

DUAL
A U S T R A L I A

Wording

Design & Engineering



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DUAL Australia Professional Indemnity Insurance

Policy Wording

Section 1: PREAMBLE

- 1.1 WE shall provide the cover described in the POLICY, subject to its terms and conditions, for the INSURANCE PERIOD.
- 1.2 The cover under the POLICY commences upon the payment of the Premium unless otherwise agreed in writing.

Section 2: INSURING CLAUSE

- 2.1 WE agree to indemnify the INSURED for any CLAIM for compensation first made against the INSURED and reported to US during the INSURANCE PERIOD in respect of any civil liability resulting from any breach of professional duty by the INSURED in its conduct of its PROFESSIONAL BUSINESS.
- 2.2 WE also agree to pay DEFENCE COSTS either incurred by US or incurred by the INSURED with OUR prior written consent.
- 2.3 The POLICY shall only provide cover for breaches of professional duty committed after the RETROACTIVE DATE.

Section 3: AUTOMATIC EXTENSIONS

The automatic extensions are subject to the Insuring Clauses and all other POLICY terms and conditions.

3.1 Fraud and Dishonesty

WE agree to provide cover in respect of any CLAIM which would otherwise be excluded because of fraud and dishonesty in Exclusion 7.14 of the POLICY provided that WE will not provide cover in respect of any:

- (a) person committing or condoning any act, omission or breach excluded by Exclusion 7.14 of the POLICY.
- (b) CLAIM arising from or directly or indirectly attributable to or in consequence of:
 - (i) any loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit or other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property; or
 - (ii) any actual or alleged fraudulent or dishonest instruction or direction; or use of electronic equipment, including but not limited to, telephony or the internet; resulting in:
 - a) any unauthorised transfer, delivery or payment of, or dealing with, any money, land or other property; or
 - b) any unauthorised reduction in the amount of any funds or other assets held by any person with any bank, building society or other institution or person having a responsibility for the maintenance or care of such funds or assets; or
 - c) any adverse effect upon any right of any person to the payment of money.

3.2 Former Principals

WE agree to provide cover in respect of any CLAIM against any former principal, partner, director or EMPLOYEE of the INSURED in respect of the conduct of the INSURED's PROFESSIONAL BUSINESS.

3.3 **Consultants, Subcontractors and Agents**

WE agree to provide cover in respect of any CLAIM against the INSURED resulting from the conduct of any consultant, subcontractor or agent in the PROFESSIONAL BUSINESS of the INSURED and for whose acts, errors or omissions the INSURED is liable.

WE will not cover the consultant, subcontractor or agent.

3.4 **Loss of Documents**

WE agree to provide cover in respect of any costs and expenses incurred by the INSURED in replacing or restoring LOST DOCUMENTS for which the INSURED is legally responsible if:

- (a) The loss of the DOCUMENTS is first discovered during the INSURANCE PERIOD;
- (b) The INSURED notifies US within 30 days of discovery of the loss of the DOCUMENTS;
- (c) The INSURED provides US with bills and accounts substantiating the costs and expenses incurred by the INSURED in replacing or restoring the LOST DOCUMENTS; and
- (d) WE approve or a competent person nominated by US approves the bills and accounts.

OUR total liability under this extension for any one claim and in the aggregate from all claims during the INSURANCE PERIOD shall not exceed \$500,000. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. A separate DEDUCTIBLE of \$2,000 or amount shown in Item 6 headed DEDUCTIBLE (whichever is the lesser) will apply to each loss under this extension.

3.5 **Run-off Cover Insured Entity or Subsidiary (Former Subsidiary)**

WE agree to provide cover in respect of any CLAIM against the INSURED resulting from the conduct of the PROFESSIONAL BUSINESS by a SUBSIDIARY that ceased or ceases to be a SUBSIDIARY either before or during the INSURANCE PERIOD.

3.6 **Joint Venture Liability**

WE agree to provide cover in respect of any CLAIM against the INSURED resulting from its conduct of the PROFESSIONAL BUSINESS as a joint venturer.

WE will not cover any liability of the joint venture partner.

3.7 **Defamation**

WE agree to provide cover in respect of any CLAIM against the INSURED which results from the INSURED making a defamatory statement in the conduct of the PROFESSIONAL BUSINESS.

3.8 **Fidelity**

WE agree to provide cover in respect of any CLAIM against, or loss discovered by, the INSURED resulting from:

- (a) any loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit and other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property belonging to the INSURED or for which the INSURED is legally liable; and/or
- (b) any actual or alleged fraudulent or dishonest instruction, direction or use of electronic equipment, including but not limited to telephony and the internet, resulting in the unauthorised transfer, delivery or payment of, or dealing with, money, land or any other property belonging to the INSURED or for which the INSURED is legally liable ("fraudulent transaction")

where such loss is sustained or fraudulent transaction occurs in consequence of any dishonest, fraudulent, malicious or reckless act or omission of any INSURED, provided always that:

- (i) Such CLAIM is first made against the INSURED or loss or fraudulent transaction is first discovered by the INSURED during the INSURANCE PERIOD and is notified in writing to US within 28 days after such discovery and where the INSURED must bear any costs or expenses to substantiate the loss or fraudulent transaction;

- (ii) We shall not be liable for any CLAIM based on or loss sustained in respect of any fraudulent transaction which occurs in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the INSURED concerned; nor will we be liable to indemnify any INSURED committing or condoning any dishonest or fraudulent conduct.

The cover provided under this extension is sub-limited to \$50,000 any one CLAIM or loss and in the aggregate all CLAIMS and losses. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. A separate DEDUCTIBLE will apply to each CLAIM and loss under this extension.

3.9 **Intellectual Property**

WE agree to provide cover in respect of any CLAIM which would otherwise be excluded by Exclusion 7.9 of the POLICY (Intellectual Property), provided that the liability incurred from the breach of intellectual property rights from the provision of advice by the INSURED in the conduct of the PROFESSIONAL BUSINESS.

3.10 **Reinstatement of INDEMNITY LIMIT**

WE agree to provide cover in respect of any CLAIM(S) which require(s) reinstatement of the INDEMNITY LIMIT during the INSURANCE PERIOD because the INDEMNITY LIMIT is eroded (partially or totally) as a result of the payment of an earlier and separate CLAIM, CLAIMS or DEFENCE COSTS. However the aggregate of all such reinstatements in connection with all CLAIMS will not exceed a total amount equal to the INDEMNITY LIMIT, inclusive of DEFENCE COSTS, and such reinstatements are only available where the subsequent CLAIM(S) is/are based on facts and matters totally different from and unrelated to those which gave rise to the erosion or exhaustion of the INDEMNITY LIMIT. Further, this Extension does not apply until the INSURED has exhausted the limits of any policy which is in excess of the original INDEMNITY LIMIT under this POLICY, other than any similar reinstatement provisions under such excess policies.

3.11 **Attendance at Inquiries**

WE agree to provide cover in respect of any legal representation costs resulting directly from the attendance by the INSURED at any INQUIRY. We will only do this if:

- (a) the INQUIRY is ordered or commissioned during the INSURANCE PERIOD, and
- (b) OUR consent is obtained before such costs are incurred, and
- (c) the INSURED notifies US during the INSURANCE PERIOD that the INSURED is legally compelled to attend the INQUIRY, and
- (d) the INQUIRY is not being held in USA or Canada, and
- (e) the INSURED's attendance is required because of the INSURED's conduct of its PROFESSIONAL BUSINESS, and
- (f) at our option, WE can nominate legal advisers to be used.

The cover provided under this extension is sub-limited to \$100,000 any one INQUIRY and in the aggregate for all INQUIRIES and a separate DEDUCTIBLE will apply to each INQUIRY under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. For the application of the terms and conditions of this POLICY to this Extension, INQUIRY is deemed to be a CLAIM.

3.12 **Court Attendance Costs**

WE agree to provide cover in respect of any court attendance costs of any partner, principal, director or EMPLOYEE of the INSURED who is legally required to attend Court as a witness in a CLAIM covered by the POLICY, to an amount not exceeding \$250 per day for EMPLOYEES and \$500 per day for those other persons. No DEDUCTIBLE applies.

3.13 **Public Relations**

WE agree to provide cover in respect of PUBLIC RELATIONS EXPENSES incurred by the INSURED in connection with an INCIDENT in order to prevent or minimise the risk of a CLAIM which would be covered under the POLICY, or in connection with an INCIDENT that results in a CLAIM covered under the POLICY. The INSURED's entitlement to this cover is conditional upon the INSURED providing US with full written details of the INCIDENT no later than 30 days after the INSURED first becomes aware of the INCIDENT. The INCIDENT must occur and be reported during the INSURANCE PERIOD. The INCIDENT must occur outside of the USA/Canada.

The cover provided under this extension is sub-limited to \$50,000 any one INCIDENT and in the aggregate for all INCIDENTS. A separate DEDUCTIBLE of \$1,000 will apply to each INCIDENT under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT.

3.14 **Heirs, Estates and Legal Representatives**

WE agree to provide cover in respect of any Estate, heirs, legal representatives or assigns of any deceased or mentally incompetent INSURED in respect of CLAIMS resulting from the conduct of the PROFESSIONAL BUSINESS by such INSURED.

3.15 **Continuous Cover**

Notwithstanding the Prior Knowledge Clause 7.1 (a) and (b), WE agree to provide cover in respect of any CLAIM made in the INSURANCE PERIOD where the INSURED:

- (a) first became aware, prior to the INSURANCE PERIOD, that a CLAIM might or could arise from facts or circumstances known to it; and
- (b) had not notified US of such facts or circumstances prior to the INSURANCE PERIOD.

Provided that:

- (i) WE were the professional indemnity liability insurer of the INSURED when the INSURED first became aware of such facts and circumstances; and
- (ii) WE have continued, without interruption, to be the INSURED's professional indemnity insurer up until this POLICY came into effect; and
- (iii) There has not been any fraudulent non-disclosure or fraudulent misrepresentation by the INSURED in respect of such facts or circumstances; and
- (iv) WE have the discretion to apply either the terms and conditions of the Policy on foot when the INSURED first became aware of the facts and circumstances, including but not limited to the INDEMNITY LIMIT and DEDUCTIBLE, or the terms and conditions of this POLICY; and
- (v) The INSURED agrees to only make a claim under one professional indemnity POLICY issued by US.

For the purpose of this Extension only, the definition of WE/US/OUR in clause 6.20 of this POLICY also includes the Underwriter(s) for which WE were the agent on any previous policy issued by US as such Underwriter's agent to the INSURED. Subject to the terms of this extension and the terms of the POLICY, the intention of this extension is to provide continuous cover to the INSURED notwithstanding any change in the identity of the Underwriters for which we presently act, or have previously acted, as agent.

3.16 **Defence Costs In Addition**

WE agree to provide cover for any DEFENCE COSTS in addition to the INDEMNITY LIMIT, in an amount not exceeding the INDEMNITY LIMIT

We will only pay these, however, if:

- (a) WE incur them; or
- (b) The INSURED incurs them after first obtaining OUR agreement in writing and the DEFENCE COSTS are in OUR view reasonable and necessary.

We will not be obliged to defend, or to continue to defend, any CLAIMS or pay, or continue to pay, any DEFENCE COSTS associated with such defence, once the INDEMNITY LIMIT has been exhausted.

DEFENCE COSTS does not include any internal or overhead expenses of the INSURED or the cost of the INSURED'S time.

3.17 **Emergency Defence Costs**

WE agree to provide cover for any DEFENCE COSTS incurred by the INSURED prior to obtaining our consent, WE will waive prior consent so long as OUR consent is obtained within 30 days of the first of such DEFENCE COSTS being incurred and provided that for the purposes of this Extension only:

- (a) WE are only liable to indemnify the INSURED for that part of the INSURED'S liability in respect of each CLAIM and DEFENCE COSTS in excess of the DEDUCTIBLE, and

- (b) If WE subsequently refuse to pay under the POLICY, the INSURED must reimburse US for any DEFENCE COSTS that WE have paid in advance, according to their respective rights and interests.

The sub limit of liability for all such payments under this Extension is \$100,000. This sub limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

3.18

Statutory Liability

Notwithstanding clause 7.2 (a) of the POLICY, WE agree under this Extension to cover STATUTORY LIABILITY.

STATUTORY LIABILITY means pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

- (a) an INSURED for any civil offence; and
- (b) an INSURED for a strict liability offence in connection with the discharge, dispersal, release or escape of POLLUTANTS; and
- (c) an INSURED for a strict liability offence in connection with a breach of occupational health and safety law or regulation ("OH&S"),

but solely resulting from the conduct by the INSURED of its PROFESSIONAL BUSINESS and only if WE are not legally prohibited from paying the pecuniary penalties.

With respect to the cover under this STATUTORY LIABILITY Extension, WE agree that for any CLAIM brought in the jurisdiction and under the laws of Australia or New Zealand against:

- (i) an INSURED in connection with a breach of occupational health and safety law or regulation "OH&S", the Bodily Injury Exclusion 7.5 of the POLICY does not apply, including in respect of DEFENCE COSTS;
- (ii) an INSURED for a strict liability offence in connection with the discharge, dispersal, release or escape of POLLUTANTS, the Pollution Exclusion 7.10 does not apply including in respect of DEFENCE COSTS.

However, WE are not liable to make payment under the POLICY in connection with any STATUTORY LIABILITY directly or indirectly based on, arising out of or attributable to the reckless or grossly negligent conduct of the INSURED, or any knowing or intentional breach or violation of law by the INSURED. This exclusion shall only apply if it is established through a judgment or other final adjudication adverse to the INSURED, or any admission by an INSURED, that such conduct did in fact occur.

The sub-limit for all cover under this STATUTORY LIABILITY Extension is \$100,000 in the aggregate for all CLAIMS inclusive of all DEFENCE COSTS. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. A separate DEDUCTIBLE of \$1,000 will apply to each CLAIM under this extension.

For the purpose of this Extension CLAIM means:

- a) a civil proceeding brought for recovery of pecuniary penalties; or
- b) any written notice from a relevant authority requiring the INSURED to pay pecuniary penalties.

3.19

Previous Business

WE agree to provide cover in respect of any principal, partner or director of the INSURED for CLAIMS resulting from professional services they performed prior to joining the INSURED.

This extension will only apply if:

- (a) the professional services were performed in the same profession as the PROFESSIONAL ACTIVITY of the INSURED; and
- (b) there were no more than 10 partners or directors in the past business in which the principal, partner or director practised; and
- (c) the principal, partner or director of the INSURED does not have the benefit of cover under any other insurance or indemnity.

The retroactive date for this Extension is limited to the commencement date of the past business in which the principal, partner or director practised.

Section 4: OPTIONAL EXTENSIONS:

The optional extensions are subject to the Insuring Clauses and all other POLICY terms and conditions.

4.1 Employment Practices Liability

WE agree to provide cover in respect of any CLAIMS against the INSURED resulting from an EMPLOYMENT PRACTICE BREACH.

For the purposes of this Extension only, the following amendments to the POLICY and additional terms apply:

1. CLAIM means:
 - (a) a civil proceeding brought by an EMPLOYEE for recovery of compensation or damages; or
 - (b) any suit, proceeding or written demand by an EMPLOYEE for monetary damages.
2. EMPLOYEE shall include a prospective employee of the INSURED.
3. 'INSURED' means the persons and entities referred to in clause 6.11 of the POLICY other than the EMPLOYEE making the CLAIM in respect of an EMPLOYMENT PRACTICE BREACH.
4. BENEFITS means any amount payable to a beneficiary of a superannuation fund by the Trustee under the rules governing the fund.
5. EMPLOYMENT PRACTICE BREACH means any breach of duty or breach of trust owed by the INSURED in relation to any of the following employment-related actual or alleged unfair or wrongful dismissal from, termination or discharge of employment (either actual or constructive, including breach of an implied contract), misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation (including lockouts), humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference) which relate solely to the INSURED and its past, present or prospective EMPLOYEES.
6. EMPLOYMENT-RELATED BENEFITS includes but is not limited to:
 - (a) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
 - (b) stock, shares, stock options, share options or any entitlement or right under any employee plan of any description;
 - (c) participation in any stock, share option or share option plan, or participation in any employee plan of any description;
 - (d) severance or redundancy payments or entitlements;
 - (e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
 - (f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
 - (g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event;
 - (h) any amount the INSURED pays or is ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

7. INDUSTRIAL INSTRUMENTS means
- (a) an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute;
 - (b) any other collective agreement;
- which regulates the terms and conditions of employment
8. All CLAIMS which arise out of or are attributable to or are in any way connected with a single EMPLOYMENT PRACTICE BREACH shall constitute a single CLAIM for the purposes of this POLICY. A single EMPLOYMENT PRACTICE BREACH means all respective EMPLOYMENT PRACTICE BREACHES which are related or form part of a series of related conduct or form part of a course of conduct that is not entirely unconnected, different and/or unrelated.
9. WE will not cover the INSURED, including for DEFENCE COSTS, in respect of any CLAIM for an EMPLOYMENT PRACTICE BREACH for, arising from or directly or indirectly attributable to or in consequence of any BENEFITS or EMPLOYMENT-RELATED BENEFITS or a breach of an express obligation of an INSURED:
- (a) to make payments (including the provision of non cash benefits); or
 - (b) pursuant to any procedural or notification requirements in the event of termination of employment;
- whether such obligation arises under statute, regulation, award, contract of employment (including any arrangement or agreement collateral to any contract of employment) or any industrial, workplace or enterprise agreement or otherwise.
10. For the purpose of the cover in this Extension, Extension 3.12 in the POLICY is deleted and is of no effect.
11. WE will not cover the INSURED, including for DEFENCE COSTS, in respect of any CLAIM for an EMPLOYMENT PRACTICE BREACH based upon, arising from, in connection to or attributable to:
- (a) any obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or any INDUSTRIAL INSTRUMENT; or
 - (b) any obligation pursuant to any law, regulation, or INDUSTRIAL INSTRUMENT in respect of workers' compensation, occupational or workplace health and safety, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation or INDUSTRIAL INSTRUMENT whatsoever.
12. Exclusions 7.4 and 7.5 of the POLICY shall not apply to any CLAIM by an EMPLOYEE in respect of mental anguish or emotional distress or disturbance alleging an EMPLOYMENT PRACTICE BREACH.
13. Exclusion 7.15(a) and 7.16 does not apply to a CLAIM covered by this Extension.
14. The cover provided under this Extension is sub-limited to \$500,000 any one CLAIM and in the aggregate for all CLAIMS, inclusive of DEFENCE COSTS, and the DEDUCTIBLE in respect to each CLAIM under this extension is \$10,000. The sub-limit is part of and not in addition to the INDEMNITY LIMIT.
15. If such other insurance is provided by US, or any other member company, associate or affiliate, and it covers a loss covered by this POLICY in respect of a CLAIM or INQUIRY, the INDEMNITY LIMIT under this POLICY in respect of that CLAIM or inquiry shall be reduced by any amount paid by US (or member company, associate or affiliate) under such other insurance.

Section 5: INTERPRETATION

In the POLICY:

- 5.1
- (a) Person includes individuals, partnerships, bodies corporate and associations.
 - (b) The singular includes the plural and the masculine includes the feminine.
 - (c) The headings are for descriptive purposes only.

- 5.2 The construction and interpretation of the POLICY shall be determined in accordance with the law of the jurisdiction in which it is issued.
- 5.3 In the event that any portion of the POLICY is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- 5.4 All POLICY documents shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

Section 6: DEFINITIONS

In the POLICY:

- 6.1 CLAIM means
- (a) any proceeding brought by a third party against the INSURED for compensation; or
 - (b) a written demand by a third party for monetary damages.
- 6.2 DEDUCTIBLE means the amount specified in Item 6 of the Schedule or otherwise specified in any extension to this POLICY.
- 6.3 DEFENCE COSTS means any necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a CLAIM covered by the POLICY.
- 6.4 DOCUMENTS means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bearer bonds or coupons, stamps, bank or currency notes, money or any negotiable instrument.
- 6.5 EMPLOYEE means any person employed by the INSURED under a contract of service or apprenticeship during or prior to the commencement of the INSURED PERIOD.
- 6.6 FAMILY MEMBER means the INSURED's:
- (a) Legal or defacto spouse, domestic partner or companion;
 - (b) Parent, or the parent of the INSURED's legal or defacto spouse, domestic partner or companion;
 - (c) Children and children of (a) and (b) above;
 - (d) Siblings.
- 6.7 INCIDENT means a matter in which the INSURED's reputation and skill in the conduct of the PROFESSIONAL BUSINESS is brought into question.
- 6.8 INDEMNITY LIMIT means the amounts specified in Item 5 of the Schedule.
- 6.9 INQUIRY means any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of the PROFESSIONAL BUSINESS of the INSURED.
- 6.10 INSURANCE PERIOD means the period specified in Item 4 of the Schedule.
- 6.11 INSURED means
- (a) The person, partnership, company, SUBSIDIARY or other entity, specified as the INSURED in the Schedule; and
 - (b) Any person who is during the INSURANCE PERIOD a principal, partner, director or employee of the person, partnership, company, SUBSIDIARY or other entity specified as the INSURED in the Schedule, but only while acting in the course of the PROFESSIONAL BUSINESS.
- 6.12 LOST DOCUMENTS means DOCUMENTS that cannot be located following a diligent search, and documents that have been destroyed or damaged.

- 6.13 POLICY means this POLICY wording, the Schedule, the PROPOSAL and any endorsement attaching to and forming part of the POLICY either at commencement or during the INSURANCE PERIOD.
- 6.14 POLLUTANTS means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes.
- 6.15 PROFESSIONAL BUSINESS means the PROFESSIONAL ACTIVITY set out in the Schedule but shall only include services of design, advice, specification, calculation and formula undertaken by or under the direct supervision of a properly qualified and appropriate professional in that PROFESSIONAL ACTIVITY. A person will be properly qualified if they possess appropriate professional qualifications from a recognised body relevant to that professional activity. For the avoidance of doubt, the PROFESSIONAL BUSINESS does not include manual labour or physical construction work, or supervision of such, that is normally the responsibility of a builder.
- 6.16 PROPOSAL means the written proposal made by the INSURED to US together with any attachments.
- 6.17 PUBLIC RELATIONS EXPENSES means any reasonable fees, costs and expenses of a public relations consultant retained with OUR prior written consent (which shall not be unreasonably delayed or withheld).
- 6.18 RETROACTIVE DATE means the date specified in Item 7 of the Schedule but no earlier than the commencement of the INSURED's business specified in the Schedule but only while in the course of the PROFESSIONAL BUSINESS.
- 6.19 SUBSIDIARY means any entity which by virtue of any applicable legislation or law is deemed to be a SUBSIDIARY of the INSURED or in which the INSURED owns or controls, directly or indirectly 50% of the issued voting shares of such entity.
- 6.20 WE/US/OUR means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriter named in the Schedule under the heading "Underwriters".

Section 7: EXCLUSIONS

WE will not cover the INSURED, including for DEFENCE COSTS or other loss, in respect of:

7.1 Prior knowledge

- (a) Any CLAIM arising from or in connection with a fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD might or could give rise to a CLAIM;
- (b) Any CLAIM arising from or in connection with a fact or circumstance of which notice has been or reasonably should have been given under any previous insurance.
- (c) Any CLAIM that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD.

7.2 Fines and Penalties and Non-Compensatory

- (a) Taxes, fines or penalties;
- (b) Punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment;
- (c) Any demand for the repayment or refund by the INSURED to a third party of professional fees paid to the INSURED for the provision of professional or other services.

7.3 Assumed Liability

Any CLAIM arising from or directly or indirectly attributable to or in consequence of any duty or obligation assumed by the INSURED by way of warranty, guarantee, indemnity, contract or agreement, unless the INSURED would have incurred the liability in the absence of such warranty, guarantee, indemnity, contract or agreement.

7.4 Liability to EMPLOYEE's

Any CLAIM arising from or directly or indirectly attributable to or in consequence of bodily injury, mental injury, sickness, disease or death of any EMPLOYEE or damage to or destruction of any property of any EMPLOYEE, including loss of use.

- 7.5 **Bodily Injury**
- Any CLAIM arising from or directly or indirectly attributable to or in consequence of the death of, or bodily injury or illness to, any person, unless it results directly from the INSURED's conduct of the PROFESSIONAL BUSINESS.
- 7.6 **Property Damage**
- Any CLAIM arising from or directly or indirectly attributable to or in consequence of the loss or destruction of, or damage to, any property, unless it results directly from the INSURED's conduct of the PROFESSIONAL BUSINESS.
- 7.7 **Liability As Occupier**
- Any CLAIM or liability arising from or incurred or alleged to have been incurred in connection with the use, occupation, ownership or lease of any real estate or personal property, by or on behalf of the INSURED.
- 7.8 **Product Liability**
- Any CLAIM or liability arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the INSURED.
- 7.9 **Intellectual Property**
- Any CLAIM arising from infringement or alleged infringement of any intellectual property right including but not limited to copyright, patent, trademark, privacy, plagiarism, design or confidentiality.
- 7.10 **Pollution**
- Any CLAIM arising from or directly or indirectly attributable to or in consequence of the actual or alleged release or discharge of POLLUTANTS.
- 7.11 **War/Terrorism**
- Any CLAIM or liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence:
- (a) War, invasion, acts of foreign enemies, hostilities or warlike 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; or
 - (b) Any act of terrorism; or
 - (c) Any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.
- For the purposes of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the 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), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 7.12 **Nuclear**
- Any CLAIM or liability arising from or directly or indirectly attributable to or in connection with:
- (a) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising therefrom or any consequential loss; or
 - (b) Any legal liability of whatsoever nature
- directly or indirectly caused by or contributed to by or arising from:
- (i) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 - (ii) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

- 7.13 **Trading Debts**
- Any CLAIM arising from or directly or indirectly attributable to any trading debt or business liability of the INSURED or any guarantee given by the INSURED for a debt.
- 7.14 **Fraud and Dishonesty**
- (a) Any CLAIM arising from or directly or indirectly attributable to or in consequence of any actual or alleged act or omission by the INSURED, its consultants, sub-contractors or agents which was reckless, fraudulent, dishonest, malicious or criminal.
- (b) Any CLAIM arising from or directly or indirectly attributable to or in consequence of any wilful breach of any statute, regulation, contract or duty by the INSURED, its consultants, sub-contractors or agents.
- 7.15 **Associates**
- (a) Any CLAIM by, on behalf of or for the benefit of any INSURED;
- (b) Any CLAIM by, on behalf of or for the benefit of any SUBSIDIARY; or
- (c) Any CLAIM by, on behalf of or for the benefit of any FAMILY MEMBER of the INSURED, unless the FAMILY MEMBER is acting without any prior direct or indirect solicitation or co-operation from the INSURED,
- irrespective of the capacity in which the CLAIM is brought.
- 7.16 **Directors & Officers**
- Any CLAIM alleging a breach by an INSURED of a duty owed or any alleged wrongful conduct in the capacity of a director, secretary or officer of a body corporate.
- 7.17 **Asbestos and Toxic Mould**
- Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of:
- (a) asbestos or other things that contain it; or
- (b) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, or mycotoxins relating to Stachy Botrys, such action to including investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, mycotoxins relating to Stachy Botrys.
- 7.18 **Performance Obligation**
- Any CLAIM arising from or directly or indirectly caused by or in any way connected with the INSURED's failure to perform its obligations within any agreed period of time, including but not limited to any delay in delivery or failure to deliver the product or service to be supplied by the agreed time.
- 7.19 **Infrastructure, Manufacturing and Financial**
- Any CLAIM arising from or directly or indirectly attributable to or in consequence of:
- (a) any errors in an estimate of probable construction cost or cost estimate unless provided by the Insured in the conduct of the PROFESSIONAL BUSINESS; or
- (b) any construction, assembly, installation, erection or maintenance undertaken by or on behalf of the INSURED; or
- (c) any breach of any express or implied warranty arising out of the development of any property; or
- (d) the insolvency or financial failure of any person or entity involved in any project; or
- (e) the failure to provide, effect or maintain any bond or any form of insurance; or
- (f) actual or alleged advice in relation to finance, accounting or tax matters; or
- (g) any loss or damage which would normally be the responsibility of a contractor; or
- (h) any loss of or damage to, including loss of use of or value in, any goods in the care, custody or control of the INSURED; or

- (i) any failure by the INSURED to inspect, access, sight or review any property or relevant part thereof in respect of any report or assessment of such property prepared by or on behalf of the INSURED in the conduct of the PROFESSIONAL BUSINESS; or
- (j) any valuation of property or premises made by or on behalf of the INSURED.

7.20 **Building Inspection**

Any CLAIM arising from or directly or indirectly caused by or in any way connected with:

- (a) the carrying out of any pest and/or pre purchase property inspection or provision of any pest and/or pre purchase property inspection report, whether oral or written;
- (b) any bodily injury or property damage occurring in the course of a property inspection, testing or sampling.

Section 8: CLAIM CONDITIONS

8.1 The cover provided by the POLICY shall extend to the conduct of the PROFESSIONAL BUSINESS by the INSURED anywhere in the world, except within the territorial limits of the United States of America or the dominion of Canada or their respective territories or protectorates.

8.2 **Notification**

- (a) The INSURED shall notify US of any CLAIM or loss as soon as practicable and within the INSURANCE PERIOD.
- (b) Notice of any CLAIM or loss shall be given to US in writing, and delivered to:
DUAL Australia Pty Ltd,
332 Kent Street, Sydney, NSW, 2000 Australia

8.3 **Co-operation**

- (a) The INSURED shall, at the INSURED's own cost, frankly and honestly provide US with all information and assistance required by US and/or the lawyers and investigators and others appointed by US in relation to any CLAIM or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the CLAIM or loss, in whole or part.
- (b) The INSURED shall, at its own cost, do all things reasonably practicable to minimise the INSURED's liability in respect of any CLAIM or loss.

8.4 **Legal Defence and Settlement**

- (a) Unless otherwise agreed, WE shall have the right to assume, in the name of the INSURED, the legal defence of any CLAIM covered under this POLICY. WE shall have the right to appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM.
- (b) WE shall have full discretion in managing any negotiation or proceeding as to the resolution of such CLAIM. WE shall be entitled to settle a CLAIM if WE so choose.
- (c) The INSURED agrees not to admit liability for or settle any CLAIM or loss, make any admission, offer any payment or assume any obligation in connection with any CLAIM or loss, or incur any DEFENCE COSTS in connection with any CLAIM, without OUR written consent.
- (d) WE shall not be liable for any settlement, DEFENCE COSTS, admission, offer, payment or assumed obligation made, incurred or entered into without OUR written consent.
- (e) If WE are of the opinion that a CLAIM will not exceed the DEDUCTIBLE, WE may require the INSURED to conduct the defence of the CLAIM. If the DEFENCE COSTS and/or any other payment exceed the DEDUCTIBLE then WE will pay the amount in excess of the DEDUCTIBLE.

8.5 **INSURED's right to contest**

In the event that WE recommend settlement of a CLAIM and the INSURED does not agree to the settlement of the CLAIM, and the INSURED decides to contest the CLAIM, OUR liability shall not exceed the amount for which the CLAIM could have been settled, and DEFENCE COSTS incurred up to the date upon which the CLAIM could have been settled.

- 8.6 **Senior Counsel**
- (a) WE shall not require the INSURED to contest a CLAIM unless a Senior Counsel (agreed upon by the INSURED and US) advises that the CLAIM should be contested, taking into account all likely DEFENCE COSTS, prospects of successfully defending the CLAIM and the damages and costs likely to be recovered by the third party claimant.
 - (b) The costs of Senior Counsel's advice shall be regarded as part of the DEFENCE COSTS.

8.7 **Non-Imputation**

Except for Exclusion Clause 7.1, no state of mind or knowledge possessed by any one INSURED will be imputed to any other INSURED for the purpose of determining whether any provision in this POLICY applies. However, any state of mind or knowledge possessed by any past or present principal, director, partner of the INSURED will be imputed to the INSURED in Clause 6.11(a) of this POLICY.

8.8 **Other Insurance**

To the extent permitted by the *Insurance Contracts Act 1984*, this POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy entered into by the INSURED.

To the extent permitted by the *Insurance Contracts Act 1984*, this POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy effected on behalf of the INSURED or under which the INSURED is a beneficiary (but not a policy to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies to such other insurance that is written only as specific excess insurance over the INDEMNITY LIMIT provided in this POLICY.

If such other insurance is provided by US, or any other member company, associate or affiliate, and it covers a loss covered by this POLICY in respect of a CLAIM or INQUIRY, the INDEMNITY LIMIT under this POLICY in respect of that CLAIM or inquiry shall be reduced by any amount paid by US (or member company, associate or affiliate) under such other insurance.

Section 9: GENERAL CONDITIONS

- 9.1 **Subrogation**
- (a) Where WE have paid an amount under the POLICY WE become entitled to any rights of the INSURED against any party in relation to the CLAIM or loss, to the extent of OUR payment.
 - (b) The INSURED, at its own cost, must assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.

9.2 **Alteration to Risk**

The INSURED must notify US in writing as soon as practicable of any material alteration to the risk during the INSURANCE PERIOD including:

- (a) The INSURED going into voluntary bankruptcy, receivership or liquidation; or
- (b) The INSURED failing to pay debts as and when those debts become due; or
- (c) The INSURED breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- (d) Any material change in the nature of the PROFESSIONAL ACTIVITY.

WE may not cover the INSURED for any CLAIM if the INSURED does not notify US in writing as soon as practicable of any material alteration to risk.

9.3 **Assignment**

The INSURED must not assign the POLICY or any rights under the POLICY without OUR prior written consent by way of endorsement to the POLICY.

9.4 **Cancellation**

- (a) The INSURED may cancel the POLICY at any time by notifying US in writing.
- (b) WE may cancel the POLICY in accordance with the provisions of the *Insurance Contracts Act 1984* (Commonwealth).
- (c) On cancellation of this POLICY, we will retain the proportion of the premium calculated pro rata as at the date of the cancellation plus fifteen percent (15%) of that amount.

9.5 **Jurisdictional Limitation**

The cover provided by the POLICY shall extend to a CLAIM brought anywhere in the world except:

- (a) Any CLAIM brought within the territorial limits of the United States of America or the dominion of Canada or their territories or protectorates;
- (b) To enforce any judgement, order or award obtained in or determined under the laws of the United States of America or the dominion of Canada or their territories or protectorates.

9.6 **Governing Law And Jurisdiction**

This POLICY is governed by the laws of the Commonwealth of Australia and the State or Territory where the POLICY was issued. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of Australia.

9.7 **Insuring Clause Clarification**

For the avoidance of doubt, the cover provided by the Insuring Clause of this POLICY, includes but is not restricted to civil liability under the Trade Practices Act (1974), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria), Australian Securities and Investment Commission Act or similar legislation enacted by the other States or Territories of the Commonwealth of Australia or the Dominion of New Zealand.

9.8 **Several Liability Notice**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

9.9 **Complaints Procedures**

Any enquiry or complaint relating to this Insurance should be referred to US in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place
123 Pitt Street
Sydney NSW 2000

Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

who will refer your dispute to Policyholder & Market Assistance at Lloyd's.

Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

For the purpose of this Clause only, "this Insurance" means the POLICY, "you/your" means the INSURED.

9.10 **Service Of Suit (Australia)**

The Underwriters hereon agree that:-

- (a) In the event of a dispute arising under this POLICY, Underwriters at the request of the INSURED (or reinsured) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (b) Any summons notice or process to be served upon the Underwriters may be served upon Lloyd's General Representative at Lloyd's Australia:

Lloyd's Australia Limited
Suite 2, Level 21 Angel Place
123 Pitt Street
Sydney NSW 2000

who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the INSURED (or reinsured) to give a written undertaking to the INSURED (or reinsured) that he will enter an appearance on Underwriters' behalf.

- (c) If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

9.11 **General Insurance Code of Practice**

This POLICY is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's and DUAL Australia proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

A copy of this Code is available by contacting DUAL Australia or from the Insurance Council of Australia's website at www.ica.com.au or from the Code's dedicated website at www.codeofpractice.com.au

Section 10: LIMIT OF LIABILITY

10.1 **Indemnity Limit**

Subject to Clause 3.10 and Clause 3.16, OUR total liability under the POLICY for any one CLAIM including DEFENCE COSTS and in the aggregate from all CLAIMS including DEFENCE COSTS shall not exceed the INDEMNITY LIMIT. For the purposes of determining the INDEMNITY LIMIT available for each CLAIM covered by the POLICY, all CLAIMS arising from the same breach of professional duty, or related breaches of professional duty, shall be regarded as one CLAIM.

10.2 **Deductible**

- (a) The INSURED is responsible for the DEDUCTIBLE in respect of each and every CLAIM. Subject to clause (c) below, WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM and DEFENCE COSTS in excess of the DEDUCTIBLE.
- (b) Where WE have paid on the INSURED's behalf part or all of the DEDUCTIBLE, the INSURED shall reimburse US.
- (c) Unless otherwise expressed in the Schedule, all DEDUCTIBLES are inclusive of DEFENCE COSTS up to the amount of the DEDUCTIBLE.
- (d) Costs and expenses incurred by US in determining whether WE are liable to indemnify the INSURED under the POLICY shall not be subject to the DEDUCTIBLE and will be met by US.
- (e) For the purposes of determining the DEDUCTIBLE(S) applicable to any CLAIM(S) covered by the POLICY, all CLAIMS arising from the same breach of professional duty, or related breaches of professional duty, shall be regarded as one CLAIM.

Section 11

AUTHORITY

- 11.1 This is to certify that in accordance with the authorisation granted under Contract to the undersigned by the Underwriters as named in the SCHEDULE.
- 11.2 In consideration of the premium paid the Underwriters are hereby bound, severally and not jointly, to insure in accordance with the terms and conditions contained herein or endorsed hereon.