



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



# **Owner Builder: Construction and Liability Insurance Product Disclosure Statement & Policy**

**esentry.com.au**

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# Product Disclosure Statement

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## Important Information

### The purpose of the Product Disclosure Statement (PDS)

This PDS is an important legal document designed to help You make an informed decision when purchasing Your **Residential Owner Builder Construction and Liability insurance**. The PDS includes information about what the policy does or does not insure, information about the terms and conditions as well as details of the significant benefits or risks and how the premium is calculated.

Please read this PDS before You apply for insurance.

The Policy Wording commences on page 11 of this booklet and You should read it for a full description of the terms, conditions and limitations of the insurance cover. If We accept Your application for insurance, You will receive a schedule that sets out details of the insurance You have taken out.

If You need more information about this PDS, please contact Us. Please keep Your PDS and Policy Wording in a safe place together with Your Policy Schedule.

### Who is the Insurer?

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

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

Tokio Marine & Nichido's Managing Agent in Australia is Tokio Marine Management (Australasia) Pty. Ltd. ABN 69 004 488 455 (**Tokio Marine Management**). As managing agent, Tokio Marine Management holds Tokio Marine & Nichido's Power of Attorney that allows it to perform all of the functions of the insurance company on Tokio Marine & Nichido's behalf. Tokio Marine Management is a wholly owned subsidiary of Tokio Marine & Nichido. Tokio Marine Management has a sub-agency agreement with eSentry Underwriting Pty., Ltd. ABN 46 141 852 842 (**eSentry**) which authorises eSentry to underwrite **Residential** Owner Builder and Liability insurance on behalf of Tokio Marine & Nichido. eSentry operates under its own Australian Financial Services License (AFSL number 402842).

References to 'We', 'Our' or 'Us' are references to Tokio Marine & Nichido and/or Tokio Marine Management.

### How to contact Us

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

#### NEW SOUTH WALES

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

#### VICTORIA

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

## How to apply for insurance

To apply for insurance please complete an application form, which can be found on the eSentry website [www.esentry.com.au](http://www.esentry.com.au). If Your application is accepted by Us, We will send You a schedule setting out the details of the insurance cover You have requested.

## When You are insured

The period of Your insurance cover will begin when We accept Your application for insurance. The date of commencement of Your insurance will be stated on the schedule that We will send You. The insurance cover applies for the period for which You have paid, or agreed to pay, the premium. You may pay the premium by cheque or direct bank transfer. If Your cheque is dishonoured by Your financial institution, You will not be covered for insurance.

## When Your insurance will end

Your insurance cover will end at the earliest of the below times:

1. 4 pm. on the date shown in Your schedule as the last day of Your insurance cover; or
2. When the construction project is completed.

This policy for insurance has been issued to You for the period of construction specified on Your application for insurance. We will not send You an invitation to renew this insurance policy. If You require insurance cover after the expiration date of Your policy, You will need to contact Us and request an extension of Your insurance policy.

## Who is insured under this policy?

This insurance policy covers the persons, partnerships and companies that are named in Your scheduled. These parties are the insured. In this PDS and insurance policy, these parties are referred to as 'You' or 'Your'.

## Cooling off period

If You are not completely satisfied with Your policy, You can cancel it within 21 days of the start date ("cooling off period") and receive a full premium refund, providing no claims have been made, by contacting Us at Your nearest Tokio Marine & Nichido office listed on page 3 of this booklet.

You have the right to cancel the policy at other times. Please see 'Cancelling Your policy before the due date' on page 27 of the Policy Wording for further details.

## Your duty of disclosure

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

You are not expected to tell Us information:

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

This means:

- (1) when You ask for cover You must honestly answer specific questions about matters that may affect Our decision whether:
- [a] to accept the risks of offering You cover; and
  - [b] the terms (including cost) of such cover
- (2) if You asked for the cover to be extended, altered or reinstated We may:
- [a] ask You specific questions as mentioned above, and You must again answer honestly; and/or
  - [b] give You a copy of the matters You previously disclosed to Us in relation to the cover, and request You to tell Us:
    - i) if there have been any changes to that matter (being a change that is known to You or that a reasonable person in such circumstances could be expected to disclose); or
    - ii) if there have been no changes to that matter

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

## The Financial Claims Scheme

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

## Taxation information

Tokio Marine & Nichido Fire Insurance Co. specifies all taxes and charges as separate items on all schedules (e.g. Stamp Duty and the Goods and Services Tax).

Further details on the Goods and Services Tax are included in the policy wording under 'Some things You should note' on page 11'.

## Premium

The premium that You are required to pay will be specified on Your schedule. The key factors that determine the calculation of Your premium are based on the questions We asked You and the information We sought from You at the time of Your enquiry or application for **Residential** Owner Builder Construction and Liability insurance. This includes factors relating to:

- the nature of the construction
- the location where the construction is being conducted
- the value of the construction works being undertaken
- Your previous claims history

Premiums are subject to Commonwealth and state taxes and/or charges. This includes the Goods and Services Tax (GST), Fire Services Levy (FSL) and stamp duty according to Your State. The amount of taxes and/or charges applicable to Your premium will be specified on Your schedule.





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<b>Property Damage Policy</b>	
Premium	\$ 1,000.00
Fire Services Levy	400.00
GST	\$ 120.00
Stamp Duty	\$ 270.00
<b>TOTAL PREMIUM:</b>	<b>\$ 1,790.00</b>

## Significant features and benefits applicable to this policy

- Insurance cover for Property Damage and Liability
- Options for Property Damage:
  - New building construction
  - Internal alterations
  - Extensions on the same floor level Cover for Existing Structures can be included
- Property Damage cover:
  - Unforeseen physical loss or damage is covered when it happens during the time when You are insured
  - Your costs of removal of debris and fees for architects, engineers and surveyors are covered when these are specified in Your schedule
  - For details of this cover, please refer to the policy wording 'When We will pay' and 'When We will not pay' on page 16.
  - A range of additional benefits applies with Property Damage cover. These benefits are detailed in the policy wording under 'Additional things We will pay for' on pages 17 & 18.
- Liability cover:
  - You will be covered against public liability when You have selected liability insurance cover and it is specified in Your schedule
  - For details of this cover, please refer to the policy wording 'When We will pay' and 'When We will not pay' on page 18-22.
  - A range of additional benefits applies with Liability cover. These benefits are detailed in the policy wording under 'Additional things We will pay for' on page 20.

## How to make a claim

In the event of loss, damage or destruction to the insurable items under Your policy, or an incident likely to give rise to legal liability relating to Your building, please immediately contact eSentry who in turn will notify Us in order to process Your claim. Additional information on how to make a claim may be available from time to time on the eSentry website at [www.esentry.com.au](http://www.esentry.com.au)

## Deductible

If You make a claim under Your insurance policy, You may be required to pay one or more deductibles. A deductible is the amount of money We will deduct from the claim amount that We will pay. Details of the Deductibles are shown in the policy wording on pages 11, 12, and 18 and the amount of each Deductible will be specified on Your schedule.

The Deductible is set taking into account a number of considerations including factors relating to:

- the nature of the construction
- the location where the construction is being conducted
- Your previous claims history



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time when You enquire or apply for Owner Builder and Construction Liability insurance.

## The most We will pay

The most We will pay You is the sum(s) specified in Your schedule, as stated on page 18 of the Policy Wording. Please note however, that certain deductibles may still apply on Your claim, as explained above and illustrated in the Claims scenarios 1-6 as detailed on pages 7 & 8. These examples are provided for indicative purposes only, and may not reflect Your specific circumstances.

### CLAIMS SCENARIO 1

#### Property Damage

Damage to Project resulting from storm.

Claim costs	\$25,000	(building damage)
Deductible	\$1,000	

If You are GST registered (100% input tax credit).

Repairs to Building Damage	\$25,000.00
Less GST	\$2,272.72
Less Policy Deductible	\$1000.00

**TOTAL SETTLEMENT AMOUNT: \$21,727.28**

### CLAIMS SCENARIO 2

#### Property Damage

Damage to Project resulting from storm

Claim costs	\$25,000	(building damage)
Deductible	\$1,000	

If You are not GST registered (0% input tax credit).

Repairs to Building Damage	\$25,000.00
Less GST	\$0.00
Less Policy Deductible	\$1,000.00

**TOTAL SETTLEMENT AMOUNT: \$24,000.00**

### CLAIMS SCENARIO 3

#### Property Damage

Damage to Project and Existing Property resulting from storm.

Repair costs	\$25,000	(new works)
	\$12,000	(Existing Structures)
	\$5,000	(Contents)

The \$5,000 amount for Contents is not claimable as it is not insured by the policy

Deductible	\$1,000	for new works
	\$2,000	for Existing structures

If You are GST registered (100% input tax credit).

Repairs to new works	\$25,000.00
Less GST	\$2,272.72
Less Policy Deductible for new works	\$1000.00
New works settlement amount	\$21,727.28

Repairs to Existing Structures	\$12,000.00
Less GST	\$ 1090.90
Less Policy Deductible for existing structures	\$2,000.00
Existing Property settlement amount	\$ 8,909.10

**TOTAL SETTLEMENT AMOUNT: \$30,636.38**

### CLAIMS SCENARIO 4

#### Property Damage

Damage to Project and Existing Property resulting from storm

Repair costs	\$25,000	(new works)
	\$12,000	(Existing Structures)
	\$5,000	(Contents)

The \$5,000 amount for Contents is not claimable as it is not insured by the policy

Deductible	\$1,000	for new works
	\$2,000	for Existing structures

If You are not GST registered (0% input tax credit).

Repairs to new works	\$25,000.00
Less GST	\$0.00
Less Policy Deductible for new works	\$1000.00
New works settlement amount	\$24,000.00

Repairs to Existing Structures	\$12,000.00
Less GST	\$0.00
Less Policy Deductible for existing structures	\$2,000.00
Existing Property settlement amount	\$10,000.00

**TOTAL SETTLEMENT AMOUNT: \$34,000.00**

### CLAIMS SCENARIO 5

#### Liability Cover

### CLAIMS SCENARIO 6

#### Liability Cover



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Claim costs	(medical costs)
\$5,000	
	(legal costs)
\$2,000	
Deductible	\$1,000
You are GST registered (100% input tax credit).	
Medical Expenses of Third Party	\$5,000.00
Legal Costs incurred	\$2,000.00
Subtotal	\$7,000.00
Less GST	\$0.00
Less Policy Deductible	\$1,000.00
<b>TOTAL SETTLEMENT AMOUNT:</b>	<b>\$6,000.00</b>



Claim costs	(repair costs)
\$10,000	
Deductible	\$1,000
You are not GST registered (0% input tax credit).	
Repairs to Third Party's property	\$10,000.00
Less GST	\$0.00
Less Policy Deductible	\$1,000.00
<b>TOTAL SETTLEMENT AMOUNT:</b>	<b>\$9,000.00</b>

## Adequacy of the Sum Insured

In the event of a major loss, Your sum insured for either the construction project or any existing structures must be sufficient to allow for its full replacement or repair. If Your sum insured is insufficient, We may apply an **Average**. If an **Average** is applied this may reduce Your claim in proportion to the amount that You have underinsured, when compared to 90% of the full replacement amount.

For example:

Specified Sum Insured:	\$100,000
Full replacement amount:	\$150,000
90% of full replacement amount:	\$135,000
Proportion that the specified Sum Insured bears to 90% of the full replacement amount (\$100,000/\$135,000):	
This makes You the insurer of 26% of any loss or damage	
If You make a claim for \$35,000 of damage after application of Deductible:	
Claim amount:	\$36,000
Less Deductible:	\$1,000
Total settlement amount:	\$35,000
Your proportion of loss:	\$9,100
Our proportion of loss:	\$25,900

## Additional product information

Other information regarding this insurance policy may be available from time to time on the eSentry website, at [www.esentry.com.au](http://www.esentry.com.au)

## General Insurance Code Of Practice

We participate in the General Insurance Code of Practice. This is a scheme to provide a better understanding between policyholders and their Insurance Company. The scheme requires Insurance Companies to have documented Internal Complaint and Dispute Resolution procedures for policyholders who feel their Insurance Company has treated them unfairly. The scheme is a free service provided by Insurance Companies.



## Complaints

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

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

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

### *Stage 1*

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

### *Stage 2*

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

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

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

## If Your Problem is Not Resolved

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

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



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



## PRIVACY

### Privacy Disclosure and Consent Statement

We collect, store and use Your personal information in accordance with the Privacy Act 1988 (Cth).

Your personal information may be passed on to other companies within Tokio Marine & Nichido and its associated companies for marketing and promotional purposes. You may stop Your personal information from being used for this purpose at any time by contacting the Privacy Officer on telephone (02) 9232 2833.

The personal information You provide to Us may also be provided by Us to Our assessors, investigators, repairers, suppliers, contractors, other insurance companies, Our related companies, legal and professional advisers if You make a claim under the policy, for the purposes of dealing with Your claim. By taking out this policy You agree to Us disclosing Your personal information to these organisations and individuals. Your failure to consent to this disclosure may mean that We cannot provide You with benefits under the policy.

If the interest of a financier is noted on Your policy and Your policy is not renewed due to non-payment, or being cancelled during the currency of the policy, by accepting this offer of insurance, You consent to Us providing details of the non renewal or cancellation to the financier.

You have a right of access to Your personal information. Please contact the Privacy Officer on (02) 9232 2833 for further information about accessing Your information.

# Owner Builder Construction and Liability Insurance Policy

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## Your Policy

Please read this policy before You apply for insurance.

This policy sets out the terms, conditions, and limits that apply for the insurance We offer You. If We accept Your application for insurance, You will receive a schedule that sets out details of the insurance You have taken out.

Our agreement with You is made up of Your application, this policy, the schedules and endorsements We send You. Endorsements are notices we send You to confirm changes to Your insurance.

Keep this policy in a safe place - You may want to refer to it from time to time.

## Some things You should note

1. The policy You are applying for will not provide any insurance cover for anything that may have happened before the policy started.
2. **Deductible**  
You must pay the deductible when a claim occurs. A deductible means the amount of money We will deduct from the amount We pay for Your claim. Where a claim is made in respect of more than one event, the deductible will apply as though a claim was made for each individual event.
3. This insurance will not begin until We have accepted Your application. The commencement date of Your insurance will be shown on the **schedule** We send You. We have the right not to accept Your insurance application.
4. The Liability section of this policy only provides cover in relation to **personal injury** or **damage to property** that happened during the period of insurance of this Liability section.
5. **Liability assumed under agreement**  
The Liability section of this policy does not provide cover for liability You have assumed under any agreement or contract. This does not apply if You would have been liable without the agreement or contract.
6. **Jurisdiction**  
Any dispute between You and Us under this policy will be determined by the courts, and in accordance with the laws of the State or Territory of Australia where We issued this policy.
7. If You cancel the policy because the Project never commenced, We will give You a full refund of premium. If You cancel the policy after the Project has commenced, We will not give You any refund of premium.
8. **Goods and Services Tax**  
Where We make a payment under this policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit

that You are, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is actually made.

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

## Words that have a special meaning

In this policy there are words that have a special meaning. These words are listed below. Wherever a word with a special meaning is printed in this policy, it will be shown in **bold** print.

**Aircraft** means: any vessel, craft or thing made to, or intended to, move through the air or space.

**Average** means: reducing any claim when the amount You specified as the sum insured stated in the **schedule** is less than the full replacement amount of the **Project** or any **Existing Structures**. Any payment We might otherwise be required to make under the Terms and conditions of this policy will be reduced in the same proportion as the amount specified bears to 90% of the full replacement amount.

**Damage to property** means: 1. physical damage to property;  
2. physical destruction of property;  
3. loss of use of property, as a result of physical damage to, or physical destruction of property;

**Debris** means: the remains of insured damaged property, excluding **pollutants** which are deposited beyond the boundaries of the **situation**.

**Event** means: 1. a single incident;  
2. a series or number of incidents either having the same original cause or attributable to the one source; or  
3. continuous or repeated exposure to substantially the same general conditions.

**Deductible** means: the amount of money We will deduct from the amount We pay for Your claim. Where You make a claim for more than one event, the **deductible** will apply for each individual event. The amount of Your deductible is shown on Your **schedule**.

**Geographical limits** means: anywhere in Australia. This does not include the ownership, occupancy or tenancy of any building, land or structure, other than at the **situation** shown in the **schedule**, or any building, land or structure used in connection with the **Project**.

<b>Hovercraft</b> means:	any vessel, craft or thing supported on a cushion of air, made to, or intended to transport persons or property over land or water.
<b>Loading or unloading goods</b> onto or from a <b>vehicle</b> means:	the single action of transferring the weight of the goods (or a portion of a consignment of goods) onto or from the vehicle.
<b>Occurrence</b> means:	<p><b>personal injury</b> or <b>damage to property</b> happening during the period of insurance, and:</p> <ol style="list-style-type: none"> <li>1. is neither intended nor expected by a reasonable person in Your position;</li> <li>2. is caused by an <b>event</b>; and</li> <li>3. happens within the <b>geographical limits</b>.</li> </ol>
<b>Personal injury</b> means:	<ol style="list-style-type: none"> <li>1. bodily injury, death, sickness, disease, disability;</li> <li>1. shock, fright, mental anguish;</li> <li>2. false arrest, false imprisonment, wrongful detention, malicious prosecution;</li> <li>3. libel, slander, defamation of character, humiliation;</li> <li>4. wrongful eviction, wrongful entry or other invasion of privacy.</li> </ol>
<b>Pollutants</b> mean:	any solid, liquid, gaseous or thermal irritant or contaminant. This includes but is not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
<b>Existing Structures</b> mean:	structures existing at the <b>situation</b> at the time of the commencement of the <b>Project</b> .
<b>Project</b> means:	the works of constructing a building. This includes formwork hired by You that You are liable to replace, temporary works, hoardings, materials supplied by You, materials for use in the building construction and additions to, or alterations of, Existing Structures. This does not include construction plant and equipment, or tools.
<b>Property</b> means:	<ol style="list-style-type: none"> <li>1. physical property not in Your possession or control;</li> <li>2. premises that You occupy for the purpose of the Project.</li> </ol>
<b>Public liability</b> means:	Your legal liability to pay damages for an <b>occurrence</b> arising in connection with the <b>Project</b> .
<b>Removal of debris</b> means:	<ol style="list-style-type: none"> <li>1. the removal, storage and disposal of debris and of any thing which caused insured damage, from the situation.</li> <li>2.(a) the removal, storage and disposal of debris from premises, roadways, services, railways or waterways owned by any other person or entity, where You are legally liable to remove, store or dispose of such debris as a result of insured damage, and</li> </ol>



2.(b) the cost of cleaning up.

Clauses 2(a) and 2(b) do not apply if Your liability has arisen as a result of any agreement or contract made by You. You will be covered for removal of debris that You would have been liable for if the agreement or contract did not exist.

3. the demolition, dismantling, shoring up, propping or underpinning of insured property or the carrying out of other temporary repairs to insured property as a result of insured damage.

4. the demolition and removal of insured property which is necessary for the purpose of repair or replacement as a result of insured damage.

**Schedule** means: the document We give You which sets out the details of Your insurance cover. You receive a **schedule** when You first take out Your insurance and when the policy is renewed or changed.

**Situation** means: the place where the Project as shown in the **schedule** is being carried out.

**Sub-Contractors** mean: any person carrying out work at the Project Site where payment in any form was agreed to prior to the commencement of the work being undertaken.

**Used as a working tool** means: used for excavating, digging, grading, drilling, lifting, pumping, spraying, vacuuming and the like.

It does not include use for:

1. loading or unloading goods onto or from a vehicle, by use of a crane mounted on the vehicle;
2. transit to or from or within a work site; or
3. transport or haulage.

**Vehicle** means: any type of machine on wheels, on skis or on self-laid tracks, designed to be moved other than by manual or animal power and includes any trailer while attached to a vehicle.

**Voluntary Worker** means: any person carrying out work of any description at the situation being work:

1. on a voluntary basis; or
2. for reward which will not form a component of their taxable income; or
3. for work where no payment of any form was agreed prior to the commencement of the work being undertaken.

**Watercraft** means: any vessel craft or thing made to, or intended to float on, or in, or travel on or through water.

# Section 1

## Property Damage

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Your **Project** and where applicable any **Existing Structures**, is insured while at the **situation**. Cover for materials to be included in the **Project**, while away from the **situation**, is not provided.

### When We will pay

We will cover Your **Project** and where applicable any **Existing Structures** shown in Your **schedule** while at the situation. We will cover the **Project** against unforeseen physical loss or damage. We will also cover any **Existing Structures** against unforeseen physical loss or damage. All damage must happen during the time when You are insured.

If there is insured damage to the **Project**, or any **Existing Structures**, We will also cover Your costs of **removal of debris** and architects, engineers, and surveyors fees.

### When We will not pay

We will not pay claims for physical loss or damage caused by, or as a result of:

1. A fault, error or omission in material, workmanship, design, plan, or specification. If loss or damage is caused by a fault, error, or omission, We will pay the cost of repairing, replacing or rectifying the property. We will reduce the amount We pay You by the amount You would have had to pay to repair, replace or rectify the fault, error or omission, immediately before the damage happened.
2. Electrical, electronic or mechanical breakdown of a machine.
  - (a) If the electrical, electronic or mechanical breakdown causes a fire in the machine that broke down, We will pay for the loss or damage caused by the fire. We will not pay for damage due to breakdown, even if that part of the machine was also damaged by the resulting fire.
  - (b) If the electrical, electronic or mechanical breakdown causes loss or damage to other insured items, We will pay for that loss or damage.
3. Moths, termites, other insects, vermin, mildew, mould, wet or dry rot, contamination or pollution, variations in temperature, evaporation, dampness, and change of colour texture or finish.
4. Wasting, wearing away, abrasion, corrosion, rust or oxidation, gradual deterioration.
5. Action of the sea, tsunami, tidal wave, or high water.
6. Cessation, interruption or delay of any process or operation as a direct result of strikes, labour disturbances, or locked out workers.
7. Demolitions ordered by government, public, or local, authorities.
8. Incorrect siting of the **Project**.
9. Fraudulent or dishonest acts by any of Your employees.

We will not pay claims for:

10. Loss or damage that is only discovered when an inventory is taken.
11. Loss of or damage to cash, bank notes, treasury notes, cheques, postal orders, stamps, deeds, bonds, bills of exchange, promissory notes, securities, or computer software.
12. Consequential loss.
13. Loss of use.
14. Penalties, fines, liquidated damages, or aggravated, punitive or exemplary damages.
15. Loss or damage in connection with guarantees of performance or efficiency.
16. The costs of normal maintenance.
17. Loss or damage which occurs more than 30 days after all work has ceased and the **Project** is still unfinished.
18. Loss of, or damage to, hoists, cranes and other mobile or stationary plant and equipment, **vehicles** of any kind, tools, belonging to You, Your employees, contractors subcontractors or their employees.
19. Loss of, or damage to, **watercraft, aircraft or hovercraft**.
20. Loss of, or damage to, any property while in transit, or during **loading or unloading** following delivery to, or removal from, the **situation**. We will pay for loss or damage to insured property being moved on the construction site.
21. Shortage in supply or delivery of materials to or from You.
22. Theft by trickery.
23. Testing involving the imposition of abnormal conditions, intentional overloading or experiments.
24. Faulty packing or storage.

## The most We will pay

The most We will pay any one event is the sum(s) insured shown in Your **schedule**.

## Additional things We will pay for

1. If We have accepted a claim and provided that the sum(s) insured is not exhausted, We will pay for **removal of debris** and architects, engineers, and surveyors fees as follows.

With respect to **removal of debris**, We will only pay for the reasonable costs to:

- a) demolish and dispose of the damaged parts of the **Project** or any **Existing Structures**
- b) remove debris coming onto the site as a result of damage insured by this policy
- c) demolish and remove undamaged parts of the **Project** or any **Existing Structures** to enable it to be reinstated

up to a maximum of 10% of the sum insured.

With respect to fees We will only pay for the reasonable costs of architects, consulting engineers, surveyors, and other fees necessarily incurred by You with Our consent in the reinstatement of the **Project** up to a maximum of 10% of the sum insured.

2. Following a claim under this section, You are fully insured again for the **Project** shown in Your **schedule**, provided that You pay any additional premium We require. This does not apply when Your claim is for a total loss, as the cover under this policy will end.

## How We will settle a claim

1. In the event of a claim for physical loss or damage to the **Project**, We will either:
  - (a) reinstate or repair the property insured to the condition it was in just before the loss or damage occurred; or
  - (b) pay You the cost of reinstating or repairing the property insured to the condition it was in just before the loss or damage occurred.

We decide which one We will do.

2. When We pay a claim under item 1 above, We will not pay for:
  - (a) any temporary repairs, unless these repairs form part of the final repairs and do not increase the total cost of repairs; or
  - (b) the cost of alterations, additions or improvements; or
  - (c) the costs of express delivery, overtime rates of wages, hire of additional labour and equipment necessary to urgently replace or repair any loss or damage to the property insured.
3. In the event of a claim for **removal of debris**, We will pay the reasonable costs necessarily incurred.
4. In the event of a claim for architects', engineers', and surveyors' fees, We will pay the reasonable costs necessarily incurred.
5. We will deduct the **deductible** from the amount We pay for Your claim. The amount of Your **deductible** is shown on Your **schedule**.
6. When We pay a claim under item 1 above, We will apply **Average** when the amount You have specified for either the **Project** or any **Existing Structures** is less than the full replacement amount.

## Section 2

# Liability

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### When We will pay

We will indemnify You against **public liability**, when You have selected cover for liability and it is shown in the schedule.

### What is covered

#### 1. Public liability

The most that We will pay for **public liability**;

- (a) for one **occurrence** (other than **occurrence** in connection with **pollutants**) shall be the limit of indemnity for **public liability** shown on the **schedule**;
- (b) for one **occurrence** in connection with **pollutants** shall be the limit of indemnity for **public liability** shown on the **schedule**, less the sum of the indemnities that We have already paid for **public liability** in connection with **pollutants** that arose during the period of insurance.

#### 2. Where **personal injury** or **damage to property** is caused repeatedly or continuously by one **event**, the **personal injury** or **damage to property**:

- (a) shall be deemed to be a single instance of **personal injury** or **damage to property**; and
- (b) shall be an **occurrence** only if the **personal injury** or **damage to property** was first discovered during the period of insurance.

#### 3. **Personal injury** or **damage to property** that has already been discovered before the period of insurance shall not be an **occurrence** and shall be deemed to have occurred outside the period of insurance.

#### 4. Where We are indemnifying more than one legal entity, for **public liability** in respect of one **occurrence**, the most We will pay in total, for all the legal entities We are indemnifying, shall be the limit of indemnity shown on the **schedule**.

#### 5. Cover for others

If they comply with and are subject to the terms, conditions and exclusions of this section, We will also indemnify, as though they were You, the following parties that are not named in the **schedule**:

- (a) Any party with whom You have entered into an agreement for the purpose of the **Project**. This cover is only for **occurrences** for which You would be liable in the absence of the agreement and only to the extent that the agreement requires You to indemnify that party in relation to that **occurrence**.
- (b) Any of Your directors, officers or employees, but only for liability incurred by them while acting within the scope of their duties in such capacity.



## Additional things We will pay for

### 1. Your legal costs

(a) In addition to the limit of indemnity shown on Your **schedule**, We will also pay, in the case of:

- (1) **public liability**; or
- (2) a claim of **public liability** being made against You;

Your legal costs.

(b) Your legal costs mean:

- (1) the legal costs and expenses, that You incur with Our written agreement, in defending a claim of **public liability** made against You; and
- (2) the legal costs and expenses of any claimant against You for **public liability** that You are liable to pay.

(c) In relation to **public liability** subject to or determined by the law outside **North America**, the indemnity for Your legal costs shall not be limited by any limit of indemnity.

(d) In relation to **public liability** subject to or determined by the law in **North America**, the indemnity for Your legal costs shall be limited to the amount by which the applicable limit of indemnity is not exhausted by the indemnity for the **public liability**.

## When We will not pay

We will not pay claims for:

### 1. Employer's liability (Workers' Compensation)

(a) Liability for or in respect of **personal injury** to any person, that person's dependants, or anyone claiming through that person, where You:

- (1) are indemnified or entitled to be indemnified (either in whole or in part) in respect of claims for damages under a policy of insurance (which expression includes arrangements made by You to provide accident insurance for Your workers under a licence to self insure) arranged (whether required by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
- (2) would have been indemnified or entitled to be indemnified had You arranged a policy of insurance as required by such legislation.

(b) Liability for **personal injury** to any person arising out of, or sustained in the course of, the employment of such person in Your service in Western Australia, other than a person of whom You are deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Rehabilitation Act 1981 (WA).

(c) Liability for mental anguish suffered by any person arising out of, or in the course of, that person's employment by, or service to, You.

(d) Liability for **personal injury** arising out of the harassment, libel, slander, defamation or humiliation of, or discrimination against, any person while in Your service or while employed by You.

(e) Liability of a type in respect of which indemnity previously would have been provided

under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current period of insurance of this policy.

- (f) Any other liability imposed by the provisions of any workers' compensation legislation or accident compensation legislation or any industrial award, agreement or determination.

2. **Discrimination and harassment**

Liability for discrimination or harassment in breach of any statute.

3. **Assault or battery**

Liability for assault or battery committed by You or at Your direction, unless it was committed for the purpose of preventing or eliminating danger to persons or **property**.

4. **Waiver of rights**

Liability in respect of all or part of which You, by an agreement, have released or waived Your right to recover indemnity or contribution from another.

5. **Contractual liability**

Liability assumed by You under an agreement, unless such liability would have attached to You in the absence of that agreement.

6. **Intentionally or recklessly caused personal injury or damage to property**

Liability in connection with **personal injury** or damage to **property** intentionally or recklessly caused by You.

7. **Faulty workmanship**

Liability to perform, complete or rectify any work undertaken by You or on Your behalf, or to pay the cost of performing, completing or rectifying such work.

8. **Family members or persons living with You**

Liability in connection with **personal injury** to, or **damage to property** of, You or any member of Your family who normally lives with You, or any other person who normally lives with You.

9. **Fines and punitive damages**

Liability for fines or penalties, or punitive, exemplary or aggravated damages.

10. **Cranes**

Liability for the operation of a crane in an unsafe condition.

11. **Investigation costs**

The costs and expenses for the investigation, by You, into the cause of any defect or **event** giving rise to a claim.

12. **Aircraft, watercraft and hovercraft**

Liability in connection with Your ownership or physical or legal control of, or use by You or on Your behalf of, any:

- (a) **aircraft**;
- (b) land, building or structures in an area where **aircraft** land or take off, or are housed, maintained or operated;
- (c) **watercraft** greater than eight metres in length, except while stored on land;
- (d) **hovercraft**.

### 13. Vehicles

- (a) Liability for **personal injury** or **damage to property** in connection with a **vehicle** when that vehicle is required by law to be registered, or to have compulsory indemnity cover against Your **liability**, or when such indemnity cover is in force.
- (b) Liability for **damage to property** in connection with a **vehicle** that is registered.

Exclusions 13(a) and 13(b) will not apply where:

- (i) the liability arises from the delivery of goods to the **vehicle** before the **loading** of the **goods** onto the **vehicle**, or arises from the collection of goods from the **vehicle** after the **unloading** of the **goods** from the **vehicle**; or
- (ii) the **liability** arises from the use of the **vehicle**, or plant or attachment to the **vehicle**, which is **used as a working tool**.

### 14. Earthquake, civil commotion

Liability in connection with:

- (a) earthquake, subterranean fire, or volcanic eruption; or
- (b) riot, strike, or civil commotion.

### 15. Pollution

Liability:

- (a) to pay the cost of preventing discharge, dispersal, release or escape of **pollutants**;
- (b) for an **occurrence** in connection with the discharge, dispersal, release or escape of **pollutants**;
- (c) to pay the cost of testing, monitoring, containing, removing, cleaning up or neutralising **pollutants**.

Exclusion 15(b) and 15(c) will not apply where the discharge, dispersal, release or escape of **pollutants**:

- (i) is caused by a single incident;
- (ii) is instantaneous;
- (iii) is clearly identifiable; and
- (iv) is confined to one specific location.

### 16. Asbestos

Liability caused by, arising out of, or in connection with, the use or presence of asbestos.

### 17. Treatment, design and professional risks

Liability caused by, or arising out of, Your performance or failure to perform the:

- (a) rendering of professional advice or service;
- (b) prescription or administration of treatment of or to persons, other than first aid;
- (c) making or formulating a design or specification in connection within the **Project**.

### 18. Libel and slander

Liability in connection with the publication or utterance of a libel or slander:

- (a) made before the commencement of the period of insurance;
- (b) made by You or at Your direction with knowledge of its falsity; or
- (c) related to publishing, advertising, broadcasting or telecasting activities conducted by You or on Your behalf.

**19. Voluntary Workers**

Liability in connection with **personal injury** to, or damage to the property of any Voluntary Workers.

**20. Sub-Contractors**

Liability in connection with **personal injury**, or damage to **property** arising from the actions or instructions of any sub-contractors or their employees.

**21. Non-building activities**

Liability in connection with **personal injury** to, or damage to **property** of, any person whilst at the Situation where such liability arises from any non-building activities whatsoever.

**22. Underground Utilities**

Liability in connection with Personal Injury or Damage to Property arising from any work undertaken on or around underground pipes and cables unless You obtained and relied upon advice in printable form from the relevant authorities as to their physical location.

**23. Vibration, Removal, Weakening of Supports**

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

## Special conditions that relate to Liability Insurance

**1. Reasonable care**

You must:

- (a) take all reasonable precautions to prevent:
  - (i) public liability;
  - (ii) personal injury or damage to property;
- (b) comply with, and ensure that Your employees, servants and agents comply with, all laws, bylaws, regulations or recognised standards for the safety of persons or property;
- (c) ensure that only competent employees use, operate, maintain and service plant and equipment; and
- (d) maintain all premises, fittings, plant and equipment in sound condition.

**2. Cranes**

You must at all times, in the operation of cranes, observe and enforce observance of all laws, bylaws, regulations and recognised standards for the safety of persons or property.

**3. Welding, flame cutting, application of heat**

You must ensure that all welding and flame cutting complies with the Australian Standard "AS1674 SAA Cutting and Welding Safety Code" 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.)

**4. Conduct of Your defence**

When You make a claim for indemnity against public liability under this section, We have the right to conduct of Your defence, to instruct lawyers to provide advice as to Your liability

and to represent You.

**5. Payment of limit of indemnity**

We may at any time pay You the amount shown on Your schedule as the limit of indemnity (less any amounts already paid) or any lesser amount for which a claim may be settled.

We will then have no further liability for the claim, except for costs and expenses, incurred with Our consent, prior to the date of the final payment.

**6. Sub-contractors Insurances**

All sub-contractors must have a minimum of \$5,000,000 public and products liability insurance and a relevant employers liability insurance current during the period the work is being undertaken.



## What Sections 1 and 2 do not cover

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We will not pay claims arising from:

1. Any war or warlike activity. War does not have to be declared. We do not provide cover for theft following these events.
2. Any hostilities, rebellion, insurrection or revolution. We do not provide cover for theft following these events.
3. Any lawful destruction or confiscation of Your property.
4. Anything radioactive or involving nuclear energy or nuclear weapons material.
5. Any loss, damage or injury that You or anyone acting for You deliberately caused.
6. Any loss, damage or legal liability caused by or due to the abandonment of the **Project**.
7. Terrorism; being 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 the public, or any section of the public, in fear.
8. **Electronic Data Exclusion**

Notwithstanding any provision to the contrary in the Policy or any endorsement thereto, it is understood and agreed as follows: -

(a) This Policy does not insure:

- (1) Total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **Electronic Data**,
- (2) Error in creating, amending, entering, deleting or using **Electronic Data**, or
- (3) Total or partial inability or failure to receive, send, access or use **Electronic Data** for any time or at all.

From any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

**Electronic Data** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation, or processing by electronic or electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

(b) However, in the event that a peril listed below (being a peril insured by this Policy but for this exclusion) is caused by any of the matters described in paragraph (a) above, this Policy, subject to all its provisions, will insure:

- (1) Physical loss or damage or destruction to Property insured directly caused by such listed peril, and/or
- (2) Consequential loss insured by this Policy.

Further, this exclusion does not apply in the event that a peril listed below (being a peril insured by this Policy but for this exclusion) causes any of the matters described in paragraph (a) above.

Fire, Explosion, Lightning, Windstorm, Hail, Tornado, Cyclone, Hurricane, Earthquake, Volcano, Tsunami, Flood, Freezing, Weight of Snow, Impact by Aircraft or other aerial objects dropped

therefrom, Impact by any Road Vehicle or Animal, Bursting Overflowing Discharging or Leaking of water Tanks Apparatus or Pipes, or Theft of Electronic Data solely where such Theft is accompanied by Theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data.

- (c) For the purposes of the Basis of Settlement provision in this Policy, computer systems records includes Electronic Data as defined in paragraph (a) above.

Any Terrorism Exclusion in this Policy or any endorsement thereto prevails over this endorsement.

## 9. 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.

## You cannot give Your rights away

You cannot give anyone else an interest in this policy without Our written consent.

## You give Us Your rights to claim from anyone else

If You have a right to claim against someone else for a claim You made under this policy, You give Us Your rights to make that claim. You also give Us Your rights to conduct, defend or settle any legal action and to act in Your name.

You must not do anything which prevents Us from doing this and You must give Us all the information and co-operation that We require.

## What You are required to do for Us

1. You must tell Us as soon as possible of anything that changes the facts or circumstances relating to Your insurance.
2. You must take all reasonable precautions to prevent anything that could result in a claim under this policy.
3. You must take all reasonable precautions to ensure that anyone doing anything on Your behalf obeys all laws.
4. You, and anyone who is insured by this policy, must comply with the conditions of this policy.
5. You must pay Us the premium for this insurance.
6. If the premium for the policy or any section of the policy is calculated on estimates provided by You, then You must keep an accurate record containing all relevant particulars. You must at any time allow Us to inspect those records. You must, within 30 days after the expiry of the period of insurance, give Us such particulars and all information We may require. The

premium will then be adjusted and any difference paid by, or allowed to You, as the case may be, subject to receipt and retention of the minimum premium charged by Us.

Even if the policy has ended, or has been cancelled, You must give Us all information We may require for the adjustment of the premium.

## Cancelling Your policy before the due date

You can cancel this policy at any time. To do this You must ask Us in writing to cancel Your policy. The policy will end when We receive Your request.

We can cancel this policy if You do any of the following:

1. Make a misleading statement to Us when You apply for Your insurance.
2. Fail to tell Us about anything that You should tell Us when You apply for this policy, renew this policy and when You change or reinstate this policy.
3. Fail to comply with the conditions of this policy.
4. Fail to pay the premium for this insurance.
5. Are not fair and open in Your dealings with Us.
6. Make a claim during the period of this policy that is not true. The claim does not have to be under this policy and can be with Us or another insurance company.

We may also cancel this policy if there is a change in the circumstances of the risk during the period of insurance.

If We cancel this policy, We will tell You in writing.

## Return of premium if Your policy is cancelled before the due date

If We cancel Your policy before the due date, We will keep the premium for the period the policy has been in force.

If You cancel the policy because the **Project** never commenced, We will give You a full refund of premium.

If You cancel the policy after the **Project** has commenced, We will not give You any refund of premium.

## What You must do when You make a claim

You must make Your claim as soon as possible after You suffer a loss. If You do not make it within 30 days, We may reduce what We pay You to take account of any disadvantage We suffer by the delay.

You must also:

1. Take all reasonable steps to minimise the loss, damage or liability and to prevent any further loss, damage or liability. We will not be liable for any further damage arising out of the continued use of damaged property, until such property is repaired to Our satisfaction.
2. Try to preserve any damaged or defective appliances, plant or things which might prove necessary or useful as evidence in connection with any claim.
3. As far as possible, and with due regard for safety, make no alteration or repair without Our

4. Keep all damaged property for inspection by Us.
5. Advise the nearest Police Station in the case of property lost, stolen, or vandalised, and obtain a written Police report if requested by Us.
6. Tell Us of any prosecution or inquest that may be held and send to Us any document relating to Your claim within 72 hours of You receiving the document.
7. At Your own expense, provide Us with all records, vouchers, invoices, and other documents, information, explanations and other evidence together with a statutory declaration, as We may require for the purpose of investigating or verifying a claim under this policy. You must co-operate fully in this regard.
8. Provide Us with a statement detailing other insurances which may also provide cover on any property or liability We have insured.

## **What You must not do in the event of a claim**

You must not:

1. Authorise repairs to, or arrange replacement of, any of the property relevant to the claim without Our consent unless by not authorising the repairs, the safety of people is put at risk.
2. Make any admission of liability or payment or promise or offer of payment in connection with any claim, without Our written consent.

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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