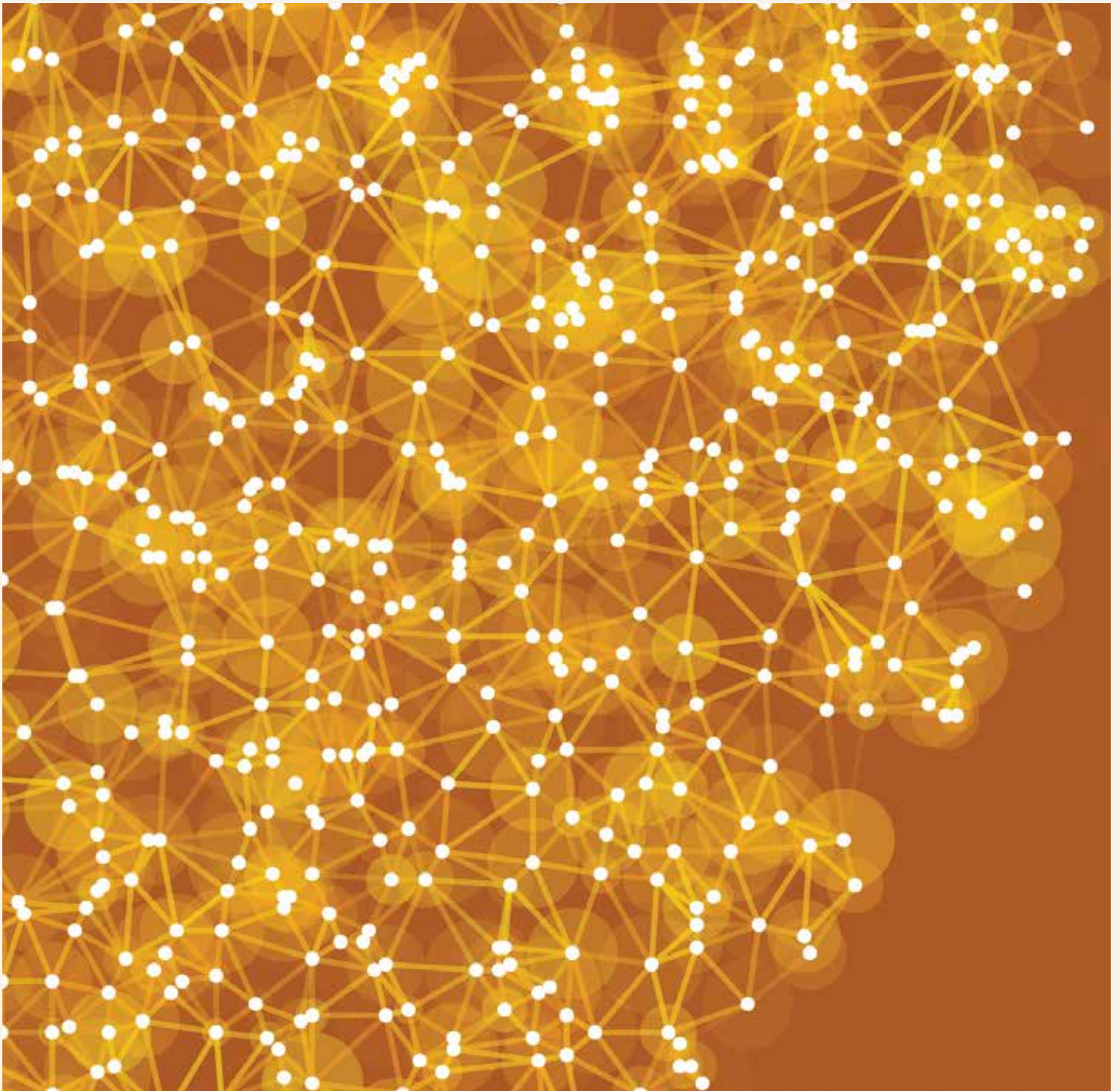




Industrial  
special  
risk  
policy





# Table of contents

Introduction .....	4
Important Information .....	5
Your Policy .....	6
Preamble .....	7
General Definitions .....	8
Section 1- Material Loss or Damage .....	9
Section 2 - Consequential Loss .....	14
Exclusions Applicable to All Sections .....	18
Memoranda Applicable to All Sections .....	22
Conditions Applicable to All Sections .....	23

# Introduction

## Applying for Cover with Us

Prior to this Policy coming into effect You have provided Us or your intermediary with information in support of Your request for Cover with Us. The information that You have provided to Us is referred to as Your Application for this Policy.

You must ensure the information provided to Us in Your Application is accurate and that You have complied with Your duty of disclosure. We have relied on Your Application to decide whether to issue this Policy and, if We do so or have, the terms and conditions upon which We do/did so.

When You have paid the Premium, or agreed to pay the Premium, We will issue You with a Schedule, and this policy-booklet. If payment of the Premium as stated in the Schedule is not made then there is no Cover provided under this Policy.

## Complaints and Disputes Resolution

We have a formal complaints and dispute resolution process that is fair, efficient and accessible to all Our clients. This service is free of charge to You.

If You do not agree with any decision We make in relation to Your insurance Policy please contact Your insurance intermediary or Us indicating the nature of the complaint.

We will then resolve or attempt to resolve Your complaint or refer it to Our internal Dispute Resolution Manager.

## General Insurance Code of Practice

We are a signatory to and fully support the General Insurance Code of Practice. The objectives of this Code are to commit insurers and the professionals they rely upon to higher standards of customer service.

Please contact Us if You or Your insurance intermediary would like further information about the Code of Practice. Alternatively, You can view the Code of Practice at [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

## Privacy

We are committed to complying with privacy laws and protecting Your personal information. By entering into a contract with Us, You agree to:

- > the collection, use and disclosure of Your personal information to evaluate, effect, manage and administer Your insurance Cover, financial service or product provided to You by Us, any related company, or in conjunction with Us. This applies to personal information provided previously, currently and in the future;
- > the collection, use and disclosure of Your personal information to inform You of other products and services offered by Us, Our related entities or Your representative;
- > the use and disclosure of Your personal information to test and improve upon the systems used to manage Your Policy or financial product;
- > the collection from, and/or disclosure of, Your personal information to a third party which may include Your employer and Our service providers (including but not limited to Your insurance intermediary, other insurers, medical practitioners, lawyers, claims consultants, loss assessors and investigators), where this is relevant for the administration of Your insurance policy or a claim under this Policy;

- > the disclosure of Your personal information to overseas recipients, where relevant, such as some of Our reinsurers; and
- > the disclosure of Your personal information to a person, regulatory bodies or other entities if We are required or permitted to do so by law.

If You do not provide the requested personal information We may not be able to evaluate, effect, manage or administer Your Policy and You may also be in breach of Your duty of disclosure.

We will ensure that Your personal information is accurate, up-to-date and complete. You or Your insurance intermediary may access personal information We hold about You by contacting Us.

If You or Your insurance intermediary would like to make a complaint about how We have handled Your personal information please contact Us and speak to one of Our staff who will assist You.

Our privacy policy contains further information on access, correction and complaints handling procedures and can be accessed online at [www.acerta.com.au/privacy-principles](http://www.acerta.com.au/privacy-principles). Alternatively, please contact Us and We will arrange for a copy of the privacy policy to be provided to You.

# Important Information

The following important information applies to this Policy. Please read this information carefully and if You are in any doubt as to how this information may affect You please contact Your intermediary or Us and ask for an explanation.

## Alterations to Your Business

This Policy Covers Your Business as You have represented it to Us. It is important for You to advise Us or your intermediary immediately of any changes to Your Business.

For example, You should tell Us when there is a change in:

- > Your Business name
- > the nature of Your Business activities
- > the construction of or alteration of Your Business Premises
- > Your address or the Location of Risk
- > any other change to the Business whereby the risk Covered under this Policy is increased
- > the ownership of Your Business if it is sold or otherwise permanently discontinued.

## Your Duty of Disclosure

Before You enter into an insurance contract, You have a duty to tell Us anything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms.

You have this duty until We agree to insure You.

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

You do not need to tell Us anything that:

- > reduces the risk We insure You for; or
- > is common knowledge; or

- > We know or should know as an insurer; or
- > We waive Your duty to tell Us about.

## If You Do Not Tell Us Something

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

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

## Deductible

An Deductible may apply to Your claim under this Policy. The amount of any Deductible applicable to this Policy is stated in the Schedule or in this Policy.

## GST and Claim Payments to You

In the event of a claim under this Policy:

- > If You are not registered for GST We will reimburse You the GST component in addition to any other amount We pay You; or
- > If You are registered for GST You will need to claim the GST component from the Australian Taxation Office. Where You cannot claim the GST component in full We will reimburse You the unclaimed GST component in addition to the amount We pay You.

Your Policy contains claims conditions in respect of:

- > GST and claim payments for compensation;
- > GST and claim payments for legal and other costs; and
- > Our limitation for GST payment.

You should read the claims conditions contained in Your Policy to make sure You understand both Our and Your obligations in respect of how GST will be treated in respect of the payment of claims under this Policy.

## Premiums

Your Premium will be subject to the inclusion of:

GST in accordance with relevant taxation legislation;

stamp duty as imposed by the relevant legislation of each Australian State or Territory; and

any other applicable Government or Statutory Taxes or Charges (e.g. Fire Services Levy or Terrorism).

# Your Policy

This policy-booklet together with the Schedule We provide to You and any Endorsement form Your insurance Policy with Us.

## Our Agreement with You

We agree to provide You with the Cover set out in this Policy which You have selected and which is stated in the Schedule.

The Cover is in force for the Period of Cover stated in the Schedule.

You have paid or agreed to pay Us the Premium set out in the Schedule for the Period of Cover.

## Definitions, Exclusions, General Conditions and Claims Conditions

The following:

- a. definitions;
- b. exclusions;
- c. general conditions; and
- d. claims conditions;
- e. will apply to this Policy.

## Grammatical Forms

A number of the defined words or terms in this Policy have different grammatical forms. The meaning given to them in their definition applies specifically to one of their grammatical forms but their other grammatical forms have a corresponding meaning.

## Headings

This policy-booklet contains headings which are used for reference only and must not be used when interpreting this Policy.

## Singular and Plural Words

In this Policy, a reference to the singular includes the plural and vice versa.

# Preamble

This Policy incorporates the Schedule, Sections, Definitions, Conditions, Exclusions, Endorsements, Memoranda, and Warranties (if any) and any other terms herein which are to be read together and any word or expression to which a specific meaning has been given in any part of the Policy shall bear this meaning whenever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

**WHEREAS** the Insured named in the Schedule has paid or agreed to pay to the Insurer(s) specified below the Premium shown on the Schedule, now the Insurer(s) agree(s), subject to the Terms, Conditions, Exclusions, Memoranda, Warranties, limitations and other provisions contained herein or endorsed hereon, to indemnify the Insured as specified herein against loss arising from any insured events which occur during the Period of Insurance stated in the Schedule or any renewal thereof.

**PROVIDED THAT** the total liability of the Insurer(s) at any one Situation shall not exceed the appropriate Limit or Sub-Limit(s) of Liability as stated in the Schedule or such amount(s) as may be substituted therefore by Endorsement or Memorandum hereon or attached hereto.

# General Definitions

## Accidental Damage

for the purposes of any Limit or Sub-Limit of Liability or Deductible as shown in the Schedule means damage caused by any peril or circumstance not more specifically covered or excluded by this Policy other than fire, lightning, thunderbolt, explosion, implosion, earthquake, subterranean fire, volcanic eruption, impact, aircraft and/or other aerial devices and/or articles dropped therefrom, sonic boom, theft, breakage of glass, loss of money, the acts of persons taking part in riots or civil commotions or of strikers or locked out workers, or of persons taking part in labour disturbances or of malicious persons or the acts of any lawfully constituted authority in connection with any of the foregoing acts, or in connection with any conflagration or other catastrophe, storm and/or tempest and/or rainwater and/or wind and/or hail, water or other liquids or substances discharged, overflowing or leaking from apparatus, appliances or any other system at the premises or elsewhere.

## Burglary

shall mean;

- a. Theft consequent upon actual forcible and violent entry upon the insured situations where property is located and any attempt thereat;
- b. Theft or any attempt thereat by person or persons concealed on the premises at the said situations for the purpose of committing an indictable offence;

but shall not include theft of Money as defined.

## Flood

shall mean the inundation of normally dry land by water escaping from or released from the normal confines of any natural watercourse or lake (whether or not altered or modified), or of any reservoir, canal or dam.

## Insured

is the persons and/or entities described in the Schedule.

## Insurer(s)

is the company or companies named on the Schedule. If there is more than one Insurer then each company will be separately liable to the Insured for that proportion of any claim as set out in the Schedule.

## Theft

shall mean theft without forcible or violent entry or larceny or any attempt thereat.



# Section 1 – Material Loss or Damage

## The Indemnity

In the event of any physical loss, destruction or damage (hereinafter in Section 1 referred to as 'damage' with 'damaged' having a corresponding meaning) not otherwise excluded happening at the Situation to the Property Insured described in Section 1 the Insurer(s) will, subject to the provision of this Policy including the limitation on the Insurer(s) liability, indemnify the Insured in accordance with the applicable Basis of Settlement

Subject to the liability of the Insurer(s) not being increased beyond the Limit(s) of Liability already stated herein, the Insurer(s) will also indemnify the Insured for:

- a. architects', surveyors', consulting engineers', legal and other fees and clerks of works' salaries for estimates, plans specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon damage to property hereby insured but not such costs, fees and salary for preparing any claim hereunder.
- b. any fee, contribution or other impost payable to any Government, Local Government or other Statutory Authority; where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate any building(s) insured hereunder; provided that the Insurer(s) shall not be liable for payment of any fines and/or penalties imposed upon the Insured by such Authorities.
- c. costs and expenses necessarily and reasonably incurred for the purpose of extinguishing fire at or in the vicinity of property hereby insured or threatening to involve such property or for the purpose of preventing or diminishing imminent damage to property hereby insured by any other peril insured against by this Policy, including damage to gain access and the cost of replenishment of fire fighting appliances and charges incurred for the purpose of shutting off the supply of water or other substance following accidental discharge from any fire protective equipment or otherwise escaping from intended confines.
- d. costs and expenses necessarily and reasonably incurred for the temporary protection and safety of property hereby insured pending repair or replacement consequent upon damage recoverable hereunder.
- e. costs of replacing locks and/or keys and/or combinations where if as a result of burglary, theft or any attempt thereat the keys and/or combinations are stolen or if there are reasonable grounds to believe the keys may have been duplicated also the cost of opening safes and/or strongrooms as a result of theft of keys and/or combinations.
- f. costs and expenses necessarily and reasonably incurred in respect of:
  - i. the removal, storage and/or disposal of debris of the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon damage to property insured by this Policy and occasioned by a peril insured against;
  - ii. the Insured's legal liability in respect to removal, storage and/or disposal of debris, notwithstanding Excluded Peril 7 in relation to premises, roadways, services, railway or waterways of others, consequent upon damage to the Property Insured by a peril hereby insured against, for such costs together with the cost of cleaning provided that such liability was not assumed by the Insured under an agreement entered into after the commencement of the Period of Insurance or any renewal thereof unless liability would have attached in the absence of such agreement; Provided that the insurance under this section does not extend to any liability that the Insured may incur as a consequence of pollution of any kind;
- g. damage to clothing and tools of trade belonging to directors and employees of the Insured whilst on the Premises.
- h. the statutory liability incurred by the Insured for fire extinguishment and/or fire attendance fees at the Insured premises but subject to the sub-limit stated in the Schedule against "Fire Extinguishment Costs &/or Fire Brigade Attendance Fees".
- iii. the demolition and removal of any property belonging to the Insured which is no longer useful for the purpose it was intended, provided such demolition and removal is necessary for the purpose of the reinstatement or replacement of Property Insured under this section and is consequent upon damage to the Property Insured by a peril hereby insured against.

Provided that the insurance under Clauses b) to h) inclusive above shall not be subject to application of any Co-insurance clause or memorandum contained in this Policy.

# Section 1 – Material Loss or Damage cont.

## The Property Insured

All real and personal property of every kind and description (except as hereinafter excluded) belonging to the Insured or for which the Insured is responsible, or has assumed responsibility to insure prior to the occurrence of any damage, including all such property in which the Insured may acquire a pecuniary or economic interest during the Period of Insurance.

It is understood and agreed that the term “personal property” shall include Money (which shall mean current coin, bank notes, currency notes, cheques, credit card sales and/or discount house vouchers, postal orders, money orders, travelers cheques, securities, negotiable instruments and unused postage and revenue stamps and including the value of stamps contained in franking machines) whilst contained in the Situation and whilst in transit to and from the Situation anywhere in Australia, including whilst contained in the night safe of any bank or financial institution where the Insured transacts business, and in the personal custody of the Insured and/or persons authorised by the Insured whilst contained in their private residences.

For the purposes of ascertaining under which any property is insured the Insurer(s) agree to accept the designation applied to the property applied by the Insured.

## Basis of Settlement

a. On buildings, machinery, plant and all other property and contents (other than those specified below); the cost of reinstatement, replacement or repair in accordance with the provisions of the Reinstatement or Replacement and Extra Cost of Reinstatement Memoranda as set out herein. Provided that if the Insured elects

to claim the indemnity value of any damaged property, the Insurer(s) will pay to the Insured the value of such property at the time of the happening of the damage or at its/ their option reinstate, replace or repair such property or any part thereof. In any event the Insurer(s) will pay costs incurred by the Insured in accordance with the provisions of the Extra Cost of Reinstatement Memorandum.

- b. On raw materials, supplies and other merchandise not manufactured by the Insured, the replacement cost at the time and the place of replacement or, if such property is not replaced, the value thereof at the time and place of the damage.
- c. On material in process of manufacture; the replacement value of the raw materials and the value of labour and other overhead charges expended thereon at the time and the place of the damage.
- d. On finished goods; the replacement value of the raw materials and the value of labour and other overhead charges expended thereon before any allowance for profit or the cost of re-stocking such goods, whichever is the lesser.
- e. On computer systems records, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description; the cost of reinstating, replacing, reproducing or restoring same, including information contained therein or thereon but excluding the value to the Insured of the said information; or, if such is not required, the replacement cost of materials as blank stationery at the time and place of the damage.

- f. On patterns, models, moulds, dies or lasts; the cost of repair or replacement (if actually replaced) otherwise the indemnity value to the Insured of such property.
- g. On glass; the cost of repairing or replacing the broken glass in accordance with applicable Australian standards including:
  - > temporary shuttering and/or hiring of security service pending replacement of broken glass;
  - > signwriting or ornamentation on glass;
  - > replacement burglar alarm tapes on glass;
  - > removing and re-fixing of window and show case frames and fittings;
  - > heat reflecting material or process on glass.
- h. On directors' and employees' clothing and tools of trade; the replacement cost at the time of replacement subject to due allowance for wear and tear, depreciation and betterment.
- i. On empty premises awaiting demolition; the salvage value of the building materials and/or landlords fixtures and fittings.

## Memoranda to Section 1

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

### Interests of Other Parties

The insurable interest of only those lessors, financiers, trustees, mortgagees, owners and all other parties specifically noted in the records of the Insured shall be automatically included without notification or specification; the nature and extent of such interest to be disclosed in event of damage

Where the insurance covers the interest of more than one party, any act or neglect of an individual party will not prejudice the rights of the remaining party/parties; provided the remaining party/parties shall, immediately on becoming aware of any act or neglect whereby the risk of damage has increased, give notice in writing to the Insurer(s) and on demand pay such reasonable additional premium as the Insurer(s) may require.

Notwithstanding the foregoing paragraph it is understood and agreed that in the event of any of the parties referred to herein being entitled to the benefits of any 'Concessions Agreement' which it may have entered into with the Insurer(s), the said 'Concessions Agreement' will take precedence over the foregoing paragraph.

### Branded Goods

Any salvage of branded goods and/or merchandise, the Insured's own or held by the Insured in trust or on commission, and/or goods sold but not delivered shall not be disposed of by sale without the consent of the Insured. If such salvage is not disposed of by sale then the damage will be assessed at the value agreed between the Insured and the Insurer(s) after brands, labels or names have been removed by or on behalf of the Insured.

### Declared Values

The Schedule of Declared Values at each Situation (in accordance with the applicable Basis of Settlement) attaches to and forms part of this Policy for the purposes of the application of Co-insurance.

### Reinstatement or Replacement

(Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items b) to i) under Basis of Settlement.)

The basis upon which the amount payable is to be calculated shall be the cost of reinstatement of the damaged property insured at the time of its reinstatement, subject to the following Provisions and subject also the terms, Conditions and Limit(s) or Sub Limit(s) of Liability of this Policy.

For the purpose of the insurance under this memorandum 'reinstatement' shall mean:

- a. Where property is lost or destroyed: in the case of a building, the rebuilding thereof or in the case of property other than a building, the replacement thereof by similar property: in either case in a condition equal to, but not better or more extensive than, its condition when new.
- b. Where property is damaged: the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new.

### Provisions

- i. The work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Insured, but subject to the liability of the Insurer(s) not being thereby increased), must be commenced and carried out with reasonable dispatch, failing which the Insurer(s) shall not be liable to make any payment greater than the indemnity value of the damaged property at the time of the happening of the damage.
- ii. When any property insured to which this memorandum applies is damaged in part only, the liability of the Insurer(s) shall not exceed the sum representing the cost which the Insurer(s) could have been called upon to pay for reinstatement if such property had been wholly destroyed.

- iii. Property insured under this memorandum is separately subject to the following Co-insurance Clause:

In the event of damage to any property insured hereunder at any situation caused by any peril hereby insured against, the Insurer(s) shall be liable for no greater proportion of such damage than the amount that the Insured's declaration of value of property insured at such situation on the day of the commencement of the Period of Insurance bears to the sum representing eighty-five per cent (85%) of the cost which would have been incurred in reinstatement if the whole of such property had been destroyed on that day, but not exceeding the Limit of Liability expressed in the Schedule; provided that if the sum actually incurred or expended in rebuilding or replacing the damaged property, within the meaning of sub-paragraph a) of the abovementioned definition of reinstatement, exceeds the amount which would have been payable under this Policy if this memorandum had not been incorporated herein, but is less than the cost of reinstatement as above defined, then the sum so actually incurred or expended shall, for all purposes of this memorandum, be deemed to be cost of reinstatement of the property.

Provided further that the above clause shall not apply if the amount of the damage does not exceed five (5) per cent of the amount of the Insured's declaration aforementioned.

# Section 1 – Material Loss or Damage cont.

- iv. No payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein shall be made until a sum equal to the cost of reinstatement shall have been actually incurred; provided that where the Insured reinstates or replaces any lost or destroyed property at a cost which is less than the cost of reinstatement (as defined) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred shall be deemed to be the cost of reinstatement.
- v. All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by or on behalf of the Insured shall be on similar reinstatement basis.

## Extra Cost of Reinstatement

(Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items b) to i) under Basis of Settlement).

This Policy extends to include the extra cost of reinstatement (including demolition or dismantling) of damaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limits of Liability of this Policy.

## Provisions

- i. The work of reinstatement (which may be carried out wholly or partially upon any other site(s), if the requirements of the aforesaid Act, Regulations or By-Law so necessitate, subject to the liability of the Insurer(s) not being thereby

increased), must be commenced and carried out with reasonable dispatch, failing which the Insurer(s) shall not be liable to make any payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein.

- ii. The amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-Law or requirement with which the Insured had been required to comply prior to the happening of the damage.
- iii. Co-insurance shall not be applied to the amount recoverable under this memorandum and any amount specified shall not be taken into account for co-insurance purposes in terms set out in any clause contained in this Policy.
- iv. All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by or on behalf of the Insured shall be on a similar basis.
- v. If the cost of reinstatement of damaged property insured is less than fifty per cent (50%) of that which would have been the cost of reinstatement if such property had been destroyed, the amount recoverable hereunder shall be limited to:
  - a. the extra cost necessarily incurred in reinstating only that portion damaged; or
  - b. whilst applying to such property insured, the Sub-Limit stated herein,

whichever is the greater. In the event of a Sub-Limit not being stated in this Policy the Insurer(s) liability shall be limited to the amount as described in sub-paragraph a) of this provision.

## Floor Space Ratio Index (Plot Ratio)

Subject to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy, in the event of any building(s) being damaged so as to constitute total loss or constructive total loss and, as a result of the exercise of Statutory powers and/or authority by any Government Departments, Local Government or any other Statutory Authorities reinstatement of such building(s) as before is prohibited and reinstatement is only permissible subject to a reduced floor space ratio index:

the Insurer(s) agree(s) to pay in addition to any amount payable on reinstatement of such building(s) the difference between:

- a. the actual cost of reinstatement incurred in accordance with the reduced floor space ratio index; and
- b. the cost of reinstatement which would have been incurred had a reduced floor space ratio index not been applicable.

In arriving at the amount payable under a) and b) above any payments made by the Insurer(s) shall include the extra cost of reinstatement, including demolition or dismantling of the insured property, necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority.

Any payment made for the difference between a) and b) shall be made as soon as the said difference is ascertained upon completion of the rebuilding works and certified by the architect acting on behalf of the Insured in the reinstatement of the building(s).

### Acquired Companies

This Policy extends to include property located in Australia belonging to companies and other organisations a controlling interest in which is acquired by the Insured during the currency of this Policy; subject to the Insured declaring details of such acquisition within a reasonable period following the date of acquisition. Provided the business of the new acquisition shall be similar to the Business as stated in the Schedule.

For the purposes of this memorandum a controlling interest shall in the case of a company, mean the acquisition of shares carrying more than fifty per cent (50%) of votes capable of being cast at a general meeting of ordinary shareholders in such company.

### Co-insurance

Unless otherwise stated herein to the contrary, this Policy is subject to the following Co-insurance memorandum:

In the event of damage to property insured hereunder at any situation caused by any peril hereby insured against, the Insurer(s) shall be liable for no greater proportion of such damage than the amount of the Insured's declaration of value of such property on the day of the commencement of the Period of Insurance bears to the sum representing eighty-five per cent (85%) of the actual value of property insured at such situation on the day of commencement of the Period of Insurance but not exceeding the Limit of Liability expressed in the Schedule.

Provided that this clause shall not apply if the amount of the damage does not exceed 5% of the amount of the Insured's declaration aforementioned.

It is expressly understood and agreed that the provisions of this Co-insurance Memorandum shall not apply in respect of that part of any claim which is made under the provisions of the Reinstatement and Replacement Memorandum.

# Section 2 - Consequential Loss

## The Indemnity

In the event of any building or any other property or any part thereof used by the Insured at the Premises for the purpose of the Business being physically lost, destroyed or damaged by any cause or event not hereinafter excluded (loss, destruction or damage so caused being hereinafter termed 'Damage') and the Business carried on by the Insured being in consequence thereof interrupted or interfered with, the Insurer(s) will, subject to the provisions of this Policy including the limitation on the Insurer(s) liability, pay to the Insured the amount of loss resulting from such interruption or interference in accordance with the applicable Basis of Settlement.

Provided that the Insurer(s) will not be liable for any loss under this section unless the Insured's property lost, destroyed or damaged is insured against such Damage (loss arising out of destruction or damage by explosion of Boilers and/or Economisers excepted) and the Insurer or Insurers by which such property is insured shall have paid for, or admitted liability in respect of, such Damage unless no such payment shall have been made or liability shall not have been admitted therefore solely owing to the operation of a provision in such insurance excluding liability for loss below a specific amount.

## Basis of Settlement

### Item No 1

The insurance under this item is limited to loss of Gross Profit due to: a) Reduction in Turnover and b) Increase in Cost of Working and the amount payable as indemnity thereunder shall be:

- a. In respect of Reduction in Turnover: the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Turnover;
- b. In respect of Increase in Cost of Working: the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for the expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;

less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the Business payable out of Gross Profit as may cease or be reduced in consequence of the Damage.

Provided that if the Declared Value of Gross Profit at the commencement of each Period of Insurance be less than the sum produced by applying the Rate of Gross Profit to the Annual Turnover (or its proportionately increased multiple thereof, where the Indemnity Period exceeds 12 months) the amount payable hereunder shall be proportionately reduced.

### Item No. 2

The insurance under this item is to cover such reasonable professional fees as may be payable by the Insured, and such other reasonable expenses necessarily incurred by the Insured and not otherwise recoverable, for preparation of claims under the Insured's Material Damage and Consequential Loss insurance policies and the Insurer(s) shall indemnify the Insured for such reasonable fees and expenses.

### Item No. 3

The insurance under this item is limited to loss in respect of Payroll and the amount payable as indemnity thereunder shall be:

- a. In respect of Reduction in Turnover:
  - i. during the portion of the Indemnity Period beginning with the occurrence of the damage and ending not later than the number of weeks thereafter specified in the Schedule: the sum produced by applying the Rate of payroll to the Shortage in Turnover during the said portion of the Indemnity Period less any saving during the said portion of the Indemnity Period, through reduction in consequence of the damage, in the amount of Payroll paid.
  - ii. during the remaining portion of the Indemnity Period: the sum produced by applying the Rate of Payroll to the Shortage in Turnover during the said remaining portion of the Indemnity Period less any saving during the said remaining portion of the Indemnity Period, through reduction in consequence of the damage in the amount of Payroll paid; but not exceeding the sum produced by applying the percentage of the Rate of Payroll specified in the Schedule to the Shortage in Turnover during the said remaining portion of the Indemnity Period, increased by such amount as is deducted for savings under the terms of Clause a) i.

Note: At the option of the Insured the number of weeks referred to in Clause a) i. above may be increased to the number of weeks specified in the Schedule under the heading 'Consolidated Period' provided that the amount arrived at under the provisions of Clause a) ii. shall not exceed such

amount as is deducted under Clause a) i. for savings effected during the said increased number of weeks.

- b. In respect of Increase in Cost of Working:  
So much of the additional expenditure described in Clause b) of Item 1 as exceeds the amount payable thereunder but not more than the additional amount which would have been payable in respect of reduction in Turnover under the provisions of Clauses a) i. and ii. of this item had such expenditure not been incurred.

Provided that if the Declared Value of Insured Payroll at the commencement of each Period of Insurance be less than the sum produced by applying the Payroll limits to the sum produced by applying the rate of Payroll to the Annual Turnover, (or its proportionately increased multiple thereof, where the Indemnity Period exceeds 12 months) the amount payable shall be proportionately reduced.

#### Item No. 4

The insurance under this Item is limited to increase in cost of working (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Indemnity Period in consequence of the damage for the purpose of avoiding or diminishing the reduction in turnover and/or assuming or maintaining normal business operations and/or services.

## Definitions

#### Gross Profit

The amount by which:

- a. the sum of the Turnover and the amount of the Closing Stock and Work in Progress shall exceed.

- b. the sum of the amount of the Opening Stock and Work in Progress and the amount of the Uninsured Working Expenses as set out in the Schedule.

Note: The amount of the Opening and Closing Stocks and Work in Progress shall be arrived at in accordance with the Insured's normal accountancy methods, due provision being made for depreciation.

#### Turnover

The money (less discounts, if any allowed) paid or payable to the Insured for goods sold and delivered and for services rendered in course of the Business at the premises.

#### Indemnity Period

The period beginning with the occurrence of the damage and ending not later than the number of months specified in the Schedule thereafter, during which the results of the Business shall be affected in consequence of the damage.

#### Payroll

The remuneration (including but not limited to payroll tax, fringe benefits tax, bonuses, overtime payments, holiday pay, sick pay, long service leave, workers compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) of all employees.

#### Shortage of Turnover

The amount by which the Turnover during a period shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period.

#### Rate of Gross Profit

The rate of Gross Profit earned on the Turnover during the financial year immediately before the date of the damage.

#### Annual Turnover

The Turnover during the twelve months immediately before the date of the damage.

#### Standard Turnover

The Turnover during the period in the twelve months immediately before the date of the damage corresponds with the Indemnity Period.

#### Rate of Payroll

The rate of Payroll to Turnover during the financial year immediately before the date of the damage.

In respect of Rate of Gross Profit, Annual Turnover, Standard Turnover and Rate of Payroll adjustments shall be made as may be necessary to provide for the trend of the business and for variations in or other circumstances affecting the business either before or after the damage or which would have affected the business had the damage not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the damage would have been obtained during the relative period after the damage.

## Memoranda to Section 2

Except to the extent that the Certificate is hereby modified under the following Memoranda the terms, conditions and limitations of the Policy shall apply.

#### Turnover Elsewhere After Damage

If during the Indemnity Period goods shall be sold or services shall be rendered elsewhere than at the premises for the benefit of the Business either by the Insured or by others on his behalf, the money paid or payable in respect of such sales or services shall be brought into account in arriving at the Turnover during the Indemnity Period.

## Section 2 – Consequential Loss cont.

### Departmental Clause

If the business be conducted in departments the independent trading results of which are ascertainable the provision of clauses a) and b) of Item Nos. 1 and 3 shall apply separately to each department affected by the damage.

### New Business

In the event of damage occurring at premises before the completion of the first year's trading of business the terms "Rate of Gross Profit", "Annual Turnover", "Standard Turnover" and "Rate of Payroll" shall bear the following meanings and not as within stated:

#### Rate of Gross Profit

The rate of Gross Profit earned on the Turnover during the period between the date of the commencement of the business and the date of the damage.

#### Annual Turnover

The proportional equivalent, for a period of twelve months of the Turnover realised during the period between the commencement of the business and the date of the damage.

#### Standard Turnover

The proportional equivalent, for a period equal to the Indemnity Period, of the Turnover realised during the period between the commencement of the business and the date of the damage.

#### Rate of Payroll

The rate of Payroll to Turnover during the period between the date of the commencement of the business and the date of the damage.

In respect of Rate of Gross Profit, Annual Turnover, Standard Turnover and Rate of Payroll adjustments shall be made as may be necessary to provide for the trend of the business and for variations in or other circumstances affecting the business either before or after the damage

or which would have affected the business had the damage not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the damage would have been obtained during the relative period after the damage.

### Accumulated Stocks

In adjusting any loss, account shall be taken and equitable allowance made if any shortage in turnover due to the damage is postponed by reason of the turnover being temporarily maintained from accumulated stocks.

### Books of Account

Any particulars or details contained in the Insured's books of account or other business books or documents which may be required by the Insurer(s) for the purpose of investigating or verifying any claim hereunder may be produced and certified by the Insured's auditors and their certificate shall be prima facie evidence of the particulars and details to which such certificate relates.

The words and expressions used herein shall have the meaning usually attached to them in the books and accounts of the Insured unless otherwise defined in the Policy.

### Public Utilities Extension

Any loss resulting from interruption of or interference with the Business directly or indirectly in consequence of damage anywhere in Australia to any land based communication link and/or generating power station, sub station, gas works, waterworks of the public supply undertaking from which the Insured obtains electric current, gas or water shall be deemed to be loss resulting from damage to property used by the Insured at the premises. It shall not be a condition precedent to liability that payment shall be made or liability admitted under section 1 of this Policy.

### Turnover/Output Alternative

At the option of the Insured the term "Output" may be substituted for the term 'Turnover' and for the purpose of the Policy 'Output' shall mean the sale and/or invoice value of goods manufactured and/or processed by the Insured in the course of the Business at the premises. Provided that only one such meaning shall be operative in connection with any one occurrence involving damage.

If the meaning set out above be used the memorandum "Turnover Elsewhere After Damage" shall be altered to read as follows:- "if during the Indemnity Period goods shall be manufactured and/or processed other than at the premises for the benefit of the Business either by the Insured or by others on the Insured's behalf the sale and/or invoice value of the goods so manufactured and/or processed shall be brought into account in arriving at the Output during the Indemnity Period".

### Computer

The Policy is extended to include loss (not otherwise recoverable) resulting from interruption to or interference with the Business occasioned by damage to Computer Installations including ancillary equipment and data processing media utilised by the Insured anywhere in Australia.

### Salvage Sale

If, following damage giving rise to a claim under this Policy, the Insured shall hold a Salvage Sale during the Indemnity Period:

- i. Clause a) of Item No. 1 of this Section shall, for the purpose of such claim, read as follows:
  - a. In respect of Reduction in Turnover: the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity



Period (less the Turnover for the period of the Salvage Sale) shall, in consequence of the damage, fall short of the Standard Turnover, from which sum shall be deducted the Gross Profit actually earned during the period of the salvage sale.

- ii. The definition of Shortage in Turnover shall, for the purpose of such claim, read as follows: Shortage in Turnover shall mean: the amount by which the Turnover during a period (less the turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period, from which shall be deducted the Payroll paid during the period of the salvage sale.

#### **Premises in the Vicinity (Prevention of Access)**

Loss as insured by this Policy resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of the premises caused by a peril, damage as a result of which is insured hereunder, which shall prevent or hinder the use thereof or access thereto, whether the premises or property of the Insured therein shall be damaged or not, shall be deemed to be loss resulting from damage to property used by the Insured at the premises.

Loss as insured by this Policy resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of and forming part of or contained in the complex of which the premises forms part caused by a peril, damage as a result of which is insured hereunder, which results in a cessation or diminution of trade due to temporary falling away of potential custom whether the premises or property of the Insured therein shall be damaged or not shall be deemed to be loss resulting from damage to property used by the Insured at the premises.

#### **Registered Vehicles and/or Trailers**

Notwithstanding the provisions of Property Exclusion 5, this Policy extends to include loss resulting from interruption of or interference with the Business occasioned by Damage to registered vehicles and/or trailers whilst such vehicles or trailers are at the Premises owned or occupied by the Insured; provided always that this Policy does not cover loss resulting from physical loss, destruction of or damage to such vehicles and/or trailers whilst they are being used on any public highway or thoroughfare.

#### **Infectious Disease and Pandemic Exclusion**

The Insurer(s) shall not be liable under Section 2 for: any loss, claim(s), cost(s) or expense(s) of whatsoever nature resulting from interruption of or interference with the Business directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by or caused by or in connection with any infectious disease(s) of any kind whatsoever including, but not limited to, Highly Pathogenic Avian Influenza in Humans or any other diseases which are Quarantinable diseases under the Quarantine Act, 1908 (Commonwealth) and subsequent amendments or successor legislation.

# Exclusions Applicable to all Sections

## Property Exclusions

The Policy does not cover physical loss, destruction or damage to the following property or loss under Section 2 resulting therefrom:

1. property (except Money) whilst in transit other than during the incidental movement of such property within situations occupied by the Insured. This exclusion shall not apply during temporary removal of property (other than stock and/or merchandise) and unregistered motor vehicles to any situation in the Commonwealth of Australia but, whilst such property is in transit, cover is limited to physical loss, destruction or damage caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, malicious damage and storm and/or tempest.
2. Money:
  - a. whilst being carried by professional money carriers, professional carriers or common carriers which is more specifically insured excepting the excess amount over any above such more specific insurance which excess is held to be covered hereunder. Provided that where in the ordinary course of business the Insured enters into an agreement with such carriers and such agreement provides that the Insured shall indemnify and/or hold harmless and/or release from liability such carriers in respect of loss, destruction or damage which may occur as a result of any event hereby insured against, this insurance shall operate as if this Property Exclusion 2. a) had been deleted.
  - b. stolen from an unlocked and unattended vehicle.
  - c. stolen from a safe or strongroom opened by a key or by use of details of a combination, either of which has been left at the situation outside business hours, unless such key or combination details have been properly secured.
- d. where the loss is not discovered within fifteen (15) working days of the event.
- e. where the loss arises out of:
  - i. kidnapping;
  - ii. bomb threat;
  - iii. hoax;
  - iv. extortion;or any attempt thereat.
3. jewellery, furs, bullion, precious metals or stones other than as stock and/or merchandise of the Business.
4.
  - a. any locomotive or rolling stock, watercraft or aircraft other than as stock and/or merchandise of the Business provided always that no cover shall apply hereunder whilst any watercraft is on water.
  - b. any aircraft (including its accessories and/or spare parts) other than as stock or merchandise of the business; provided always that no cover shall apply hereunder during taxiing, take-off, flight or landing.
5. vehicles or trailers registered or licensed to travel on a public road, provided this exclusion shall not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any premises occupied or used by the Insured.
6. livestock, animals, birds or fish.
7. standing timber, growing crops and pastures.
8. land, provided that this exclusion shall not apply to structural improvement on or in the land if such structural improvements are not otherwise excluded in this Policy.
9. bridges, canals, roadways and tunnels, railway tracks (other than on the premises occupied or used by the Insured), dams and reservoirs (other than tanks) and their contents.
10. docks, wharves and piers not forming part of any building.
11. mining property located beneath the surface of the ground unless otherwise expressly stated in the Policy.
12. property during the course of, and as a result of, its processing.
13.
  - a. gates, fences, retaining walls, textile awnings and blinds;
  - b. property in the open air unless such property comprises or forms part of a permanent structure designed to function without the protection of the walls or roof;caused by wind, rainwater or hail.
14.
  - a. property undergoing construction, erection, alteration or addition when the value of work exceeds 10% of the Limit of Liability or \$500,000 whichever is the lesser.
  - b. empty premises undergoing alteration.
15. oil and gas drilling and/or production rigs whilst offshore.
16. all Machinery (as defined in this exclusion), electronic data processing equipment or electronic control equipment occasioned by or happening through any mechanical, electrical, electromechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or non-operation of whatsoever kind.

Provided that Property Exclusion 16 shall not apply to any subsequent loss, destruction of or damage to such Machinery, electronic data

processing equipment or electronic control equipment occasioned by or happening through any cause or event not otherwise excluded herein which results from any of the events referred to in this exclusion.

For the purpose of Property Exclusion 16, Machinery means: any apparatus whether or not functioning independently or as any component part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power.

17. any boiler (other than a boiler used for domestic purposes) economiser or other pressure vessel, including pipes, valves and other apparatus thereof in respect of which a certificate is required to be issued under the terms of any statute or regulation occasioned by or arising from explosion, rupture, collapse, bursting, cracking or overheating thereof provided that this exclusion shall be limited to the aforementioned items immediately affected and shall not extend to other property as a result of such loss destruction or damage. The exclusion shall not apply to Section 2 as specifically stated therein.

## Perils Exclusions

The Insurer(s) shall not be liable under Sections 1 and/or 2 in respect of:

1. any loss, damage, liability or expense of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
  - a. ionising radiations or contamination by radio activity from any nuclear waste or from the combustion of nuclear fuel;
  - b. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
  - c. any weapon or device employing atomic or nuclear fission and/ or fusion or other like reaction or radioactive force or matter;
  - d. the radioactive, toxic, explosive or other hazardous contaminating properties of any radioactive matter.
2. physical loss, destruction or damage occasioned by or happening through:
  - a. flood, which shall mean the inundation of normally dry land by water overflowing from the normal confines of any natural watercourse or lake (whether or not altered or modified), reservoir, canal or dam
  - b. water from or action by the sea, tidal wave or high water

Provided that Perils Exclusions 2 a) and 2 b) shall not apply if loss, destruction or damage is caused by or arises out of an earthquake or seismological disturbance.
3. physical loss, destruction or damage occasioned by or happening through:
  - a. moths, termites or other insects, vermin, rust or oxidation, mildew, mould, contamination or pollution, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting therefrom)
  - b. wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good
  - c. error or omission in design, plan or specification or failure of design
  - d. normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements,

roads and other structural improvements, creeping, heaving and vibration

- e. faulty materials or faulty workmanship
- Provided that this Exclusion 3 a) to e) shall not apply to subsequent loss, destruction of or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.
4. physical loss, destruction or damage occasioned by or happening through:
    - a. incorrect siting of buildings consequent upon
      - i. error in architectural design or specification
      - ii. faulty workmanship
      - iii. non compliance by the Insured (or anyone acting on behalf of the Insured) with the necessary permit issued by Government, Public or Local Authorities
    - b. demolitions ordered by Government or Public or Local Authorities due to failure on the part of the Insured or their agents to obtain the necessary permits required.
  5. physical loss, destruction or damage occasioned by or happening through:
    - a. theft of property (other than Money in Transit) in the open air
    - b. unexplained or inventory shortage, disappearance resulting from clerical or accounting errors, shortage in the supply or delivery of material or accounting errors, shortage in the supply or delivery of materials to or from the Insured

# Exclusions Applicable to all Sections cont.

- c.
  - i. spontaneous combustion
  - ii. spontaneous fermentation or heating or any processing involving the direct application of heat

Provided that Perils Exclusions 5 c) i. and 5 c) ii. shall be limited to the item or items immediately affected and shall not extend to other property damaged as a result of such spontaneous combustion, fermentation, heating or process involving the direct application of heat.

- 6. physical loss, destruction or damage occasioned by or happening through:

- a.
  - i. fraudulent or dishonest acts, fraudulent misappropriation, embezzlement, forgery, counterfeiting data corruption, unauthorised amendment of data and erasure by electronic or non-electronic means involving the Property Insured by the Insured or any employee(s) of the Insured acting alone or in collusion with any other person(s)
  - ii. access by any person(s) other than the Insured or the Insured's employee(s) to the Insured's computer system via data communication media that terminate in the Insured's computer system

Provided that this exclusion shall not apply to theft consequent upon forcible and violent entry upon premises or felonious concealment upon premises committed by an employee of the Insured or theft of money whilst in transit

- b.
  - i. the cessation of work whether total or partial

- ii. the cessation, interruption or retarding of any process or operation as a direct result of strikes, labour disturbances or locked out workers

Provided that Perils Exclusions 6 b) i. and 6 b) ii. shall not apply in respect of physical loss, destruction or damage directly caused by strikers, locked out workers or similar persons.

- c. erosion, subsidence, earth movement or collapse resulting therefrom
- d. kidnapping, bomb threat, hoax, extortion or any attempt thereat

Provided that Exclusion 6 a) to d) shall not apply to subsequent loss, destruction or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this Exclusion.

- 7. any legal liability of whatsoever nature other than as herein provided.
- 8. consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as herein provided in Section 2.

9.

- a. any loss or damage caused by:
  - i. the total or partial destruction, distortion, erasure, corruption alteration, misinterpretation or misappropriation of Electronic Data
  - ii. error in creating, amending, entering, deleting or using Electronic Data
  - iii. total or partial inability or failure to receive, send, access or use Electronic Data for any time at all,

- iv. from any cause whatsoever, regardless of any other contributing cause or event when ever it may occur.

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

- b. However, in the event that a peril listed below (being an insured peril) is caused by any of the matters described in paragraph 9 a) above we will insure:

- i. physical loss of or damage or destruction to Property Insured directly caused by the following perils listed; and/or
- ii. consequential loss insured by this Policy.

Further this exclusion does not apply to losses arising from the perils of fire, explosion, lightning, windstorm, hail, tornado, cyclone, hurricane, earthquake, volcano, tsunami, flood where it is insured by this Policy, freezing weight of snow, impact by aircraft or other objects dropped therefrom, impact by any road vehicle or animal, bursting overflowing 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 Electronic Data.

## War & Terrorism Exclusion

This Policy does not insure death, injury, illness, loss, damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other contributing cause or event:

- a. war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority;

- b. any act of Terrorism.

For the purpose of this exclusion, Terrorism means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto and which:

- i. involves violence against one or more persons;
- ii. involves damage to property;

- iii. endangers life other than that of the person committing the action;
- iv. creates a risk to health or safety of the public or a section of the public; or
- v. is designed to interfere with or to disrupt an electronic system.

This Policy also excludes death, injury, illness, loss, damage, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to in any act of Terrorism.

# Memoranda Applicable to all Sections

Except to the extent that the Policy is hereby modified under the following Memoranda the terms, conditions and limitations of the Policy shall apply.

## Amount of Policy Not Reduced by Loss

The insurance under each section and/or item of the Policy and the Indemnity Period shall be automatically reinstated in the event of any loss in consideration of the payment by the Insured of a pro-rata additional premium calculated on the amount of the loss settlement at the rate(s) agreed for the Period of Insurance.

## Event

Only for the purpose of the application of any deductible: all loss destruction or damage resulting from earthquake occurring during each period of 72 consecutive hours shall be considered as one event whether such earthquake is continuous or sporadic in its sweep and/or scope and irrespective of whether the loss destruction or damage was due to the same seismological conditions. Each event shall be deemed to have commenced on the first happening of any such loss destruction or damage not within the period of any previous event.

## Subrogation Waiver

The Insurer(s) agree(s) to waive any rights and remedies or relief to which it/they may become entitled by subrogation against:

- a. any corporation or organisation (including their directors, officers, employees or servants) owned or controlled by any **Insured named herein or subsidiary to any Insured named herein or any co-owner of the property insured hereunder**;
  - b. any Insured named or described by the Policy (including their directors, officers, employees or servants).
- c. The provisional premium shall be adjusted by payment to the Insurer(s) of an additional premium or by allowance to the Insured of a return premium, as the case may be, calculated at the agreed rate on:
    - i. Fifty (50) per cent of the difference between property declared in accordance with Clauses a) i. and b) i.
    - ii. The full agreed rate hereunder on the difference between the amounts declared under a) ii. and b) ii.

## Adjustment of Premium

- a. The Premium shown is provisional and is calculated on the Declared Value of
    - i. Property Insured;
    - ii. Gross Profit and Insured Payroll; on the day of commencement of each Period of Insurance.
  - b. The Insured undertakes to declare to the Insurer(s) within a reasonable time after the day or expiry of the period of insurance:
    - i. the value of property insured on the day of expiry of the period of insurance. For purpose of this declaration Stock-in-Trade and Merchandise shall be taken at the average value during the period of insurance.
    - ii. the amount of the Gross Profit earned and Payroll paid in accordance with the cover afforded in the respective Items of Section 2 in the course of the business during the accounting period of twelve months most nearly concurrent with the period of insurance.
- d. It is agreed to make allowance for any abnormal fluctuation in values and to charge a premium commensurate with the risk, such premium to be agreed between the parties to this agreement
  - e. The Declaration of Values at the expiry of the Period of Insurance declared in accordance with this memorandum shall not be reduced as the result of loss, destruction or damage in respect of which a claim has been paid or is payable under the Policy.

# Conditions Applicable to all Sections

## 1. Misrepresentation and Non-disclosure

If the Insured:

- i. failed to disclose any matter which the Insured was under a duty to disclose to the Insurer(s); or
- ii. made a misrepresentation to the Insurer(s) before this Policy was entered into;

and if the Insurer(s) would not have entered into this Policy for the same premium and on the same terms and Conditions expressed in this Policy but for the failure to disclose or the misrepresentation.

then:

- a. the liability of the Insurer(s) in respect of any claim will be reduced to an amount to place the Insurer(s) in the same position in which the Insurer(s) would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made; or
- b. if the non-disclosure or misrepresentation was fraudulent, the Insurer(s) may avoid this Policy.

## 2. Alteration

Subject to Section 54 of the Insurance Contracts Act 1984 the Insurer(s) shall not be liable for loss, destruction or damage to any property insured hereunder caused or contributed to by any alteration after the commencement of this Policy:

- a. by removal of such property from the Premises other than as provided under the terms of Property Exclusion 1;
- b. in the trade or processes of manufacture carried on at the Premises or whereby the nature of the occupation or other circumstance affecting the premises and/or the Insured's property therein contained shall be changed in such a way as to increase the risk of loss, destruction or damage;

- c. whereby any premises containing any property insured hereunder shall become unoccupied, and so remain for a period of more than thirty days; or
- d. whereby the Insured's interest ceases except by will or the operation of law;

Provided that any such alteration, upon coming to the knowledge of the Insured's officer responsible for insurance, shall be immediately notified to the Insurer(s) and, if agreed to by the Insurer(s) in writing, an appropriate premium paid if required.

## 3. Sprinkler Installations – Applicable to Owned Premises or Installations for which the Insured is Responsible

This condition applies to property being Property Insured in which an automatic sprinkler system is installed and which is owned by the Insured or where the Insured is responsible for the operation or maintenance of the automatic sprinkler system.

The Insured shall ensure that where the property is protected by an approved installation of automatic sprinklers, automatic external alarm signal and automatic alarm signal connected to a fire brigade station, that due diligence is used in maintaining these in good working order.

It is a condition of this Insurance that provision will be made for the regular maintenance of the installation in accordance with Australia Standard AS 1851 Part 3 Automatic Sprinkler Installation by the installing engineers or firm (if their services are available) or, failing this, by a person or entity who must be approved by the Insured to carry out such maintenance.

Notice of all alterations and additions to the automatic sprinkler installation shall be given by the Insured to the Insurer(s) as soon as reasonably practicable.

## 4. Other Insurance

The Insured shall give written notice as soon as practicable to the Insurer(s) of any other insurance or insurances effected covering the Property Insured.

## 5. Cancellation

a. This Policy may be cancelled at any time at the request of the Insured, in which case the Insurer(s) will retain the customary short-period rate for the time this Policy has been in force.

b. The Insurer(s) may also cancel this Policy by giving the Insured written notice to that effect where:

- i. the Insured or any person who was at any time the Insured failed to comply with the duty of utmost good faith;
- ii. the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
- iii. the person who was the Insured at the time when this Policy was entered into made a misrepresentation to the Insurer(s) during the negotiations for this Policy but before it was entered into;
- iv. the Insured or any person who was at any time the Insured failed to comply with the provision of this Policy, including a provision with respect to the payment of the Premium;
- v. the Insured has made a fraudulent claim under this Policy or any other Policy of insurance (whether with the Insurer(s) or some other insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
- vi. the Insured failed to notify the Insurer(s) of any specific act or omission where such notification is required under the terms of this Policy; or

# Conditions Applicable to all Sections cont.

vii. the Insured acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers the Insurer(s) to refuse to pay, or reduce its/their liability in respect of, a claim in the event of such contravention or omission.

- c. The Insurer(s) notice of cancellation takes effect at the earlier of the following times:
- i. the time when another Policy of insurance between the Insured and the Insurer(s) or some other insurer, being a Policy that is intended by the Insured to replace this Policy, is entered into; or
  - ii. 4.00pm on the thirtieth business day after the day on which notice was given to the Insured.

In the event that the Insurer(s) cancel(s) this Policy, the Insurer(s) will repay to the Insured a rateable proportion of the Premium for the unexpired Period of Insurance from the date of cancellation.

If the premium has been funded by a premium funding company which holds a legal right over the Policy by virtue of a notice of assignment and irrevocable power of attorney, then it is understood and agreed that subject to Section 60 of the Insurance Contracts Act 1984, the Insurer may cancel the Policy at the request of the premium funding company after substantiation of the debt and default in payment by the insured has been made and proven by the Insurer, by giving the Insured not less than three days written notice to that effect, following which a refund of the proportionate part of the premium applicable to the unexpired Period of insurance.

## 6. Notification of Claims

On the happening of any loss, destruction or damage, the Insured shall forthwith give notice thereof in writing to the Insurer(s) and shall as soon as practicable after such loss, destruction or damage or such further time as the Insurer(s) may in writing allow, at his own expense deliver to the Insurer(s) a claim in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property lost, destroyed or damaged and of the amount of loss, destruction or damage thereto respectively having regard to their value at the time of the loss, destruction or damage, together with details of any other insurances on any property hereby insured.

The Insured shall use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the business to avoid or diminish the loss and shall also deliver to the Insurer(s) a statement in writing of any claim certified by the Accountant, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith.

No claim under the Policy shall be payable unless the Insured has complied with the items of the Condition.

## 7. Fraud

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy, or if any destruction or damage be occasioned by the willful act or with the connivance of the Insured, the Insurer(s), without prejudice to any other right(s) the Insurer(s) might have under this Policy, shall be entitled in accordance with the Insurance Contracts Act to reduce its payment or to refuse to pay such claim.

## 8. Reinstatement

If the Insurer(s) elect(s) or become(s) bound to reinstate or replace any property, the Insured shall at the Insured's own expense produce and deliver to the Insurer(s) all such plans, documents and information as the Insurer(s) may reasonably require. The Insurer(s) shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend more than the applicable Limit of Liability.

## 9. Insurer(s) Rights

On the happening of any loss, destruction or damage in respect of which a claim is or may be made under the Policy the Insurer(s) and every person authorised by the Insurer(s) may, without thereby admitting any liability, and without diminishing the right of the Insurer(s) to reply upon Conditions of the Policy, enter, take or keep possession of the Building or premises where the loss, destruction or damage has happened, and may take possession of or require to be delivered to them any of the property hereby insured and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner.



This Condition shall be evidence of the leave and licence of the Insured to the Insurer(s) so to do. If the Insured or any one acting on his behalf shall not comply with the requirements of the Insurer(s) or shall hinder or obstruct the Insurer(s) in doing any of the abovementioned acts, then all benefits under the Policy shall be forfeited. The Insured shall not in any case be entitled to abandon any property to the Insurer(s) whether taken possession of by the Insurer(s) or not.

#### 10. Subrogation

- a. Any person claiming under this Policy shall at the request and at the expense of the Insurer(s) do and concur in doing and permit to be done all such acts and things may be necessary or reasonably required by the Insurer(s) for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the Insurer(s) shall be or would become entitled or subrogated upon the Insurer(s) paying for or making good any destruction or damage under this Policy.
- b. If the Insurer(s) make(s) any recovery as a result of such action, the Insured may only recover from the Insurer(s) any amount by which the amount recovered by the Insurer(s) exceeded the amount paid to the Insured by the Insurer(s) in relation to the loss.

#### 11. Precautions to Prevent Loss

The Insured shall take all reasonable precautions to prevent loss, destruction or damage to the Property insured by the Policy.

#### 12. Insured's Action After Theft or Damage

The Insured shall upon becoming aware of any loss or theft or of any wilful or malicious damage, which may give rise to a claim under the Policy, take all practicable steps to trace and recover any missing property and to discover by whom the property was stolen or damaged.

#### 13. Termination of Cover Under Section 2

Notwithstanding anything contained herein to the contract, if during any period in respect of which the Policy is in force:

- a. the Insured ceases to carry on the Business or any part of the Business is disposed of, permanently discontinued or the Insured's interest in the Business or such part thereof ceases otherwise than by death;
- b. the Insured (being a corporation) is placed in liquidation (or provisional liquidation), is placed under Official Management, enters into a scheme of Arrangement, has Receivers and/or Managers appointed over its assets or undertaking(s) or is unable to pay its debts as and when they fall due; or
- c. the Insured (being a natural person) becomes a bankrupt or enters into a scheme of arrangement or compromise or composition with creditors:

then the insurance cover provided under Section 2 of the Policy in respect of such Business or Insured shall automatically and forthwith cease unless otherwise agreed in writing by the Insurer(s).

In the event of the Indemnity Period having begun to run in respect of any claim relating to such Business or part thereof, the Indemnity Period shall thereupon be at an end, unless its continuance be admitted by memorandum signed for or on behalf of the Insurer(s).

#### 14. Observance of Terms and Conditions

The due observance and fulfillment of these conditions and the other Terms of the Policy by the Insured in so far as the same are capable of being construed as such, are conditions precedent to any liability of the Company(ies) to make any payment under the Policy.

#### 15. Progress Payments

Provided that liability has been admitted progress payments on account of any claim may be made to the Insured at such intervals and for such amount as may be agreed upon on production of a report by the Loss Adjuster (if appointed) provided such payments shall be deducted from the amount finally determined upon adjustment of the claim.





## We're here to help

1300 223 782 (1300 ACERTA)

[acerta.com.au](http://acerta.com.au)

### Victoria

Level 13, 171 Collins Street

Melbourne VIC 3000

Fax: (03) 9810 9810

### New South Wales

Level 20, 20 Bond Street

Sydney NSW 2000

Fax: (02) 9018 9900

### Who is the insurer?

This policy is underwritten by Guild Insurance Limited ABN 55 004 538 863 and AFS Licence Number 233791 trading as Acerta.

Effective date: 11 July 2016

GLD2505 Acerta Industrial Special Risk Policy 07/2016