



Insurer Tokio Marine & Nichido Fire Insurance Co., LTD
Incorporated in Japan ABN 80 000 438 291 AFS 246548



Mobile Plant, Motor Vehicle and Liability Insurance Combined Financial Services Guide and Product Disclosure Statement (including Policy terms and conditions)

esentry.com.au

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Combined Financial Services Guide and Product Disclosure Statement (including Policy terms and conditions)

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Introduction

This booklet is in two parts:

- Part I of this booklet, the combined Financial Services Guide (FSG) and Product Disclosure Statement (PDS), is designed to assist **You** to understand the cover offered by this insurance product and make informed choices about **Your** insurance needs. It also contains information about the remuneration that may be paid to **Us** and to others in relation to the services offered in this FSG, and how complaints against **Us** and against those acting on **Our** behalf are dealt with, and sets out the principal features and benefits and risks associated with this insurance product.
- Part II of this booklet, the **Policy** terms and conditions, sets out all the terms, conditions and exclusions of this insurance product. If **We** accept **Your** application for the insurance, Part II is to be read with and subject to the **Policy Schedule** that **We** will give **You**. If **You** require further information about this product please contact **Your** broker.

Any word or expression to which a specific meaning (definition) has been given in any part of this **Policy** shall bear that specific meaning wherever it may appear. Please see the Definitions Sections starting at page 25 of this **Policy**.

Please note that **You** and **Your** refers not only to each person and/or company named as an insured, but also certain subsidiary companies and other organisations as described in the definition of **You/Your** on page 27. The terms "**We**", "**Our**", and "**Us**" means Tokio Marine & Nichido.

Part I. Combined Financial Services Guide and Product Disclosure Statement

Date prepared: 15th September 2016

Financial Services Guide (FSG)

This FSG is an important document that has been designed to help **You** make an informed decision about whether to use any of the services that **We** offer in this FSG. The FSG also contains information about the remuneration that may be paid to **Us** and to others in relation to the services offered in this FSG, and how complaints against **Us** and against those acting on **Our** behalf are dealt with.

This FSG has been prepared by Tokio Marine & Nichido.

You should read this FSG carefully and contact **Us** if **You** have any questions.

1 What services are provided, and who provides them?

Tokio Marine & Nichido (ABN 80 000 438 291) (AFSL No 246548) is responsible for the financial services disclosed in this FSG. The services disclosed in this FSG will be provided by Tokio Marine Management (Australasia) Pty Ltd (TMMA) (ABN 69 001 488 455) on behalf of Tokio Marine & Nichido.

Tokio Marine & Nichido is the **Insurer** issuing the eSentry **Mobile Plant, Motor Vehicle** and Liability Insurance **Policy**. It is the holder of an Australian Financial Services Licence (AFSL) authorising it to provide financial product advice about general insurance products, and to issue interests in general insurance products. It is also authorised by the Australian Prudential Regulation Authority (APRA) to conduct general insurance business in Australia.

TMMA is a representative and wholly owned subsidiary of Tokio Marine & Nichido, and is also its managing agent in Australia. This means that TMMA has the authority, pursuant to a binder and managing agent agreement, to act for Tokio Marine & Nichido to issue its insurance policies and handle and settle claims in relation to those policies, subject to the terms of the authority. As a representative and managing agent of Tokio Marine & Nichido, TMMA is also authorised to provide financial advice in relation to those policies.

Tokio Marine & Nichido takes responsibility for and is liable for any statement made in, and in relation to, this combined FSG and PDS.

Where **We** issue an insurance policy, **We** will give **You** a Product Disclosure Statement (PDS). **You** may also download one from the eSentry website www.esentry.com.au. The PDS contains important information to assist **You** in choosing an insurance product that suits **You**. The PDS provides details about the features and benefits of **Our** insurance products, what is covered, what is not, and how claims will be handled.

2 Who is eSentry?

eSentry Underwriting Pty Ltd (eSentry) is an underwriting agency and AFSL holder (AFSL No. 402842) which acts as the agent of the **Insurer** to market, solicit, offer, arrange and administer this insurance. eSentry has binding authority to issue contracts of insurance on behalf of the **Insurer**. Because of this, **You** should contact eSentry in the first instance in relation to this insurance. Their details are on the back page of this FSG.

3 Remuneration

3-1 How Our staff are paid

All employees of Tokio Marine & Nichido and TMMA who provide a service do not receive specific payments or commissions for the giving of that service. **Our** employees are paid an annual salary, which can be based on performance against sales targets and/or include an annual bonus payment based on a number of factors, including sales targets and other performance criteria.

3-2 How We are paid

We will charge **You** a premium for any **Policy** issued by **Us** as described in the PDS. If **You** cancel **Your Policy** a cancellation fee of 10% may apply and be deducted against the refund. TMMA receives a management fee for administering the insurances of Tokio Marine & Nichido consisting of the reimbursement of total expenses incurred plus 3% of these expenses. This is not an additional fee paid by **You**, but is payable by **Us** to TMMA (from the premium **You** pay to purchase the insurance).

3-3 How eSentry are paid

eSentry are paid a commission to cover the costs of the services they provide to **Us**. They may also be paid a share of a profit should the business they provide result in a lower loss ratio than expected. These commissions and/or any share of a profit paid to eSentry are not in addition to **Your** premium but payable by **Us** to eSentry.

4 Contact details

You may contact eSentry in the following ways:

Level 29, 9 Castlereagh Street, Sydney, NSW, 2000
Telephone: (02) 8912 0888

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

In writing: GPO Box 4616, SYDNEY NSW 2001
Telephone: (02) 9232 2833
Facsimile: (02) 9232 6374

Product Disclosure Statement (PDS)

Date prepared: 15th September 2016

5 About this PDS

This PDS is an important document designed to help **You** make an informed decision when purchasing the eSentry Mobile Plant, Motor Vehicle and Liability Insurance **Policy**. Please take the time to read it before you purchase this insurance product.

5-1 Who is the Insurer?

This insurance is underwritten by Tokio Marine & Nichido Fire Insurance Co., Ltd (**Tokio Marine & Nichido**) (ABN 80 000 438 291, AFSL 246548), who is the issuer of this **Policy** and PDS.

Tokio Marine Management (Australasia) Pty Ltd (ABN 69 004 488 455) (**TMMA**) is the wholly owned subsidiary and managing agent of Tokio Marine & Nichido, and is therefore authorised to act on behalf of Tokio Marine & Nichido in relation to the issue of the **Policy** and to handle claims and enquiries in relation to the **Policy**.

eSentry Underwriting Pty Ltd (**eSentry**) is an underwriting agency and AFSL holder (AFSL No 402842) which acts as agent of Tokio Marine & Nichido (through a binding authority) to distribute, administer and issue the **Policy**. Because of this, you should contact eSentry in the first instance if you have any queries in relation to the **Policy**.

5-2 Cooling-off Period

We will refund all premiums paid for cover under the **Policy** to **You** if **You** provide **Us** with a written request to cancel the **Policy** within fourteen (14) days of:

- the date on which **You** receive a written or electronic confirmation from **Us** advising that **Your** insurance cover under this **Policy** has commenced; or
- the end of the fifth (5th) business day after the day on which the insurance cover under this **Policy** is sold or issued to **You**,

whichever is earlier (**Cooling-off Period**). **You** will not receive a refund if you cancel the **Policy** during the Cooling-off Period if **You** have made a claim under the **Policy**.

5-3 Your Duty of Disclosure

Before **You** enter into an insurance contract with **Us**, **You** have a duty, under the Insurance Contracts Act 1984 (Cth), to tell **Us** anything that **You** know, or could reasonably be expected to know, may affect **Our** decision to insure you and, if so, on what terms.

If **We** ask **You** questions that are relevant to **Our** decision to insure **You** and on what terms, **You** must tell us anything that **You** know and that a reasonable person in the circumstances would include in answering the questions.

You have this duty until **We** agree to insure **You**.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk **We** insure **You** for; or

- is of common knowledge; or
- **We** know or should know as an insurer; or
- **We** waive **Your** duty to tell us about.

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 renewed, 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** do not tell **Us** about a change to something **You** have previously told **Us**, **You** will be taken to have told **Us** that there is no change.

You have this duty until **We** agree to renew the contract.

5-4 If You do not tell Us something

If **You** do not tell **Us** anything **You** are required to tell **Us**, **We** may cancel **Your** contract or reduce the amount **We** will pay **You** if **You** make a claim, or both.

If **Your** failure to tell **Us** is fraudulent, **We** may refuse to pay a claim and treat the contract as if it never existed.

5-5 Privacy

In this Privacy Statement the use of **We**, **Our** or **Us** means eSentry and the **Insurer** unless specified otherwise.

Your privacy is important to **Us**. **We** are dedicated to upholding **Your** privacy and protecting **Your** personal information. **We** are bound in Australia by the Privacy Act 1988 (Cth) and its associated Australian Privacy Principles, along with any other applicable privacy laws and codes, when collecting, using, disclosing, holding, handling and transferring any personal information. **We** have ongoing practices, procedures and systems in place to ensure that **We** manage personal information in an open and transparent way.

We may use **Your** personal information (such as **Your** name, date of birth, contact details, and in certain cases explained in **Our** Privacy Policy, sensitive information) for the following purposes:

- to determine whether and on what terms **We** might issue **You** an insurance policy;
- to open and administer any products and services **You** may sign up for;
- to help improve **Our** products and services;
- to undertake market research, customer data analysis and direct marketing activities;
- to manage and resolve complaints made;
- to report information required by law or regulations; and
- to perform any other appropriately related functions.

If **You** don't provide all the information requested, the main consequence is that **We** may not be able to issue **You** with a policy or pay **Your** claim.

Unless it is unreasonable or impracticable under the circumstances, **We** will collect **Your** personal information directly from **You**, **Your** advisor or someone authorised by **You**, for example, **Your** insurance broker, financial planner, legal services provider, agent or carer. Where **You** are providing personal information relating to another person, such as **Your** employee or contractor, **You** warrant that **You** are authorised by them to provide their personal information to **Us**.

In issuing and/or managing **Your** policy or claim, **We** may need to disclose **Your** personal information to third parties such as another insurer, **Our** reinsurers, an insurance broker, **Our** legal providers, **Our** accountants, loss investigators or adjusters, anyone acting as **Your** agent or regulatory bodies as well as **Our** various third party service providers described in **Our** Privacy Policy. **We** may also disclose **Your** information as required by law.

In providing **You** with **Our** services it may be necessary to disclose **Your** information overseas where **We** have a presence or engage such parties, including but not limited to Japan, the United States of America, Canada, Bermuda, New Zealand, Thailand, Hong Kong, Europe (including the United Kingdom), Singapore and India.

We will otherwise collect, hold, use and disclose **Your** personal information in accordance with **Our** Privacy Policies, which set out how **You** may access and correct the personal information that **We** hold about **You** and how to lodge a complaint.

5-6 Goods and Services tax (GST) affects the payments We make

The amount payable by **You** for this **Policy** includes an amount for GST. When **We** pay a claim, **Your** GST status will determine the amount **We** pay.

When **You** are:

- a) not registered for GST, the amount **We** pay is the **Sum Insured** or **Limit of Liability** or sub-limit of liability or other limits of insurance cover including GST;
- b) registered for GST, **We** will pay the **Sum Insured** or **Limit of Liability** or sub-limit of liability or other limits of insurance, and where **You** are liable to pay an amount for GST in respect of an acquisition relevant to **Your** claim **We** will pay the GST amount. The amount that **We** are liable to pay under this **Policy** will be reduced by the amount of any Input Tax Credit (ITC) that **You** are or may be entitled to claim for the supply of goods or services covered by that payment.

You must advise **Us** of **Your** correct Australian Business Number (ABN) and Taxable Percentage. Taxable Percentage is **Your** entitlement to an ITC on **Your** premium as a percentage of the total GST on that premium. Any GST liability arising from **Your** incorrect advice is payable by **You**.

Where the settlement of a claim is less than the applicable **Limit of Liability** or sub-limit of liability or the other limits applicable to this **Policy**, **We** will only pay the GST (less **Your** entitlement for ITC) applicable to the settlement. This means that if these amounts are not sufficient to cover the whole loss, **We** will only pay the GST relating to **Our** share of the settlement for the claim. **We** will pay the claim by reference to the GST exclusive amount of any supply made by any **Business** of **Yours** which is relevant to the claim.

GST, ITC, BAS and Acquisition have the same meaning as given to those words or expressions in *A New Tax System (Goods and Services Tax) Act 1999* and related legislation as amended from time to time.

5-7 General Code of Practice

Tokio Marine & Nichido is a signatory to the Insurance Council of Australia's General Insurance Code of Practice.

The Code of Practice informs individuals of the standards of service to be expected from the insurance industry. The objectives of the Code of Practice are to:

- commit **Us** to high standards of service;
- promote better, more informed relations between **Us** and **You**;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes between **Us** and **You**; and
- to promote continuous improvement of the general insurance industry through education and training.

For more information on the Code of Practice, or to obtain a copy of it, **You** can call **Us** on (02) 9225 7500 or **You** can access the Code of Practice at <http://www.codeofpractice.com.au>

5-8 Financial Claims Scheme

You may be entitled to payment under the Federal Government's Financial Claims Scheme in the unlikely event that **We** are unable to meet **Our** obligations under the **Policy**. Access to this scheme is subject to eligibility criteria. Information about the scheme can be obtained from the Australian Prudential Regulation Authority (APRA) Financial Claims Scheme website at <https://www.fcs.gov.au/> and the APRA hotline on 1300 13 10 60.

5-9 Changes to the PDS

From time to time and where permitted by law, **We** may change parts of this PDS. If **We** do this, any updates that are not materially adverse to **You** may be found on the eSentry website www.esentry.com.au. If **We** substantially amend the PDS, **We** will issue **You** a Supplementary Product Disclosure Statement (SPDS) that will provide the details of the change.

6 What Is A Dispute?

A dispute is when there has been an expression of dissatisfaction in a product or service provided by **Us** or by **Our** service providers that has not been resolved after initial contact, and there has been a request that the complaint be remedied by **Us**.

7 Complaints and Dispute Resolution Procedure

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 complaint handling in a fair, transparent and timely manner.

Stage One

Within fifteen (15) business days of the date **We** receive **Your** complaint, 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 fifteen (15) business days of the date **We** receive **Your** complaint, 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 **We** cannot reach an agreement on an alternative timeline, **We** will

advise **You** of **Your** right to take **Your** complaint to Stage Two of **Our** complaints and dispute resolution process.

We will keep **You** informed about the progress of **Our** response at least every ten (10) business days, unless **You** agree otherwise.

We will respond to **Your** complaint in writing and tell **You**:

- **Our** decision in relation to **Your** complaint;
- the reasons for **Our** decision; and
- **Your** right to take **Your** complaint to Stage Two if **Our** decision at Stage One does not resolve **Your** complaint to **Your** satisfaction.

If **You** are satisfied with **Our** decision, **Your** complaint has been resolved.

If **Our** decision does not resolve **Your** complaint to **Your** satisfaction, **You** can request **Us** to take **Your** complaint to Stage Two.

Stage Two

Your complaint will be reviewed by the relevant department manager or an employee with appropriate authority, knowledge and experience, who is, to the extent practical, different from the person or persons whose decision or conduct is the subject of **Your** complaint, or who was involved in the Stage One decision.

We will keep **You** informed about the progress of **Our** review at least every ten (10) business days. Within fifteen (15) business days of the date **You** advise **Us** that **You** wish to take **Your** complaint to Stage Two, if the reviewer has all the information they need and has completed their investigation, **You** will be advised of **Our** final decision. If the reviewer requires more information or more time, they will let **You** know as soon as reasonably practicable within the fifteen (15) business day timeframe, and will attempt to agree to a reasonable alternative timeline with **You**. If **We** cannot reach an agreement or an alternative timeline, **We** will advise **You** of **Your** right to take **Your** complaint to the Financial Ombudsman Service (FOS). The FOS is an independent external dispute resolution scheme.

Our response to the review of **Your** complaint will be in writing and will include:

- **Our** final decision in relation to **Your** complaint, and the reasons for that decision; and
- **Your** right to take **Your** complaint to the FOS if **You** are not satisfied with **Our** decision, together with the contact details for the FOS, and the timeframe within which **You** must take **Your** complaint to the FOS.

We further advise that Stage One and Stage Two of **Our** complaints process described above will not exceed forty five (45) calendar days in total, unless **We** are unable to provide **You** with a final decision within forty five (45) calendar days.

If **We** are unable to provide **You** with a final decision within forty five (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 the contact details for the FOS.

8 If Your Complaint Is Not Resolved

If, despite **Our** best efforts, this does not resolve the complaint to **Your** satisfaction, **You** have several other avenues open to **You**.

The small claims courts and tribunals deal with matters where small amounts are involved.

Mediation may be arranged where **You** and Tokio Marine & Nichido both agree on an independent person being appointed to assist in solving the complaint.

When all else fails and the amount involved is more substantial, **You** may utilise the formal legal process available through the Australian court system.

To learn more about the collection and use of **Your** personal information, see **Our** Privacy Policy, which can be viewed at the eSentry website www.eSentry.com.au. A copy of the **Insurer's** full Privacy Policy is located at www.tokiomarine.com.au

9 Benefits and Features

9-1 Scope of Cover

Three different Sections are available for cover under this **Policy**. Only those Sections that **We** have agreed to include in **Your Policy Schedule** will be operative. These will be identified in the **Policy Schedule** as **INSURED**. The inoperative Sections will be shown as **NOT INSURED**.

Exclusions, limits and conditions apply so please refer to the **Policy** wording in Part II of this document for full details.

Section 1: Material Damage

Section 1 provides cover against the cost of repair or replacement of items of **Mobile Plant** and **Motor Vehicles** identified as **Insured Items** in the **Policy Schedule** if they are damaged, destroyed, lost or stolen during the **Policy Period** anywhere in Australia.

Section 2A: Registered Items liability including CTP gap cover

Section 2A provides cover against **Your** legal liability to third parties in respect of **Personal Injury** or **Property Damage** first occurring during the **Policy Period**, which is caused by an **Occurrence** in Australia from **You** using or operating (primarily as a **Motor Vehicle**) any **Mobile Plant** or **Motor Vehicle** that is listed in the **Policy Schedule** as an **Insured Item**, subject to the **Policy** terms and conditions.

This Section does not cover liability for **Personal Injury** which is covered / coverable under compulsory third party insurance.

Section 2B: Public and Products Liability

Section 2B provides cover against **Your** legal liability to third parties in respect of **Personal Injury** or **Property Damage** first occurring during the **Policy Period**, and caused by an **Occurrence** anywhere in the world (subject to some limitations concerning the United States of America/Canada) in connection with **Your Business**.

9-2 Our Agreement

Where **We** agree to insure **You**, **We** will issue a **Policy Schedule** confirming cover. The information contained in the **Policy Schedule** sets out information specific to **You**, such as the cover **We** have agreed to provide and the **Policy Sum Insured** or **Limit of Liability** or sub-limit of liability. **Our** agreement with **You** (the **Policy**) will comprise the **Policy** terms and conditions, the **Policy Schedule** and any **Endorsements** **We** issue. They should be read together and kept in a safe place. Where **We**

have agreed to enter into a **Policy** with **You** and subject to the terms, conditions and exclusions of the **Policy**:

- **We** agree to provide **You** with the insurance cover set out in each of the sections which are listed in the **Policy Schedule**, subject to **Your** payment of, or agreement to pay **Us**, the premium set out in the current **Policy Schedule**;
- The insurance applies for the period for which the premium **You** have paid relates to **Our** annual premium required;
- **We** will cover **You** for the relevant covered loss, damage and liability occurring during that **Policy Period**; and
- **We** will not pay more than the **Sum Insured** or **Limit of Liability** or sub-limit of liability for each section which is shown in the **Policy Schedule** or as provided in the **Policy**.

9-3 How much **We** insure **You** for

Section 1: An **Agreed Value**, **Sum Insured** or **Market Value** will be shown in the **Policy Schedule** for each **Insured Item**. A different **Sum Insured** may apply under an automatic or optional extension or **Endorsement**.

The amount **We** pay will be limited by the applicable **Sum Insured** and will be calculated according to the Basis of Settlement and other terms in Section 1.

Section 2A: The maximum amount **We** will pay under Section 2A will be the **Limit of Liability** specified for Section 2A in the **Policy Schedule**, or any other **Limit of Liability** applicable under an extension or **Endorsement**.

Section 2B: The maximum amount **We** will pay under Section 2B will be the **Limit of Liability** specified for Section 2B in the **Policy Schedule** or any other **Limit of Liability** applicable under an extension or **Endorsement**.

9-4 The cost of this **Policy**

The premium payable by **You** for the insurance under this **Policy** will be shown on the **Policy Schedule**. The key factors that influence the premium calculation are reflected in the questions asked, and the information provided by **You** at the time of **Your** enquiry or application for this insurance. These include factors relating to:

- the type and **Market Value** of each **Insured Item**;
- the age and driving experience of **Your Operators**;
- where and how each **Insured Item** is used;
- the type of loss covered;
- the place where **Your Insured Item** is stored when not in use; and
- **Your** previous insurance and claims history.

If **You** purchase Public and Products Liability section, the following factors may also be used in calculating the premium for that section:

- **Your** Turnover;
- **Your** Business activities;
- The number of contractors **You** engage;
- The type of cover or extensions **You** have chosen.

Premiums are subject to Commonwealth and state taxes and/or charges. These include the Goods and Services Tax and stamp duty. The amount of these taxes and/or charges will be shown on **Your Policy Schedule**.

The premiums for some Sections or extensions of this **Policy** are adjustable. **You** will be required to pay a deposit premium based on estimated values provided by **You** at the commencement of the **Policy**. At the end of the **Policy Period**, **You** will be required to complete a declaration of the final actual values to enable **Us** to adjust the final premiums that will apply to **Your** insurance cover under the **Policy**.

9-5 Paying Your Premium

You must pay **Your** premium by the due date. If **We** do not receive **Your** premium by this date or **Your** payment is dishonoured, this **Policy** will not operate and there will be no cover. If **You** pay **Your** premium by way of instalments and **You** fail to pay **Your** premium instalment and the premium instalment remains unpaid for at least:

- fourteen (14) calendar days after the due date of the instalment, **We** may refuse to pay any claim under the **Policy** arising from an **Event** occurring after the due date of the instalment; and
- one month after the due date of the instalment, **We** may cancel **Your Policy**.

If **We** have not received a premium instalment, **We** will send **You** a notice in writing regarding **Your** non-payment at least fourteen (14) calendar days before any cancellation by **Us** for non-payment of the premium instalment. If after sending this notice **We** do not receive the outstanding premium instalment, **We** will send **You** a second notice in writing, either:

- prior to cancellation, informing **You** that **Your Policy** is being cancelled for non-payment; or
- within fourteen (14) calendar days after cancellation by **Us**, confirming **Our** cancellation of **Your Policy**.

9-6 Risks

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 **Policy Schedule** details the **Excesses** and deductibles applicable to **Your** insurance cover under the **Policy**.

If **You** make a claim under the **Policy**, **You** may be required to pay one or more **Excesses**. The descriptions of these **Excesses** and the circumstances in which they are applied are shown in the **Policy** terms and conditions under 'General Conditions Applicable to All Sections' on pages 30 to 35, 'Automatic Extensions applicable to Section 1' on pages 37 to 43, 'Optional Extensions applicable to Section 1' on pages 43 to 45, 'Automatic Extensions applicable to Section 2B' on pages 62 to 63, 'Optional Extensions applicable to Section 2B' on page 63, and on **Your Policy Schedule**. **Your Policy Schedule** and **Policy** terms and conditions will be made available to you when you receive your quotation documents. **We** take into consideration a number of factors in calculating the amount of **Your Excesses** including:

- the type of **Insured Item(s)**;
- the age and driving experience of **Your Operators**;
- where and how the **Insured Item(s)** is/are used;
- the type of loss covered;
- the place where **Your Insured Item(s)** is/are stored;
- when **Your Insured Item(s)** is/are not in use; and
- **Your** previous insurance and claims history.

At the time of **Your** enquiry or application for insurance, **We** will notify **You** of the amount of all **Excesses** applicable to **Your Policy**.

The **Excess** reduces the amount that **We** are liable to pay under this **Policy** and **We** will not be liable to pay any amount that is less than the applicable **Excess**. More than one **Excess** may apply at the same time. There are several kinds of **Excess**:

- a) Standard **Excess**, being the first listed **Excess** in each of the Policy Sections (Sections 1, 2A, and 2B) on **Your Policy Schedule**.
- b) Special **Excess**, which is an **Excess** that applies to certain items or claims as provided in this **Policy** or **Your Policy Schedule**. Some examples of Special **Excesses** are:
 - i. Age/inexperienced **Excess** where the **Operator** or driver of the **Insured Item** or vehicle was under twenty five (25) years of age or has not held an Australian driver's licence for two (2) or more years for the type of **Insured Item** or **Motor Vehicle**.
 - ii. Tipping **Excess** where the **Insured Item** is a rigid body tipper or tipping trailer whose tipping hoist is partially or fully extended, at the time of the accident. Where a Tipping **Excess** applies, the Standard **Excess** and any other applicable **Excess** is increased by one hundred per cent (100%).

Excess – Section 1

Under Section 1, **You** must pay the amount of the applicable **Excess** to **Us** or the repairer or anyone else **We** direct before **We** will be liable to pay any amount under that Section. If the **Insured Item** for which **We** are liable to pay under Section 1 is declared a total loss, **We** will be entitled to deduct any unpaid amount of **Excess** from **Our** payment.

Excess – Section 2A and 2B

Under Section 2A and 2B, **You** must pay the applicable **Excess** or however much of it **We** request before **We** are liable to pay any amount under those Sections.

9-7 What We do not cover You for

The **Policy** does not cover certain things. There are certain restrictions or exclusions that limit the cover given. Please see:

- pages 28 to 29 for the 'General Exclusions applicable to All Sections';
- pages 45 to 48 for the 'Exclusions Applicable to Section 1';
- pages 54 to 56 for the 'Exclusions Applicable to Sections 2A & 2B';
- pages 59 to 61 for the 'Exclusions Applicable to Section 2A'; and
- pages 63 to 68 for the 'Exclusions Applicable to Section 2B'.

9-8 Claim payment examples

We have provided the following three examples to illustrate how a claim may be paid:

Example One - Insured Item is a total loss (where the Sum Insured exceeds the Market Value)

The **Insured Item** is a vehicle that is used 100% for **Business** use and is insured for a **Sum Insured** of \$150,000, or **Market Value**, whichever is lesser. The standard **Excess** is \$1,000 or 1% of the **Sum Insured**, whichever is greater. The **Insured Item** is damaged and **We** assess the cost of repair to be \$200,000, and therefore a total loss (**We** normally decide an **Insured Item** is a total loss if the complete repair cost exceeds its **Market Value** or **Sum Insured**, whichever is less, less the salvage value and any relevant **GST** component).

The **Market Value** is determined as follows:

The **Insured Item** is 10 years old, and **We** assess the **Market Value** to be \$130,000 (GST inclusive). The **Insured Item** is a total loss. **Market Value** is less than the **Sum Insured**. **We** are liable for the **Market Value** of \$130,000.

Less **Excess** \$1,500

As mentioned, the standard **Excess** is \$1,000 or 1% of the **Sum Insured**, whichever is greater. However, as 1% of the **Sum Insured** equals \$1,500, which is greater than \$1,000, the **Excess** in this example is \$1,500.

The total claim payable is \$128,500 (**We** would normally pay this amount directly to **You** in a total loss situation). As **You** do not have a GST liability in respect of any payment **We** make to **You** for the total loss of **Your** vehicle, **We** will deduct the **GST** component.

Please note that if the **Insured Item** salvage value is \$1,000, the salvage becomes **Our** property and **We** are entitled to keep the \$1,000 proceeds of its sale, plus any registration and compulsory third party insurance refund (if applicable). This does not affect the calculations above, unless **You** obtain these refunds directly in which case **We** will deduct these costs from the total claim payable to **You**.

Example Two - Insured Item is repairable

The **Insured Item** is a vehicle that is used for **Business**. It is covered under **Section 1** for a **Sum Insured** of \$150,000 or **Market Value**, whichever is lesser. The standard **Excess** is \$1,000 or 1% of the **Sum Insured**, whichever is greater. The **Insured Item** is damaged in an accidental event and **We** assess the cost of repair to be \$50,000 (GST exclusive).

We authorise repairs to **Your Insured Item** and pay the cost of repair (i.e. \$50,000).

Less **Excess** \$1,500

As mentioned, the standard **Insured Item Excess** is \$1,000 or 1% of the **Sum Insured**, whichever is greater. However, as 1% of the **Sum Insured** equals \$1,500, which is greater than \$1,000, the **Excess** in this example is \$1,500. **We** deduct the **Excess** from the amount **We** pay to the repairer and **You** would pay the **Excess** of \$1,500 directly to the repairer.

Total claim payable \$48,500 (**We** would normally pay this amount directly to the repairer).

Example Three - Third Party Liability

A third party is injured whilst visiting your premises and you have covered under Section 2B. The basic **Excess** is \$500.

You were held legally liable to pay \$50,000 as compensation for damage to the third party as a result of the accident. The sum of \$50,000 represents the amount payable (after adjustment) for the GST position of the third party. In addition, **We** have spent \$10,000 defending the claim. Making the total cost of the claim \$60,000.

Total claim payable is \$60,000 less the excess of \$500. **We** would normally pay the claim directly to the third party, so we would pay the Third Party \$50,000, the defence costs to the Lawyers \$10,000. **We** would then collect the \$500 excess from **You**.

9-9 Automatic Extensions

Each Section includes automatic extensions which can expand the cover in that Section. Some of these extensions may cover things that are otherwise specifically excluded under the **Policy**, or that are otherwise outside the scope of cover, but usually with a lower **Sum Insured** or sub-limit of liability (than the **Sum Insured** for Section 1 or **Limit of Liability** for Sections 2A and 2B). Automatic extensions are included in the standard cover automatically, they are not shown in the **Policy Schedule**. Please see:

- pages 37 to 43 for the 'Automatic Extensions applicable to Section 1';
- pages 53 to 54 for the 'Automatic Extensions applicable to Section 2A and 2B';
- pages 58 to 59 for the 'Automatic Extensions applicable to Section 2A'; and
- page 62 for the 'Automatic Extensions applicable to Section 2B'.

9-10 Optional Extensions

Each section has optional extensions which **You** can request. If **We** accept **Your** request and agree to provide an optional extension it will be shown as 'Covered' in the **Policy Schedule**, and in most cases **We** will charge **You** an additional premium for the cover. Please see:

- pages 43 to 45 for the 'Optional Extensions applicable to Section 1';
- page 59 for the 'Optional Extensions applicable to Section 2A'; and
- page 63 for the 'Optional Extensions applicable to Section 2B'.

9-11 Conditions

The **Policy** details certain conditions that **You** must comply with in order to claim under the **Policy**. If **You** do not comply with these conditions, **We** may be able to reduce the amount of, or avoid paying, a claim under the **Policy**. These conditions are found on 30 to 35, 51, and 56 of the **Policy** terms and conditions.

9-12 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 an agreement.

9-13 Average / Underinsurance

In Section 1 of this **Policy**, where **You** request any cover for **Mobile Plant** on a **Market Value** basis, the **Sum Insured** for the **Mobile Plant** must be for the **Market Value** of the item at commencement of the **Policy Period**. Following an **Event**, if it is found that the amount **You** have specified as **Sum Insured** for the **Mobile Plant** is less than 90% of the **Market Value**, the amount to be paid by **Us** in respect of the **Insured Damage** to the **Mobile Plant** shall be reduced in the same proportion as the **Sum Insured** bears to 90% of the **Market Value** of the **Mobile Plant**.

9-14 Assumed Liability and Waived rights

Other than **Covered Contracts**, if **You** have entered into an agreement with another party:

- where **You** are assuming a greater liability than would apply had **You** not entered into that agreement; or
- which prevents **You** from taking a recovery action for indemnity or contribution from that party,

it may adversely affect **Your** rights to cover under this **Policy**.

Part II. The Policy Terms and Conditions

10 General provisions applying to the whole policy

10-1 Terms of Policy

In consideration of payment to **Us** of the amounts **We** charge for this insurance, **We** will cover **You** in accordance with this **Policy**.

10-2 General Definitions applying to All sections

Some key words and terms used in this **Policy** have special meanings that appear below. Words and terms that are used in only one section of the **Policy** will be defined in that section.

A word or term importing the singular includes the plural (and vice versa).

Accessories, Tools, Spare Parts means the equipment Accessories, Tools and/or Spare Parts supplied with the **Insured Item** when new as standard.

Act(s) of Terrorism means an act, which may include but is not limited to 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.

Attachment means any device attachable to or detachable from the **Insured Item** that, when attached is intended to enable the **Insured Item** to perform additional functions or increase its operational capacity.

Business means the business specified in the **Policy Schedule** and also includes:

- a) a canteen, social or sporting club or first aid, fire or ambulance service, provided by **You** and incidental to that business; and
- b) private work undertaken by **Your** employees for any of **Your** directors or senior executives.

Covered Contracts means

- a) a contract between **You** and **Your** principal for the provision of work or service by **You** to **Your** principal;
- b) a contract or agreement, for lease or occupancy of any building or premises or part of a building or premises, between **You** and the lessor or owner;
- c) a contract or agreement, for hiring in of an **Insured Item** without an **Operator**, between **You** and the lessor or owner;
- d) a contract or agreement, for hiring out of an **Insured Item** with an **Operator**, between **You** and the party hiring the **Insured Item** from **You**; or
- e) a contract or agreement specified under Covered Contract(s) in the **Policy Schedule**.

Except as specified in c) and d) above, **Covered Contract** does not include any hire agreement or other contract or agreement for the hire or lease of equipment, including hire or lease of **Insured Item(s)**.

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

Endorsement means any changes identified in the **Policy Schedule** as attaching to or applying to the **Policy**.

Excess means the amount specified as an excess in the **Policy Schedule** or an **Endorsement**.

Insured Item means any item listed in the insured items schedule of the **Policy Schedule** including its **Accessories, Tools, Spare Parts** and sign writing, but excluding **Attachments** not listed in the **Policy Schedule** for the **Insured Item**.

Insured Damage means accidental, sudden and unforeseen physical loss or destruction of or damage to an **Insured Item** which occurs during the **Policy Period**.

Insurer means Tokio Marine & Nichido Fire Insurance Co. Ltd.

Limit of Liability means the amount specified as the **Limit of Liability** in the **Policy Schedule**.

Loading or Unloading means the single action of transferring the weight of goods or equipment (or a portion of a consignment of goods) onto or from any form of conveyance.

Mobile Plant means a:

- a) backhoe, bulldozer, front end loader, forklift, industrial crane or hoist, other mobile machinery/equipment, agricultural implement; or
- b) non-motorised machine or implement;

described in **Your Policy Schedule** and is not a **Motor Vehicle**.

Motor Vehicle means

- a) a automobile, truck, bus, or similar motor-driven conveyance; or
- b) a trailer;

described in **Your Policy Schedule**.

Occurrence means an accident which results in **Personal Injury** or **Property Damage** neither expected nor intended from **Your** standpoint. All **Personal Injury** and **Property Damage** arising out of continuous or repeated exposure to substantially the same general conditions will be considered to arise out of one **Occurrence**.

Operator means any person operating, driving or in charge of the **Insured Item**.

Personal Injury means:

- a) bodily injury, sickness, disease, death;
- b) shock, fright, mental anguish;
- c) false arrest, false imprisonment, wrongful detention, malicious prosecution;
- d) libel, slander, defamation of character, humiliation; or
- e) wrongful eviction, wrongful entry or other invasion of privacy.

Policy means this policy wording, the **Policy Schedule**, and any **Endorsements** issued by **Us** amending these terms and conditions or **Policy Schedule**.

Policy Period means the period shown in the **Policy Schedule**.

Policy Schedule means the insurance schedule or any **Endorsement** schedule or tax invoice that **We** give **You**.

Property Damage means physical damage to or physical destruction of or physical loss of tangible property including any resultant loss of use.

Software means programs, procedures and routines associated with the operation of electronic or electromechanical data processing or electronically controlled equipment, including any operating system.

Territorial Limit

- a) For the purposes of sections 1 and 2A of this **Policy**, **Territorial Limit** means the Commonwealth of Australia;
- b) For the purpose of section 2B of this **Policy**, **Territorial Limit** means:
 - i) anywhere in the world excluding the United States of America or Canada; and
 - ii) the United States of America or Canada but only in respect of the temporary presence of any person who is normally a resident in Australia and who is not performing any manual or supervisory work whatsoever whilst in the United States of America or Canada.

We/Us/Our means Tokio Marine & Nichido Fire Insurance Co. Ltd.

You/Your

- a) means:
 - i) the entity named as the Insured in the **Policy Schedule**; and
 - ii) all subsidiary companies (and their subsidiaries) of the entity named as the Insured in the **Policy Schedule** existing at the commencement of the **Policy Period**, but only while they continue to be subsidiary companies (and their subsidiaries) of the entity named as the Insured in the **Policy Schedule**.
- b) For the purpose of Section 2A of this **Policy**, includes:
 - i) any **Operator** of a **Registered Insured Item** with the consent of the entities referred to in a) above;
 - ii) any employer or principal of the entities referred to in a) above where the **Registered Insured Item** was, at the time of the happening of **Personal Injury** or **Property Damage**, being used or operated with the consent of the entities referred to in a) above.
- c) For the purpose of Section 2B of this **Policy**, includes:
 - i) any directors, executive officers or employees of the entities referred to in a) above but only while acting within the scope of their duties in such capacity;
 - ii) any principal of the entities referred to in a) above but only for the principal's vicarious liability arising out of the work performed by the entities referred to in a) above for the principal; and if the entities referred to in a) above have a contractual obligation to include the principal as an insured entity under this **Policy**, to the extent required under such contractual obligation; or
 - iii) any office bearer or member of any canteen, internal fire brigade or internal first aid service; social and/or sports clubs, societies or associations; formed with the consent of the entities referred to in a) above but only while such persons are acting within the scope of their duties in such capacity.

When the term **You** or **Your** is used in an exclusion clause, it refers only to the person or company making the claim for indemnity under the relevant section of this **Policy Endorsement**. If the intention was to refer to any party forming part of **You**, the phrase 'any of **You**' will be used.

11 General Exclusions applicable to All Sections

This **Policy** will not provide cover for any **Insured Damage, Personal Injury, Property Damage, or Defence Costs** or any other amounts insured by this **Policy** which arise out of or are in any way connected with:

11-1 Consequential Loss

Any penalties (contractual or otherwise) for non-completion or delay in completion, non-compliance with any contract conditions, fines, liquidated damages, or aggravated, punitive, or exemplary damages, extra costs of working, or any other consequential financial loss, unless otherwise coverage is agreed and acknowledged by specific endorsement issued by **Us**.

11-2 Criminal acts

Theft or other criminal act by **You** or any of **Your** partners or directors.

11-3 Data

- a) Total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **Electronic Data** and/or **Software**;
- b) Error in creating, amending, entering, deleting or using **Electronic Data** and/or **Software**; or
- c) Total or partial inability or failure to receive, send, access or use **Electronic Data** and/or **Software** for any time or at all.

11-4 Illegal Alterations or Modifications

Your Insured Item being operated with illegal alterations or modifications so that **Your Insured Item** does not comply with any Machinery Act or regulations or any relevant law, bylaw, regulation, the Australian Standards Code, Australian Design Rules or the manufacturer's standard design.

11-5 Known Defects

Any faults or defects known to **You** or any of **Your** employees at the time of arrangement of this insurance.

11-6 Mobile Plant Operation

Any loss, damage and/or liability:

- a) that could have been avoided if any fitted safety/security devices had been properly activated; or
- b) occurring while **Insured Item** is undergoing a test of any kind, except one required by law which is performed appropriately and by a duly licensed or qualified person; or
- c) occurring while **Insured Item** is being used, operated or prepared for operation in any manner or for any purpose other than for which it was designed; or
- d) caused by failure to provide **Insured Item** with adequate or appropriate, fuel, oil, lubricant or coolant; or
- e) occurring while any crane insured by the **Policy** is being used in a lifting operation in which a load is shared or rigged for sharing with other cranes, unless otherwise agreed and acknowledged by specific **Endorsement**; or
- f) the **Insured Item** is used beyond the manufacturer's recommended safe working limits;

However, if **You** have given instructions or taken precautions that are adequate to prevent such use and did not know or could not reasonably have known that the **Operator** was using the **Insured Item**

in this manner, then **We** will not deny any claim under this Exclusion 11-6, but **We** will not waive **Our** subrogation rights against the **Operator**.

11-7 Radioactivity

Any Radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

11-8 Requisition

Any lawful seizure or requisition of an **Insured Item** or by other operation of law or arising from any breach of contract, agreement or obligation.

11-9 Trading Sanctions

Any trade or economic sanctions or other laws or regulations that prohibit **Us** from providing insurance.

11-10 Terrorism

Any **Act(s) of Terrorism**.

11-11 War

War, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.

11-12 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.

*This **Policy** also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to clauses 11-2, 11-7, 11-8, 11-9, 11-10, 11-11 above.*

12 General Claims Procedures applicable to All Sections

12-1 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, payment, promise, or offer of payment in connection with any such claim, without **Our** written consent.

12-2 Authority for Repairs, Replacement or Reinstatement

- a) 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 (inclusive

of GST) and **You** must give **Us**, **Our** employees or agents an opportunity to inspect the loss or damage before any repairs or alterations are effected.

- b) 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.

12-3 Other Insurances

Upon the happening of any **Occurrence**, **Insured Damage** or other event which may give rise to a claim under this **Policy**, **You** must furnish **Us** with a statement giving details of any other insurances which may also provide insurance cover for any property or legal liability that is insured under this **Policy**.

12-4 What can affect a claim?

We will reduce the amount of a claim by the **Excess** shown in the **Policy Schedule**. **We** may refuse to pay a claim if **You** are in breach of **Your** duty of disclosure or any other conditions of this **Policy**. **We** pay only once for loss or damage from the same event covered by this **Policy** even if it is covered under more than one section of the **Policy**. **We** may be entitled to refuse to pay or to reduce the amount **We** pay for a claim if:

- a) it is in any way fraudulent; or
- b) any fraudulent means or devices are used by **You** or anyone acting on **Your** behalf to obtain any benefits under this **Policy**.

12-5 What You must not do

In the event of an incident that may give rise to a claim, **You** must not, without **Our** written consent;

- a) make any admission of guilt or promise or offer of payment;
- b) incur any costs or expenses in respect of any right or claim which may be the subject of a claim by **You** against **Us** under this **Policy** (other than authority provided under clause 12-2);
or
- c) authorise repairs to **Your Insured Item**.

However **You** may authorise the fitting of an identical replacement **Windscreen** or window glass.

13 General Conditions applicable to All Sections

13-1 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**.

13-2 Breach of Conditions or Warranty

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

- a) breach of a condition or warranty without **Your** knowledge or consent;
- b) 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)**;
- c) error in name, description or situation of property; or

- d) 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, **You** or **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.

13-3 Cancellation

The **Policy** may be cancelled:

- a) by **You** at any time by giving notice in writing to **Us** outside the **Cooling-off Period** (as defined in Section 5-2). Such cancellation will be effective from the date **We** physically receive **Your** notice, and **You** will be entitled to a pro rata refund of premium for that portion of the **Policy** not utilized, less ten per cent (10%); or
- b) by **Us** in accordance with the provisions of the Insurance Contracts Act 1984 (as amended). **You** will be entitled to a pro rata refund of premium for the portion of the **Policy** not utilized;

in either of the situations in a) or b) above, no refund of premium will be made on cancellation if that refund would result in **Our** not retaining the minimum amount of premium specified in **Our** underwriting guidelines, or if there has been a claim under this **Policy**.

13-4 Claim Co-operation

On the happening of an **Event/Occurrence** for which a claim is made or maybe made under the **Policy** **We** may at **Our** election:

- a) take over and conduct in **Your** name the defence or settlement of such claim;
- b) at **Our** own expense and for **Our** own benefit conduct proceedings or prosecute any action to enforce **Your** rights against others whether or not any payment has been made by **Us** in respect of such claim; and/or
- c) request from **You** and **You** will be obliged to provide all assistance and information that **We** may reasonably require for the purpose of defending or settling such claim or the pursuit of any rights of recovery from others.

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.

13-5 Defective Product(s)

You will, at **Your** own expense, trace, recall, and modify any of **Your Products** that **You** know, or **You** reasonably suspect, may contain any defect or deficiency or the instructions relating to the use of the **Products** or their packaging are inadequate.

13-6 Entitlement

Each person or organisation entitled to insurance under the **Policy** will be subject to all of the **Policy's** terms and conditions as if such person or organisation were **You**. **You** undertake to use all reasonable means to communicate the terms of this **Policy** to all persons who may be entitled to any cover under the **Policy**.

13-7 Goods and Services Tax and Your premium

The amount of premium payable by **You** for this **Policy** includes an amount to account for the GST on the premium.

All amounts insured under this **Policy** are in accordance with the advice **You** have given to **Us** regarding **Your** GST status and the GST status of the **Insured Items**. **We** will not be liable to pay any

GST, or any fine, penalty or charge that **You** are liable for arising out of **Your** misrepresentation of, or failure to disclose, **Your** proper Input Tax Credit entitlement on the premium relating to the **Policy**. In respect of **Your Policy** with **Us** where **You** are registered for GST purposes, **You** should calculate **Your** proposed **Sums Insured** with reference to the GST status of each item of property to be insured. Depending on the GST status of each item of property to be insured, the **Sums Insured** may or may not include a GST component. An amount for GST should only be included in the **Sum Insured** if the item of property to be insured is not used 100% for **Business** use. All items of property used 100% for **Business** use should be insured on a GST exclusive basis. This outline of the effect of the GST on **Your Policy** is for general information only. **You** should not rely on this information without first seeking expert advice on the application of the GST to **Your** particular circumstances.

13-8 Goods and Services Tax and Claim Payments

When **We** pay a claim, **Your** GST status and the GST status of the property which is the subject of the claim, will determine the amount **We** pay.

When **You** are:

- a) not registered for GST, the amount **We** pay is the **Sum Insured/Limit of Liability** or the other limits of insurance cover including GST;
- b) registered for GST and the property which is the subject of the claim is used 100% for **Business** use, **We** will pay the **Sum Insured/ Limit of Liability** or the other limits of insurance less any relevant GST component, which includes but is not limited to, any Input Tax Credit to which **You** are entitled for any acquisition which is relevant to **Your** claim, or which **You** would have been entitled were **You** to have made a relevant acquisition;
- c) registered for GST and the property which is the subject of the claim is used 100% for personal use, the amount **We** pay is the **Sum Insured/Limit of Liability** or the other limits of insurance cover including GST;
- d) registered for GST and the property which is the subject of the claim is used for **Business** and personal use, **We** will pay the **Sum Insured/Limit of Liability** inclusive and exclusive of any relevant GST component with reference to the percentage of personal use and the percentage of **Business** use of the item that is the subject of the claim.

You must advise **Us** of **Your** correct entitlement to an Input Tax Credit on **Your** premium and the correct entitlement to an Input Tax Credit on each item of property to be insured.

Should the item of property which is the subject of the claim be used for both personal and **Business** use, any amounts **We** pay will be in accordance with the percentage of personal and **Business** use. Any GST liability arising from **Your** incorrect advice is payable by **You**.

13-9 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.

13-10 Inspection

We or **Our** employees or agents will at any reasonable time have the right to inspect and examine at any location, any item, plant or equipment associated directly or indirectly with the risk, which is the subject of the **Policy**, and **You** must provide to **Us**, **Our** employees or agents all details and information which **We** may reasonably require.

13-11 Interpretation

In this **Policy**:

- a) the singular includes the plural and vice versa;
- b) the male gender includes the female and neutral genders;
- c) 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
- d) 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**.

13-12 Material Change

Every change materially affecting:

- a) the facts or circumstances existing at the commencement of the **Policy Period**; or
- b) the risk insured by this **Policy**;

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

13-13 Misrepresentation and Non-Disclosure

If **You** have:

- a) failed to disclose any matter which **You** were under a duty to disclose to **Us**; or
- b) made a misrepresentation to **Us** before the **Policy** of insurance was entered into; and if **We** would not have entered into the **Policy** for the same premium and on the same terms and conditions expressed in the **Policy**, but for the failure to disclose or the misrepresentation, then:
 - i) **Our** liability in respect of any claim shall be reduced to an amount which places **Us** in the same position in which **We** would have been placed if the failure to disclose had not occurred or the misrepresentation had not been made; and
 - ii) if the non-disclosure or misrepresentation was fraudulent, **We** may also avoid the **Policy**.

Where more than one party is insured under the **Policy**, any misrepresentation or non-disclosure will only affect the party responsible for the misrepresentation or non-disclosure and no other party.

13-14 Observance of Terms and Conditions

Our liability under the **Policy** depends upon and is conditional on compliance with all of the following conditions:

- a) the observance of the terms and conditions of the **Policy** and/or **Endorsement** of the **Policy** by any person or entity insured under it, in so far as they relate to anything to be done or complied with by such persons or entities; and
- b) the truth of the verbal and written statements made to **Us** by any of the persons or entities insured or their representative or agents prior to concluding the **Policy**; and
- c) the immediate notification to **Us** of any alteration of risk which materially affects this insurance, by any of the persons or entities insured under this **Policy**.

13-15 Payment of Premium

The named **Insured** must pay the premium specified in the **Policy 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).

13-16 Premium Adjustment

This clause 13-16 will automatically apply to Section 2B of **Your Policy** (if Section 2B is chosen).

If this clause 13-16 is to be applied to Sections 1 and/or 2A of **Your Policy**, it will be noted in the **Policy Schedule**.

Within thirty (30) days of the expiry of the **Policy Period**, **You** shall provide **Us** with a declaration which details:

- a) if Section 1 was covered -schedule of **Insured Items** as at the expiry of the policy
- b) if Section 2B was covered -the actual wages and turnover of **Your Business** for the **Policy Period**

The final premium for this **Policy Period** shall then be determined as follows.

- i) In respect of Sections 1 and 2A of this **Policy**

By multiplying the sum total of amounts referred to in 13-16 a) less the **Sum Insured** at the start of the **Policy Period** by the premium rates used at the start of the period multiplied by sixty per cent (60%).

- ii) In respect of Section 2B of this **Policy**

By multiplying the actual turnover for the **Policy Period** by the agreed premium rate for Section 2B 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** during the **Policy Period** (**Provisional Premium**), **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**.

13-17 Reasonable Care

You must:

- a) take all reasonable precautions to prevent:
 - i) **Insured Damage, Personal injury and Property Damage**; and
 - ii) the manufacture, sale or supply of defective workmanship of **Products**;
- 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** that **You** know, or have reason to suspect, contain a defect or deficiency.

If any provisions of clause 13-17 have 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 under this **Policy** by the amount that fairly represents the extent to which **We** have been prejudiced by such breach or non-compliance.

13-18 Reinstatement of Sum Insured (Section 1)

Following **Insured Damage** to any **Insured Item** or any part of any **Insured Item**, the **Sum Insured** in respect of the **Insured Item** will automatically be reinstated, provided that **You** pay **Us** any additional premium **We** require when **We** agree to reinstate any such amount. The additional premium will be the same proportion of the premium for that **Insured Item** as the amount reinstated bears to the **Sum Insured** for the **Insured Item** reinstated.

13-19 Subrogation and Allocation of Recoveries

Any corporation, organisation or person claiming under this **Policy** 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 **Policy**.

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 claim.

13-20 Transfer of Interest

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

13-21 Welding, Flame Cutting, application of Heat

All welding and flame cutting must comply with the Australian Standard “AS1674.1 – 1997 and AS1674.2 – 2007 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).

Section 1: Material Damage

14 Definitions applicable to Section 1

Agreed Value means the **Sum Insured** for an **Insured Item** to which this extension applies, which will be the value of the **Insured Item** that **We** have agreed to before this **Policy** was entered into, after **You** have provided to **Us** a valuation certificate for that **Insured Item**.

Breakdown means the sudden and unforeseen derangement or cessation of normal functioning of an **Insured Item** that:

- a) occurs while the **Insured Item** is in normal use;
- b) is caused by or results from a fault or defect of or within a mechanical, electrical or electronic part of the **Insured Item** (including but not limited to breaking, rupturing, bursting, cracking, burning, seizing of the part) that is not caused by anything external to the part; and
- c) requires repair or replacement of the faulty or defective part before the **Insured Item** can resume normal functioning.

Damage Waiver means a term in a hire agreement for an **Insured Item** that removes or restricts **Your** rights of recovery against the hirer in respect of loss or damage to the **Insured Item**.

Dry Hire means the hiring out of an **Insured Item** by **You** without an **Operator** provided by **You**.

Event means an incident that causes sudden and unforeseen physical loss or damage to more than one **Insured Item** covered under this **Policy**.

General Average means any extraordinary sacrifice or expenditure relating to part of a ship or its cargo that is voluntarily and reasonably made or incurred for the purpose of preserving the whole ship or cargo at risk in a Sea voyage.

Hired in Item(s) means any **Insured Item** hired in by **You**, without an **Operator**, for use in **Your Business**.

Indemnity Period means the period that starts when the loss or damage occurs and it continues for the period that is shown in the **Policy Schedule**.

Limit Any One Loss means the amount stated as such in the **Policy Schedule** which is **Our** maximum liability for any one claim under Section 1.

Market Value means the cost to buy an Item, of the same or equivalent age, condition, model and make as an **Insured Item**, including any sign-writing applied to any **Insured Item** or other item.

Personal Property means personal property generally carried or worn, but excluding cash, negotiable instruments, mobile phones, lap top computers, personal computers, electronic organisers, portable music players, video recorders, cameras or tools and equipment.

Sum Insured means the sum specified in the **Policy Schedule**, or an **Endorsement**, as the **Sum Insured** for Section 1.

Windscreen means the sheet of flat or curved glass that forms a front, side, back or top window of an **Insured Item**.

15 What You are Insured for under Section 1

15-1 Scope of cover

If this Section is operative, **We** will cover **Insured Damage** of:

- a) **Your Insured Item**;
- a) **Your Unspecified Attachments** whilst contained in/on or attached to **Your Motor Vehicle**;
and
- b) **Your Accessories** whether or not they are attached to **Your Mobile Plant**

occurring during the **Policy Period** anywhere within the **Territorial Limit**.

16 Automatic Extensions applicable to Section 1

If Section 1 is operative, the extensions below are operative provided the loss takes place during the **Policy Period** and within the **Territorial Limits**.

The terms, conditions, exclusions and definitions of this **Policy** apply to the extension except as expressly amended by that extension.

16-1 Accidental Overload

We will cover **Insured Damage** that is caused by or results from accidental overloading which is not deliberate and clearly unintentional.

For cover under this automatic extension to apply, **You** have the onus of proving that the overloading was not deliberate and was unintentional from **Your** standpoint.

16-2 Appreciation

Despite anything contained in this **Policy** to the contrary, the **Sum Insured** for an **Insured Item** will be increased by the amount of any appreciation in the **Market Value** during the **Policy Period** on the **Insured Item**, provided that:

- a) the **Sum Insured** correctly reflected the **Market Value** of the **Insured Item** at commencement of the **Policy Period**; and
- b) the **Sum Insured** will not be increased by more than twenty five per cent (25%) of the **Sum Insured** specified at the commencement of the **Policy Period**.

In the event that the appreciation during the **Policy Period** exceeds twenty five per cent (25%) of the **Sum Insured**, **Our** liability under this clause will be limited to twenty five per cent (25%) of the **Sum Insured**.

16-3 Automatic Additions

We will cover, for a maximum period of thirty (30) days from **Your** acquisition, **Insured Damage** occurring during the **Policy Period** to newly purchased items of a similar kind to those currently insured by the **Policy**, as if they were **Insured Items**. The **Sum Insured** for **Insured Damage** to an **Insured Item** covered by this automatic extension will be whichever is the lesser of:

- a) the current **Market Value** of the item; or
- b) two hundred thousand dollars (\$200,000),

in each case less the **Excess** applicable to the **Insured Items** of a kind similar to the item.

16-4 Damage to Goods Lifted

We will cover accidental physical damage or destruction to any property in **Your** physical or legal care, custody, possession or control while any such property is suspended from, lifted or lowered by an **Insured Item** being used as a crane or a lifting device.

We will not cover damage or destruction of property caused by or arising from any fault in or fragility of such property or its container or packaging.

Our total liability under this automatic extension will not exceed one hundred thousand dollars (\$100,000) in the aggregate during the **Policy Period**.

16-5 Dry Hire

We will cover **Insured Damage** happening to an **Insured Item** on **Dry Hire** provided that the hire agreement does not include a **Damage Waiver**.

We will not cover **Insured Damage** that happens while the **Insured Item** is in the possession or control of a person or company other than the hirer for the purpose of its operation by that person or company.

If the hire agreement is not in writing or, if it is in writing but does not identify at least the hirer, the **Insured Item**, the hire period and the hire fees, **We** will not cover loss of the **Insured Item** by reason of theft by the hirer.

If **We** pay for any **Insured Damage** under this automatic extension, **We** will be subrogated to **Your** recovery rights in respect of the **Insured Damage**, including against the hirer.

16-6 Dual or Multiple Lifting

We will cover **Insured Damage** which is caused by or arises out of the operation of any **Insured Item** in connection with dual or multiple lifting, provided that all such operations are carried out in accordance with the relevant Australian Standard current at the time of the happening of such **Insured Damage**.

We will not cover **Insured Damage** if any **Insured Item** is:

- a) being operated by any person in contravention of any applicable statutory requirement or in breach of any Australian legislation relating to the operation being performed;
- b) loaded in contravention of the maximum capacity requirements as set out in the relevant Australian Standard current at the time of the happening of **Insured Damage**; or
- c) being operated without radio communication between **Operators** that are dual lifting or sharing loads.

If any **Insured Item** covered under this automatic extension is involved in an event giving rise to a claim while dual or multiple lifting, the Standard **Excess** for **Insured Items** and any other **Excesses** that may be applicable will be increased by one hundred per cent (100%).

16-7 Emergency Travel Costs

Following **Insured Damage** that **We** are liable to pay for under Section 1, **We** will cover up to a maximum of two thousand five hundred dollars (\$2,500) if **Your Insured Item** was more than two hundred (200) kilometres from its base or point of departure at the time of the **Insured Damage**; otherwise five hundred dollars (\$500) if under two hundred (200) kilometres for the costs of returning **You** or **Your** employee to the point of departure, or at **Your** option to **Your** or **Your** employee's destination, provided:

- a) the **Insured Damage** is covered under this **Policy**; and
- b) the **Insured Item** was being used in connection with **Your Business** at the time of the **Insured Damage**.

16-8 Employees' Property Damage

- a) **We** will cover an employee of **Yours** against accidental damage or destruction or loss by theft of the employee's **Personal Property** caused by the same event that caused **Insured Damage** to an **Insured Item** that **We** are liable to cover under Section 1.
- b) The cover shall not exceed and is limited to the lowest of:

- i) the cost of repair of employees **Personal Property**;
- ii) the **Market Value** of employees **Personal Property** immediately prior to the damage, destruction or loss;
- iii) an amount that indemnifies the employee against the damage, destruction or loss of their **Personal Property**; or
- iv) five hundred dollars (\$500) per item and two thousand dollars (\$2,000) per claim.

16-9 Expediting Costs

If **Insured Damage** occurs to an **Insured Item** that **We** are liable to pay for under Section 1 and **We** have given **Our** written consent, **We** will also pay for the necessary additional costs incurred in effecting temporary repairs or to expedite permanent repairs, provided that such costs do not exceed fifty per cent (50%) of the normal repair cost of such **Insured Damage** or twenty thousand dollars (\$20,000), whichever is the lesser.

Additional costs include but are not limited to overtime, night work, work on public holidays, express freight and air freight (by a recognised scheduled flight).

No cover will be provided under this automatic extension where **You** have not obtained written consent from **Us** prior to incurring the additional costs.

16-10 Finance Payout Protection

In the event that:

- a) **Insured Damage** occurs to an **Insured Item** that **We** are liable to pay for under Section 1; and
- b) the **Market Value** of the lost or damaged **Insured Item**, at the time of loss or damage, is less than the amount owed by **You** under a valid hire purchase, leasing or other financial agreement;

then **We** will pay **You** for the difference, between the **Market Value** at the time of the loss, and the amount owed, less all of the following:

- i) any finance payments and interest thereon in arrears at the date of the loss or damage; and
- ii) any discount for early payment in respect of the reduction of finance charges and interest for the unexpired term of such hire purchase or leasing agreement as at the date of **Our** offer of settlement to **You**; and
- iii) any additional payment which was not actually due under the agreement,

provided that:

Our Limit of Liability under this **Endorsement** shall not exceed twenty per cent (20%) of the **Market Value** at the time of the loss or damage.

16-11 Fire, Police and Emergency Services

Where there is a valid claim under Section 1 of this **Policy**, **We** will cover **You** up to a limit of twenty five thousand dollars (\$25,000) per claim for all costs charged by the following authorities as a result of loss and damage involving **Your Insured Item** which results in the attendance of members of any of:

- a) the fire brigade;
- b) the police; or
- c) any other emergency service personnel.

16-12 Hire Motor Vehicle After Theft

Subject to **Your Motor Vehicle** being insured under Section 1, **We** will pay for a hire **Motor Vehicle** of similar make and model to **Your Motor Vehicle** for up to thirty (30) days if **Your Motor Vehicle** is stolen and either is not found or is found but is not driveable.

This benefit stops at the earlier of:

- a) **Your Motor Vehicle** being returned undamaged;
- b) **Your Motor Vehicle** being repaired by **Us** and **We** return it to **You**; or
- c) **Your** claim being settled by **Us**.

You are responsible for all running costs of the hire **Motor Vehicle**. **We** will not pay more than ten thousand dollars (\$10,000) for any one claim under this automatic extension. This benefit does not apply to **Your Mobile Plant**.

If **We** refuse or decline **Your** claim, **You** must repay to **Us** any moneys already paid by **Us** under this automatic extension.

16-13 Hire Motor Vehicles - Difference in Excess

Where **You** hire a **Motor Vehicle** that is a passenger carrying type **Motor Vehicle** (but not an omnibus, taxi, truck or utility) in connection with **Your Business** and the hire agreement deems the owner of that hired **Motor Vehicle** to be responsible for insurance, then **Your Policy** extends to cover any difference in the **Excess** for the same type of **Motor Vehicle** in **Your Policy Schedule** and that of the insurance excess applicable to the hired **Motor Vehicle** insurance cover.

16-14 Hold Harmless (Subrogation Waiver)

If **You** have waived **Your** recovery rights against the other contracting party under any **Covered Contracts**, **We** acknowledge and accept that **Our** rights, remedies or relief to which **We** would have become entitled by subrogation against such party, have been jeopardised as a consequence of **Your** agreement to waive those recovery rights.

16-15 Interested Parties

- a) **We** will extend the cover for **Insured Damage** to any person or company with a financial and insurable interest in the **Insured Item**, provided that the interest of that person's or company's interest is specified in the **Policy Schedule** under Interested Parties.
- b) The interested party has the same obligations to **Us** under this **Policy** as if that interested party were **You**.
- c) **We** have the same rights, remedies and defences to a claim by the interested party as **We** would have to a claim by **You**, including but not limited to rights, remedies and defences relating to **Your** conduct.

16-16 Locks and Keys

Where the locks and keys of an **Insured Item** are lost or damaged or are reasonably believed to have been duplicated but there is no **Insured Damage** to the **Insured Item**, **We** will cover the cost of any replacement lock and/or key. **Our** liability shall be limited to whichever is the lesser amount of:

- a) Two thousand five hundred dollars (\$2,500) per **Insured Item**; or
- b) Five thousand dollars (\$5,000) any one event and in the aggregate during one **Policy Period** less an **Excess** of two hundred and fifty dollars (\$250).

16-17 LPG Conversion

Cover under the **Policy** will not be prejudiced by modification of any **Insured Item** to operate on liquefied gas, provided that the modification has been carried out in accordance with any relevant statutory and/or regulatory standard(s) by a properly licensed and qualified person.

16-18 Modification For Disablement – Motor Vehicle

Where **You** or **Your** employee driver of **Your Motor Vehicle** is permanently disabled in an accident for which there is a valid claim under Section 1 of this **Policy**, **We** will pay the reasonable costs of

modifying **Your Motor Vehicle**, up to a limit of ten thousand dollars (\$10,000) in total, to enable **Your Motor Vehicle** to be driven safely by **You** or **Your** employee.

16-19 Non Owned Trailer in Control

We will cover the cost of repairing or replacing any damage to or destruction to trailers that are:

- a) in **Your** physical or legal control or possession; and
- b) not owned, leased or hired by **You**; and
- c) used by **You** in conjunction with an **Insured Item**;

at the time of such damage or destruction but only up to a maximum of fifty thousand dollars (\$50,000) in the aggregate for the **Policy Period**.

But **We** will not cover such trailer that is manufactured as, or is capable of being, a temperature controlled trailer or a tanker trailer.

16-20 Novated lease

Cover is extended to the **Motor Vehicles** of **Your** employees, their spouses and immediate family, which are the subject of a novated lease or similar agreement arranged under the auspices of **You** and specifically agreed to be insured by **You**, and where such **Motor Vehicles** are specified in **Your Policy Schedule**.

16-21 Owner's Indemnity

We will cover **You** under this Section 1 irrespective of a breach of or non-compliance with any condition or any of the exclusions in this Section, provided **You** prove that the breach or noncompliance was without **Your** knowledge.

However where **You** become aware of such breach or non-compliance, **You** must notify **Us** immediately. In respect of this clause only **You** means the named insured in the **Policy Schedule** only.

16-22 Protection and Removal

We will extend the cover:

- a) Following **Insured Damage**, to cover the cost of protecting and removing the damaged **Insured Item** to the nearest repairer or place of safety, or to any other location that **We** approve; or
- b) to cover the cost of protecting and removing the **Insured Item** to a place of safety, following it becoming bogged, immobilised or stranded, without loss or damage having occurred, provided such immobilisation, bogging, stranding cannot be attributed to the careless action of the **Operator**.

This additional cover does not extend to provide the costs for search, location and retrieval of the lost or damaged **Insured Items** unless **We** give **Our** prior written consent to such costs being incurred. **Our** liability for protection and removal expenses shall be limited to the lesser amount of: Section 1 Material Damage:

- i) ten per cent (10%) of the **Sum Insured** of the damaged or immobilised **Insured Item**; or
- ii) fifty thousand dollars (\$50,000) any one event and in the aggregate during one **Policy Period**.

This automatic extension will not apply where the immobilisation, bogging or stranding is attributable to the reckless action of the **Operator**.

16-23 Removal of Debris

We will also cover **Your** costs, charges and expenses necessarily and reasonably incurred to clean up and remove any debris resulting from an accident insured under Section 1 of this policy:

- a) involving an **Insured Item**; or

b) caused by or arising from goods falling from an **Insured Item**.

Our total liability under this automatic extension will not exceed fifty thousand dollars (\$50,000) per claim.

We will not cover fines and penalties levied against **You** in respect of any debris.

16-24 Return of Insured Item(s)

Where an **Insured Item** is stolen during the **Policy Period** and recovered, **We** will cover **Your** necessary costs to return the **Insured Item** to the place at which it is normally stored when not in use.

Our total liability under this automatic extension will not exceed twenty five thousand dollars (\$25,000) in the aggregate for the **Policy Period**.

16-25 Reward Costs

If **Your Insured Item** is stolen, **We** will pay for any reward offer made (if made with **Our** prior written consent) that results in the recovery of **Your Insured Item**. **Our** total liability for any one theft will not exceed five thousand dollars (\$5,000) for all reward offers made.

16-26 Search Locate and Retrieval Costs

Costs associated with the search, location, retrieval or recovery of any lost or damaged **Insured Item**.

Our total liability under this automatic extension will not exceed ten thousand dollars (\$10,000) per claim.

16-27 Sea Transportation

We will insure **You** for **General Average** and salvage charges for which **You** are liable or have incurred as a result of a covered claim involving a **Insured Item** while in transit by sea between places in Australia; but **You** must secure **Our** authority before signing any **General Average** bond or agreement for salvage charges.

Our total liability under this automatic extension will not exceed ten thousand dollars (\$10,000) per claim.

16-28 Sign Writing

Following **Insured Damage**, to an **Insured Item**, that **We** are liable to pay for under Section 1, **We** will cover loss or damage to sign writing or fixed advertising signs forming a permanent part of the **Insured Item** at the time of such **Insured Damage**.

Our total liability under this automatic extension will not exceed five thousand dollars (\$5,000) per claim.

16-29 Two Wheel or Box Trailer

When **Your** two wheel trailer or box trailer is attached to or being towed by **Your Motor Vehicle**, **We** will cover loss or damage to **Your** trailer caused by an accident.

We will pay the **Market Value** for this trailer, limited to a maximum one thousand dollars (\$1,000), unless a higher **Sum Insured** is included in **Your Policy Schedule**.

No **Excess** will apply to claims accepted under this automatic extension.

16-30 Unspecified Attachments

Where an **Insured Item** has sustained **Insured Damage** that is covered under Section 1, **We** will also cover loss of or damage to **Attachments** that were not listed in the **Policy Schedule** for the **Insured Item** but were attached to the **Insured Item** when the **Insured Damage** occurred.

Our total liability under this automatic extension will not exceed the lesser of:

- a) five thousand dollars (\$5,000) in respect of any one item; or
- b) five per cent (5%) of the value of the **Insured Item** lost or damaged.

16-31 Windscreen Replacement

If a **Windscreen** alone is damaged during the **Policy Period**, **We** will cover **You** for **Your** windscreen replacement;

- a) for **Mobile Plant** items weighing in excess of two (2) tonnes for the second (2nd) loss in any one **Policy Period** to one **Insured Item** without the application of any **Excess** up to a maximum of five thousand Australian dollars (\$5,000);
- b) for **Motor Vehicles** and **Mobile Plant** item(s) weighing 2 tonnes or under for the first (1st) loss in any one **Policy Period** to one **Insured Item** without the application of any **Excess**.

17 Optional Extensions applicable to Section 1

The optional extensions below are only operative if specified as covered in the **Policy Schedule** and the loss takes place during the **Policy Period** and within the **Territorial Limits**.

The terms, conditions, exclusions and definitions of this **Policy** apply to the optional extension except as expressly amended by that optional extension.

17-1 Agreed Value

If **We** accept that **Insured Damage** to an **Insured Item** to which this optional extension applies has resulted in total loss of the **Insured Item**, **We** will pay the **Agreed Value** less the **Excess**.

17-2 Automatic Additions - Increased Sum Insured

If this optional extension is operative, automatic extension 16-3 'Automatic Additions' is deleted and, for a maximum of thirty (30) days from the date of acquisition, **We** will cover under Section 1, as if it were an **Insured Item**, any item of a kind similar to the **Insured Items** that **You** acquire after commencement of the **Policy Period** for the purpose of performing work in the **Business**.

Our liability in respect of such items will not exceed whichever is the lesser of the item's current **Market Value** and the sub-limit specified in the **Policy Schedule** for this optional extension, less the premium that **We** will charge to cover the item during the thirty (30) day period and the **Excess** applicable to **Insured Item(s)** of a similar kind.

Once **You**:

- a) give **Us** notice of **Your** acquisition of such items; and
- b) declare to **Us** its **Market Value**; and
- c) pay **Us** any additional premium **We** ask for,

the item will be added to the **Insured Items** schedule forming part of the **Policy Schedule** and the relevant Basis of Settlement will apply from the date of such inclusion.

17-3 Consequential Additional Costs

If this optional extension is operative, regardless of Exclusion 11-1 'Consequential Loss', in the event of **Insured Damage** to an **Insured Item** of **Mobile Plant**, **We** will cover **You** for:

- a) Substitute Hire Costs (SHC):
The costs necessarily incurred by **You** for each day to hire in a substitute item of the same type and capacity as the **Insured Item** which has suffered **Insured Damage**, until the **Insured Item** is repaired or replaced or the end of the **Indemnity Period**, whichever is earlier, less the **Excess** specified for this optional extension in the **Policy Schedule**; or
- b) Ongoing Hire Costs (OHC):
If the **Insured Item** which suffered **Insured Damage** was hired in/out under a **Dry Hire** agreement, the continuing hire costs owed by/payable to **You** under the terms of the hire agreement, for each day from the time of the **Insured Damage** until the earliest to occur of:

- i) repair or replacement of the **Insured Item**;
 - ii) the expiry date of the hire agreement in force immediately prior to the **Insured Damage**;
 - iii) expiry of the **Indemnity Period** less the **Excess** specified for this optional extension in the **Policy Schedule**; or
- c) Finance Payment Protection (FPP):
- If:
- i) a substitute **Insured Item** is not able to be sourced; and
 - ii) the **Insured Item** was not on **Dry Hire** (i.e. neither a) SHC or b)OHC applies); and
 - iii) **You** are making payments under a valid hire purchase, leasing or other formal financial agreement in respect of the **Insured Item** which has suffered the **Insured Damage**,
- We** will cover those payments, by paying on a daily pro-rata basis the amount of the actual finance payments, for each day from the day the **Insured Damage** was incurred until the day the **Insured Item** is replaced, repaired or cash settled, or the end of the **Indemnity Period** whichever is the earlier, less the **Excess** specified for this optional extension in the **Policy Schedule**.

Actual Finance Payment means the actual finance payments due and payable by **You** for the period from the date of **Insured Damage** until whichever is the earliest of **Your Insured Item** being replaced, repaired or cash settled, or the end of the **Indemnity Period**, less any balloon or residual payments which fall due during that period.

Our maximum liability per **Insured Item** under this cover will not exceed the amount specified as the sub-limit for whichever is applicable of Substitute Hire Costs, Ongoing Hire Costs or Finance Payment Protection for this optional extension in the **Policy Schedule**.

You must take all possible steps to comply with all the achievable requests from **Us** with regard to minimising the period between the time of the **Insured Damage** and the repair, replacement or cash settlement of the **Insured Item**.

17-4 Damage Waiver Protection (Extended Dry Hire)

If this optional extension is operative, the cover under automatic extension 16-5 'Dry Hire' is extended to both **You** and the hirer if the hire agreement:

- a) is in writing and identifies at least the hirer, the **Insured Item**, the hire period and the hire fees; and
- b) contains a **Damage Waiver** that applies to the **Insured Damage**;

but **We** will not cover:

- i) **You** for loss of the **Insured Item** by reason of theft by the hirer;
- ii) the hirer for **Insured Damage** to which the **Damage Waiver** does not apply.

If **We** pay for any **Insured Damage** under this optional extension, **We** will be subrogated to **Your** and the hirer's recovery rights, in respect of the **Insured Damage**.

17-5 Goods Lifted – Increased Sublimit

If this optional extension is operative, automatic extension 16-4 'Damage to Goods Lifted' is deleted and **We** will cover **You** for accidental physical damage to or destruction of any property in **Your** physical or legal care, custody, possession or control while any such property is suspended from, lifted or lowered by an **Insured Item** being used as a crane or lifting or a lifting device.

We will not cover **You** for such damage to or destruction of such property arising from fault in or fragility of such property or its container or packaging.

Our total liability under this optional extension will not exceed in the aggregate for the **Policy Period** for property not belonging to **You**, the amount specified in the **Policy Schedule** as the **Sum Insured** for this optional extension, less the **Excess** specified for this optional extension applied per claim.

17-6 Hired In Items (Blanket Cover)

If this optional extension is operative, **We** will cover the repair or replacement of any **Hired in Item** in the event that the **Hired in Item** suffers accidental, sudden and unforeseen physical loss or damage, provided:

- a) **You** are responsible under the terms of the hire agreement for such loss or damage; and
- b) the **Hired in Item** must be of a similar or equivalent type to the **Insured Items** in the schedule of **Insured Items** in the **Policy Schedule**; and
- c) **Our** liability in respect of such repair or replacement shall, subject to the **Sum Insured** specified for this optional extension in the **Policy Schedule**, as far as possible be calculated in accordance with section 19 'Basis of settlement for Section 1'.

Our maximum liability under this optional extension is the amount specified in the **Policy Schedule** as the **Sum Insured** for this optional extension less the **Excess**.

The premium for this optional extension is adjustable by reference to **Your** hire costs incurred during the **Policy Period** and condition 13-16 'Premium Adjustment' applies.

17-7 Hired in Items (Specified)

If this optional extension is operative, **We** will cover **You** for **Insured Damage** to an **Insured Item**:

- a) hired in by **You** for use by **You** in **Your Business** under a written hire agreement that identifies at least the hirer, the **Insured Item**, the hire period and the hire fees;
- b) specified in the **Insured Items** schedule of the **Policy Schedule**; and
- c) in respect of which **You** have paid **Us** any additional premium **We** ask for.

Our liability in respect of such repair or replacement shall as far as possible be calculated in accordance with section 19 'Basis of settlement for Section 1'.

18 Exclusions applicable to Section 1

This **Policy** will not provide cover for any **Insured Damage**, **Personal Injury**, **Property Damage**, or **Defence Costs** or any other amounts insured by this **Policy** which arise directly out of or are in any way connected with:

18-1 Breakdown

The cost of repairs or replacement of any part of an **Insured Item**:

- a) that has caused or resulted in **Breakdown** of the **Insured Item** or has otherwise failed or been damaged or destroyed as a result of a fault or defect within that part without any direct or indirect cause external to the part; or
- b) that has been damaged or destroyed by the lack of, defectiveness to, or burning or freezing of any coolant, lubricant or any dry or liquid substance required for the working of that part; or
- c) being an internal combustion engine that has exploded, or boiler or other pressure vessel that has burst under internal pressure.

18-2 Caravans/Trailers

Loss or Damage to **Your** caravans and like trailers where:

- a) the loss or damage to annexes, camping equipment and the like, is caused by wind or storm;
- b) any **Insured Damage** which occurs as a result of theft or burglary of equipment and/or contents from the caravan or trailer, unless the theft or burglary is due to visible violent and forcible entry to the locked caravan or trailer, including windows thereto.

18-3 Concrete setting

Insured Damage to any concrete agitator, barrel, bowl or pump and/or its fittings caused by, or arising from the hardening or setting of concrete.

18-4 Dry Hire

Insured Damage to any **Insured Item** whilst on **Dry Hire**, except as otherwise covered under automatic extension 16-5 'Dry Hire'.

18-5 Improvements to item

The cost of any alterations, additions or improvements carried out to an **Insured Item**.

18-6 In ground

Insured Damage to or costs associated with searching for, locating or recovering any drill bits, augers, strings and the like damaged below any rotary table.

18-7 Legal Liability

Legal liability of any kind, except as otherwise covered under Section 2 of this **Policy** (if chosen).

18-8 Marine Exposure

Loss or damage:

- a) whilst being used as a **Tool of Trade** on any watercraft; or
- b) whilst in the course of marine transit, unless otherwise agreed and acknowledged by specific **Endorsement**;

including whilst undergoing any **Loading or Unloading** operations.

18-9 Minor Visual Damage

Loss or damage to an **Insured Item** that only has a visual effect.

18-10 Not fully commissioned

Insured Damage to an **Insured Item** that:

- a) is a prototype undergoing development; or
- b) has not been fully commissioned as a fully operational item.

18-11 Outside manufacturer's guidelines

Insured Damage to any **Insured Item** which is or has been operated contrary to the manufacturer's guidelines.

18-12 Overloading

Insured Damage if the **Insured Item**, at the time the **Insured Damage** occurred, was being used as a crane or lifting device and was:

- a) being operated by any person in contravention of any applicable statutory requirement, with **Your** knowledge or the knowledge of any of **Your** agents or employees; or
- b) loaded in excess of the safe working load specified by any relevant statutory authority or manufacturer's specification; or
- c) not used in compliance with the relevant Australian standard current at the time of the happening of **Insured Damage**.

18-13 Provisional repair

Except as provided for under automatic extension 16-9 'Expediting Costs', the cost of any provisional repairs unless such repairs constitute part of the final repairs and do not increase the total repair cost.

18-14 Relinquished Custody

The loss of any **Insured Item**:

- a) where **You** have entrusted any **Insured Item** to anyone posing as a prospective buyer; or
- b) where **You** have entrusted any **Insured Item** under any hire purchase or lease arrangement, and do not have legally enforceable conditions of hire in place making the hirer responsible for loss or damage; or
- c) where **You** have entrusted any **Insured Item** under any hire purchase or lease arrangement, and the conditions of hire include any **Damage Waiver** or any conditions restricting **Our** rights of subrogation;

unless **We** have otherwise agreed and acknowledged by specific **Endorsement**.

18-15 Replaceable parts

The cost of and the resultant damage caused by replaceable parts and **Attachments** of an **Insured Item** such as bits, drills, knives, discs or other cutting edges, blades, dies, moulds, patterns, hammers, pulverizing and crushing surfaces, screens and sieves, belts, chains elevator and conveyor bands, batteries, tyres, electrical connecting wires and cables, flexible pipes, jointing and any packing material which is regularly replaced unless damaged as a result of **Insured Damage**.

18-16 Ropes, wires

Insured Damage to any ropes other than complete severance of wire ropes within an **Insured Item** that is used as a crane or lifting device.

18-17 Testing

Insured Damage occurring while any **Insured Item** is undergoing a test of any kind or is being used in any manner or for any purpose other than that for which it was designed.

18-18 Tidal waters

Insured Damage to any **Insured Item** due to its total or partial immersion in tidal waters.

18-19 Tyres

Insured Damage to tyres caused by the application of brakes or by road cuts, punctures or bursts not arising from an accident.

18-20 Unlicensed

Insured Damage while any **Insured Item**, at the time of an accident, is being driven by or is in the charge of a person who is not authorised, licensed or trained to operate the **Insured Item**.

18-21 Underground

Insured Damage to any **Insured Item** which is underground. However, this exclusion does not apply to an **Insured Item** whilst:

- a) travelling in a completed tunnel that is a public road; or
- b) working in an open pit, regardless of whether or not the bottom of the pit is below ground or sea level.

18-22 Unsafe condition

Insured Damage if an **Insured Item**:

- a) is used in an unsafe or unroadworthy condition unless such condition could not reasonably be detected by **You**;
- b) is driven by or is in the charge of any person whose faculties are impaired by any drug or intoxicating liquor or by any person who is convicted of driving under the influence of intoxicating liquor at the time of the accident causing such **Insured Damage**;
- c) is driven by or is in the charge of any person who, at the time of the accident causing such **Insured Damage**, has a concentration of alcohol in his or her breath, urine or blood in excess of the amount permitted by law; or
- d) is driven by or is in the charge of any person who, following an accident causing such **Insured Damage**, refuses to provide or allow the taking of a sample of breath, blood or urine for testing or analysis as required by the law of the State or Territory in which the accident occurred.

18-23 Wear and tear

Insured Damage caused by or due to wear and tear, corrosion, oxidation, or deterioration.

19 Basis of Settlement for Section 1

19-1 Repairable Insured Damage

- i) If the **Insured Item** is noted as **Market Value** and if the **Insured Damage** can be repaired, **We** will pay the cost of repairs which have to be borne by **You** and which are necessary to restore the **Insured Item** to its condition immediately before the **Insured Damage**, but not exceeding whichever is the lesser of:
 - the **Sum Insured** (as declared in the **Policy Schedule**); or
 - the **Market Value** of the **Insured Item** immediately prior to the **Insured Damage**, which includes:
 - the cost of dismantling and re-assembly incurred for the purpose of effecting the repairs;
 - customs duties and dues, if any, to the extent that such expenses have been included in the **Sum Insured**.
- ii) If the **Insured Item** is noted as **Agreed Value**, the **Agreed Value** (as declared in the **Policy Schedule**).

In all cases above, less any applicable **Excesses** less any applicable GST component if we are cash settling **You**.

19-2 Total Loss

If the **Insured Damage** cannot be repaired or where **We**, in **Our** sole discretion, accept that there has been a total loss of an **Insured Item** due to **Insured Damage**, **We** will pay:

Mobile Plant

If the **Insured Item** is noted as **Agreed Value**, the **Agreed Value** less the **Excess** less any applicable GST component;
otherwise whichever is the lesser of the **Sum Insured** for the **Insured Item**; or the **Market Value**, immediately prior to the **Insured Damage** depending on the coverage **You** have chosen and is shown on **Your Policy Schedule**.

Motor Vehicle

If at the time of the **Insured Damage**, the **Insured Item** was under two (2) years of age from the date of original commissioning when new, at **Your** election **We** will:

- a) replace **Your Insured Item** with a new **Motor Vehicle**, including payment of stamp duty, delivery charges and **Our** proportion of registration fees (replacement cost) where an equal model is available; or
- b) provide the equivalent value of **Your** original **Insured Item's** replacement cost towards the purchase of an alternate make if **You** chose to move to that make.

If at the time of the **Insured Damage**, the **Insured Item** was a **Motor Vehicle** and over two (2) years of age from the date of original commissioning when new, the **Sum Insured** for the **Motor Vehicle**; or the **Market Value**, immediately prior to the **Insured Damage** depending on the coverage **You** have chosen and shown on **Your Policy Schedule**.

In either case less the **Excess** less any applicable GST component. If **You** elect not to replace **Your Insured Item** (that includes its **Accessories**), or the equal model or alternate make is not available, then **We** will pay:

- a) the **Market Value**; or
- b) the **Sum Insured**,

at the time of the loss or damage or theft, and whichever is the lesser amount.

When **We** pay for a total loss of **Your Insured Item**, cover will cease for that **Insured Item** without refund of premium.

19-3 Depreciation of Parts

No deduction shall be made for depreciation in respect of parts replaced.

19-4 Repairs carried out by You

If **You** carry out repairs at **Your** own situation or **Your** own workshop, with **Our** approval, **We** will pay the cost of replacement parts, wages and transport costs at ordinary rates and custom dues or other impost, incurred for the purpose of carrying out the repairs plus a reasonable mark-up for overheads, provided that the person carrying out the repairs is qualified to do so.

19-5 Unavailable or Obsolete Parts

If it is necessary to replace parts which are unavailable or obsolete, **We** will not pay more than the estimate cost for similar parts for similar type of plant currently available. If similar parts are found to be unprocurable, **We** shall not pay more than the manufacturer's or supplier's latest price list.

19-6 Decrease in Market Value as a Result of Repair

We will not indemnify **You** for any decrease in the **Market Value** of the **Insured Item** as a result of any repair carried out under Section 1.

19-7 Where Repair Does Not Take Place

The following clauses 19-7 a) and 19-7 b) apply where repair of the item of **Insured Item** does not take place.

- a) Property Not Repaired Within Two (2) Years

If any lost or damaged **Insured Item** is not repaired within a period of two (2) years from the date of loss or damage, **We** will only pay the lesser of:

- ii) the estimated cost of carrying out repairs at or shortly after the date of loss or damage; or
- ii) the difference in the **Market Value** of the **Insured Item** immediately prior to and immediately after the **Event**.

b) Residual Value of Damaged Parts

We will deduct the residual value of any damaged part from the amount otherwise indemnified.

19-8 Excess

Where only one item is lost or damaged then the **Excess** applicable shall be that noted in the **Policy Schedule** for a single item.

Our liability to indemnify **You** for loss under the **Policy** shall be reduced by the amount of the **Excess** applicable for each and every lost or damaged item.

More than one **Excess** may apply at the same time.

Where an **Excess** is shown for Section 1 and Section 2A, only the highest **Excess** will apply to the **Event/Occurrence**.

19-9 Co-Insurance, Average, Underinsurance

Where the **Mobile Plant** value appearing against the **Insured Item** which is lost or damaged is less than ninety per cent (90%) of the **Market Value** of that item (at the commencement of the **Policy Period**), **We** will only pay that portion of the Loss, that the declared **Sum Insured** noted in the **Policy Schedule** relates to ninety per cent (90%) of the **Market Value** of the lost or damaged **Insured Item(s)**.

This clause 19-9 does not apply to those items noted on the **Policy Schedule** as **Agreed Value**.

19-10 Limit of Liability

Our total liability arising out of one claim or series of claims arising out of one source or original cause will not exceed:

- a) in the case of any one **Insured Item**:
 - ii) the **Mobile Plant** or **Motor Vehicle** value noted in the **Policy Schedule** set against the lost or damaged **Insured Item**, less the **Excess**; plus
 - ii) any cover provided under automatic and optional extensions allowed under the **Policy**; and
- b) in respect of any one **Event**:
 - i) the **Sum Insured** noted in the **Policy Schedule** as the maximum for any one **Event**, less any **Excess** applicable.

19-11 No Fault Excess

In the event **Your Motor Vehicle** sustains loss or damage which is indemnified under Section 1 of this **Policy**, **You** will not have to contribute the **Excess** specified in the **Policy Schedule** if, in **Our** opinion, the loss was not **Your** fault and **You** can provide **Us** with:

- a) the name, address and licence number of the driver/**Operator**/owner or the third party vehicle responsible; and
- b) the vehicle registration of the other vehicle involved.

If this claim is disputed by the third party, **You** will be required to pay the **Excess** noted in the **Policy Schedule**. This will be refunded if **We** are successful in establishing that the other party was at fault.

20 Claims Conditions for Section 1

20-1 Notice of Claims

In the event of a claim under Section 1 the following conditions apply:

- a) following discovery of any loss or damage which might give rise to a claim under the **Policy**, **You** or **Your** representative must:
 - i) notify **Us** as soon as possible and confirm such notification in writing by giving an indication of the circumstances, nature and extent of the loss, destruction or damage; and
 - ii) take all steps within **Your** power to minimise any further loss or damage; and
 - iii) preserve all parts affected and make them available for inspection by **Us**, **Our** employees or agents; and
 - iv) furnish all such information and documentary evidence as **We** may reasonably require; and
 - v) notify the police immediately on discovery of any actual or attempted theft, burglary or malicious damage;
- b) upon notification of any loss or damage being given to **Us**, **You** may carry out repairs or make good any minor damage, but in all cases **You** must give **Us**, **Our** employees or agents an opportunity to inspect the loss or damage before any repairs or alterations are effected;
- c) any inspection carried out by **Us** shall not amount to a representation that the item inspected is safe, fit for purpose, free of defect or suitable for use;
- d) **We** will not pay for any additional damage to any item caused by the failure to repair that item properly and without delay.

If no inspection is carried out by **Us** or on **Our** behalf within a period of time which is reasonable having regard to the location of risk, weather conditions and any other relevant factors, **You** may proceed with such repairs or replacement.

Section 2 - 2A Registered Items Liability / 2B Public and Products Liability

21 Definitions applicable to Sections 2A and 2B

Aircraft means anything designed to transport people or goods in or through the air or space.

Dangerous Goods means:

- a) goods as defined by The Australian Dangerous Goods Code for the Transport of Dangerous Goods by Road and Rail (as amended from time to time), which is maintained and updated by the National Transport Commission; or
- b) any infectious substance; or
- c) the following substances or materials in excess of the following quantities:
 - ii) one thousand (1,000) litres of petroleum or substances having a closed cup flash point below twenty three (23) degrees Celsius, but in containers no greater than two hundred and fifty (250) litres;
 - ii) five (5) kilograms of explosives;
 - iii) one hundred (100) kilograms of compressed gas;
 - iv) five hundred (500) litres in total of substances which are toxic chemicals, corrosive acids or corrosive alkalis;
 - v) five hundred (500) litres (where a liquid) or fifty (50) kilograms (where a solid) of substances which form explosive mixtures with organic and other readily oxidizing materials; or
 - vi) any two (2) or more substances mentioned under i) to v) above being carried or transported on **Your Insured Item** at the same time if the quantity of any substance carried is more than half the quantity stated above for each substance.

Defence Costs means:

- a) the charges, expenses and legal costs, incurred by **Us** or with **Our** written consent, necessary to investigate, settle or defend a claim or in anticipation of a claim against **You**; or
- b) the commercial costs for representing **You** at any Coroner's inquest or any court of summary jurisdiction.

Hovercraft means any vessel, craft or thing designed to transport people or goods over land or water.

Internet Operations means any of the following:

- a) use of electronic mail systems by **You**, or **Your** employees, including part-time and temporary staff, use of the World Wide Web or a public internet site by **You**, or **Your** employees, including part-time and temporary staff, and others within **Your** organisation; or
- b) **Your** access to the World Wide Web or **Your** access to **Your** intranet (meaning internal company information and computing resources) which is made available through the World Wide Web for **Your** customers or others outside **Your** organisation; or
- c) the operation and maintenance of **Your** website and others within **Your** organisation.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

Products means anything (after it has passed from **Your** possession or control), including its packaging or container, that was manufactured, grown, extracted, produced, processed, assembled,

constructed, erected, installed, repaired, serviced, treated, sold, supplied, re-supplied or distributed by **You** or on **Your** behalf in the course of **Your Business**, 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 **You** are taken or deemed to be the manufacturer by operation of a law of Australia.

Products Liability means **Your** legal liability to pay compensation for an **Occurrence** caused by **Your Products**.

Public Liability means **Your** legal liability to pay compensation for an **Occurrence** caused as a result of undertaking **Your Business**, but excludes **Products Liability**.

Registered Insured Item means any **Insured Item** and associated **Attachments** that are registered for public road use and are shown on the **Insured Items** schedule forming part of the **Policy Schedule**.

Restoration Expenses means the costs and expenses associated with or in connection with the fixing or replacement of concrete products that are defective.

Ripping and Tearing Expenses means the costs and expenses associated with or in connection with the intentional destruction and removal of concrete products that are defective.

Tool of Trade means the use of a **Registered Insured Item** of **Mobile Plant** for any function for which it is designed (other than road transport or use or operation primarily as a **Motor Vehicle**) including but not limited to use for excavating, digging, shovelling, grading, levelling, bulldozing, drilling, lifting, lowering, suspending, carrying (other than road transport), pumping, spraying, discharging, tipping, crushing, chipping, vacuuming, scraping, mixing (other than mixing during road transport), loading, unloading and the like including the process of setting up for such operations and reverting from such operative format to travel/ transit configuration.

Underground Services means any underground pipes, ductwork, mains, wires, fibre optic and/or other cables, conduits and their supports.

Workers on Site means:

- a) any contractor or subcontractor (of any tier); or
- b) any employee of a) above,

involved in any project, in respect of which **You** are contracted or subcontracted to perform work or service, whilst such person is at the Project Site.

For the purpose of this definition, Project Site means the place or area where the work or service is being performed by **You**. Project Site is not limited to the immediate area where **You** are working, and includes the whole place or area for the overall project, part of which may be contracted or subcontracted to **You**.

22 Automatic Extensions Applicable to Section 2A and 2B

If Section 2A and/or 2B are operative, the extensions below are operative provided the loss takes place during the **Policy Period** and within the **Territorial Limits**.

The terms, conditions, exclusions and definitions of this **Policy** apply to these automatic extensions except as expressly amended by that extension.

22-1 Temporary protection and Coronial inquest

With respect to and only to the extent of the indemnity provided to **You** by Sections 2A and 2B of the **Policy**, **We** will:

- a) pay expenses incurred by **You** for temporary protection of damaged and undamaged property of any person or party, including temporary repairs, shoring up and/or underpinning thereof; and
- b) pay all legal costs incurred by **You** with **Our** prior written consent for **Your** representation at:
 - i) any Coronial inquest or inquiry; and/or
 - ii) any proceedings in any court or tribunal in connection with liability insured against by this **Policy**.

Any amounts **We** pay pursuant to paragraphs a) and b) above (inclusive) will constitute **Defence Costs** for the purposes of the **Policy**.

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

22-2 Cross Liability

Where there is more than one legal entity forming part of **You**, each of **You** will be considered as a separate and distinct entity and cover under this **Policy** will apply to each of **You** as if a separate **Policy** had been issued to each of **You**, provided that the **Limit of Liability** always applies to all of **You** combined and not to each of **You** separately.

However, nothing in this automatic extension clause will increase the **Limit of Liability** or **Excess**.

23 Exclusions applicable to Section 2A and 2B

Section 2A and 2B of this **Policy** will not provide cover for any **Insured Damage**, **Personal Injury**, **Property Damage**, or **Defence Costs** or any other amounts insured by this **Policy** which arise out of or are in any way connected with:

23-1 Admission of Liability

Any liability assumed by **You** as a result of any admission made by **You**.

23-2 Asbestos

Any liability in respect of the use or presence of asbestos.

23-3 Assumed Liability under Contract

Any liability:

- a) assumed by **You** under any warranty, guarantee, contract or agreement. This exclusion 23-3 a) does not apply to:
 - i) liability assumed by **You** under any lease of real or personal property or premises, other than any liability arising from **Your** failure to effect material damage insurance as required under such lease;
 - ii) liability assumed by **You** under a warranty of fitness or quality as regards to **Your Products**; or
 - iii) liability that would have attached to **You** in the absence of such warranty, guarantee, contract or agreement;
- or
- b) in respect of which **You** 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 liability.

This exclusion 23-3 b) does not apply in respect of any liability assumed from or recovery rights waived against the other contracting party(ies) under any **Covered Contracts**.

23-4 Driver, Employee and Family Members

Any liability arising out of **Personal Injury** to anyone who, at the time of **Occurrence**, was:

- a) operating or in charge of the **Insured Item**; or
- b) **Your** employee; or
- c) a member of **Your** immediate family.

23-5 Dry Hire

Any liability from any **Insured Item** hired out under a **Dry Hire** arrangement and caused by the actions of the hirer or employee of the hirer; but the **Policy** will insure **You** for **Your** legal liability arising as a result of mechanical, electrical or service defects in such hired equipment not arising as a result of the **Dry Hire**.

23-6 Employer's Liability / Workers Compensation

Any liability in respect of **Personal Injury** to any of **Your** workers or employees or any person deemed to be **Your** worker or employee under the relevant workers' compensation law [other than any person of whom **You** are deemed employer by reason only of Section 175 of the Workers Compensation and Injury Management Act 1981 (WA)]. This exclusion does not apply to any liability in respect of **Personal Injury**:

- a) to any person who is not deemed to be **Your** worker or employee under the relevant workers' compensation law;
- b) which is not covered under any insurance, scheme or fund **You** are required by law to effect, establish or fund; or
- c) where **You** have not effected, established or funded such an insurance, scheme or fund, which would not have been covered under insurance, scheme or fund **You** are required by law to so insure or fund had **You** complied with such requirement.

23-7 Fines, Penalties and Certain Damages

- a) Any fines or penalties; or
- b) Any aggravated damages; or
- c) Any punitive damages.

23-8 Injury to Family

Any **Personal Injury** to and/or **Property Damage** of any member of **Your** family ordinarily residing with **You** or with whom **You** ordinarily reside.

23-9 Insured Property on Rails

Any liability occurring while the **Insured Item** is on rails, other than as cargo.

23-10 Jurisdiction

Any legal actions taken, proceedings or claims instituted in the USA, its protectorates or any other jurisdiction enforcing such actions.

23-11 Own property

Any liability in respect of **Property Damage** to any property belonging to **You** or the **Operator** or any property in **Your** or the **Operator's** physical or legal possession or control. However, **We** will not treat **Your** employees' or visitors' vehicles including their contents while contained within a car park owned, operated or provided by **You**, as property in **Your** physical or legal possession or control.

23-12 Pollution

- a) Any actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of **Pollutants**, provided always that this shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place; or
- b) Any costs and expenses incurred in the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of **Pollutants**.

23-13 Statutory Policy

Any liability which is insured under any compulsory statutory insurance or scheme or accident compensation insurance or scheme, or would have been so insured but for the failure to:

- a) insure or register the **Motor Vehicle**;
- b) lodge a claim; or
- c) comply with any term or condition of any such scheme.

23-14 Types of Work

Any liability arising out of:

- a) the construction, alteration, repair, restoration, maintenance, extension, installation, demolition or dismantling of buildings, runways, or structures (whether permanent or not), including lighting, power supply, drainage, sanitation, water supply, gas supply, fire protection, security and communications systems, testing and commissioning, site clearance, earthmoving, excavation, tunnelling, boring, laying of foundations/ footings, landscaping, and the provision of roadways and other access works forming, or to form, part of any:
 - i) area of an airport where **Aircraft** take off and land, taxi and load/unload. This includes runways, the aprons adjacent to runways, air- bridges, and **Aircraft** standing areas. This does not include the interior of the airport terminal, to which the public and airport staff have normal access; or
 - ii) railway, rail works, or rail activities; or
 - iii) oil, gas, chemical or petro-chemical plants;or
- b) the demolition of buildings or structures involving the use of explosives or implosion techniques; or
- c) the structural maintenance of dams, reservoirs or weirs; or
- d) ship building or structural ship repairing activities, unless otherwise agreed and acknowledged by **Us** issuing to **You** a specific **Endorsement**, but only to the extent set out in that **Endorsement**.

23-15 Warranty and Maintenance Agreements

Any liability for which the supplier or manufacturer is responsible by law or under contract, or sale or warranty condition or which is covered under a maintenance agreement.

24 Conditions applicable to Section 2A and 2B

24-1 Payment of Limit of Liability

With respect to Section 2A or Section 2B 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 the **Limit of Liability** as stated in the **Policy Schedule**.

25 Claims Conditions for Section 2A and 2B

25-1 Notice of Claims

In the event of any **Occurrence** likely to give rise to a claim under Section 2A or Section 2B of this **Policy**, **You** must:

- a) at **Your** own expense, take such immediate action as may be necessary to minimise the extent of **Personal Injury** and/or **Property Damage**; and
- b) as soon as possible, give notice in writing of such **Occurrence** to **Us**; and
- c) send to **Us** immediately on receipt any letter, claim, writ, summons or proceedings which has been or may be commenced against **You**; and
- d) make no admission, offer, promise, payment, or offer of indemnity to any party without **Our** prior written consent.

Section 2A – Registered Items Liability

This section is operative only if the **Policy Schedule** shows that Section 2A is insured.

26 What You are Covered for under Section 2A

26-1 Scope of cover

We will cover **You** for the amount **You** may be held legally liable to pay as compensation in respect of **Personal Injury** or **Property Damage** which first happens during the **Policy Period** and is caused by an **Occurrence** within the **Territorial Limit** arising from using, operating or towing a **Registered Insured Item** primarily as a **Motor Vehicle**.

However, **We** will not pay any compensation or defend any claim after the **Limit of Liability** has been exhausted.

26-2 Maximum amount payable under Section 2A

The maximum amount **We** will cover **You** for under Section 2A of this **Policy** in respect of all claims arising out of any one **Occurrence** is the **Limit of Liability** less the **Excess** applied per claim.

26-3 Defence Costs

Where cover applies, **We** will also cover **You** for **Defence Costs** in addition to the **Limit of Liability**. However, if a payment for compensation, to finalise a claim, exceeds the **Limit of Liability** of this **Policy**, **Our** liability to pay **Defence Costs** shall be limited to such proportion of the **Defence Costs** as the **Limit of Liability** bears to the amount actually paid or payable for compensation.

27 Section 2A – Automatic Extensions

If Section 2A is operative, the automatic extensions below are operative provided the loss takes place during the **Policy Period** and within the **Territorial Limits**.

The terms, conditions, exclusions and definitions of this **Policy** apply to these automatic extensions except as expressly amended by that extension.

27-1 Automatic Additions

If **You** give **Us** details of any new or replacement **Registered Insured Item**, of the same or similar type as those declared in the **Policy Schedule** within thirty (30) days of its purchase or lease, **We** will cover **You** from the date of purchase or lease for the remainder of the **Policy Period**, as long as it is acceptable to **Us** and **You** pay any additional premium **We** may require.

27-2 Damage to Your Motor Vehicle by Uninsured Parties

This cover applies to sedans and utilities only, insured under **Your Policy** for third party damage only. Provided **You** can satisfy **Us** that the accident which gave rise to the claim was totally the fault of the authorised driver of another vehicle and:

- a) **You** tell **Us** the registration number and the name and address of the driver and owner of that other vehicle; and
- b) at the time of the loss or damage the owner of that other vehicle was not insured for third party liability; and
- c) at the time of the loss or damage that third party vehicle was not owned or registered in **Your** name or in the name of a person who is a relative of **Yours** or any person with whom **You** normally reside,

then under this clause, the maximum amount **We** will pay for all claims from any one accident or series of accidents arising out of one cause or event is the lesser of five thousand dollars (\$5,000) or the **Market Value** of **Your Motor Vehicle** at the time of the loss or damage.

If **We** pay **You** the **Market Value**, then **Your Motor Vehicle** in its damaged condition will, at **Our** option, become **Our** property.

We will, at **Our** option, either:

- i) repair **Your Motor Vehicle** to its condition immediately prior to the time of loss; or
- ii) pay **You** the reasonable cost of repairs to **Your Motor Vehicle**, subject to the maximum amount.

27-3 Movement of Other Machines

We will pay **You** all amounts that **You** become legally liable to pay as compensation arising out of **Property Damage** happening during the **Policy Period**, within the location specified in the **Policy Schedule**, that was caused by **You** having moved or attempted to move, any other machine that was parked in a position which prevented or impeded the **Loading or Unloading** or lawful passage of **Your** vehicle.

27-4 Removal of Debris

We will cover **You** up to a maximum of fifty thousand dollars (\$50,000) any one **Occurrence** for the necessary costs incurred to clean up or remove debris following a covered **Occurrence** where goods have fallen or leaked from a **Registered Insured Item** during the **Policy Period**.

27-5 Substitute Item

Any item being used by **You** as a substitute item, while any **Registered Insured Item** is being serviced, repaired or cannot be used, shall be treated as a **Registered Insured Item**, but only if:

- a) one substitute item only is being used at any one time in place of any one **Registered Insured Item**; and
- b) the substitute item is not already covered under another insurance policy; and
- c) the substitute item is not owned by **You**.

28 Optional Extensions applicable to Section 2A

The optional extensions below are only operative if specified as covered in the **Policy Schedule** and the loss takes place during the **Policy Period** and within the **Territorial Limits**.

The terms, conditions, exclusions and definitions of this **Policy** apply to the optional extension except as expressly amended by that optional extension.

28-1 Dangerous Goods

Regardless of Exclusion 29-1 'Dangerous Goods' applicable to Section 2A of this **Policy**, **We** will cover **You** for **Your** legal liability to pay compensation in respect of **Personal Injury** or **Property Damage** which first occurs during the **Policy Period** and is caused by or arises out of goods classified in classes 2, 3, 4, 5, 8 and 9 under The Australian Dangerous Goods Code for the Transport of Dangerous Goods by Road and Rail, whilst being transported or carried by or on behalf of **You** but only if such goods were transported or carried in accordance with the requirements of The Australian Dangerous Goods Code for the Transport of Dangerous Goods by Road and Rail.

Our maximum liability under this optional extension shall not exceed in the aggregate for the **Policy Period** the amount specified in the **Policy Schedule** as the **Sum Insured** for this optional extension.

29 Exclusions applicable to Section 2A

Section 2A of this **Policy** will not provide cover for any **Insured Damage**, **Personal Injury**, **Property Damage**, or **Defence Costs** or any other amounts insured by this **Policy** which arise out of or are in any way connected with:

29-1 Dangerous Goods

Any **Dangerous Goods** transported or carried by or on behalf of **You**.

29-2 Delivery or Collection Away From the Registered Motor Vehicle

Any liability arising or occurring beyond the limits of a carriageway or thoroughfare declared a designated road, whilst merchandise is being delivered away from, or collected and being conveyed to, **Your** registered **Motor Vehicle**.

29-3 Loading or Unloading

Any liability in connection with any operation of loading, unloading, **Your** Vehicle except for the operation of **Loading or Unloading Products** onto or from **Your** Vehicle direct to a fixed place of rest beside **Your** Vehicle.

29-4 Other Section

Any liability for which indemnity is available, either in part or in whole, under Section 2B of this **Policy**.

29-5 Overloading

Any liability if **You**:

- a) carry or tow a load; or
- b) carry a number of passengers,

in excess of that for which the **Registered Insured Item** was designed.

However, **We** will cover **You** if **You** prove that such liability was not caused by or contributed to by any such load or number of passengers.

29-6 Products Liability

Any liability for an **Occurrence** that is caused directly or indirectly by or arises out of **Your Product(s)**.

29-7 Registered Vehicles in Northern Territory

Any liability in respect of **Personal Injury** arising as a result of the use of an **Insured Item** which is registered in the Northern Territory of Australia.

29-8 Missuse of Vehicle

Any liability in respect of any **Registered Insured Item**:

- a) being used or operated in an unsafe or unroadworthy condition unless such condition could not reasonably be detected by **You**. However, this Exclusion (a) shall not apply if **You** prove that the liability was not caused or contributed to by such unsafe or unroadworthy condition;
- b) which is or has been operated contrary to the manufacturer's guidelines;
- c) being used or operated in any experiment or type of test or in preparation for or involved in racing, speed testing, reliability trial, pace making, hill climbing, trial or demonstration other than for resale purposes on public roads;
- d) being used or operated for conveyance of passengers for hire, fare or reward;
- e) running on rails or which is not designed to run solely on solid ground;
- f) being used as a **Tool of Trade** or **Attachment** forming part of a **Registered Insured Item** being used as a **Tool of Trade**. However, this Exclusion (f) does not apply while the **Registered Insured Item** is travelling, transporting or carting goods on a public road.

29-9 Airside

Any liability whilst the vehicle is being used or operated in any **Airside Area** of an airport that handles commercial flights. For the purpose of this Exclusion only, **Airside Area** means an area where airships and airplanes take off, land, taxi, load and/or unload, including runways, taxiways, aprons adjacent to runways and/or taxiways, air bridges and **Aircraft** landing areas.

29-10 Underground Services

Any liability for and/or arising from **Property Damage** to any underground pipes, cables, services, support and the like.

29-11 Unlawful Operation

Any liability whilst the vehicle is being driven or operated by:

- a) **You** or by any person with **Your** consent who is not licensed under any relevant law to drive such a **Registered Insured Item**;
- b) any person who is not authorised, licensed or trained to operate the **Registered Insured Item** under any relevant law;
- c) anyone under the influence of any drug or intoxicating liquor at the time of the accident;
- d) anyone whose blood or urine alcohol reading exceeds the legal limit (subject to any laws to the contrary);
- e) anyone who following an accident, refuses to provide or allow the taking of a sample of breath, blood or urine for testing or analysis as required by the law of the State or Territory in which the accident occurred.

However **We** will cover **You** if **You** have allowed another person to drive or operate a **Registered Insured Item** and **You** can prove that **You** were not aware that the **Registered Insured Item** was being driven by, operated by or in charge of that person when they were so impaired, affected or unlicensed.

Section 2B – Public and Products Liability

This Section is operative only if the **Policy Schedule** shows this Section as insured.

30 What You are covered for under Section 2B

30-1 Scope of cover

We will cover **You** for the amount **You** may be held legally liable to pay as compensation in respect of **Personal Injury** or **Property Damage** which first occurs during the **Policy Period** and is caused by an **Occurrence** within the **Territorial Limit** in connection with **Your Business**.

30-2 Maximum amount payable under Section 2B

The maximum amount **We** will cover **You** for under Section 2B of this **Policy** in respect of all claims arising out of any one **Occurrence** is the **Limit of Liability** in the amount specified in the **Policy Schedule** for Section 2B less the **Excess** applied per claim. However, the maximum aggregate amount **We** will pay in total in respect of the **Policy Period** for all liability arising out of or in any way connected with **Your Products** is the **Limit of Liability** in the amount specified in the **Policy Schedule** for **Products Liability**, less the **Excess** applied per claim.

30-3 Defence Costs

Where cover applies, **We** will also cover **You** for **Defence Costs** in addition to the **Limit of Liability**. However, if a payment for compensation, to finalise a claim, exceeds the **Limit of Liability** of this **Policy**, **Our** liability to pay **Defence Costs** shall be limited to such proportion of the **Defence Costs** as the **Limit of Liability** bears to the amount actually paid or payable for compensation.

31 Automatic Extensions applicable to Section 2B

If Section 2B is operative, the extensions below are operative provided the loss takes place during the **Policy Period** and within the **Territorial Limits**.

The terms, conditions, exclusions and definitions of this **Policy** apply to these automatic extensions except as expressly amended by that extension.

31-1 Care Custody and Control

We will cover **You**, under Section 2B of this **Policy**, for **Your** legal liability to pay compensation in respect of **Property Damage** to any property, other than property being lifted, lowered or suspended from any item whatsoever, which first occurs during the **Policy Period** and is caused by an **Occurrence** in connection with **Your Business**.

Our maximum liability under this automatic extension shall not exceed two hundred and fifty thousand dollars (\$250,000) in the aggregate for the **Policy Period** less the **Excess**.

31-2 First Aid Expenses

Where **We** are covering **You**, or would cover **You** if a claim were made against **You** for **Personal Injury**, **We** will also cover **You** for the expenses reasonably incurred by **You** for first aid given to others at the time such **Personal Injury** first occurs.

31-3 Vibration and Removal of Support

Regardless of Exclusion 33-29 'Vibration and Removal of Support' applicable to Section 2B of this **Policy**, **We** will cover **You** for **Your** legal liability to pay compensation in respect of **Property Damage** first occurring during the **Policy Period** in connection with:

- a) vibration; or

- b) removal or weakening of, or interference with support to land, buildings or any other property.

Our maximum liability under this automatic extension shall not exceed two hundred and fifty thousand dollars (\$250,000) in the aggregate for the **Policy Period** less the **Excess** specified in the **Policy Schedule** for this extension applied per claim.

32 Optional Extensions applicable to Section 2B

The optional extensions below are only operative if specified as covered in the **Policy Schedule** and the loss takes place during the **Policy Period** and within the **Territorial Limits**.

The terms, conditions, exclusions and definitions of this **Policy** apply to the optional extension except as expressly amended by that optional extension.

32-1 Care Custody and Control - Increased limit

We will cover **You**, under Section 2B of this **Policy**, for **Your** legal liability to pay compensation in respect of **Property Damage** to any property, other than property being lifted, lowered or suspended from any item whatsoever, which first occurs during the **Policy Period** and is caused by an **Occurrence** in connection with **Your Business**.

Our maximum liability under this optional extension shall not exceed in the aggregate for the **Policy Period** the amount specified in the **Policy Schedule** as the **Sum Insured** for this extension less the **Excess**.

32-2 Vibration and Removal of Support – Increased limit

Regardless of Exclusion 33-29 'Vibration and Removal of Support' applicable to Section 2B of this **Policy**, **We** will cover **You** for **Your** legal liability to pay compensation in respect of **Property Damage** first occurring during the **Policy Period** in connection with:

- a) vibration; or
- b) removal or weakening of, or interference with, support to land, buildings or any other property.

Our maximum liability under this optional extension shall not exceed in the aggregate for the **Policy Period** the amount specified in the **Policy Schedule** as the **Sum Insured** for this extension less the **Excess** specified in the **Policy Schedule** for this extension applied per claim.

33 Exclusions applicable to Section 2B

This **Policy** will not provide cover for any **Insured Damage**, **Personal Injury**, **Property Damage**, or **Defence Costs** or any other amounts insured by this **Policy** which arise out of or are in any way connected with:

33-1 Advertising Liability

Any Advertising Liability that is caused by or arises out of:

- a) a breach of contract, other than misappropriation of advertising ideas contrary to an implied contract; or
- b) an infringement or passing off of a trade mark, service mark, copyright item or trade name on any **Products**, goods or services sold, offered for sale or advertised, other than an infringement of titles or slogans; or
- c) the incorrect description of the price of **Products**, goods or services; or
- d) the failure of **Products**, goods or services to conform with advertised performance, quality, fitness or durability.

33-2 Aircraft and Hovercraft

Any liability caused by, arising out of, in connection with or in respect of **Your** ownership or physical or legal control of, or use by or on behalf of **You**, of any:

- a) **Aircraft**; or
- b) land, building or structures in an area where **Aircraft** land or take off, or are housed, maintained or operated; or
- c) **Hovercraft**.

33-3 Aircraft Products

Any liability caused by, arising out of, in connection with or in respect of **Your Products** that are incorporated into the structure, machinery or control of any **Aircraft** with **Your** knowledge.

33-4 Assault or Battery

Any liability caused by, arising out of, in connection with or in respect of any assault or battery committed by **You** or at **Your** direction, unless it was committed for the purpose of preventing or eliminating **Personal Injury** and/or **Property Damage**.

33-5 Cranes

Any liability caused by, arising out of, in connection with or in respect of the operation of a crane that is in an unsafe condition, or where all laws, bylaws, regulations and recognised standards for the operation of the crane or for safety of persons or property, in the relevant State or Territory, have not been observed.

33-6 Dangerous Goods

Any liability caused by, arising out of, in connection with or in respect of any **Dangerous Goods** transported or carried by or on behalf of **You**.

33-7 Defamation

Any liability caused by or arising out of, in connection with or in respect of the publication of defamatory or disparaging material and/or the utterance of defamatory or disparaging statements:

- a) made before the commencement of this **Policy Period**;
- b) made by **You**, or at **Your** direction, with knowledge of its falsity; or
- c) if **You** are in the business of publishing, advertising, broadcasting or telecasting.

33-8 Design

Any liability resulting from any fault or failure of the design or specification of **Your Products**.

33-9 Discrimination and Harassment

Any liability in respect of any discrimination or harassment in violation of any legislation, wrongful or unfair dismissal, denial of natural justice, or defamation in respect of employment by the **Insured**.

33-10 Dry Hire

Any liability from any **Insured Item** hired out under a **Dry Hire** arrangement and caused by the actions of the hirer or of an employee of the hirer; but the **Policy** will insure **You** for **Your** legal liability arising as a result of mechanical, electrical or service defects in such hired equipment not arising as a result of the **Dry Hire**.

33-11 Exports to USA and/or Canada

Any liability caused by, arising out of, in connection with or in respect of any **Products** exported to the United States of America or Canada (or any other territory coming within or subject to the jurisdiction of the courts of the United States of America or Canada) with **Your** knowledge.

33-12 Faulty Workmanship

Any liability to perform, complete, repair or rectify any work undertaken by or on behalf of **You**.

33-13 Foreign Non-admitted Cover

Any liability under the law of any country, state or territory (outside the Commonwealth of Australia) that requires such liability to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance or security.

33-14 Insured Items

Any liability for the cost of repairing or replacing any of the **Insured Items**.

33-15 Internet Operations

Any liability directly or indirectly caused by or arising from **Your Internet Operations**.

This Exclusion 33-15 will not apply to legal liability arising out of any material which is already in print by a manufacturer in support of its **Product**, including but not limited to **Product** use and safety instructions or warnings, and which is also reproduced on **Your** website, but this exclusion will apply to any other advice or information located on **Your** website that is used for the purpose of attracting customers.

33-16 Libel and Slander

Any **Personal Injury** caused by:

- a) the publication of any libellous or slanderous statement made prior to the **Policy Period**; or
- b) any statement made by or at **Your** direction if **You** could reasonably be expected to know that the statement was false, libellous, slanderous or illegal.

33-17 Loss of Use of Property

Any liability in connection with or in respect of any loss of use of property that has not been physically damaged, lost or destroyed, caused by or arising out of:

- a) a delay in, or lack of, performance, by or on behalf of **You**, of any contract or agreement; or
- b) the failure of **Your Products** to meet any warranties or representations as to performance, fitness, quality or durability.

33-18 Motor Vehicle or Mobile Plant

Any liability caused by, arising out of, in connection the ownership, possession, operation, driving or use by **You** of any **Motor Vehicle** or **Mobile Plant**:

- a) which is registered;
- b) which is required under any legislation to be registered; or
- c) in respect of which insurance is required to be effected by **You** or on **Your** behalf by or under any legislation, including legislation of any state or territory of Australia, whether or not such insurance is effected.

However, this Exclusion will not apply to claims which arise out of:

- i) delivering goods away from, or collecting goods to convey to, any **Motor Vehicle** or **Mobile Plant**; or

- ii) the **Loading or Unloading** of, or the delivery or collection of goods to or from, any vehicle not in **Your** physical or legal control but which is used in work undertaken by **You** or on **Your** behalf; or
- iii) use as a **Tool of Trade** either on any site where **You** are undertaking work or at **Your** premises.

However, the above clauses i) to iii) in this Exclusion 33-18 do not apply where such **Personal Injury** or **Property Damage** is covered by a policy required by legislation or would be except for a breach of that policy's terms and conditions.

33-19 Organic Growths

Any liability caused by or arising out of, any moulds, fungi, spores or other similar growth including but not limited to aspergillums, penicillium, or any strain or type or stachybotris.

33-20 Other section

Any liability for which indemnity is available, either in part or in whole, under Section 2A of this **Policy**.

33-21 Product Recall and Repair

Any liability:

- a) for the cost of recall, withdrawal from sale, inspection, repair or replacement of **Your Products** or of any property of which **Your Products** form a part or component;
- b) for the cost of investigation into the cause of any defect in **Your Products**; or
- c) caused by, arising out of, in connection with or in respect of the loss of use of **Your Products**.

33-22 Professional Liability

Any liability in respect of the rendering of or failure to render professional advice or service, given for a fee, by or on behalf of **You** or any error or omission connected therewith.

This exclusion does not apply to the rendering of or failure to render professional medical advice or treatment provided by any Registered Health Professional employed or engaged by **You** to provide first aid or Health Care for **Your** employees on **Your** premises.

For the purpose of this exclusion, the terms Health Care and Registered Health Professional have the same meanings as defined under the Medical Indemnity (Prudential Supervision and Products Standards) Act 2003.

33-23 Property Damage to Your Products

Any liability in respect of **Property Damage** to **Your Products** if such **Property Damage** is attributable to any defect in or harmful nature or unsuitability of **Your Products**.

33-24 Property in Your Physical or Legal Possession or Control

Except as specifically given under automatic extension 31-1 'Care, Custody and Control' or optional extension 32-1 'Care, Custody and Control – Increased Limit', any liability in respect of **Property Damage** to:

- a) any property while being lifted, lowered or suspended by or from any item whatsoever; or
- b) any other property belonging to **You** or the **Operator** or any property in **Your** or the **Operator's** physical or legal possession or control.

However, **We** will not treat **Your** employees' or visitors' vehicles including their contents while contained within a car park owned, operated or provided by **You**, as property in **Your** physical or legal possession or control.

33-25 Repair, Replacement or Recall of Your Products

- a) Any liability arising from the inspection, repair, removal or replacement of **Your Product(s)** or **Property Damage to Your Products**, other than **Property Damage to Your Product(s)** that is caused directly by **You** while repairing, servicing, or treating **Your Product(s)**; or
- b) any liability arising from the recall of:
 - i) any or all of **Your Product(s)**; or
 - ii) work performed by **You** or for **You**;
 - iii) property that incorporates or has incorporated any of **Your Product(s)**; or
 - iv) property worked on by **You** or worked on by others for **You**;or
- c) any liability assumed by any warranty or guarantee given by **You**, other than any warranty as to the safety of **Your Product(s)** implied by Statute.

33-26 Rip and Tear

Any liability arising from **Ripping and Tearing Expenses** and **Restoration Expenses**.

33-27 Roadwork

Any liability arising from:

- a) road surfacing; or
- b) road surface maintenance;

which forms the whole of, or part of, or which is associated with **Your Product(s)**.

33-28 Underground Services

Any liability for or arising from **Property Damage** to any underground pipes, cables, services and supports unless **You** can show that prior to such damage:

- a) appropriate authorities have been consulted and written details and plans have been obtained showing the position of pipes, cables and services; and
- b) **You** took reasonable care to identify the location of any underground pipes, cables and services, using the details obtained; and
- c) **You** took reasonable care whilst working so as to avoid contact or impact with pipes, cables and services using those details obtained.

33-29 Vibration and Removal of Support

Any liability for **Property Damage** in connection with:

- a) vibration; or
- b) removal and/or weakening of, or interference with, support to land, buildings or any other property.

33-30 Watercraft Liability

- a) Any liability in respect of the ownership, use or operation by or on behalf of **You** of any watercraft greater than eight metres in length, except whilst stored on land; or
- b) any liability in respect of **Property Damage** to watercraft in **Your** physical or legal possession or control, where the watercraft is greater than eight metres in length, except whilst stored on land. Provided that, the maximum amount **We** will pay for the liability of all the parties **We** are covering in respect of all **Property Damage**, first occurring during the **Policy Period** to watercraft greater than eight metres in **Your** physical or legal possession or control, shall be one hundred thousand dollars (\$100,000).

33-31 Welding

Any liability in connection with arc or flame cutting, flame heating, arc or gas welding or similar operation in which welding or cutting equipment is used, unless such use is carried out in strict compliance with the prevailing Australian Standards (AS1674.1-1997 and AS1674.2-2007 Safety in welding and Allied Processes) issued by the Standards Association of Australia.

Insurer Tokio Marine & Nichido Fire Insurance Co., LTD
Incorporated in Japan ABN 80 000 438 291 AFS 246548



eSentry Underwriting Pty Ltd is an underwriting agent of the Insurer Tokio Marine & Nichido Fire Insurance Co., Ltd. (TMNFA) and acts under its own AFSL as agent of TMNFA

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