



 **PRORISK**

Public & Products Liability Insurance Policy

 Policy Wording

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Public & Products Liability Insurance Policy

In consideration of the payment of **premium** and in reliance on the contents of the **proposal** and any other information submitted by or on **your** behalf, **we** will indemnify **you** in accordance with the terms of this **policy**. The **policy** includes this document and the General Terms & Conditions Section attached to this **policy**, and the **policy** should be interpreted with the General Terms and Conditions. **Our** total aggregate liability under each insuring clause will not exceed the sub-limit specified in the **schedule**. Each Insuring Clause and Extension is subject to the **excess** specified in the **schedule**.

SECTION 1: INSURING CLAUSES

1.1 Public Liability Cover

We will pay on behalf of an **insured** their **loss** in respect of any **personal injury** or **property damage** for **public liability** arising from an **occurrence** in connection with the **business** during the **insurance period**.

1.2 Product Liability Cover

We will pay on behalf of an **insured** their **loss** in respect of any **personal injury** or **property damage** for **product liability** arising from an **occurrence** in connection with the **business** during the **insurance period**.

1.3 Advertising Liability

We will pay on behalf of an **insured** their **loss** for **advertising liability** arising from an **occurrence** in connection with the **business** during the **insurance period**.

1.4 Defence Costs In Addition

We will pay **defence costs** arising from a covered **loss** for **personal injury** or **property damage** in addition to the **limit of liability** for Insuring Clause 1.1 (Public Liability Cover), Insuring Clause 1.2 (Product Liability Cover) and Insuring Clause 1.3 (Advertising liability) of this **policy**.

Provided that we are not obligated to pay any **defence costs** after the **limit of liability** shown in the **schedule** under Insuring Clause 1.1 (Public Liability Cover), Insuring Clause 1.2 (Product Liability Cover) or Insuring Clause 1.3 (Advertising liability) has been exhausted.

SECTION 2: EXTENSIONS OF COVER

Our total aggregate liability under each Extension of Cover will not exceed the sub-limit specified in the **schedule**.

Each Extension of Cover is subject to the **excess** and sub-limit specified in the **schedule**.

Extensions Applicable to All Insuring Clauses

2.1 Advancement of Defence Costs and Investigation Costs

We will advance **costs** as incurred prior to a final determination or adjudication of a **claim** or up until the time that a claim is withdrawn. If such a **claim** is finally determined not to be covered under this **policy** or is excluded under this **policy** then all **costs** already advanced must be repaid to **us**.

2.2 Automatic acquisition or creation of subsidiaries

If during the **insurance period** the **insured** creates or acquires a new **subsidiary**, then such new **subsidiary** will be automatically covered under this **policy** unless that new **subsidiary** is incorporated or domiciled in the **USA**.

If any new **subsidiary** is not eligible for automatic coverage due to this condition, then the **policyholder** may provide **us** with sufficient details in respect of the new **subsidiary** for **us** to assess and evaluate any increase in risk. **We** may then agree, with reasonable consideration, to extend cover in return for the payment of additional **premium** and any amendments to the terms of this **policy**.

Cover for any new **subsidiary** will apply solely in respect of **loss** arising from conduct on or after the effective date of incorporation or acquisition of such new **subsidiary**.

2.3 Care, Custody & Control

We will pay for **property damage** to property in your care custody or control for:

- a) **premises** or the contents of **premises** occupied by **you**;
- b) vehicles (other than Vehicles Owned or used by **you** or your behalf), but only whilst such vehicles are in a car park owned or operated by you other than for income or reward as a car park operator; or
- b) clothing and personal effects belonging to **your employees** and visitors; or
- c) other property temporarily in **your** physical or legal control, but not for property in respect of physical damage to, destruction of or loss of that part of any property upon you are working and the loss arises from the performance of such work

This extension does not apply to liability assumed by the **Insured Person** under any contract or agreement which requires the **Insured Person** to effect material damage insurance on premises, property or goods not owned by the Insured.

2.4 Court Attendance Costs

We will pay the **policyholder** for **court attendance costs**.

2.5 Emergency Costs

If written consent from **us** cannot reasonably be obtained prior to **costs** being incurred by an **insured**, **we** automatically grant retrospective approval for such **costs** of up to 10% of the **limit of liability** (or relevant sub-limit, whichever is the lower amount) in the aggregate for all **claims** made during the **insurance period** provided consent is obtained from **us** within 30 days of **costs** being incurred. Any amounts paid under this Extension are part of and not in addition to the **limit of liability**.

2.6 Principal's Indemnity

We agree to indemnify every **principal** in respect to the **principal's** vicarious liability arising out of:

- (a) the negligent performance by or on behalf of the **insured** of any contract or agreement for the performance of work for such **principal**; or
- (b) any **products** sold or supplied by the **insured**, but only in respect of the **insured's** own acts or failure to act in connection with such products;

This does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or a breach of duty of such **principal**.

2.7 Public Relations Costs

We will pay the **public relations costs** of an **insured** following a **claim** covered by the **policy**.

2.8 Tenants Liability

We agree to indemnify any lessor with whom the **policyholder** has entered into an agreement for the rental or lease of **premises** in connection with the **business**. Cover available to the lessor is on terms no wider than would have been provided in this **policy** to the **policyholder** if the **policyholder** had been held legally liable for the same **loss**.

2.9 Vicarious Liability

We agree to indemnify **you** for **your** vicarious liability for any conduct of **your**:

- (a) agents;
- (b) contractors; or
- (c) **employees**.

Value Added Benefits

2.10 Contract Review

The **policyholder** is entitled to use the ProRisk Contract Review Service for four (4) contract reviews for the **insurance period**. The Contract Reviews relate only to the provisions of the Contract that might affect the Insured's insurance.

2.11 Panel Counsel

The **policyholder** is entitled to one (1) hour free advice from any one firm listed on our panel of solicitors relating to a matter which we have accepted as notification of circumstances which may give rise to a **claim**. We consent to that firm listed on our panel of solicitors being retained to act for an **insured** in respect of any claim covered by this **policy**.

SECTION 3: EXCLUSIONS

We will not be liable under this **policy** to make any payment for **loss**:

3.1 Abuse

on account of any **claim** based upon, arising from or in consequence of, or in any way connected with any actual or alleged verbal, physical or sexual abuse, molestation, assault, battery or any violence committed by an **insured person**. This Exclusion will not apply to the vicarious liability of the **policyholder** if they were not aware of such conduct at the time.

3.2 Advertising Liability

for **advertising liability**:

- (a) resulting from statements made at your direction with knowledge that such statements are false.
- (b) resulting from failure of performance of contract but this exclusion will not apply to **claims** for unauthorised appropriation of advertising ideas contrary to an implied contract.
- (c) resulting from any mistake in the advertised price of **products** or services.
- (d) failure of **your products** or services to conform with advertised performance, quality, fitness or durability.
- (e) incurred by any **insured** whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

3.3 Alcohol, illegal drugs, narcotics and intoxicants

directly or indirectly caused by, contributed to by, or arising out of or in connection with **you** being under the influence of alcohol, illegal drugs, intoxicants or narcotics.

3.4 Assumed Liability

directly or indirectly attributable to or in consequence of any actual or alleged breach of an obligation assumed by the **insured** under any agreement, except that this Exclusion does not apply to:

- (a) any liability which is, or would have been, implied by law in such agreement or would have arisen separately from it; or
- (b) any liability arising from a lease of **premises** used by the **business**, provided that our liability will not extend beyond that assumed under standard industry contracts or for any obligation by **you** to insure the premises.

3.5 Aviation Products

arising from the sale, manufacture or importation of any **product** which is intended to be incorporated into the structure, machinery, electronics or controls of any aircraft or spacecraft.

3.6 Care Custody and Control

for **property damage** to property in **your** care custody or control, other than provided for in Extension 2.3 (Care, Custody & Control)

3.7 Cyber Liability

directly or indirectly based upon, arising from or in consequence of a **cyber incident**.

3.8 Defamation, Libel or Slander

based upon, arising from or in consequence of the actual or alleged defamation, libel or slander of a third party by an **insured**, unless arising out of an **advertising liability**.

3.9 Dishonest or wilful acts

based upon, arising from or attributable to the:

- (a) dishonest, fraudulent or criminal acts, errors or failure to act;
- (b) wilful breach of any statute, contract, agreement or duty; or
- (c) any wilfully reckless act, error or failure to act;

of an **insured**.

3.10 Electronic Data

for the communication, display, distribution or publication of **electronic data**.

This exclusion does not apply to:

- (a) **personal injury** or the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of **electronic data**;
- (b) an error in creating, amending, entering, deleting or using **electronic data**; or
- (c) the total or partial inability or failure to receive, send, access or use **electronic data** for any time or at all.

3.11 Employment Liability

for any **claim** based upon, arising from, or attributable to:

- (a) an **employment practices wrongful act**; or
- (b) liability for any **personal injury** to any **employee** arising out of:
 - (i) the course of their employment;
 - (ii) any other liability imposed by any workers compensation law; or
 - (iii) any other liability imposed by the provision of any industrial award, 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, agreement or determination, or any such contract of employment or workplace agreement.

3.12 Faulty Workmanship

for reperforming, correcting or improving any work undertaken by the **insured** in the course of the **business**.

3.13 Loss of Use

for the loss or loss of use of tangible property, which is due to the actual or alleged:

- (a) delay in or lack of performance by an **insured** or their agent under any contract or agreement; or
- (b) failure of any **products** or work performed by an **insured** or their agent, to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented.

This Exclusion does not apply to property loss resulting from the sudden, unexpected and unintended physical damage to or loss or destruction of **products** or work performed by an **insured** or on their behalf after such **products** or work have or has been used by a third party.

3.14 Product Damage, Product Recall or Product Guarantee

based upon, arising from or in consequence of the actual or alleged:

- (a) damage to a **product**; or
- (b) **product recall**; or
- (c) breach of warranty or guarantee in relation to a **product**.

3.15 Professional Services

based upon, arising from, or in consequence of the rendering of or failure to render professional advice or services by the **insured** or any error or failure to act connected with the provision of professional advice or services.

3.16 Property Owned by You

for **property damage** or property owned by **you**.

3.17 Territorial Limits

arising from any **occurrence** outside of the **territorial limits**.

3.18 Vehicles

- (a) arising from the ownership, possession or use by or on **your** behalf of any motor vehicle or trailer for which compulsory insurance is required by law, other than claims arising from damage to any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking; or
- (b) arising from the ownership, possession or use by or on **your** behalf of any aircraft, watercraft or hovercraft, spacecraft or other vehicle.

SECTION 4 - DEFINITIONS

Please refer to the General Terms and Conditions for any definitions not listed below.

4.1 Advertising liability means any liability of the **insured** arising out of actual or alleged:

- (a) unintentional breach of the misleading or deceptive conduct provisions of the *Competition and Consumer Act 2010 (Cth.)* or any Fair Trading or similar legislation of any State or Territory of Australia; or
- (b) infringement of copyright or passing off of title or slogan; or
- (c) unfair competition, piracy, misappropriation of advertising ideas or style of doing business;
- (d) invasion of privacy; or
- (e) defamation, libel or slander

committed or alleged to have been committed during the **insurance period** in any advertisement, publicity article, broadcast or telecast and caused by or arising out of the advertising activities of the **business**.

4.2 Benefits means any obligation to pay superannuation or pension entitlements, which constitutes money or property or other entitlement.

4.3 Business means the business conducted by **you** as stated in the **schedule**, and includes:

- (a) property ownership and office occupation by **you** for the purposes of the **business**; and
- (b) a canteen, social or sporting club or first aid, provided by **you** and incidental to the **business**.

4.4 Civil liability means the actual or alleged liability of the **insured** other than a criminal liability.

4.5 Claim means:

- (a) any written demand for compensation, monetary damages or other relief, including non-monetary relief, made against an **insured**;
- (b) any formal written notice of an alternative dispute resolution proceeding, including but not limited to a conciliation, mediation or arbitration.
- (c) A Writ, Statement of Claim, or other similar legal proceeding commenced in writing; or
- (d) an **investigation**;

brought by a third party.

4.6 Computer system means all electronic computers owned or operated by the **insured** including operating systems, software, electronic communication systems and software or websites owned or operated by the **insured** and data storage computers or software.

4.7 Costs means **investigation costs** and **defence costs**, provided that **we** have consented in writing prior to such **costs** being incurred. **We** will not unreasonably withhold that consent.

Costs does not mean any overheads of the **policyholder** or any salaries, commissions, expenses or other **benefits** associated with the remuneration of the **insured persons**.

4.8 Court attendance costs means:

- (a) the reasonable out of pocket expenses; and
- (b) the equivalent daily salary;

incurred by an **insured person** in attending Court when legally compelled to do so, or at the reasonable request of solicitors acting for an **insured** in relation to a covered **claim** under this **policy**.

4.9 Cyber incident means any actual or suspected:

- (a) **data breach**; or
- (b) unauthorised access to a **computer system** including:
 - (i) ransomware attack;
 - (ii) cyber extortion;
 - (iii) hacking attack;
 - (iv) malware infection;
 - (v) phishing attack;
 - (vi) telephone hacking;
 - (vii) denial of service attack;
 - (viii) computer virus;
 - (ix) cryptojacking; or
 - (x) a credential compromise of software used by the **insured**.

4.10 Defence Costs

means all reasonable fees, costs and expenses in the defence, investigation, adjustment, challenging, resisting or appeal of any **claim**.

4.11 Data breach means an actual or suspected unauthorised disclosure of information retained by the **insured**:

- (a) arising from unauthorised access to a **computer system**; or
- (b) unauthorised or accidental disclosure by an **employee**.

4.12 Director or officer means any natural person who was prior to, is or becomes during the **insurance period**:

- (a) a director, officer, partner, manager or trustee of the **policyholder** or subsidiary;
- (b) a shadow director of the **policyholder** but only where such shadow director is also a person described in sub-paragraph (a) above;
- (c) an **employee** of the **policyholder** who:
 - (i) carries out a managerial or supervisory function for the **policyholder**;
 - (ii) is joined as a party to any **claim** against any person defined above;
- (d) the lawful **spouse** of a person defined above, where recovery is sought solely because joint property is held or owned by or on behalf of the spouse or domestic partner and not in respect of any conduct by that person in his or her own right; or
- (e) the legal representatives, heirs, assigns or estates of a person defined above in the event of that person's death, incapacity, insolvency or bankruptcy.

This definition does not include external auditors of the **policyholder** and does not include any liquidator, trustee, receiver and manager, administrative receiver, supervisor, mortgagee in possession or other insolvency office-holder of the **policyholder** or the assets of the **policyholder**.

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

4.14 Employee means:

- (a) any natural person full-time, part-time, casual, seasonal or temporary worker of the **policyholder** who is employed under a contract of service with the **policyholder** and is compensated by way of salary, wages and/or commissions;
- (b) any work experience staff member, intern or volunteer of the **policyholder** under the direction and control of the **policyholder**;
- (c) students, who are doing work for the **policyholder**, at the **policyholder's** direction, regardless of whether they are paid, or not; or
- (d) in relation to insurance clause 1.4 (Employee Fidelity Cover), the **employee** must also be under the direction and control of the **policyholder**.

For the avoidance of doubt, **employee** does not include independent contractors or labour hire personnel.

4.15 Employment practices wrongful act means any actual or alleged violation of employment laws or any other employment related obligation or matter including but not limited to any actual or alleged:

- (a) employment-related:
 - (i) sexual or other unlawful harassment (including bullying);
 - (ii) unlawful discrimination;
 - (iii) denial of natural justice;
 - (iv) defamation;
 - (v) invasion of privacy;
- (b) unlawful termination of employment;
- (c) false or misleading advertising or representation involving terms or conditions of employment;
- (d) failure to employ, promote or grant tenure;
- (e) unfair deprivation of career opportunity;
- (f) unfair discipline or evaluation of employment performance;
- (g) failure to provide or adhere to adequate employment policies or procedures;
- (h) violation of any Federal, State or Local statute or regulation governing employment practices; or
- (i) breach of employment contract;

with respect to any natural person who was, now is or becomes an **employee** of the **policyholder**, including prospective **employee**.

4.16 Employment related benefits means any:

- (a) salary, wages and/or commissions;
- (b) a special right, a privilege, or a fringe benefit;
- (c) payments due under any employee benefit plan, pension plan or superannuation scheme;
- (d) bonuses;
- (e) equitable interest/s; or
- (f) incentive or deferred compensation;

payable to an **employee**.

4.17 Insured, you and your means:

- (a) the **policyholder**;
- (b) any **subsidiaries** of the **policyholder**;
- (c) any **insured persons**;
- (d) a **principal**; or
- (e) a **landlord**.

4.18 Insured person means:

- (a) any **director**;
- (b) **officer**;
- (c) **partner**;
- (d) **proprietor**;
- (e) **employee**; or
- (f) **student**.

4.19 Investigation means any formal investigation, inquiry or examination by an **official body**, which the **insured** is legally compelled to comply with and is commenced by written notice. For the avoidance of doubt, an **investigation** does not include a risk management visit (or equivalent) by an **official body**.

4.20 Investigation costs means reasonable legal fees, costs and expenses incurred by the **insured persons** in their representation (or in preparation for their representation) at an **investigation** in which the **insured persons** first become involved during the **insurance period**.

Investigation costs does not include wages, salaries or other remuneration, internal costs or overheads of any **insured**.

4.21 Landlord means the landlord and property owner of **premises**.

4.22 Loss means the amount, including **costs**, damages, judgments, settlements or reasonable fees incurred on account of a **claim** made during the **insurance period**.

Loss does not include:

- (a) matters uninsurable under the law applicable to this **policy**;
- (b) punitive, exemplary or aggravated damages, or the multiple portion of any multiplied damages award;
- (c) taxes or the loss of tax benefits, rates, duties, levies, charges, fees or any other state or government revenue or impost;
- (d) criminal fines or criminal penalties;
- (e) civil fines or civil penalties;
- (f) **employment related benefits**;
- (g) any liability or costs incurred in connection with any educational, sensitivity or other corporate programme, policy or seminar relating to an **employment practices wrongful act** or the costs of reinstatement of any **employee**;
- (h) any refund of fees;
- (i) internal or overhead expenses of any **insured**;
- (j) the cost of complying with any non-monetary order or non-monetary relief;
- (k) **benefits**;
- (l) any actual or alleged violation of the responsibilities, obligations or duties imposed by any law, regulation or bylaw relating to vehicular, air or marine traffic and any amendments to that law, regulation or bylaw;
- (m) liquidated damages; or
- (n) any actual or alleged violation of the responsibilities, obligations or duties imposed by Sections 182, 183, 601FD, 601FE, 601JD of the *Corporations Act 2001 (Cth)*, or any similar law anywhere in the world, and any amendments to that Act, – including duties of directors, officers and employees to not misuse their position or information, duties of a member of a scheme's compliance committee and the duties of officers and employees of a responsible entity.

4.23 Maximum aggregate limit of liability means the total amount payable under this **policy** as stated in the **schedule**, including all reinstatements.

4.24 Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **personal injury** and/or **property damage** and/or **advertising liability** that is neither expected or intended by the **insured**.

With respect to **personal injury** and/or **property damage**, all events of a series consequent upon or attributable to one source or original cause will be deemed to be one **occurrence**.

All **advertising liability** arising out of the same injurious material or act (regardless of the frequency or repetition of such injurious material or act, the volume or kind of media used, or the number of claimants, will be deemed to be one **occurrence**.

4.25 Official body means any regulator, state or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **policyholder** or the conduct of an **insured person** in their insured capacity.

4.26 Partner means the natural persons as the **policyholder** and any natural person who in the past, present or future trades in partnership with the **policyholder** as specified in the **schedule**, in his or her capacity as such.

4.27 Personal injury means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (c) wrongful entry, wrongful eviction or other invasion of right of privacy; and/or
- (d) assault and battery committed by the **insured** for the purpose of preventing or eliminating danger to persons or property.

In the event of **personal injury** arising from latent injury, latent sickness, latent disease or latent disability, that **personal injury** will be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.

4.21 Premises means the place or places where the **policyholder** and/or its **subsidiaries** conduct their business.

4.22 Principal means the head contractor, who has sub-contracted the supply of goods and/or services to the **policyholder** or its **subsidiaries** for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and **limit of liability** as is provided by this **policy**.

4.23 Product liability means **your** actual or alleged **civil liability** in respect of **personal injury** and/or **property damage** caused by or arising out of any **products** sold or otherwise supplied by **you** to a third party.

4.24 Product recall means any form of **loss** arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any **products** where such **products** are withdrawn or recalled from the market because of any actual, alleged or suspected defect or deficiency.

4.28 Products means anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by **you** or on **your** behalf, including discontinued **products**.

Products does not include:

- (a) food and beverages supplied by **you** or on **your** behalf to **your** employees; or
- (b) any item sold via a vending machine, which **you** do not wholly own and operate.

4.29 Property means money, securities and other property owned by the **policyholder** or for which it is legally liable.

4.30 Property damage means physical loss, damage or destruction of tangible property owned by a third party, including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or destroyed. In the event of a **claim** arising from latent damage or from the exposure of tangible property to gradual deterioration and eventual damage, such **property damage** will be deemed to have occurred on the day such deterioration or damage was first discovered.

4.31 Proprietor means the natural person as the **policyholder** as specified in the **schedule**, in his or her capacity as such.

4.32 Public liability means **your** actual or alleged **civil liability** in respect of **personal injury** and/or **property damage** sustained by a third party while on **your premises** or as a result of the conduct of the **business**.

4.33 Public relations costs means any reasonable fees, costs and expenses of a public relations consultant retained with **our** prior written consent (which will not be unreasonably delayed or withheld).

4.34 Spouse means a past or present lawful spouse, domestic partner (including, without limitation, same sex partner) or any person deriving similar status by reason of the common law or statute in Australia.



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 **PRORISK**



General Terms & Conditions

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SECTION 1: IMPORTANT INFORMATION

1.1 This Policy

The **policy** wording, **schedule** and the General Terms and Conditions, together set out the cover provided, the amount insured and the terms and conditions of **your** insurance.

Please read these documents carefully and keep them in a safe place.

Words appearing in bold text have defined meanings in the **policy**. When reading the **policy** please make sure that **you** refer to the various definitions to ensure that **you** understand what is being said.

Where **you** have purchased more than one **policy** from **us** these General Terms and Condition need to be read together as one document for each and every **policy** purchased. Each **policy** is a separate policy of insurance.

Your insurance broker has arranged this **policy** for **you**. If **you** have any questions about **your** cover, or **you** wish to contact **ProRisk**, please contact **your** Insurance Broker for assistance.

Coverage commences upon payment of the **premium**.

1.2 Limit of Liability and Excess

The **limit of liability** is the maximum liability for all **loss** under the **policy** during the **insurance period**.

Any sub-limit of liability specified in the **policy** or **schedule** will be part of and not in addition to the **limit of liability**. If more than one **limit of liability** or sub-limit of liability is applicable to a claim, then the total payment by **us** will not exceed the highest of the applicable **limits of liability** or sub-limits of liability.

We are only liable to pay to the extent that any loss under the **policy** exceeds the amount of the **excess**.

All covered loss arising out of, based upon, in connection with, or otherwise attributable to: the same act, error, failure to act, event, circumstance or **claim**; or causally connected or interrelated acts, errors, failures to act, events, circumstances or **claims** that have as a common nexus any fact, circumstance, situation or event, will constitute a single policy claim for the purposes of this **policy** regardless of whether the same or different parties, claimants or causes of action are involved. In this case, the **excess**, which will be the highest applicable, will apply once to any such single policy claim and the single applicable **limit of liability** or sublimit of liability will apply to such single policy claim.

All causally connected or interrelated acts, errors, failures to act, events, circumstances or **claims** that constitute such a single policy claim shall be considered to have occurred, been discovered or made (as applicable) and reported to **us** at the time the required notice with respect to the first of such acts, errors, failures to act, events, circumstances or **claims** was first given to **us**.

Where an **insured** is entitled to indemnity for a claim under one or more insuring clauses, sub-limits or extensions under the **policy**, then the **insured** is only entitled to claim under one of those insuring clauses, sub-limits or extensions and must elect under which one they choose to seek indemnity.

1.3 ProRisk

ProRisk is an underwriting agency and has authority to bind this **policy** on behalf of the **underwriters**.

1.4 Claims Made Policy (Facts Prior to Commencement of Policy)

A claims made policy does not provide cover for any **claims** made against **you** during the **insurance period** if at any time prior to the commencement of the **insurance period** **you** were aware of facts which might give rise to those **claims** being made against **you**.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where the **insured** gives notice in writing to the insurer during the **insurance period** of facts that might give rise to a **claim** against the insured, the

insurer cannot refuse to pay a **claim** which arises out of those facts, by reason only that the **claim** is made after the **insurance period** has expired.

This means that if during the **insurance period** you became aware of any facts that might give rise to a **claim** it is in **your** interest to inform **us** of those facts. This will serve to protect **your** rights to make a later **claim** that has arisen from those notified facts.

1.5 Insurer may not refuse to pay a claim in certain circumstances

Section 54 of the *Insurance Contracts Act 1984* provides that **we** may not refuse to pay a **claim** in certain circumstances:

- (a) by reason only of an act (or failure to act) of **you** or another person, if that act (or failure to act), which occurred after the **policy** was entered into, did not cause any part of the **loss** giving rise to the **claim**. For example, if **you** have failed to satisfy a technical requirement of the **policy** but able to prove that this technical breach could not reasonably be said to have caused or contributed to the **loss** that is the subject of **your** claim, **we** may not refuse the **claim** based on the technical breach on **your** part; or
- (b) where the act was necessary to protect a person's safety, to preserve property or if it was not reasonably possible for the person not to do the act.

We can reduce **our** liability for the **claim** by the amount that fairly represents the extent to which **we** were prejudiced as a result of **your** actions or **your** failure to act.

1.6 Your Duty of Disclosure

Section 21 of the *Insurance Contracts Act 1984* provides that before **you** enter into a contract of general insurance with an insurer, **you** have a duty to disclose to the insurer every matter that **you** know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. **You** have the same duty to disclose those matters to **us** before **you** renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of a matter:

- (a) that diminishes the risk to be undertaken by **us**;
- (b) that is of common knowledge;
- (c) that **we** know, or in the ordinary course of business, ought to know; or
- (d) where **we** waive **your** duty of disclosure.

1.7 Non-Disclosure

If **you** fail to comply with **your** duty of disclosure, **we** may be entitled to reduce **our** liability under the **policy** or **we** may cancel the contract. If **your** non-disclosure is fraudulent, **we** may also have the option of avoiding the contract from its beginning.

1.8 Waiver of Rights of Subrogation

You must not, without **our** prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which **you** may have in respect of any **claim** covered under this **policy**. Our consent will not be unreasonably withheld. Further, **you** must not do anything or fail to do anything which excludes, limits or prejudices **our** rights of subrogation. This term is subject to section 54 of the *Insurance Contracts Act 1984* (Cth) which limits **our** right to refuse to pay a **claim**.

1.9 Privacy Statement

ProRisk is bound by the obligations of the *Privacy Act 1988* (as amended) regarding the collection, use, disclosure and handling of personal information.

We collect personal information about **you** to enable **us** to provide **you** with relevant products and services, to assess **your** application for insurance and, if a contract is entered, to enable **us** to provide, administer, and manage **your policy**, and to investigate and handle any claims under **your policy**. **We** may disclose **your** information to third parties (who may be located overseas), such as **underwriters**, lawyers, claims adjusters, and others appointed by **ProRisk** or by **underwriters** to assist **us** in providing relevant products and services. **We** may also disclose **your** information to people listed as co-insured on **your policy** and to

your agents or broker. By providing **your** personal information to **us**, **you** consent to **us** making these disclosures.

If **you** do not provide all or part of the information required, **we** may not be able to provide **you** with **our** products and services, consider **your** application for insurance, administer **your policy**, assess or handle **claims** under **your policy**, or **you** may breach **your** duty of disclosure.

When **you** provide **us** with personal information about other individuals, **we** rely upon **you** to have made them aware of that disclosure, and of the terms of the **ProRisk** Privacy Statement, and to have obtained their consent. For a copy of the **ProRisk** Privacy Statement or to request access to or update **your** personal information, contact the Privacy Officer at **ProRisk** by email: enquiries@prorisk.com.au or by mail at the address shown on this **policy**.

1.10 General Insurance Code of Practice

ProRisk and **underwriters** proudly support the General Insurance Code of Practice ('the Code').

The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from the website www.codeofpractice.com.au.

This **policy** is compliant with the General Insurance Code of Practice.

1.11 Financial Hardship

We will review any Financial Hardship application in accordance with the General Insurance Code of Practice and any applicable guidelines.

1.12 Terms and Conditions

Except for these General Terms and Conditions or unless stated to the contrary in any **policy**, the terms and conditions of each **policy** will apply only to that **policy**. The General Definitions apply to all **policies** in addition to any specific definitions that may apply in each **policy**. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any **policy**, the terms and conditions of such **policy** will prevail for purposes of that **policy**. Any words in bold print in these General Terms and Conditions not defined will have the meaning indicated in the definitions section of the relevant **policy**.

SECTION 2: CLAIM REPORTING

Each policy wording to which these General Terms and Conditions apply will specify in the Insuring Clause or Extension the basis for claims reporting and notification which is outlined in clauses 2.1 (Notification – Claims Made and Notified), 2.2 (Notification – Discovery), and 2.3 (Notification – Occurrence Based)

2.1 Notification

The **policyholder** will notify us of any **claim**, **investigation**, **occurrence** or **direct financial loss** or other matter that may be claimed under this **policy** as soon as is reasonably practicable after they first became aware of such **claim occurrence** or **direct financial loss** and within the **insurance period** or **discovery period** (if a **discovery period** is operable).

Such written notice shall satisfy all terms of the **policy** and will include the following, so far as is reasonably practicable and so far as the relevant **policyholder** is aware:

- (a) the identities of all parties involved, if known;
- (b) an outline of the facts alleged;
- (c) an estimate of the likely quantum of any loss; and
- (d) the policy number under which the notification is made.

2.2 Written Notice

Notice to **us** will be given in writing, and delivered to:

The National Claims Manager
ProRisk
Level 2, 115 Bridge Road
Richmond, VIC, 3121
Email: newclaims@prorisk.com.au

Any written notice will be considered effective from the date such notice is first received by **us**.

SECTION 3: CONSENT AND LEGAL REPRESENTATION

3.1 Consent

The **insured, insured person** or any agent of the **insured's** must not:

- (a) incur any costs or expenses or make any payment that is or may be covered under this **policy** without **our** prior written consent (unless expressly stated otherwise by an Extension of Cover), such consent not to be unreasonably withheld. **We** accept no liability for any costs or expenses incurred or payment made by an **insured, insured person** or any agent of the **insured** without **our** prior consent;
- (b) take any action which is prejudicial to **our** interests; or
- (c) admit or assume liability, consent to any judgment, enter into any settlement agreement or settle any **claim**.

This term is subject to section 54 of the *Insurance Contracts Act 1984* (Cth) which limits **our** right to refuse to pay a **claim**.

3.2 Legal Representation

We will be entitled at any time, but not obligated, to take over and conduct in the **policyholder's** name:

- (a) the defence of any suit, legal proceeding or action the subject of a **claim**;
- (b) the investigation of any **claim**; or
- (c) the handling of any **investigation**.

We may appoint legal representatives of **our** choice for these purposes.

We shall not agree to any settlement in connection with any **claim** unless **we** have reasonably engaged with **you** and considered **your** interest in relation to defending the **claim**.

3.3 We will advance **costs** as incurred prior to a final determination or adjudication or up until the time that a **claim** is withdrawn. If such a **claim** is finally determined not covered or is excluded under this **policy** then all such **costs** already advanced must be repaid to **us**.

3.4 The insured will provide its reasonable co-operation and any information that **we** may reasonably require to assist **us** in defending any **claim** against the **insured**.

3.5 Legal advisers retained by **us** to act on the **insured's** behalf in relation to any **claim** or **investigation** are at liberty to disclose to **us** any information they receive in that capacity, wherever they obtain it from, including from the **insured**. By claiming under this **policy**, the **insured** authorises such legal advisers to disclose this information to **us** and waives all claim to legal professional privilege which might otherwise prevent those legal advisers from disclosing this information to **us**.

3.6 The legal advisers retained by **us** to conduct the investigation, defence or settlement of any **claim** or **investigation**, may provide advice to **us** on any issue regarding **our** liability to indemnify the **insured** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **claim** or **investigation** on behalf of both **us** and the **insured**.

3.7 The insured agrees that all communications between **us** and the legal advisers retained by **us** to act in the

conduct of the investigation, defence or settlement of any **claim** or **investigation** in relation to the **insured's** entitlement to indemnity from **us** are privileged between **us** and the legal advisers and the **insured** agrees that it is not entitled, under any circumstances, to access or obtain any such communications.

- 3.8** If any actual or apparent conflict arises between the interests of the **insured** and **us**, the legal advisers retained by **us** to conduct the investigation, defence or settlement of any **claim** or **investigation** may cease acting on the **insured's** behalf and may continue to act on **our** behalf in relation to any dispute between **us** and the **insured** with respect to the **insured's** entitlement to indemnity from **us**.
- 3.9** **We** will not agree to any settlement of any **claim** without consultation with **you**. If **we** recommend the settlement of a **claim** for a certain amount, and the **claim** can be settled for that amount but **you** refuse to agree to the settlement and decide to contest the **claim**, then **we** are only liable under this **policy** for no more than:
- (a) the recommended settlement amount; and
 - (b) **costs** up to the date of the **insured's** refusal to settle.
- 3.10** **You** may conduct the defence of any suit, legal proceedings or action the subject of a **claim** or **investigation** without **our** written consent, if the settlement amount and any costs for such **claim** does not exceed the **excess**. **You** are required to provide **us** with reasonable progress reports and we reserve the right to take over the conduct of the defence of the **claim** or **investigation** should we consider it be reasonable to do so.

SECTION 4: GENERAL CONDITIONS

4.1 Allocation

Our liability under this **policy** is limited to the proportion of **loss**, **direct financial loss**, or any other form of covered loss or loss that could be covered under the **policy** which is a fair and equitable allocation as between:

- (a) covered and uncovered parties; and/or
- (b) covered and uncovered matters; having regard to the relative legal and financial exposures attributed to the covered and uncovered matters and/or parties.

Only **loss** incurred by covered parties in relation to covered matters will be covered by this **policy** and is subject always to the terms and conditions of this **policy**. **We** will use our best endeavours to agree with the **insured** upon a fair and equitable allocation of the proportion covered under the **policy**, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of New South Wales.

The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing. Pending Senior Counsel's determination, **we** will agree to pay **loss** on an interim basis at the percentage, which **we** contend should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel's determination.

4.2 Alteration or Assignment of Interest

No change in, modification of, or assignment of interest under this **policy** will be effective except when made by a written endorsement to this **policy** issued by **us**.

4.3 Alteration to Risk and Change in Exposure

The **policy** requires **you** to notify **us** within thirty (30) days of any material change in the nature of the **insured's** business, or any act of insolvency or bankruptcy of the **policyholder**, or the appointment of an administrator, liquidator, receiver or manager or any other **change in exposure**. The **policy** requires **you** to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of the **insured's** statutory registration. **Loss** arising from conduct which occurs subsequent to the cancellation, suspension or termination of an **insured's** statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing **your** profession are excluded from indemnity under the **Policy**.

4.4 Complaints Handling & Dispute Resolution

Any inquiry or complaint relating to this **policy** should be referred to **ProRisk** in the first instance. **We** have a complaints handling and internal dispute resolution process to assist **you**, and information about **our** complaints handling procedures is available upon request. If this does not resolve the matter or **you** are not satisfied with the way a complaint has been dealt with, **you** should write to the Complaints Department of the **Underwriters**:

The Complaints Manager
Swiss Re International SE, Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Telephone: (02) 8295 9500
Email: complaints_anz@swissre.com

Complaints that cannot be resolved by the Complaints Department of the **Underwriters** may be referred to the:

Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001
Email: info@afca.org.au
Telephone: 1800 931 678

Further details will be provided at the appropriate stage of the complaints process.

4.5 Goods & Services Tax

If **you** are entitled to an input tax credit for the premium paid for this **policy**, then **you** should advise **us** of the extent of that entitlement at or before making a claim under the **policy**. The deductible paid by **you** will be net of any input tax credit that is or may be available in connection with your payment of **loss** within the **excess**.

4.6 Interpretation, Governing Law and Jurisdiction, and Assumptions

The construction of the terms and conditions of this **policy**, and interpretation of any issue relating to its construction will be determined by the laws of New South Wales and it is agreed that the courts of Australia will have exclusive jurisdiction to determine any disputes which arise in relation to this **policy**.

4.7 Non-Avoidance

We will not avoid this **policy** in the event of non-disclosure or misrepresentation of information to **us** if **you** be able to establish, to the reasonable satisfaction of **us** that such non-disclosure or misrepresentation was innocent and free from any fraudulent conduct or intent to deceive.

We may avoid this policy if the non-disclosure or misrepresentation of information to **us** was made fraudulently.

In either case, to the extent that the non-disclosure or misrepresentation has prejudiced **our** right to effectively associate with **you** in the defence and settlement of any **claim**, then we reserve the right to deduct from any **loss** an amount that **we** believe would have been payable had such prejudice not occurred.

4.8 Non-Imputation

The **proposal** for this insurance will be construed as a separate **proposal** by each **insured** under this **policy**. With respect to the declarations and statements contained in the **proposal**, no statement in the **proposal** or knowledge possessed by any **insured** will be imputed to any other **insured** under this **policy**.

Only knowledge possessed by and facts known to any past, present or future chairman, director, chief executive officer, chief financial officer partner, proprietor, or person occupying an equivalent position of the **policyholder** will be imputed to the **policyholder**.

For the purposes of determining whether an exclusion applies, no fact pertaining to or knowledge possessed by any **insured** will be imputed to any other **insured** under this **policy**.

4.9 Order of Payment

If the payment of **loss** in respect of a **claim** or **direct financial loss** is due under this **policy** but the amount of such **loss** or **direct financial loss** in the aggregate exceeds the remaining available **limit of liability**, **we** will:

- (a) first pay such **loss** or **direct financial loss** for which coverage is provided to **insured persons**; then
- (b) to the extent of any remaining amount of the **limit of liability** available after payment under subparagraph (a) above, pay such **loss** or **direct financial loss** for which coverage is provided under any other provision of this **policy**.

4.10 Other Insurance

As permitted by the *Insurance Contracts Act 1984 (Cth)*, the **policy** will only cover **loss** or **direct financial loss** to the extent that the amount of such **loss** or **direct financial loss** is in excess of any indemnity or cover available to the **insured** in respect of that **loss** or **direct financial loss** under the **other insurance** policy or policies listed in the **schedule**.

4.11 Policy Cancellation

The **policyholder** may cancel this **policy** at any time during the **insurance period** by giving **us** written notice. If the **policyholder** cancels this **policy**, **we** will retain the earned proportion of the **premium** calculated pro rata as at the date of cancellation, provided we will always retain a minimum of 25% of the **premium**.

We will only cancel this **policy** as permitted by law and will be entitled to retain the pro rata proportion of the **premium**.

This **policy** may otherwise be cancelled in writing following mutual agreement between the **policyholder** and **us**. A **subsidiary** cannot cancel the **policy**.

This **policy** will automatically terminate in the event that a **discovery period** has been purchased. In this case, **we** will return the unearned portion of the **premium** for this **policy** calculated pro rata as at the date of cancellation or offset it against any **premium** payable for the **discovery period**.

4.12 Retroactive Liability

If specified in the schedule, the **policy** is limited by a **retroactive date**. The **policy** does not cover any **loss** arising from **your** conduct, or any acts, errors or failure to act, event or **direct financial loss** that occurs prior to the **retroactive date**.

4.13 Representations

It is understood and agreed that all statements and declarations made to **us** have been relied upon by **us**, but only to the extent that those statements and declarations are material.

4.14 Subrogation

Should any payment be made under this **policy**, **we** will retain the right to be subrogated to all rights of recovery in respect of such payments. In addition, all reasonable assistance, including the provision of documentation, will be rendered to **us** in the prosecution of such rights by **you**. Any recovery received will be applied first against any **loss** insofar as it exceeds the **limit of liability**, then against any payment made by **us**, and finally against the **excess**.

SECTION 5: GENERAL EXCLUSIONS

The following exclusions will apply to each **policy** purchased by the **policyholder**.

5.1 Asbestos & Toxic Dust

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from or attributable to any actual or alleged liability for property damage, personal injury, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to

- (a) asbestos, asbestos dusts, asbestos products, asbestos fibres; or
- (b) silica, silica dust, silica products or silica fibres.

5.2 Nuclear

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from, or attributable to:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or
- (c) the storage, transport assembly, disassembly, maintenance or operation of any nuclear weapon or nuclear compound thereof.

5.3 Pollution

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from, or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants** whether such discharge, dispersal, release or escape is intentional or accidental; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **pollutants**.

5.4 Sanctions Limitation

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** or to provide any other benefit to the extent that trade or economic sanctions or other laws or regulations prohibit **us** from providing insurance.

5.5 War, Terrorism and Unlawful Acts

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from, or attributable to:

- (a) **war**;
- (b) **terrorism**; or

- (c) any unlawful, wanton or malicious act committed by a person or persons acting on behalf or in connection with any **unlawful association**;

regardless of any other cause or event contributing concurrently or in any other sequence to the **claim, loss or direct financial loss**.

SECTION 6: GENERAL DEFINITIONS

6.1 Change in exposure means any of the following events:

- (a) the **policyholder** is acquired by another person or entity;
- (b) the **policyholder** merges or consolidates with another entity;
- (c) any person, entity or affiliated group of persons or entities obtains the right or power to elect, appoint or designate at least 50% of the directors of the **policyholder**;
- (d) any person, entity or affiliated group of persons or entities acquires 50% or more of the issued capital or equity of the **policyholder** specified in the **schedule**.

6.2 Continuous cover date means the **continuous cover date** stated and specified in the **schedule**.

6.3 Discovered or discovery means when any **director** or **officer, partner or proprietor** (who is not in collusion with an **employee** or third party who has committed or is attempting to commit a **dishonest act**) becomes aware of;

- (a) any facts which would cause a reasonable person to believe that a **direct financial loss** which may be covered by this **policy** has been or may be incurred, even though the exact amount or details of the **direct financial loss** are not known at that time; or
- (b) a **cyber incident** or **cyber crime**, which may be covered by this **policy**, even though the exact amount or details are not known at that time.

Such awareness constitutes **discovery** by the **policyholder**.

6.4 Excess means the amounts stated and specified as the excess or excesses in the **schedule**. In the event that any **claim** falls under more than one insuring clause, extension or endorsement, then the applicable **excess** will be applied to each insuring clause, extension or endorsement. However, the total amount payable by the **insured** in respect of each **claim** covered by this **policy** will not exceed the highest applicable **excess**.

6.5 Greenhouse gases means those gases defined by applicable law as a greenhouse gas including but not limited to carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), fluorinated gases and high global warming potential gases.

6.6 Industrial Instrument means any award, agreement, arrangement or other instrument which is certified or registered by an industrial tribunal in Australia including the Australian Industrial Relations Commission, Fair Work Australia and the Industrial Relations Commissions of the States or Territories of Australia, or similar provisions of any body anywhere in the world.

6.7 Insurance period means the period of time stated and specified as the insurance period of the **schedule**.

6.8 Investigator means any independent investigator, accountant or other consultant, who does not have a conflict of interest, selected by the **insured** with **our** prior written consent (which will not be unreasonably delayed or withheld), to establish the nature and extent of any **direct financial loss**.

6.9 Limit of liability means the amounts stated as the **limit of liability** in the **schedule**. For the avoidance of doubt, the **limit of liability** includes any sub-limits. Sub-limits of liability are part of and not in addition to the **limit of liability**.

6.10 Other insurance means the other insurance policy or policies stated and specified as other insurance in the **schedule** or any other insurance policy that provides coverage in whole or in part, for the same claim.

- 6.11 Policy** means this **policy** wording, any endorsements to it, the **schedule**, the General Terms & Conditions, the **proposal** and any other documents that **we** advise form part of the **policy**. Where the General Terms & Conditions refer to **ProRisk policies** or **ProRisk policy**, this means the **policy** and any other **policy** issued to **you** by **ProRisk**.
- 6.12 Policyholder** means the organisation, individuals or entities specified and stated as the **policyholder** in the **schedule**.
- 6.13 Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant, infectious or medical waste, toxic or hazardous substance, or contaminant, including but not limited to lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals, nuclear waste, oil or oil products, **greenhouse gases** and/or any noise.
- 6.14 Premium** means the amount of money paid for the **policy** as stated in the invoice.
- 6.15 Proposal** means the application form, together with any supplementary material completed by **you** or on **your** behalf, that was given to **us**, and relied on by **us** to underwrite and effect this **policy**. For the avoidance of doubt, the application form will include any online questions submitted to **us** through an internet portal.
- 6.16 ProRisk** means Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076.
- 6.17 Retroactive date** means the retroactive date stated and specified in the **schedule**.
- 6.18 Schedule** means the schedule and any Endorsements attached to this **policy**.
- 6.19 Subsidiary** means any organisation of which the **policyholder** controls or has controlled:
- a) any legal entity in which the **policyholder** owns or controls, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors;
 - b) any legal entity that ceases to be a subsidiary of the **policyholder** during the **insurance period** or prior to commencement of the **insurance period**, provided that the cover provided will only apply in respect of a acts, errors or failure to act that occurred whilst the entity was a subsidiary of the **policyholder**;
 - c) any legal entity which is created or acquired by the **policyholder** during the **insurance period**, provided that the legal entity:
 - (i) has total gross assets which are less than 25% of the total gross assets of the **policyholder**;
or
 - (ii) has gross annual turnover of less than 25% of the total gross annual turnover of the **policyholder**; or
 - (iii) has total gross assets which are less than 25% of the total gross assets of the **policyholder** in the **USA** or Canada.

The cover provided in this **policy** will only apply in respect of acts, errors, failures to act or conduct occurring after the date of creation or acquisition.

- 6.20 Territorial limits** means the territorial limits and areas of sovereign control of the sovereign nations, states or areas, stated and specified in the **schedule**.
- 6.21 Terrorism** means the use of force or violence and/or the threat of force or violence, by any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organisations(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 6.22 Underwriters** means Swiss Re International SE Australia Branch (ABN 38 138 873 211).
- 6.23 Unlawful association** means any organisation which is engaged in **terrorism**.

6.24 Us, our and we means **ProRisk** on behalf of **underwriters**.

6.25 USA means the United States of America, its territories, possessions and includes its states or political subdivisions.

6.26 War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.



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