

Liberty International Underwriters

Trades Combined General & Products Liability Policy
Policy Form LIU-CAS-TRAD-13-01



Liberty
International
Underwriters

Trades Combined General & Products Liability Insurance Policy

Our Agreement

LIU relies on Your statements and declarations in the Proposal. When you have paid the Premium, LIU agrees to cover You with the insurance set out in this Policy.

1 Cover

1.1 Your Legal Liability

Subject to the terms of this Policy LIU will pay to You or on Your behalf all sums which You shall become legally liable to pay by way of compensation in respect of Injury, Damage and/or Advertising Liability first happening during the Period of Insurance as a result of an Occurrence in connection with Your Business.

1.2 Your Defence Costs

LIU will defend in Your name and on Your behalf any claim or legal action against You alleging Injury, Damage and/or Advertising Liability to the extent that indemnity is provided by this Policy, even if such action is groundless, false or fraudulent.

LIU shall have full discretion in the conduct of such claim or legal action and in the settlement of any claim.

In addition to the Limit of Indemnity LIU will:

- 1.2.1 Pay all reasonable legal costs and/or expenses incurred by You with LIU's prior written consent in the defence of any claim;
- 1.2.2 Pay all expenses incurred by LIU, all costs assessed against you and all interest accruing after judgment until we have paid or tendered in court such part of the judgment as does not exceed the Limit of Indemnity;
- 1.2.3 Pay reasonable expenses incurred by You in rendering first aid arising out of or in connection with an Occurrence (other than medical expenses prohibited by section 126 of the Health Insurance Act (1973)).

Provided that:

- 1.2.4 LIU shall not be liable for legal costs and/or expenses to the extent indemnity is not provided by this Policy;

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- 1.2.5 LIU shall not pay legal costs and/or expenses in respect of any Occurrence after LIU has paid compensation up to the Limit of Indemnity;
- 1.2.6 If a payment exceeding the Limit of Indemnity has to be made to dispose of a claim, LIU's liability to pay legal costs and/or expenses shall be limited to that proportion of those amounts as the Limit of Indemnity bears to the amount paid to dispose of the claim;
- 1.2.7 In the event You are a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this Policy, You and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this Policy which relate solely to what is covered under this Policy; and
- 1.2.8 In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by You and LIU) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this Policy as it considers appropriate.

2 Definitions

- 2.1 "Advertising Liability" means:
- 2.1.1 Infringement of copyright, title or slogan;
- 2.1.2 Unfair competition, piracy or misappropriation of advertising ideas contrary to an implied contract; or
- 2.1.3 Invasion of privacy,
- committed, or alleged to have been committed in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities first published or broadcast by You or on Your behalf, in the course of advertising Your Products, goods or services.
- 2.2 "Aircraft" means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 2.3 "Damage" means:
- 2.3.1 Physical damage to, loss or destruction of tangible property including any resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or

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- 2.3.2 Loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.
- 2.4 “Employment Practices” means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by You.
- 2.5 “Injury” means:
- 2.5.1 Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- 2.5.2 False arrest, wrongful detention or imprisonment, malicious prosecution;
- 2.5.3 Wrongful entry or eviction;
- 2.5.4 Assault and battery not committed by or at the direction of You unless committed for the purpose of preventing Injury and/or Damage or eliminating danger; or
- 2.5.5 Libel, slander, defamation of character or invasion of right of privacy.
- 2.6 “LIU” means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).
- 2.7 “Limit of Indemnity” means the amount stated in the Schedule pursuant to Clause 5 of this Policy.
- 2.8 “Occurrence” means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury, Damage and/or Advertising Liability neither expected nor intended from Your standpoint. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- All Advertising Liability involving the same injurious material or act shall be deemed to arise out of one Occurrence, regardless of its frequency or repetition, the number and kind of media used and the number of claimants.
- 2.9 “Period of Insurance” is the period shown in the Schedule.
- 2.10 “Pollutants” means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

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- 2.11 “Product” means any commodity, article or thing (after it has ceased to be in Your possession or under Your control) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by You or by others trading under Your name (including any container thereof other than a motor vehicle).
- 2.12 “Proposal” is the totality of the answers you give to the questions you are asked when you apply for insurance under this Policy, or such other written proposal for insurance you may submit, including at any renewal.
- 2.13 “Terrorism” means an act or acts:
- 2.13.1 That are violent in nature or are dangerous to human life:
- 2.13.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia and that have the apparent intent of:
- 2.13.1.1.1 Intimidating or coercing any civilian population;
- 2.13.1.1.2 Influencing the policy of any government by intimidation or coercion; or
- 2.13.1.1.3 Affecting the conduct of any government by mass destruction, assassination or kidnapping,
- Or
- 2.13.2 That result in:
- 2.13.2.1 The denial of access to or services from web sites, computer networks or telecommunication equipment; or
- 2.13.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, mechanical equipment or the interruption to the functioning of web sites or such properties,
- And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

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- 2.14 “Vehicle” means any type of machine on wheels or self laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachments made or intended to be drawn by any such machine.
- 2.15 “Worker” means any person employed by You or deemed to be employed by You whether pursuant to any Workers’ Compensation Law or otherwise.
- 2.16 “Workers’ Compensation Law” means any law relating to compensation for Injury to Workers or employees.
- 2.17 “You, Your” means You stated in the Schedule and:
- 2.17.1 All Your Australian subsidiary companies and their subsidiaries; or
- 2.17.2 Any other Australian entity controlled and actively managed by You.
- 2.18 “Your Business” is the business stated in the Schedule including:
- 2.18.1 Provision and management of canteens, social, sports and welfare organisations for the benefit of Your employees;
- 2.18.2 First aid, fire and ambulance services; or
- 2.18.3 Ownership and tenancy of premises.

3 Indemnity to Others

Subject to the terms of this Policy and in accordance with Insuring Clause 1, this Policy will extend to pay to or on behalf of:

- 3.1 Any principal, in respect of that principal’s vicarious liability for Your negligent acts or omissions pursuant to Definition 2.17 and arising out of Your Business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;
- 3.2 Your directors, executive officers or Workers or, where You are a partnership, Your partner, but only while acting within the scope of their duties in such capacity;
- 3.3 The officers, committee and members of Your canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such; or
- 3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.

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Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy in so far as they can apply as though they were You.

4 Cross Liabilities

Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that LIU's total liability shall not exceed the Limit of Indemnity for all claims under this Policy.

5 Limit of Indemnity

LIU's liability to pay compensation shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of LIU for any one Period of Insurance for all claims in respect of or in any way connected with Your Products shall not exceed the Limit of Indemnity stated in the Schedule.

6 Exclusions

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

- 6.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of You of any Vehicle which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:
 - 6.1.1 Injury for which no indemnity is or would be available to You under the said policy of compulsory liability insurance or statutory scheme had You complied with Your obligations pursuant to such law;
 - 6.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any Vehicle for which no indemnity is or would be available to You under the said policy of compulsory liability insurance or statutory scheme had You complied with Your obligations pursuant to such law;
 - 6.1.3 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any Vehicle;

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- 6.1.4 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any Vehicle or of the load carried thereon;
 - 6.1.5 Damage arising out of and during loading or unloading of goods to or from any Vehicle; or
 - 6.1.6 Damage to any Vehicle (not owned, leased or hired by, under hire purchase, on loan or rented to You) temporarily in Your custody or control for the purpose of parking and directly arising out of such parking.
- 6.2 Damage to property owned, leased, hired by, under hire purchase, on loan or rented to You or otherwise in Your care, custody or control other than:
- 6.2.1 Premises (or to contents thereof) temporarily occupied by You for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises or contents on which You are or have been working on if the physical damage or destruction arises from such work;
 - 6.2.2 Premises tenanted by You;
 - 6.2.3 Directors', employees' and visitors' clothing and personal effects; or
 - 6.2.4 Other property not owned by You but temporarily in Your possession provided:
 - 6.2.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which You are or have been working on if the physical damage or destruction arises from such work; and
 - 6.2.4.2 LIU's limit of liability under this clause 6.2.4 does not exceed \$250,000 each and every Occurrence and in the aggregate for any one Period of Insurance.
- 6.3 Damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of Your Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency in them.
- 6.4 Damage to Your Products if such Damage is attributable to any defect in it or harmful nature or unsuitability of it.
- 6.5 The cost of performing, completing, correcting or improving any work undertaken by You.
- 6.6 Any Product guarantee or warranty given by or on behalf of You but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.

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- 6.7 Liability assumed under the terms of a contract, agreement or warranty unless and only to the extent that:
- 6.7.1 You would have been liable in the absence of such contract, agreement or warranty;
 - 6.7.2 Assumed under those agreements specified in the Schedule;
 - 6.7.3 Assumed under a lease of real or personal property which does not impose on You:
 - 6.7.3.1 An obligation to insure such property; or
 - 6.7.3.2 Liability regardless of fault.
- 6.8 Liability assumed where You may have been able to recover from another party but for an agreement between You and such party where You have waived, released or abandoned any right of recourse or recovery against any party.
- 6.9 Any Product which is incorporated into the structure, machinery or controls of any Aircraft, watercraft or hovercraft.
- 6.10 Injury to any Worker.
- Provided that if You:
- 6.10.1 Are required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or
 - 6.10.2 Are not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or "employee" within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such Law,
- Then this Policy will respond to the extent that Your liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement had You complied with Your obligations pursuant to such Law.
- 6.11
 - 6.11.1 Any Workers' Compensation Law. This exclusion does not apply in respect of Injury to any person of whom You are deemed to be the employer by reason only of Section 175 of the Workers' Compensation and Injury Management Act 1981 (WA);
 - 6.11.2 The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or

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- 6.12 Employment Practices.

- 6.13 Libel, slander and/or other defamation:
 - 6.13.1 Made prior to the commencement of the Period of Insurance;
 - 6.13.2 Made at Your direction or with Your authority or with knowledge of its falsity; or
 - 6.13.3 Related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of You.

- 6.14 Advertising Liability:
 - 6.14.1 For statements made at Your direction or at the direction of any party indemnified by the Policy with the knowledge of their illegality or falsity;
 - 6.14.2 For breach of contract, other than misappropriation of advertising ideas contrary to an implied contract;
 - 6.14.3 For passing off or infringement of a trade mark, service mark or trade name on any Products, goods or service sold, offered for sale or advertised. This does not apply to infringement of titles or slogans;
 - 6.14.4 For You or any party indemnified by the Policy whose business is advertising, broadcasting, publishing or telecasting;
 - 6.14.5 For incorrect price description, or failure to conform to advertised performance, quality, fitness or durability of any Products, goods or services;
 - 6.14.6 For acts, errors or omissions committed prior to the inception date of this Policy.

- 6.15 The loss of use of tangible property which has not been physically damaged or destroyed resulting from:
 - 6.15.1 A delay in or lack of performance by You or on Your behalf of any contract or agreement; or
 - 6.15.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than You.

- 6.16 Any change in the nature of Your Business which:

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6.16.1 Occurred during the currency of this Policy; and

6.16.2 Was known by You, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy.

For the purposes of this exclusion, where You are a corporate body, the knowledge of any director or officer of Yours shall be deemed to be Your knowledge.

6.17 The rendering of or failure to render professional advice or service or any error or omission connected therewith given for a fee by You or any person covered by Clause 3 of this Policy.

Provided that this exclusion does not apply to the rendering of first aid or medical services on Your premises by medical persons employed by You.

6.18 6.18.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

6.18.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

6.18.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or

6.18.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

Provided always that exclusions 6.18.1, 6.18.2 and 6.18.3 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place.

The total aggregate liability of LIU for all claims covered in any one Period of Insurance in respect of the proviso above shall not exceed the Limit of Indemnity shown in the Schedule.

6.19 6.19.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion; or

6.19.2 Nuclear weapons material.

6.20 And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

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- 6.20.1 War and military action which includes without limitation the following:
- 6.20.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
 - 6.20.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - 6.20.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- 6.20.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:
- 6.20.2.1 Alone or on behalf of or in connection with any organisation; or
 - 6.20.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.
- 6.20.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or nuclear radiation or radioactive contamination in place of Exclusion 6.19.

- 6.21 The ownership, maintenance, operation, possession or use by You or on Your behalf of:
- 6.21.1 Any Aircraft;
 - 6.21.2 Any watercraft exceeding 10 metres in length; or
 - 6.21.3 Any hovercraft.
- 6.22 The Excess shown in the Schedule.
- 6.23 Asbestos.

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- 6.24 6.24.1 Claims made and actions instituted within the United States of America or Canada and their respective territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or Canada; or
- 6.24.2 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.

Provided that this exclusion does not apply to claims and actions caused by Your employee who normally resides in Australia while such employee is temporarily travelling on Your behalf outside Australia. The Limit of Indemnity for such claims and actions is inclusive of legal costs and/or expenses.

- 6.25 Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.
- 6.26 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of Yours or any person covered by Clause 3 of this Policy.
- 6.27 Arc or flame cutting, flame heating, arc, electric, oxy-acetylene or gas welding, and cutting or similar operation, unless such activity is conducted in strict compliance with the Fire Precautions applicable to AS1674 Safety in Welding and Allied Processes or as amended from time to time.
- 6.28 Damage to underground services (such as but not limited to water, gas, sewerage or fuel pipes, electric or telephone cables) or any underground property or structure for the purpose of storing, conveying, transporting, transmitting or delivering of electricity, water, gas, fuel, telecommunications media, signals, radio or other waves unless prior to the commencement of any work You enquired with the relevant public authority or owner of such service, property or structure as to the exact location of such service, property or structure, and You took all precautions to avoid such service, property or structure.

7 General Conditions

- 7.1 You shall give written notice to LIU as soon as possible of any claim under this Policy and shall give all such additional information as LIU may require.
- 7.2 No admission, offer, promise, or payment shall be made or given by You or on Your behalf without the prior written consent of LIU.
- 7.3 You shall give all such information and assistance as LIU may require.
- 7.4 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

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- 7.5 The amount shown within the Schedule as an Excess is the first amount for all claims arising out of any one Occurrence which is to be borne by You or any person covered by Clause 3 of this Policy.
- 7.6 LIU may at any time discharge its total liability to You in respect of any one claim or series of claims arising from one Occurrence by paying to You or on Your behalf:
- 7.6.1 The total amount in respect of such claim to which You are entitled to indemnity under this Policy;
 - 7.6.2 The total amount sought by the claimant for such claim; or
 - 7.6.3 The total amount for which such claim can be settled,
- And in addition to such payment LIU will pay Defence Costs incurred up to the date of payment as provided for by Clause 1.2 of this Policy.
- Upon such payment, LIU shall relinquish conduct or control of such claim and be under no further liability under this Policy in connection with such claim including but not limited to Defence Costs.
- 7.7 This Policy shall be interpreted in accordance with the laws of Australia and all claims for indemnity under this Policy shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation or interpretation of the Policy shall be submitted to the exclusive jurisdiction of the Australian Courts.
- 7.8 You must:
- 7.8.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
 - 7.8.2 Take all reasonable precautions to:
 - 7.8.2.1 Prevent Injury and Damage;
 - 7.8.2.2 Prevent the manufacture, sale or supply of defective Products; and
 - 7.8.2.3 Comply and ensure that Your Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
 - 7.8.3 At Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency You have knowledge of or has reason to suspect; and

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- 7.8.4 Assist and co-operate fully and promptly with LIU in the investigation, settlement or defence of any claim or matters relating or in connection thereto.

The amount of any benefit under this Policy for any liability caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which LIU's interests have been prejudiced thereby.

- 7.9 Where the premium is provisionally based on Your estimates, You shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to You as the case may be, subject to any minimum premium that may apply.

- 7.10 You may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

- 7.10.1 It is entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto;
- 7.10.2 You have failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy; or
- 7.10.3 You have acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between You and LIU or some other insurer (being a contract that is intended by You to replace this Policy) is entered into or at 4pm on the third business day after the date on which notice was given to You by LIU, whichever is the earlier.

- 7.11 Where You comprise more than one person or company, it is agreed that You referred to in the Schedule shall be the agent of each of the other insured persons or companies or others indemnified by Clause 3 for the purposes of receiving any notice of cancellation pursuant to General Condition 7.10, or any other notice, statement, document or information relating to this Policy. Where You have a broker, nothing shall restrict LIU's right to notify the broker as Your agent.

- 7.12 Notwithstanding anything else to the contrary in the Policy, whenever coverage provided by this policy would be in violation of any applicable economic, trade or other sanction or law, such coverage shall be null and void and LIU has no obligation to pay a claim if to do so would breach that sanction or law.

- 7.13 7.13.1 Words importing persons shall include corporations and other legal entities;
- 7.13.2 References in the singular shall be deemed to include the plural and vice versa;

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- 7.13.3 Words depicting any gender include reference to all other genders;
- 7.13.4 References to any legislation or subordinate instruments shall refer to such legislation or subordinate instruments as amended from time to time and in force; and
- 7.13.5 Headings have been included for ease of reference and it is understood and agreed that this Policy is not to be construed or interpreted by reference to such headings.
- 7.14 Each Insured agrees that LIU may issue by electronic mail or post any notices required to be given under the *Insurance Contracts Act 1984* or otherwise.
- 7.15 Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company ("LMIC"), a stock insurance company incorporated in Massachusetts USA. LMIC is an indirect subsidiary of Liberty Mutual Holding Company Inc. ("LMHC"), a Massachusetts USA mutual holding company. NOTICE IS HEREBY GIVEN that the annual meeting of LMHC is held on the second Wednesday in April of each year at ten o'clock in the morning, local time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts USA. This notice is for members of LMHC only. One becomes a member of LMHC by virtue of being a policyholder of LMIC. Membership rights terminate when one ceases to be a policyholder of LMIC. Members of LMHC may request a copy of LMHC's annual financial statements, which are posted on Liberty Mutual's website at www.libertymutual.com, by writing to Liberty Mutual Holding Company Inc., 175 Berkeley Street, Boston, Massachusetts 02116.

Signed on behalf of Liberty International Underwriters
on the date stated in the Schedule



N. MacCarthy
Senior Vice President, Casualty – Asia Pacific

This Policy is valid only if attaching to a signed and current Policy Schedule including any applicable endorsements and it is signed and dated by a representative of LIU.

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FINANCIAL LOSS (PRODUCTS & SERVICES) ENDORSEMENT

1. Notice to You

This endorsement provides cover on a **Claims made and notified basis**.

1.1 A Claim must be made against You during the Period of Insurance; and

1.2 You must notify LIU in writing of such Claim during the Period of Insurance.

2. Insuring Clause

Subject to the terms and conditions of the Policy and this endorsement, LIU will pay to or on behalf of You all sums which You shall become legally liable to pay by way of compensation as a result of a Claim for Financial Loss both first made against You and notified to LIU during the Period of Insurance arising out of any negligence, whether by act, error or omission (which expression shall include any non-deliberate breach of Section 52, Section 53, Section 55, Section 55A or Section 71 of the Trade Practices Act 1974 or Section 18, Section 29, Section 33, Section 34, Section 54 or Section 55 of the Australian Consumer Law or mirroring provisions of any State Fair Trading Act or similar statute) committed or alleged to have been committed by You in connection with Your Products and services provided in the normal course of Your Business.

3. Definitions

3.1 "Claim" means:

3.1.1 Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or served upon You; or

3.1.2 The receipt by You of any written or verbal notice of demand for compensation made by a third party against You.

3.2 "Financial Loss" means any loss which is economic in nature and not consequent upon Injury or Damage.

4. Limit of Indemnity

LIU's liability to pay compensation under this endorsement shall not exceed the Limit of Indemnity referred to in the Schedule any one Claim and in the aggregate during the Period of Insurance.

Further, all payments made under this endorsement will also contribute towards the exhaustion of the aggregate Limit of Indemnity in respect of Products liability.

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All claims of a series consequent on or attributable to one source or original cause shall be deemed one Claim.

The excess shown on the Schedule applies each and every Claim (costs inclusive) and shall be borne by You at Your own risk and LIU's liability shall only be in excess of this amount.

5. Defence Costs

LIU agrees to pay all legal costs and expenses incurred with LIU's prior written consent in connection with any Claim for which indemnity is available under this endorsement, provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this endorsement.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this endorsement.

In the event You are a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this endorsement, You and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this endorsement which relate solely to what is covered under this endorsement.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by LIU and You) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this endorsement as it considers appropriate.

6. Exclusions

For the purposes of this endorsement only:

6.1 Exclusion 6.15.2 of the Policy wording is deleted.

6.2 Section 4. Cross Liabilities of the Policy wording is deleted.

6.3 The following additional exclusions apply:

6.3.1 Any act, error or omission which occurred or allegedly occurred prior to the Retroactive Date shown on Schedule.

6.3.2 An occurrence which would otherwise be excluded under the public/products component of this Policy (and any endorsements attached thereto) to which this endorsement is attached.

6.3.3 Any facts or circumstances of which You were aware prior to the commencement of the Period of Insurance or which a reasonable person in Your position would have considered may give rise to a Claim.

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- 6.3.4 Any Claim made prior to or existing at the inception of this Policy.
- 6.3.5
 - 6.3.5.1 Any Claim; or
 - 6.3.5.2 Facts or circumstances that might give rise to a Claim,

Which have been notified or which could have been notified under any prior policy.
- 6.3.6 Any failure or omission on the part of You to effect or maintain insurance.
- 6.3.7 Arising from or in connection with the rendering of or failure to render professional advice or service or any error or omission connected therewith given for a fee by You or any person covered by Clause 3 of this Policy.
- 6.3.8 Any claim which is more specifically insured against in any other section of this Policy.
- 6.3.9 Conspiracy, conversion, deceit, inducement to breach contract or injurious falsehood.
- 6.3.10 Claims made and actions instituted within the United States of America or Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or Canada.
- 6.3.11 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.
- 6.3.12 Any Claim incurred by or caused by a director or officer of Yours whilst acting within the scope of their duties in such capacity.
- 6.3.13 The failure of any Product to meet the level of performance, quality, fitness or durability warranted by You.

7. Conditions

- 7.1 In the event of a Claim, You must give immediate notice in writing to LIU of such Claim and such information as LIU may require to reasonably investigate the Claim and to enable LIU to determine its liability under this Policy.
- 7.2 You must take all reasonable precautions to prevent Financial Loss to any third party.



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Nothing contained in this endorsement shall in any way serve to increase the Limit of Indemnity stated in the Schedule.

Other than as amended above, the terms of this Policy shall continue to apply.

For and on behalf of
Liberty International Underwriters

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STATUTORY LIABILITY EXTENSION

Preamble

In consideration of the premium being paid by You to Us and in reliance upon the written statements and declarations contained in the proposal form or insurance broker's quotation submission, We agree to indemnify You in accordance with the following extension wording.

1. Notice to You

This extension provides cover on a Claims made and notified basis.

- 1.1 A Claim must be made against You during the Period of Insurance; and
- 1.2 You must notify Us in writing of such Claim during the Period of Insurance.

2. Insuring Clause

Subject to the terms and conditions of this extension, We will pay to You or on Your behalf any Loss arising from any Claim in respect of a Wrongful Breach that occurs after the Retroactive Date.

3. Definitions

- 3.1 **"Act"** means any Act of the Parliament of Australia and any Act of the Parliaments of the States or Territories of Australia, including any subordinate or delegated legislation made under those Acts; and any amendment, consolidation or re-enactment of any of the above Acts or legislation.
- 3.2 **"Business"** means Your business as described in the Schedule.
- 3.3 **"Claim"** means the receipt by You of any written or verbal notice from a regulatory authority with alleges a Wrongful Breach and imposes a Penalty on You for the Wrongful Breach or asserts that You are liable to pay a Penalty.
- 3.4 **"Consumer Protection Act"** means any of the following:
 - Fair Trading Act 1985 (VIC)
 - Fair Trading Act 1987 (NSW)
 - Fair Trading Act 1987 (SA)
 - Fair Trading Act 1987 (WA)
 - Fair Trading Act 1989 (QLD)
 - Fair Trading Act 1990 (TAS)
 - Fair Trading Act 1992 (ACT)

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Consumer Affairs and Fair Trading Act 1996 (NT)
Trade Practices Act 1974 (Cth)
Competition and Consumer Act 2010
Part 2 of the Australian Securities and Investments Commission Act 2001

And any amendment, consolidation or re-enactment of any of those Acts.

- 3.5 “**Defence Costs**” means necessary and reasonable legal costs and expenses, including witness costs and expenses, but excludes wages, salaries or other remuneration of Yours, in defending any prosecution or threatened prosecution.
- 3.6 “**Excess**” means the amount stated in the Schedule and applies to all amounts payable under this extension.
- 3.7 “**Employee**” means any person who is, was or becomes engaged as an employee under a contract of employment with You..
- 3.8 “**Joint Venture**” means any enterprise undertaken jointly by You and any other party.
- 3.9 “**LIU**” means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA. (The liability of members is limited).
- 3.10 “**We, Us, Our, Ourselves**” means LIU.
- 3.11 “**Loss**” means any Penalty and Defence Costs.
- 3.12 “**Officer**” means any past, present or future director, executive officer (as defined by the Corporations Act) or company secretary of Yours.
- 3.13 “**Outside Directorship**” means an executive position held by an Officer of Yours in connection with the Business at Your specific request in any corporation, joint venture, partnership, trust or other enterprise which is not included in the Definition of You, Your, Yours. In this Definition, a reference to You shall mean You as defined in clauses 3.21.1 and 3.21.2.
- 3.14 “**Penalty**” means any fine, infringement fee or monetary sum imposed by any Regulatory Authority on and payable by You pursuant to any Act for a Wrongful Breach by You but excluding:
- 3.14.1 Any amounts payable as compensation;
- 3.14.2 Any compliance, remedial, reparation or restitution costs;
- 3.14.3 Any damages, including any exemplary or punitive damages;

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3.14.4 Any consequential economic loss;

3.14.5 Any legal costs and associated expenses.

Notwithstanding clause 3.14.5, We will pay any reasonable legal costs and associated expenses payable by You to any Regulatory Authority upon the imposition of a Penalty covered by this extension. Provided that where the proceedings that lead to the imposition of the Penalty also include proceedings in respect of any of the matters set out in sub-clauses 3.14.1 to 3.14.4, We will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in sub-clauses 3.14.1 to 3.14.4.

3.15 **“Period of Insurance”** means the period of insurance specified in the Policy Schedule.

3.16 **“Reasonable Grounds for Defence”** means:

3.16.1 You have reasonable prospects of success in avoiding the quantum of any Penalty alleged in the Claim; or

3.16.2 You have reasonable prospects of success in reducing the quantum of any Penalty alleged in the Claim by entering a defence or pleading not guilty,

and that having regard to the likely legal costs incurred in defending the Claim it is reasonable for the Claim to be defended.

Provided that Reasonable Grounds for Defence will not exist if the Claim is capable of being avoided or mitigated by a settlement into which a reasonable person in Your position, properly advised, would enter.

In the event that an agreement on reasonable prospects for success cannot be reached between Us and You, a Senior Counsel (to be mutually agreed upon by Us and You) shall, as an expert and not an arbitrator, make such determination. Until the Senior Counsel has made a determination We may, in Our absolute discretion, pay such legal costs and/or expenses or any other amount insured under this extension as We consider appropriate.

In the event that agreement on the appointment of a Senior Counsel cannot be reached, such Senior Counsel shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.

3.17 **“Regulatory Authority”** means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorized to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

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- 3.18 **“Retroactive Date”** means the date specified in the Schedule.
- 3.19 **“Territorial Limits”** means anywhere in Australia.
- 3.20 **“Wrongful Breach”** means any act, error or omission which occurs in connection with the Business, within the Territorial Limits and after the Retroactive Date, whereby:
- 3.20.1 You contravene an Act or are involved in the contravention of an Act;
 - 3.20.2 You commit an offence pursuant to an Act; or
 - 3.20.3 Such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.
- 3.21 **“You, Your, Yours, Insured”** means:
- 3.21.1 The organisation named as the Named Insured in the Schedule, including past, present or future Officer, Employee or work experience student whilst acting in the performance of their duties or employment;
 - 3.21.2 Any subsidiary company of Yours which is:
 - 3.21.2.1 Incorporated within Australia including subsidiaries;
 - 3.21.2.2 Controlled by You and over which You assume active management;
 - 3.21.3 Outside Directorship held by an Officer;
- Provided that:
- 3.21.3.1 Coverage shall not be extended to the outside organisation in which such Outside Directorship is held, or to any other director, executive officer, company secretary or employee of such organisation; and
 - 3.21.3.2 Coverage shall not apply to any part of any Loss covered by any indemnity given by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.

4. **Limit of Indemnity and Excess**

Our liability under this extension in respect of all Losses arising out of all Claims covered by this extension shall not exceed the Limit of Indemnity specified in the Schedule any one Claim and in the aggregate during the Period of Insurance.

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All Losses arising out of any one Wrongful Breach or interrelated Wrongful Breaches are deemed to be one Loss.

The Excess is the first amount for each and every Claim which is to be borne by You.

5. Defence Costs

We agree to pay all Defence Costs incurred with Our prior written consent in connection with any Claim in respect of a Wrongful Breach where You have Reasonable Grounds for Defence. provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this extension.

Provided that We shall not be obliged to provide such consent unless We are satisfied that You have Reasonable Grounds for Defence.

Provided that We shall not be liable for legal costs and/or expenses where indemnity is not provided by this extension.

6. Exclusions

6.1 This extension does not provide indemnity in respect of any Claim:

6.1.1 Based upon, attributable to or in consequence of:

6.1.1.1 Any wilful, intentional or deliberate Wrongful Breach;

6.1.1.2 A wilful, intentional or deliberate failure to comply with any lawful notice, enforcement order, direction, enforcement proceeding or any other proceeding under any Act;

6.1.1.3 Any Wrongful Breach caused by Your gross negligence or recklessness;

6.1.1.4 Your dishonest, fraudulent or malicious act or omission, provided that cover is provided to any of You who is innocent of and has no prior knowledge of such conduct. Such person shall as soon as practicable after becoming aware of such conduct, advise Us in writing of all relevant facts.

6.1.1.5 You gaining any personal profit or advantage or receiving any remuneration to which You were not legally entitled;

6.1.1.6 Any Wrongful Breach in connection with any strike, lockout, picket line, stand down or industrial dispute. This exclusion does not apply to

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Officers and Employees for Claims arising in the proper performance of their duties as Officers and Employees;

- 6.1.1.7 A Wrongful Breach of any Consumer Protection Act. This exclusion does not apply to Officers and Employees for Claims arising in the proper performance of their duties as Officers and Employees;
- 6.1.1.8 Any Wrongful Breach pursuant to Sections 182, 183, 601FE or 601JD of the Corporations Act; and any amendment, consolidation or re-enactment of any of those Sections;
- 6.1.1.9 A Wrongful Breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
- 6.1.1.10 A Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
- 6.1.1.11 Asbestos, asbestos products and/or products containing asbestos;
- 6.1.2 Made, threatened or in any way intimated against You prior to the Period of Insurance;
- 6.1.3 Arising from any matter disclosed to any insurer, including Us, prior to the Period of Insurance as either a Claim or fact which may give rise to a Claim against You;
- 6.1.4 Arising from any facts of which You were aware prior to the commencement of the Period of Insurance and which You knew, or ought reasonably to have known, to be facts which may give rise to a Claim;
- 6.1.5 Arising from any Wrongful Breach where You knew, or ought reasonably to have known, prior to the Period of Insurance that there had been such a Wrongful Breach;
- 6.1.6 For any Loss or part of any Loss which is attributable to the period after You knew, or ought reasonably to have known, that its conduct was a Wrongful Breach;
- 6.1.7 Deliberately or intentionally solicited by You. This exclusion does not apply to Officers and Employees where such Claims arise in the discharge of their duties as Officers and Employees;
- 6.1.8 Any Defence Costs incurred or paid before Our consent has been given in accordance with the provisions of this Policy;

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6.1.9 For any Loss or part of any Loss arising from or which is attributable to Your participation in any Joint Venture. Provided that this exclusion shall not apply to Outside Directorship as defined in Definition 3.13;

6.1.10 For any Penalty:

6.1.10.1 Imposed pursuant to any law of any country, state or territory outside the Territorial Limits;

6.1.10.2 Imposed within the Territorial Limits but arising out of any act or omission occurring outside the Territorial Limits, and any Defence Costs associated with such Penalty.

6.2 We shall not be liable to pay the amount of the Excess in respect of each Loss.

7. Continuous Cover

If You were aware of any facts that might give rise to a Claim prior to the commencement date of the Period of Insurance and had not notified Us of such facts prior to the commencement date of the Period of Insurance, then Exclusion 6.1.4 will not apply to the notification of a Claim resulting from such facts, provided that:

7.1 The failure to notify such facts was not a fraudulent misrepresentation or fraudulent non-disclosure by You; and

7.2 You have been insured continuously under a Statutory Liability Policy or this extension with Us and were so insured by Us at the time You first became aware of such facts; but

7.3 Indemnity will be considered under the terms and conditions of the Policy or this extension (including limits of liability and deductibles) in force when You first became aware of such facts; and

7.4 We will reduce Our liability to the extent of any prejudice suffered as a result of Your failure to notify such facts giving rise to a Claim prior to the commencement date of the Period of Insurance.

8. Conditions

8.1 In the event of a Claim, You must give immediate notice in writing to Us of such Claim. At the same time You must enable Us to reasonably investigate the Claim for the purpose of determining liability under this extension including but not limited to the following:

8.1.1 Provide comprehensive details of any notice, circumstance or Claim together with any documentation, information and relevant details;

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8.1.2 Use best endeavours to preserve all property, products, appliances and plant which may assist in the investigation or conduct of the Claim;

8.1.3 Co-operate with Us and Our appointed representatives in all aspects of the Claim..

8.2 You must take all reasonable care and do and concur to do all things reasonably practicable to avoid or prevent a Wrongful Breach, or diminish a Loss.

8.3 You shall not make any admission, offer, promise or payment in respect of any Claim, or agree to pay any Penalty or consent to any order directing You to pay any Penalty without Our prior written consent.

We shall not be liable for any such Penalty incurred without Our consent, and such consent will not be unreasonably withheld by Us.

8.4 We shall be entitled, but not obligated, to take over the conduct in Your name investigation, defence (including appeal and resisting appeal) and settlement of any Claim. Any amount incurred by Us shall be deemed part of Defence Costs.

8.5 If We grant indemnity under this extension in respect of any Claim, then We shall be subrogated to all Your rights of recovery in respect of such Claim whether or not payment has in fact been made and whether or not You have been compensated in full for Your loss. Each of You must, at Your own cost, provide all reasonable assistance to Us (including, but not limited to giving information, signing documents and giving evidence) to help enforce those rights.

You must not do anything that may prejudice Our position or Our potential or actual rights of recovery against any party. Any amounts recovered by Us shall be allocated in the following order – recovery costs, uninsured loss, Limit of Indemnity and Excess.

8.6 Where We recommend to You to pay any Penalty, consent to any order directing You to pay any Penalty or otherwise settle or resolve any Claim, and You do not agree to do so, then We are entitled to reduce Our liability to You to the extent of any prejudice suffered by Us by reason of Your failure to so agree.

8.7 If You continue to defend a Claim where We have refused to provide consent in accordance with Clause 5 and you are successful in respect of that Claim, then consent as set out in Clause 5 shall be deemed to have been given at the time it was first requested by You. For the purpose of this condition, “successful” means that the outcome of the Claim established that at the time at which We refused consent, You had Reasonable Grounds for Defence.

8.8 This extension shall be interpreted in accordance with the laws of Australia or any State or Territory as applicable, and all claims for indemnity under this extension shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation

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or interpretation of the extension shall be submitted to the exclusive jurisdiction of the Australian Courts.

- 8.9 You shall comply with any lawful notice or direction received from, or any enforcement action taken by any appropriate Regulatory Authority under any Act within the time specified or, if no time is specified, within a reasonable time.
- 8.10 You may cancel the Policy and this extension at any time by giving notice in writing to Us.

We may cancel the Policy and this extension at any time where:

- 8.10.1 We are entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments;
- 8.10.2 You have failed to notify Us of any specific act or omission where such notification is required under the terms or conditions of the Policy or this extension; or
- 8.10.3 You have acted in contravention of or omitted to act in compliance with any term of the Policy or this extension which empowers Us to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by Us shall take effect either at the time when another contract of insurance between You and Us or some other insurer (being a contract that is intended by You to replace this Policy) is entered into or at 4pm on the third business day after the date on which notice was given to the You by Us (whichever is the earlier).

- 8.11 Where You comprise more than one person or company, it is agreed that the Named Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies for the purposes of receiving any notice of cancellation pursuant to Clause 8.10, or any other notice, statement, document or information relating to the Policy or this extension. Where You have an insurance broker, nothing in this paragraph shall restrict Our right to notify the broker as Your agent.
- 8.12 Except to the extent that You are compelled by law to do so, You shall not release to any third party or otherwise publish details of :
- 8.12.1 the nature of the liabilities insured by this extension;
- 8.12.2 the extent of cover provided by this extension; or
- 8.12.3 the amount of the premium specified in the Schedule,
- without Our written consent.

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8.13 Where this extension provides any indemnity to You which is prohibited by law, this extension shall be varied by operation of this Clause 8.13 so that this extension does not respond to the extent that the indemnity is prohibited by law.

8.14 8.14.1 Your failure to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth) or misrepresentation by You to Us shall not prejudice the right of any other Insured to cover under this extension.

8.14.2 Your failure to comply with any terms and conditions of this extension shall not prejudice the right of any other Insured under this extension.

Cover is only provided to any of You who are innocent of and have no prior knowledge of such conduct. Such of You shall as soon as practicable after becoming aware of such conduct, advise Us in writing of all relevant facts.

8.15 To the extent of any inconsistency, the provisions of this extension prevail over those of the Policy.

Nothing contained in this endorsement shall in any way serve to increase the Limit of Indemnity stated in the Schedule.

Other than as amended above, the terms of this Policy shall continue to apply



For and on behalf of
Liberty International Underwriters