



## **(RE)INSURERS LIABILITY CLAUSE**

### **(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

### **Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

## SCHEDULE

<b>POLICY NUMBER:</b>	B0595XB66050211294
<b>CONTRACT NUMBER:</b>	B0595XB6605021
<b>POLICY WORDING:</b>	BES Miscellaneous 1.7.18
<b>INSURED:</b>	Salvatore Mamone Architects Pty Ltd, Inspect Direct Pty Ltd
<b>PRINCIPAL ADDRESS:</b>	144 Centenary Dr, Mill Park, Victoria, Australia, 3082
<b>PERIOD OF INSURANCE:</b>	From: 08-Feb-2021 To: 08-Feb-2022 (both days at 4 p.m. Local Time at the Principal Address)
<b>PROFESSIONAL BUSINESS:</b>	Providers of architectural services and pre-purchase building inspection reporting as more fully described in proposal form dated 12/01/2021
<b>LIMIT:</b>	AUD 2,000,000 any one claim and in the aggregate Including costs and expenses plus one reinstatement
<b>EXCESS:</b>	AUD 5,000 each and every claim including costs and expenses
<b>PREMIUM:</b>	AUD 4,700.00
<b>TERRITORIAL LIMITS:</b>	Worldwide excluding United States of America and Canada
<b>CHOICE OF LAW AND JURISDICTION:</b>	The Commonwealth of Australia as per Policy Form
<b>CONDITIONS:</b>	As per Policy Wording plus: LMA 3100 Sanctions Limitation and Exclusion Clause LSW1145 Australian Dispute Resolution Endorsement Premium Payment Clause Non renewable policy Total COVID19 Exclusion Limit Endorsement Non-compliant building products endorsement Pest Inspections Exclusion Swimming Pools Exclusion
<b>NOTIFICATION OF CLAIMS / CANCELLATION TO:</b>	Solution, Level 5,289 Flinders Lane, Melbourne, Victoria Australia, 3000

<b>RETROACTIVE DATE:</b>	01-Feb-2011 excluding all known claims and circumstances
<b>DATE OF PROPOSAL:</b>	12-Jan-2021
<b>PLACE POLICY ISSUED:</b>	London
<b>DATED IN LONDON</b>	29-Jan-2021

## COMPLAINTS NOTICE

### Complaint handling arrangements

Our aim is to ensure that all aspects of your insurance are dealt with promptly, efficiently and fairly.

At all times we are committed to providing you with the highest standard of service.

If you wish to make a complaint, you can do so at any time. Any complaint should be addressed in the first instance to your broker.

If you do not receive a response from your broker within 15 business days you may refer your complaint, if eligible, to Lloyd's Australia:

### Complaints

Lloyd's Australia Limited  
Level 9, 1 O'Connell Street  
Sydney NSW 2000

Telephone: (02) 8298 0783

Fax: (02) 8298 0788

E-mail: [idlaustralia@lloyds.com](mailto:idlaustralia@lloyds.com)

Should you remain dissatisfied with the decision on your complaint or if you have not received a final response within 45 calendar days of the complaint being made, you may be eligible to refer your complaint to the Financial Services Ombudsman in Australia. The contact details are as follows:

AFCA (Australian Financial Complaints Authority)

GPO Box 3

Melbourne, Vic 3001

Australia

Telephone: 1800 931 678

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [www.afca.org.au](http://www.afca.org.au)

The complaints handling arrangements above are without prejudice to your rights in law.

# **Australian Miscellaneous Professional Indemnity Insurance Policy**

## **Preamble**

Where the Insured has made to Insurers a written Proposal which Insurers have relied upon, and which it is hereby agreed now forms the basis of this Policy and is considered to be incorporated herein, and subject to the payment of the premium specified in the Schedule, Insurers agree to provide indemnity to the Insured subject to the terms and conditions of this Policy.

## **Section 1 – Insuring Clauses**

- 1.1 The Insurers shall indemnify the Insured in respect of any civil liability whatsoever and when so ever incurred in connection with the Professional Business in respect of which a Claim is first made against the Insured during the Period of Insurance and notified in writing to the Insurers during the Period of Insurance.
- 1.2 Insurers agree to pay the Costs and Expenses incurred by the Insured, with Insurers written consent, in defence or settlement of any Claim covered by this Policy.

## **Section 2 – Policy Extensions**

The following extensions are included automatically in this Policy for nil additional premiums PROVIDED ALWAYS THAT each extension is subject to the terms and conditions, excess and Limit of Indemnity of this Policy. The inclusion of these extensions does not increase the Limit of Indemnity of the Policy.

### **2.1 Consultants and Sub-contractors**

Insurers agree to provide indemnity to the Insured for any Claim arising in connection with the Professional Business for work undertaken on the Insured's behalf by any consultant, sub-contractor or agent

PROVIDED ALWAYS THAT no indemnity shall extend to any consultant, sub-contractor or agent.

### **2.2 Consumer Protection Legislation**

Insurers agree to provide indemnity to the Insured for any Claim arising from any unintentional breach of the misleading and deceptive conduct provisions of Part V of the Trade Practices Act 1974 (Cth); Schedule 2 of the Competition and Consumer Act 2010 (Cth); Division 2 Part 2 of the Australian Securities and Investment Commission Act 2001 (Cth); Part 7 of the Corporations Act 2001 (Cth) or any similar or related legislation of a State or Territory of Australia or New Zealand (but not for criminal liability in respect of any of these). Nothing in this clause will effect the operation of Exclusion 6.14 of this Policy.

### **2.3 Continuous Cover**

Insurers agree to provide indemnity to the Insured to the extent that the Insured held this professional indemnity policy or prior professional indemnity policies with the existing Insurer or Insurers continuously from the time the Insured first became aware of a circumstance which could have been notified under an earlier professional indemnity policy issued by the same existing

Insurers, each such Insurer will severally accept the notification of such circumstance or Claim resulting from such circumstance under this policy.

This will apply on the basis that:

- a) for each respective Insurer, their liability under this policy will be the lesser of the cover, for each of the Indemnity Limit and the proportion of cover, afforded by that Insurer under this policy and the prior policy that would have applied if the circumstance had been notified and accepted under such prior policy held by the Insured at the time the Insured first became aware of such circumstance. The Insured shall pay the greater of the excess as applicable under such prior policy or under this policy at the time the Insurers accept the notification;
- b) cover will be reduced by the amount that fairly represents the extent to which the Insurers were prejudiced by the Insured's failure to notify such circumstance when the Insured first became aware of it;
- c) there is an absence of fraudulent non-compliance with the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Insured in respect of such circumstance;
- d) the notification of such circumstance or Claim resulting from such circumstance is made by the Insured to the Insurer during the Period of Insurance.

#### **2.4 External Dispute Resolution Scheme**

Insurers agree to provide indemnity to the Insured against civil liability for compensation and the complainant's costs and expenses resulting from a binding determination made by an ASIC-approved External Dispute Resolution Scheme in respect of any Claim or Claims arising from the conduct of the Professional Business, where the Claim or Claims were first made against the Insured and notified to the Insurer during the Period of Insurance; but not in respect of any such Claim or Claims resulting from and act, error or omission occurring or committed prior to the Retroactive Date.

The Insurer will in addition pay all necessary and reasonable costs and expenses Incurred by the Insured with the Insurer's prior written consent, arising from the Insured responding to an ASIC-approved External Dispute Resolution Scheme in respect of any complaint made against the Insured.

Provided that:

- a) the total liability of the Insurer under this Automatic Extension for compensation, the complainant's costs and expenses and all reasonable costs and expenses incurred by the Insured with the Insurer's prior written consent shall not exceed AUD 280,000 for any one Claim during the Period of Insurance; and
- (b) the Insurer shall not be liable in respect of:
  - i) the cost of membership to the ASIC-approved External Dispute Resolution Scheme or any professional association to which the Insured belongs; or

- ii) the costs of any ASIC-approved External Dispute Resolution Scheme services or facilities or those of any professional association to which the Insured belongs; or
- iii) the costs arising from any dispute between members of such professional association; and

For the purpose of this Extension:

- a) the definition of “Claim” includes a complaint by a third party to an ASIC-approved External Dispute Resolution Scheme; and
- b) all Claims arising out of, based upon, attributable to or in respect of a single complaint, act, error or omission or series of complaints, acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be a single Claim and shall attract one Excess; and
- c) “ASIC-approved External Dispute Resolution Scheme” means a scheme falling within s912A(2)(b)(i) of the Corporations Act 2001 (Cth).

## **2.5 Fiduciary Duties**

Insurers agree to provide indemnity to the Insured for any Claim for a breach of fiduciary duty owed by the Insured to a client or customer of the Insured.

## **2.6 Fraud and Dishonesty**

Insurers agree to provide indemnity to the Insured for any Claim arising out of any dishonest, fraudulent, criminal or malicious acts or omissions of an Employee of the Insured PROVIDED ALWAYS THAT:

- a) no indemnity shall be provided to any person committing or condoning any act or omission; and
- b) the Insured shall take all reasonable steps requested by Insurers to recover the loss; and
- c) the Insured shall permit Insurers to take such recovery action in the name of the Insured and the Insured shall assist and co-operate with Insurers and shall provide Insurers with such information (including signed statements) as Insurers may reasonably require; and
- d) this Extension shall not apply to any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

## **2.7 Heirs, Estates and Representatives**

Insurers agree to provide indemnity to the estate, heirs, legal representatives or assigns of any Insured in the event of the death or incapacity of such Insured PROVIDED ALWAYS THAT such persons shall observe and be subject to all the terms and conditions of this Policy.

## **2.8 Intellectual Property**

Insurers agree to provide indemnity to the Insured for any Claim for any actual or alleged infringement of copyrights, trademarks, registered designs or patents, plagiarism or breach of any

confidentiality or breach of any other intellectual property right PROVIDED ALWAYS THAT such Claim arises in the conduct of the Professional Business as stated in the Schedule.

## **2.9 Inquiry Costs**

Insurers agree to provide indemnity to the Insured for any Claim arising from Inquiry Costs in respect of an official investigation. Provided that:

- a) the notice requiring the Insured's attendance at the inquiry or hearing is first received by the Insured during the Period of Insurance and notified to the Insurer during the Period of Insurance; and
- b) such attendance arises directly from conduct allegedly committed by the Insured in carrying on their Professional Business; and
- c) such indemnity is subject to the written consent of the Insurer prior to the incurring of the Inquiry Costs; and
- d) regular or overtime wages, salaries or fees of the Insured are excluded from this Indemnity; and
- e) the total liability of the Insurer under this clause shall not exceed AUD 250,000 during the Period of Insurance which shall form part of and not be in addition to the Limit of Indemnity afforded under this policy.

"Inquiry Costs" means necessary and reasonable legal costs and expenses incurred by the Insured arising out of any notice requiring the Insured's attendance at an official investigation, inquiry, examination or hearing held before a court, tribunal or legally constituted industry or professional board, committee or the like.

## **2.10 Libel and Slander**

Insurers agree to provide indemnity to the Insured for any Claim for libel or slander by reason of words written or spoken by the Insured in the conduct of the Professional Business.

## **2.11 Loss of Documents**

Insurers agree to provide indemnity to the Insured for any Claim arising from the loss of any Documents which have been destroyed, damaged, lost or mislaid and after diligent search cannot be found PROVIDED ALWAYS THAT:

- a) such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring (whichever is the lesser) such Documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by some competent person to be nominated by Insurers with the approval of the Insured; and
- b) such indemnity shall be limited to the loss of any Documents which were in the physical care, custody or control of the Insured or any other person to or with whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business; and



- c) no indemnity shall be provided for any loss arising from the normal wear and tear and other gradually operating causes.

## **2.12 Reinstatement of Limit**

Insurers agree to increase the Limit of Indemnity under this Policy by an amount equal to the Limit of Indemnity PROVIDED ALWAYS THAT:

- a) indemnity under this Policy shall not exceed the Limit of Indemnity as stated in the Schedule for any one Claim or series of Claims arising from the same acts, errors or omissions; and
- b) in the aggregate, indemnity shall not exceed an amount equal to twice the Limit of Indemnity as stated in the Schedule; and
- c) where there is additional insurance in place in excess of the Limit of Indemnity of this Policy, any indemnity under this Extension is limited to the sums which are not covered by the additional insurance.

This extension is not automatically included in this Policy unless stated in the Schedule

## **2.13 Run-Off Cover**

Insurers agree that in the event that an Insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this Policy with respect to such Insured entity shall continue until the expiry date of the Policy Period.

Provided always that such coverage shall only apply in respect of any Claim for work undertaken prior to the effective date that such Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

## **Section 3 – Definitions**

### **3.1 Business**

“Business” shall mean the business (or businesses) or profession (or professions) shown in the Schedule.

### **3.2 Claim**

“Claim” shall mean:

- a) any writ or summons or other legal form of legal or arbitral process served upon the Insured; or
- b) any written or oral demand for compensation received by the Insured which might result in a claim against the Insured.

### **3.3 Costs and Expenses**

“Costs and Expenses” shall mean the expenses incurred by or on behalf of the Insured or Insurers

in the investigation or defence of a Claim and shall include legal costs and disbursements.

### **3.4 Documents**

“Documents” shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronically stored data but shall not include money, bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

### **3.5 Employee**

“Employee” shall mean any person employed under a contract of service or apprenticeship during or prior to the commencement of the Period of Insurance.

### **3.6 Excess**

“Excess” shall mean the amount of the Excess as stated in the Schedule.

### **3.7 Insured**

“Insured” shall mean:

- a) the firm, partnership, company or individual named in the Schedule;
- b) any individual who is, has been, or may become during the Period of Insurance a Principal, Partner or Director of the firm named in the Schedule but only in respect of Claims arising out of work performed for and/or on behalf of the firm, partnership or company named in the Schedule;
- c) any predecessor in business of the firm named in the Schedule, but only to the extent of the liability attaching to the firm, partnership or company named in the Schedule.

### **3.8 Limit of Indemnity**

“Limit of Indemnity” shall mean the limit of liability under this Policy as stated in the Schedule.

### **3.9 Period of Insurance**

“Period of Insurance” shall mean the period stated in the Schedule.

### **3.10 Policy**

“Policy” shall mean:

- a) the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms and conditions herein; and
- b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Insurance; and

- c) the Proposal.

### **3.11 Professional Business**

“The Professional Business” means the profession, practice, occupation or business conducted by the Insured as stated in the schedule and more fully described in the Proposal form.

### **3.12 Proposal**

“Proposal” shall mean the written Proposal form submitted to Insurers containing particulars and statements (together with any other written information which may have been supplied in conjunction therewith) bearing the date as stated in the Schedule.

### **3.13 Schedule**

“Schedule” shall mean the schedule to this Policy.

### **3.14 Security**

“Security” shall mean various Underwriters at Lloyd’s, each of whom (including their executors and administrators) is only liable for their share of any Claim, loss, liability or expense payable under this Policy.

## **Section 4 – General Conditions**

### **4.1 Alteration of Risk**

The Insured shall as soon as reasonably practicable notify Insurers of any material alteration to the risk during the Period of Insurance including but not limited to:

- a) any merger with or acquisition of another business or the commencement of a branch office or joint venture;
- b) the Insured going into voluntary bankruptcy, receivership or liquidation or the Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- c) any material change in the Insureds Business;
- d) cancellation, suspension or termination of any statutory registration relevant to the Insureds Business.

### **4.2 Australian Litigation Dispute Resolution**

This Insurance does not comply with the Insurance Council of Australia’s General Insurance Code of Practice.

The Insurers hereon agree that:

- a) In the event of a dispute arising under this Insurance, the Insurers at the request of the Assured will submit to the jurisdiction of any competent Court in the Commonwealth of

Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

- b) Any summons notice or process to be served upon the Insurers may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Level 9  
1 O'Connell Street  
Sydney NSW 2000  
Telephone Number: (02) 9223 1433  
Facsimile Number: (02) 9223 1466

who has authority to accept service and to enter an appearance on the Insurers behalf, and who is directed at the request of the Assured to give a written undertaking to the Insured that he will enter an appearance on the Insurers behalf.

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

The amount of Premium specified herein is the amount due to the Underwriters and any commission allowed by them is to be regarded as remuneration of the Broker/Coverholder placing this Insurance.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to the entity specified in the Schedule

#### **4.3 Cancellation**

The Insured may cancel this Policy at any time during the Period of Insurance by giving written notice to Insurers. Insurers will allow a pro-rata refund for the unexpired Period of Insurance less any non-refundable duties or charges and any cancellation fees that may apply. Insurers will not refund any premium if any Claim has been notified during the Period of Insurance.

#### **4.4 Excess**

The Insured shall bear the amount of the Excess stated in the Schedule in respect of each and every Claim made against the Insured and Insurers shall only be liable to indemnify the Insured in excess of that amount. Where a Claim involves more than one act, error or omission the Excess shall apply to each and every act, error or omission.

All expenses incurred by Insurers pursuant to the appointment or engagement of professional advisers considered necessary by Insurers to determine the liability of the Insured and to resolve the Claim shall be borne by the Insured except for any costs and expenses incurred by Insurers to determine whether Insurers have a liability to indemnify the Insured under the Policy which shall be borne by Insurers.

#### **4.5 Interested Parties**

This Policy only provides indemnity to those persons or entities noted as Insureds in the Schedule or otherwise included under the terms and conditions of this Policy. No interest in this Policy may be changed, modified, assigned or transferred to any other party without Insurers prior written

consent.

#### **4.6 Limit of Indemnity**

Insurer's liability under this Policy shall not exceed for any one Claim or in the aggregate for all Claims, including all costs and expenses included under Insuring Clause 1.2, the Limit of Indemnity as stated in the Schedule.

For the purposes of any cover provided under Automatic Extension 2.7 – Loss of Documents Insurers liability shall not exceed AUD 250,000 in the aggregate including all costs and expenses.

#### **4.7 Multiple Claims**

Where one act, error or omission results in more than one Claim against the Insured all such claims shall jointly constitute one Claim under this Policy.

Where causally connected or interrelated acts result in a Claim or Claims under this Policy, all such Claims shall be regarded as one Claim.

#### **4.8 Policy Construction**

- a) The construction, interpretation and meaning of the terms and conditions of this Policy shall be construed in accordance with the laws of the state, territory or country in which the Policy is issued and as stated in the Schedule. Any and all disputes relating to the interpretation of this Policy will be subject to the jurisdiction of the courts of such state, territory or country.
- b) The paragraph titles in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- c) For the purposes of this Policy all references to the masculine include the feminine, the singular includes the plural and vice versa.

#### **4.9 Several Liability**

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

#### **4.10 Territory and Jurisdiction**

This Policy shall indemnify the Insured for any Claim first brought in a court of law anywhere in the world and arising in connection with the Professional Business committed anywhere in the world except for:

- a) any Claim first brought within the United States of America or the Dominion of Canada or their territories or protectorates; or
- b) any Claim arising from the enforcement of any judgement, order or award obtained within, or pursuant to the laws of the United States of American or the Dominion of

Canada or their territories or protectorates; or

- c) arising from any act, error or omission committed or alleged to have been committed within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

## **Section 5 – Claims Conditions**

### **5.1 Claims Management**

- a) The Insured shall not disclose to any person without Insurers written consent the nature of or terms and conditions of this Policy.
- b) The Insured shall not admit liability, or incur any Costs or Expenses, or make any admission, arrangement, offer, promise or payment without Insurers written consent, such consent not to be unreasonably withheld.
- c) Insurers shall at any time be entitled to take control of or conduct in the name of the Insured the defence or settlement of any Claim. If Insurers believe the Claim will not exceed the Excess Insurers may instruct the Insured to conduct the defence of the Claim. In such circumstance the Insured shall be required to provide Insurers with regular progress reports and Insurers reserve the right to take control of the defence of such Claim at any time.

### **5.2 Claims Co-operation**

- a) The Insured shall as a condition precedent to their right to indemnity under this Policy give to Insurers such information and co-operation as Insurers may reasonably require to enable Insurers to investigate and to defend any Claim under this Policy and/or to enable Insurers to determine any liability under this Policy including but not limited to the identification of any parties against whom the Insured may have rights.
- b) The Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.

### **5.3 Notification of Claim**

The Insured shall as a condition precedent to their right to indemnity under this Policy give to Insurers immediate notice in writing during the Period of Insurance of any Claim whether that Claim be oral or in writing made against the Insured.

Notice of any Claim shall be given in writing to Insurers and delivered to the entity specified in the Schedule

Notwithstanding the Excess contained in this Policy all claims, complaints or threats of action must be notified to Insurers and handled and controlled by Insurers or no indemnity shall be afforded by this Policy in respect of any such claims, complaints or threats of action.

### **5.4 Right to Contest**

In the event that Insurers recommend the settlement of a Claim and the Insured does not agree

that such Claim should be settled then the Insured may elect to contest or continue any legal proceedings therewith PROVIDED ALWAYS THAT Insurers liability in connection with such Claim shall not exceed the amount for which the Claim could have been settled plus the Costs and Expenses incurred with Insurers written consent to the date of such election, less the Excess and subject always to the Limit of Indemnity under this Policy.

### **5.5 Right to Subrogation**

Where Insurers have made any payment of a Claim under this Policy Insurers shall become entitled to any and all rights the Insured may have against any third party. The Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights including but not limited to the execution of documents necessary to enable Us to effectively bring suit in the name of the Insured and/or the provision of information including signed statements and the giving of evidence at any trial.

## **Section 6 – Exclusions**

This Policy shall not provide indemnity to the Insured for any Claim or Claims arising directly or indirectly from:

### **6.1 Associated Entities**

any Claim brought by or on behalf of:

- a) any person, firm or corporation within the definition of the Insured; or
- b) any member of the family of an Insured; or
- c) any person or entity which owns, operates, manages or controls an Insured entity; or
- d) any entity which is owned by, operated by, managed by or controlled by any Insured party, or
- e) any joint venture partner or entity established to control or manage such joint venture.

unless such Claim emanates from an independent third party

### **6.2 Bodily Injury and Property Damage**

- a) bodily injury, sickness, disease or death of any person including but not limited to mental injury, mental anguish, nervous shock or emotional distress whether or not associated with bodily injury; or
- b) physical loss of, damage to or destruction of any tangible property (other than any Document) including the loss of use thereof or any consequential loss

OTHER THAN any Claim arising directly or indirectly from a breach of professional duty of the Insured.

### **6.3 Computer Records**

the loss or damage to or destruction of any computer records including but not limited to computer printouts or computer memory whether programmes, databases, software or otherwise and however recorded including the failure and/or non-performance of computer software or hardware.

#### **6.4 Contractual Liabilities**

any liability relating to a duty or obligation assumed by the Insured by way of warranty, guarantee, contract, indemnity or hold harmless agreement unless such liability would have attached to the Insured notwithstanding such assumed duty or obligation.

#### **6.5 Cyber**

- a) the use or misuse of the Internet or similar facility;
- b) any electronic transmission of data or other information;
- c) any computer virus or similar problem;
- d) the use or misuse of any Internet address, website or similar facility;
- e) the functioning or malfunctioning of the Internet or similar facility, or of any Internet address, website or similar facility;
- f) any data or information posted on a website or similar information.

#### **6.6 Directors and Officers Liability**

any activities as a trustee, director, secretary or officer of any trust or body corporate unless that liability would have arisen if the Insured had not held that position as a trustee, director, secretary or officer.

#### **6.7 Employers' Obligations**

any breach of any obligation owed by the Insured as an employer to an Employee including but not limited to:

- a) any personal or bodily injury, mental injury, mental anguish, sickness, disease or death of any Employee; and
- b) damage to or destruction of any property of an Employee; and
- c) any allegation of sexual harassment, sexual discrimination or racial discrimination or any other matter relating to employment practices or any industrial award, determination or legislation.

#### **6.8 Fines and Penalties**

any claim for punitive, aggravated, multiple or exemplary or other non-compensatory damages; taxes, duties, or fines or penalties imposed by law, including but not limited to civil penalties.



## **6.9 Insolvency**

the insolvency, bankruptcy or liquidation of the Insured.

## **6.10 Intentional Acts**

any Insured or their consultants, sub-contractors or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof, or any wilful breach of any statute, contract or duty by any Insured or their consultants, sub-contractors or agents.

## **6.11 Joint Ventures**

any activities in which the Insured is engaged as a joint venturer or partner unless such Claim arises in connection with the Professional Business PROVIDED ALWAYS THAT any indemnity is limited to the Insured's proportion of liability as determined by final adjudication or ruling.

## **6.12 Nuclear**

ionising radiations or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material from the combustion of nuclear fuel, or by the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## **6.13 Occupiers Liability**

the ownership, use, occupation or leasing of property (real or otherwise) by, to or on behalf of the Insured.

## **6.14 Other Insurances**

any liability for which the Insured is or would be insured under any policy of insurance required to be effected by or under any law.

## **6.15 Pollution**

the discharge, dispersal, seepage, release or escape of any pollutant into or onto any land, soil, vegetation, crop, foodstuff, stockfeed, building, structure, watercourse, underground water supply, aquifer, body of water or into the atmosphere.

For the purposes of this exclusion Pollutants shall mean:

- a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids alkalis, chemicals; or
- b) any waste materials including materials recycled, reconditioned or reclaimed; or
- c) any other air emission, odour, waste water, oil, oil products, infection or medical waste, asbestos, asbestos products or any noise emission.

OTHER THAN any Claim arising directly or indirectly from a breach of professional duty of the Insured.

#### **6.16 Prior or Pending Claims**

Any Claim:

- a) first made, threatened or intimated against or to the Insured prior to the Period of Insurance; or
- b) relating to any matter disclosed or notified to Insurers or any other insurer prior to the Period of Insurance as being a Claim or a circumstance that may give rise to a Claim; or
- c) relating to any litigation that was in progress or pending prior to the Period of Insurance; or
- d) relating to any fact or circumstance of which the Insured became aware prior to the Period of Insurance and which the Insured knew or ought reasonably to have known may give rise to a Claim.

#### **6.17 Previous Business**

an Insured prior to them joining the Insured as stated in the Schedule.

#### **6.18 Professional Fees**

any matter relating to your entitlement or otherwise to fees or charges for work performed.

#### **6.19 Retroactive Date**

any act, error or omission committed or allegedly committed prior to the Retroactive Date specified in the Schedule.

#### **6.20 Sale and Supply of Goods**

the sale, storage, supply or distribution of any good, or any actual or alleged provision of advice associated with the sale, storage, supply or distribution of any good except where a Claim arises directly from the cost incurred in correcting an act, error or omission in design or specification by the Insured, but shall not include any cost associated with the disposal, repair, recall, manufacture or replacement of any good or goods.

#### **6.21 Toxic Mould**

any Claim involving in any way the actual or potential presence of mould, mildew or fungi of any kind whatsoever, whether or not directly or indirectly caused by or resulting from the conduct of the Insured's Business.

#### **6.22 Vehicles**

the ownership, operation or use of any aircraft, vessel, automobile or any other vehicle or mechanically propelled mobile machinery.

#### **6.23 War and Terrorism**

war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Furthermore, this Policy shall not provide indemnity to the Insured for any Claim or Claims arising directly or indirectly from any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Loss.

For the purposes of this exclusion “an act of terrorism” means an act, including but not limited to the use of force or violence, and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any Government and/or to put the public, or any section of the public in fear.

This exclusion also excludes loss, damage, costs or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If Insurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon the Insured.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

### **Sanctions Limitation and Exclusion Clause**

It is hereby agreed that no Insurer(s) shall be deemed to provide cover and no Insurer(s) shall be liable to pay any Claim or provide any benefit to the extent that the provision of such cover, payment of such Claim or provision of such benefit would expose that Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Commonwealth of Australia, United Kingdom or United States of America.

Nothing contained in this Clause 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.

## **Lloyds Australian Alternative Disputers Resolution Clause**

In the event that a dispute arises between Underwriters and the Insured/Reinsured out of or otherwise in relation to this agreement, then:

(a) Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "Dispute Notice") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;

(b) If a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:

1. A process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (LEADR) (or other appropriate professional body as agreed by the parties); or
2. referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
  - (a) will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
  - (b) will act as an expert and not as an arbitrator;
  - (c) will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - (d) will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
  - (e) will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause (c) below) without first pursuing such informal resolution techniques in good faith;

In the event that the dispute is not resolved by such informal process within 35 days of the Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

(c) Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia

Level 9

1 O'Connell Street

Sydney

NSW 2000

Australia

who has authority to accept service and to appear on Underwriters' behalf.

If proceedings are instituted against any one of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

- (d) Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- (e) Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- (f) Notwithstanding anything in this schedule, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief.

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## **Premium Payment Clause**

Notwithstanding any provision to the contrary within this contract or any endorsement hereto, in respect of non-payment of premium only the following clause will apply.

The Insured undertakes that premium will be paid in full to Insurers within 60 days of inception of this contract (or, in respect of instalment premiums, when due).

If the premium due under this contract has not been so paid to Insurers by the 60th day from the inception of this contract (and, in respect of instalment premiums, by the date they are due) Insurers shall have the right to cancel this contract by notifying the Insured via the broker in writing. In the event of cancellation, premium is due to Insurers on a pro rata basis for the period that Insurers are on risk but the full contract premium shall be payable to Insurers in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this contract.

It is agreed that Insurers shall give not less than 15 days prior notice of cancellation to the Insured via the broker. If premium due is paid in full to Insurers before the notice period expires, notice of cancellation shall automatically be revoked. If not, the contract shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

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## **Non-renewable policy**

This Policy will terminate at the end of the Period of Insurance specified in the Schedule. If the Insured wants to obtain similar insurance for a subsequent Period of Insurance, the Insured will need to complete a new proposal form before the end of the Period of Insurance specified in the Schedule.



## **Total COVID-19 Exclusion**

Notwithstanding of any language contained within the attached policy, the Insurer(s) shall not be liable to make any payment in respect of any Claim(s) or circumstance(s) or loss(es) or other matter(s) insured under the policy arising out of, related to, connected to, or in any way involving, directly or indirectly:

- a. Coronavirus disease (COVID-19);
- b. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- c. any mutation or variation of COVID-19 or SARS-CoV-2;
- d. any fear or threat (whether actual or perceived) of a), b) or c) above;
- e. any action taken to control, prevent, suppress, mitigate or in any way relating to any actual or suspected outbreak of any of a), b) or c).

It is further agreed that the Insurer(s) shall not be liable to make any payment in respect of Claim(s) or circumstance(s) or loss(es) or other matter(s) insured under the policy that arises as a result of, or is connected in any way, directly or indirectly, with any consequential loss or financial impairment suffered by the Insured or any third party as a result of any of a), b), c), d) or e) above.

If the Insurer(s) maintains that this exclusion applies then the burden of proving that it does not shall be on the Insured.

All other terms and conditions remain unchanged.

## **Limit Endorsement**

It is hereby noted and agreed that the Limit and Retroactive date as stated on the Policy Schedule are deleted and replaced as follows;

LIMIT: AUD 2,000,000 any one claim and in the aggregate including costs and expenses plus one reinstatement

RETROACTIVE DATE:

01-Feb-2011 excluding all known claims and circumstances for limits up to and including AUD 1,000,000 any one claim and in the aggregate including costs and expenses plus one reinstatement

11-Feb-2020 excluding all known claims and circumstances for limits in excess of AUD 1,000,000 any one claim and in the aggregate including costs and expenses plus one reinstatement

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

## **Non-Compliant Building Products Endorsement**

**We** shall not be liable under this **Policy** to provide indemnity in respect of any **Claim** against any Insured directly or indirectly based upon, attributable to, or in consequence of the specification, use or approval of any building product or material, which, at the time of use or approval, was not in compliance with the National Construction Code of Australia; the Building Code of Australia or the relevant the Australian Standard(s).

Subject otherwise to the terms and conditions of the **Policy**.

### **Pest Inspections Exclusion**

Notwithstanding any provisions to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes Pest Inspections activities whatsoever.

All other terms, conditions and limitations of this insurance remain unaltered.

## **Swimming Pools Exclusion**

This Policy shall not indemnify the Insured for any Claim, cost or expense arising directly from the provision of professional services in relation to the design, specification, inspection or supervision of construction of swimming pools and associated building services.

For the avoidance of doubt, this Exclusion shall not apply to professional services in relation to swimming pool outer buildings.

All other Policy Terms and Conditions remain unaltered.



%	Lloyd's Syndicate	Underwriting Reference
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100%	Navigators Syndicate - NAV1221	KEX021KF92130014
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A blue circular stamp containing the number "1221" in a bold, sans-serif font. A handwritten signature in blue ink is written over the stamp.

Signed & Dated Stamp	29-Jan-2021
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