

# **INDUSTRIAL SPECIAL RISKS (MARK IV) INSURANCE POLICY**

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## INSURER

This insurance is underwritten by Swiss Re International SE (ABN 38 138 873 211). Swiss Re International SE is licensed by the Australian Prudential Regulation Authority (APRA)

In the event that a dispute arises between Insurers and the Insured out of or otherwise in relation to this Policy, 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:
    - i) 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);
    - ii) will act as an expert and not as an arbitrator;
    - iii) 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;
    - iv) 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
    - v) 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 Insurers may be served upon:

Australis Group (Underwriting) Pty Ltd  
Level 3, 117 Clarence Street  
Sydney NSW 2000

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

If proceedings are instituted against any one of the Insurers, all Insurers 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 Policy.
- 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.

### **Australian Terrorism Insurance Act 2003 Notice**

The Insurers have treated this Insurance (or part of it) as an Insurance to which the Australia Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined by ATIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

If any or all of the Insurers have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any such Insurers will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Insurer's liability for payment for "eligible terrorism losses".

### **DUTY OF DISCLOSURE – What you must tell us**

Under the Insurance Contracts Act 1984 (the Act), you have a Duty of Disclosure. You are required before you enter into, renew, vary, extend or reinstate your Policy, to tell us everything you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be insured under the Policy, and if so, on what terms.

- ◆ You do not have to tell us about any matter
  - that diminishes the risk
  - that is of common knowledge
  - that we know or should know in the ordinary course of our business as an Insurer, or
  - which we indicate we do not want to know.
- ◆ If you do not comply with your Duty of Disclosure we may reduce or refuse to pay a claim or cancel your Policy. If your non-disclosure is fraudulent we may treat this Policy as never having worked.

## **PRIVACY**

We are committed to protecting you the Insured's privacy. We only use the personal information you provide to us to quote on and insure your risks. We only provide personal information to our Insurers (and their representatives) and those we appoint to assist us with claims under your policy. We will not trade, rent or sell your information.

If you don't provide us with complete information, we cannot properly quote for your insurance and we cannot insure you. You can check the personal information we hold about you at any time.

If you provide us with personal information about anyone else, we rely on you to have told them that you will provide their information to us, to whom we may provide it, the purposes for which we will use it and that they can access it. If the information is sensitive, we rely on you to have obtained their consent on these matters.

*For more information about our Privacy Policy, please visit our website – [www.ausuw.com](http://www.ausuw.com)*

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## **Industrial Special Risks Insurance Policy**

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

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

PROVIDED THAT the total liability of the Insurers at any one situation hereunder shall not exceed the appropriate Limit or Sub Limits of Liability as stated in the Schedule or such amounts as may be substituted therefor by endorsement or memorandum herein or attached hereto and that each Insurer specified below shall only be liable to contribute to any loss covered by this Policy that proportion of the loss as is specified beside its name.

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

# SECTION 1- MATERIAL LOSS OR DAMAGE

## THE INDEMNITY

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

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

- a) architect's, surveyors', consulting engineers', legal and other fees and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon damage to property hereby insured but not such costs, fees and salary for preparing any claim hereunder.
  - b) any fee, contribution or other impost payable to any Government, Local Government or other Statutory Authority; where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate any buildings insured hereunder; provided that the Insurers shall not be liable for payment of any fines and/or penalties imposed upon the Insured by any such Authorities.
  - c) costs and expenses necessarily and reasonably incurred for the purpose of extinguishing fire at or in the vicinity of property hereby insured or threatening to involve such property or for the purpose of preventing or diminishing imminent damage to property hereby insured by any other peril insured against by this Policy, including damage to gain access and the cost of replenishment of fire fighting appliances and charges incurred for the purpose of shutting off the supply of water or other protective equipment or otherwise escaping from intended confines.
  - d) costs and expenses necessarily and reasonably incurred for the temporary protection and safety of property hereby insured pending repair or replacement consequent upon damage recoverable hereunder.
  - e) costs of replacing locks and/or keys and/or combinations where if as a result of burglary, theft or any attempt thereat the keys and/or combinations are stolen or if there are reasonable grounds to believe the keys may have been duplicated also the cost of opening safes and/or strongrooms as a result of theft of keys and/or combinations.
  - f) costs and expenses necessarily and reasonably incurred in respect of:
    - i) the removal, storage and/or disposal of debris or the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon damage to property insured by this Policy and occasioned by a peril insured against;
    - ii) the Insured's legal liability in respect of removal, storage and/or disposal of debris, notwithstanding Excluded Peril 8 in relation to premises, roadways, services, railway or waterways of others, for such costs together with the cost of cleaning provided that such liability was not assumed by the Insured under an agreement entered into after the commencement of the Period of Insurance or any renewal thereof unless liability would have attached in the absence of such agreement.
- Provided that the insurance under this section does not extend to any liability that the Insured may incur as a consequence of pollution of any kind.
- iii) the demolition and removal of any property belonging to the insured which is no longer useful for the purpose it was intended, providing such demolition and removal is necessary for the purpose of the reinstatement or replacement of Property Insured under this section and is consequent upon damage to the Property Insured by a peril hereby insured against.
- g) damage to clothing and tools of trade belonging to directors and employees of the Insured whilst on the Premises.

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

## THE PROPERTY INSURED

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

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

## BASIS OF SETTLEMENT

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

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

- b) On raw materials, supplies and other merchandise not manufactured by the Insured; the replacement cost at the time and the place of replacement or, if such property is not replaced, the value thereof at the time and place of the damage.
- c) On material in process of manufacture; the replacement value of the raw materials and the value of labour and other overhead charges expended thereon at the time and the place of the damage.
- d) On finished goods; the replacement value of the raw materials and the value of labour and other overhead charges expended thereon before any allowance for profit or the cost of re-stocking such goods, whichever is the lesser.
- e) On computer systems records, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description; the cost of reinstating, replacing, reproducing or restoring same, including information contained therein or thereon but excluding the value to the Insured of the said information; or, if such is not required, the replacement cost of materials as blank stationery at the time and place of the damage.
- f) On patterns, models, moulds, dies or lasts; the cost of repair or replacement (if actually replaced) otherwise the indemnity value to the Insured of such property.
- g) On glass; the cost of repairing or replacing the broken glass including: temporary shuttering and/or hiring of security service pending replacement of broken glass sign writing or ornamentation on glass replacement burglar alarm tapes on glass removing and re-fixing of window and show case frames and fittings heat reflecting material or process on glass.
- h) On directors' and employees' clothing and tools of trade; the replacement cost at the time of replacement subject to due allowance for wear and tear, depreciation and betterment.
- i) On empty premises awaiting demolition; the salvage value of the building materials and/or landlords fixtures and fittings.

# MEMORANDA TO SECTION 1

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

## INTEREST OF OTHER PARTIES

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

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

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

## BRANDED GOODS

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

## DECLARED VALUES

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

## REINSTATEMENT AND REPLACEMENT

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

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

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

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

### Provisions

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

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

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

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

## **EXTRA COST OF REINSTATEMENT**

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

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

### **Provisions**

- i) The work of reinstatement (which may be carried out wholly or partially upon any other sites, if the requirements of the aforesaid Act, Regulation or By-Law so necessitate, subject to the liability of the Insurers not being thereby increased), must be commenced and carried out with reasonable dispatch, failing which the Insurers shall not be liable to make any payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein.
- ii) The amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-law or requirement with which the Insured had been required to comply prior to the happening of the damage.
- iii) Co-insurance shall not be applied to the amount recoverable under this memorandum and any amount specified shall not be taken into account for co-insurance purposes in terms set out in any clause contained in this Policy.
- iv) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property affected by or on behalf of the Insured shall be on a similar basis.
- v) If the cost of reinstatement of damaged property insured is less than fifty per cent (50%) of that which would have been the cost of reinstatement if such property had been destroyed, the amount recoverable hereunder shall be limited to:-
  - (a) the extra cost necessarily incurred in reinstating only that portion damaged; or
  - (b) whilst applying to such property insured, the Sub Limit stated herein, whichever is the greater. In the event of a Sub Limit not being stated in this Policy the Insurers liability shall be limited to the amount as described in sub-paragraph (a) of this provision.

## **FLOOR SPACE RATIO INDEX (PLOT RATIO)**

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

The Insurers agree to pay in addition to any amount payable on reinstatement of such buildings the difference between:-

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

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

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

## **ACQUIRED COMPANIES**

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

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

## **AVERAGE / UNDER INSURANCE**

Unless otherwise stated herein to the contrary, this Policy is subject to the following Co-Insurance memorandum:-  
In the event of damage to property insured hereunder at any situation caused by any event hereby insured against, the Insurers shall be liable for no greater proportion of such damage than the amount of the Insured's declaration of value of such property on the day of the commencement of the Period of Insurance bears to the sum representing eighty-five per cent (85%) of the actual value of property insured at such situation on the day of commencement of the Period of Insurance but not exceeding the Limit of Liability expressed in the Schedule.

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

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

# SECTION 2 - CONSEQUENTIAL LOSS

## THE INDEMNITY

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

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

## BASIS OF SETTLEMENT

### Item No. 1

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

#### a) In respect of Reduction in Turnover

the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Turnover,

#### b) In respect of Increase in Cost of Working

the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;

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

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

### Item No. 2

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

### **Item No. 3**

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

#### **a) In respect of Reduction of Turnover**

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

**NOTE:** At the option of the Insured the number of weeks referred to in clause (a) (i) above may be increased to the number of weeks specified in the Schedule under the heading "Consolidated Period"; provided that the amount arrived at under the provisions of clause (a) (ii) shall not exceed such amount as is deducted under clause (a) (i) for savings effected during the said increased number of weeks.

#### **b) In respect of Increase in Cost of Working**

So much of the additional expenditure described in clause (b) of Item 1 as exceeds the amount payable thereunder, but not more than the additional amount which would have been payable in respect of Reduction in Turnover under the provisions of clauses (a) (i) and (ii) of this item had such expenditure not been incurred.

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

### **Item No. 4**

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

## **DEFINITIONS**

**GROSS PROFIT:** The amount by which:-

- a) the sum of the Turnover and the amount of the Closing Stock and Work in Progress shall exceed
- b) the sum of the amount of the Opening Stock and Work in Progress and the amount of the Uninsured Working Expenses as set out in the Schedule.

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

### **TURNOVER:**

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

### **INDEMNITY PERIOD:**

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

### **PAY-ROLL:**

The remuneration (including but not limited to pay-roll tax, bonuses, holiday pay, workers' compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) of all employees.

### **SHORTAGE IN TURNOVER:**

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

### **RATE OF GROSS PROFIT:**

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

### **ANNUAL TURNOVER:**

The Turnover during the 12 months immediately before the date of the Damage.

### **STANDARD TURNOVER:**

The Turnover during that period in the 12 months immediately before the date of the Damage which corresponds with the Indemnity Period.

### **RATE OF PAYROLL:**

The rate of Pay-Roll to Turnover during the financial year immediately before the date of the Damage.

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

# MEMORANDA TO SECTION 2

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

## TURNOVER ELSEWHERE AFTER DAMAGE

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

## DEPARTMENTAL CLAUSE

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

## NEW BUSINESS

In the event of Damage occurring at the Premises before the completion of the first year's trading of the Business the terms "Rate of Gross Profit", "Annual Turnover", "Standard Turnover" and "Rate of Pay-Roll" shall bear the following meanings and not as within stated:

- RATE OF GROSS PROFIT:** The rate of Gross earned on the adjustments Gross Profit earned on the during the period between the date of the commencement of the Business and the date of the Damage
- ANNUAL TURNOVER:** The proportional equivalent, for a period of 12 months of the Turnover realised during the period between the commencement of the Business the date of the Damage
- STANDARD TURNOVER:** The proportional equivalent, for a period equal to the Indemnity Period, of the Turnover realised during the period between the commencement of the Business and the date of the Damage
- RATE OF PAY-ROLL:** The rate of Pay-Roll to Turnover during the period between the date of the commencement of the Business and the date of the Damage

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

## ACCUMULATED STOCKS

In adjusting any loss, account shall be taken and equitable allowance made if any Shortage in Turnover due to the Damage is postponed by reason of the Turnover being temporarily maintained from accumulated stocks of finished goods.

## BOOKS OF ACCOUNT

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

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

## PUBLIC UTILITIES EXTENSION

Any loss resulting from interruption of or interference with the Business in consequence of damage to property, caused by a peril damage as a result of which is insured hereunder, at any electricity station or sub-station, gas works or water works of a public supply undertaking which is situated on or immediately adjacent to the Premises shall be deemed to be loss resulting from Damage to Property used by the Insured at the Premises.

## TURNOVER/OUTPUT ALTERNATIVE

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

If the meaning set out above be used, the memorandum "Turnover Elsewhere After Damage" shall be altered to read as follows:

"If during the Indemnity Period goods shall be manufactured and/or processed other than at the Premises for the benefit of the Business either by the Insured or by others on the Insured's behalf the sale and/or invoice value of the goods so manufactured and/or processed shall be brought into account in arriving at the Output during the Indemnity Period".

## COMPUTER

This Policy extends to include loss (not otherwise recoverable) resulting from interruption of or interference with the Business occasioned by Damage to computer installations, including ancillary equipment and data processing media utilised by the Insured anywhere in Australia.

## SALVAGE SALE

If, following Damage giving rise to a claim under this Policy, the Insured shall hold a salvage sale during the Indemnity Period:

1. Clause (a) of Item 1 of this Section shall, for the purpose of such claim, read as follows:

a) **In respect of Reduction in Turnover**

the sum produced by applying the Rate of Gross Profit to the amount by which Turnover during the Indemnity Period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the Standard Turnover, from which shall be deducted the Gross Profit actually earned during the period of the salvage sale.

b) The definition of Shortage in Turnover shall, for the purpose of such claim, read as follows:

**Shortage in Turnover** shall mean:

the amount by which the Turnover during a period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period, from which shall be deducted the Pay-Roll paid during the period of the salvage sale.

## PREMISES IN THE VICINITY (PREVENTION OF ACCESS)

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

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

## REGISTERED VEHICLES &/OR TRAILERS

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

# EXCLUSIONS TO ALL SECTIONS

## PROPERTY EXCLUSIONS

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

1. property (except Money) whilst in transit other than during the incidental movement of such property within situations occupied by the Insured. This exclusion shall not apply during temporary removal of property (other than stock and/or merchandise) and unregistered motor vehicles to any situation in the Commonwealth of Australia but, whilst such property is in transit, cover is limited to physical loss, destruction or damage caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, malicious damage and storm and/or tempest.

2. Money

a) Whilst being carried by professional money carriers, professional carriers or common carriers which is more specifically insured excepting the excess amount over and above such more specific insurance which excess is held to be covered hereunder

Provided that where in the ordinary course of business the Insured enters into an agreement with such carriers and such agreement provides that the Insured shall indemnify and/or hold harmless and/or release from liability such carriers in respect of loss, destruction or damage which may occur as a result of any event hereby insured against, this insurance shall operate as if this Property Exclusion 2(a) had been deleted.

b) stolen from an unlocked and unattended vehicle

c) stolen from a safe or strongroom opened by a key or by use of details of a combination, either of which has been left at the Situation outside business hours, unless such key or combination details have been properly secured.

d) where the loss is not discovered within five (5) working days of the event

e) where the loss arises out of:

- i) kidnapping;
- ii) bomb threat;
- iii) hoax;
- iv) extortion, or any attempt thereat.

3. jewellery, furs, bullion, precious metals or precious stones other than as stock and/or merchandise of the Business

4.

a) any locomotive or rolling stock or watercraft other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder whilst any watercraft is on water.

b) any aircraft (including its accessories and/or spare parts) other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder during taxiing, take-off, flight or landing.

5. vehicles or trailers registered or licensed to travel on a public road, provided that this exclusion shall not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any premises occupied or used by the insured.

6. livestock, animals, birds or fish

7. standing timber, growing crops and pastures

8. land, provided that this exclusion shall not apply to structural improvements on or in the land if such structural improvements are not otherwise excluded in this Policy

9. bridges, canals, roadways and tunnels, railway tracks (other than on the premises occupied or used by the Insured), dams and reservoirs (other than tanks) and their contents.

10. docks, wharves and piers not forming part of any building

11. mining property located beneath the surface of the ground unless otherwise expressly stated in this Policy

12. property during the course of, and as a result of, its processing

13.
  - a) gates, fences, retaining walls, textile awnings and blinds
  - b) property in the open air unless such property comprises or forms part of a permanent structure designed to function without the protection of the walls or roof caused by wind, rainwater or hail
14.
  - a) property undergoing construction, erection, alteration or addition when the value of work exceeds 10% of the limit of Liability or \$500,000 whichever is the lesser
  - b) empty premises undergoing demolition
15. oil and gas drilling and/or production rigs whilst offshore
16. All machinery (as defined in this exclusion), electronic data processing equipment or electronic control equipment occasioned by or happening through any mechanical, electrical, electro-mechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or non-operation of whatsoever kind.
 

Provided that Property Exclusion 16 shall not apply to any subsequent loss, destruction of or damage to such Machinery, electronic data processing equipment or electronic control equipment occasioned by or happening through any cause or event not otherwise excluded herein which results from any of the events referred to in this exclusion.

For the purpose of Property Exclusion 16, Machinery means:

any apparatus whether or not functioning independently or as any component part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power
17. Any boiler (other than a boiler used for domestic purposes) economiser or other pressure vessel, including pipes, valves and other apparatus thereof in respect of which a certificate is required to be issued under the terms of any statute or regulation, occasioned by or arising from explosion, rupture, collapse, bursting, cracking or overheating thereof provided that this exclusion shall be limited to the aforementioned items immediately affected and shall not extend to other property as a result of such loss or destruction or damage. This exclusion shall not apply to Section 2 as specifically stated therein.

## PERILS EXCLUSIONS

The Insurers shall not be liable under Sections 1 and/or 2 in respect of:-

1. physical loss, destruction of or damage to the Property Insured
  - a) directly or indirectly occasioned by or happening through or connected with war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power
  - b) resulting from confiscation, nationalisation, requisition or damage to property by or under the order of any Government or Public or Local Authority
 

Notwithstanding the provisions of Perils Exclusion 1(b) the Insurers shall be liable for loss, destruction of or damage to, or the cost of removal of, sound property at the Premises for the purpose of preventing or diminishing imminent damage by, or inhibiting the spread of, fire or any other peril insured against under this Policy
  - c) any act of terrorism

For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or 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, cost 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 a and/or c above.

If the Insurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance 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.

2.
  - a) physical loss, destruction of or damage to the Property Insured,
  - b) any legal liability of whatsoever nature, directly or indirectly caused by or contributed to by or arising from:-
    - i) ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this exclusion only, "combustion" shall include any self-sustaining process of nuclear fission
    - ii) nuclear weapons materials;
3. physical loss, destruction or damage occasioned by or happening through:-
  - a) flood, which shall mean the inundation of normally dry land by water overflowing from the normal confines of any natural watercourse or lake (whether or not altered or modified), reservoir, canal or dam.
  - b) water from or action by the sea, tidal wave or high water  
Provided that Perils Exclusions 3(a) and 3(b) shall not apply if loss, destruction or damage is caused by or arises out of an earthquake or seismological disturbance
4. physical loss, destruction or damage occasioned by or happening through:-
  - a) moths, termites or other insects, vermin, rust or oxidation, mildew, mould, contamination or pollution, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour, texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting therefrom)
  - b) wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good
  - c) error or omission in design, plan or specification or failure of design
  - d) normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration
  - e) faulty materials or faulty workmanship

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

Provided that Perils Exclusions 6 (c) (i) and 6 (c) (ii) shall be limited to the item or items immediately affected and shall not extend to other property damaged as a result of such spontaneous combustion, fermentation or heating or process involving the direct application of heat

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

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

Provided that Perils Exclusions 7(a) and 7(b) shall not apply to theft consequent upon forcible and violent entry upon premises or felonious concealment upon premises committed by an employee of the Insured or theft of Money whilst in transit

- c) the cessation of work whether total or partial
- d) the cessation, interruption or retarding of any process or operation as a result of strikes, labour disturbance or locked out workers

Provided that Perils Exclusions 7(c) and 7(d) shall not apply in respect of physical loss, destruction or damage directly caused by strikers, locked out workers or similar persons

- e) erosion, subsidence, earth movement or collapse resulting therefrom
- f) kidnapping, bomb threat, threat of contamination, hoax, extortion or any attempt thereat

Provided that this Exclusion 7(a) to (f) shall not apply to subsequent loss, destruction or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

8. any legal liability of whatsoever nature other than as herein provided

9. consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as provided in Section 2.

# MEMORANDA APPLICABLE TO ALL SECTIONS

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

## AMOUNT OF POLICY NOT REDUCED BY LOSS

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

## EVENT

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

## SUBROGATION WAIVER

The Insurers agree to waive any rights and remedies or relief to which they may become entitled by subrogation against:-

- a) any corporation or organisation (including its directors, officers, employees or servants) owned or controlled by any Insured named herein or subsidiary to any Insured named herein or any co-owner of the property insured hereunder;
- b) any Insured named or described by this Policy (including its directors, officers, employees or servants).

## ADJUSTMENT OF PREMIUM

- a) The Premium shown is provisional and is calculated on the Declared Values of:-
  - i) Property Insured,
  - ii) Gross Profit and Insured Pay-Roll, on the day of commencement of each Period of Insurance
- b) The Insured undertakes to declare to the Insurers within a reasonable time after the day of expiry of the Period of Insurance
  - i) the value of Property Insured on the day of expiry of the Period of Insurance. For the purpose of this declaration, stock-in-trade and/or merchandise shall be taken at its average value during the Period of Insurance.
  - ii) the amount of the Gross Profit earned and Pay-Roll paid, in accordance with the cover afforded in the respective items of Section 2, in the course of the business during the accounting period of 12 months most nearly concurrent with the Period of Insurance.
- c) The provisional premium shall be adjusted by payment to the Insurers of an additional premium or by allowance to the Insured of a return premium, as the case may be, calculated at the agreed rate on:-
  - i) Fifty per cent (50%) of the difference between property declared in accordance with clauses (a) (i) and (b) (i).
  - ii) The full agreed rate hereunder on the difference between the amounts declared under clauses (a) (ii) and (b) (ii).
- d) It is agreed to make allowance for any abnormal fluctuation in values and to charge a premium commensurate with the risk, such premium to be agreed between the parties to this agreement.
- e) The Declaration of Values at the expiry of the Period of Insurance declared in accordance with this memorandum shall not be reduced as the result of loss, destruction or damage in respect of which a claim has been paid or is payable under this Policy.

# CONDITIONS APPLICABLE TO ALL SECTIONS

## 1. MISREPRESENTATION AND NON-DISCLOSURE

If the Insured –

- a) failed to disclose any matter which the Insured was under a duty to disclose to the Insurers; or
- b) made a misrepresentation to the Insurers before this Policy was entered into and if the Insurers would not have entered into this Policy for the same premium and on the same terms and Conditions expressed in this Policy but for the failure to disclose or the misrepresentation then –
  - i) the liability of the Insurers in respect of any claim will be reduced to an amount to place the Insurers in the same position in which the Insurers would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made; or
  - ii) if the non-disclosure or misrepresentation was fraudulent, the Insurers may avoid this Policy.

## 2. ALTERATION

The Insurers shall not be liable for loss, destruction of or damage to any property insured hereunder caused or contributed to by any alteration after the commencement of this Policy –

- a) by removal of such property from the Premises other than as provided under the terms of Property Exclusion 1.
- b) in the trade or processes of manufacture carried on at the Premises or whereby the nature of the occupation or other circumstances affecting the Premises and/or the Insured's property therein contained shall be changed in such a way as to increase the risk of loss, destruction or damage;
- c) whereby any premises containing any property insured hereunder shall become unoccupied, and so remain for a period of more than thirty days; or
- d) whereby the Insured's interest ceases except by will or the operation of law,

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

## 3. SPRINKLER INSTALLATIONS - APPLICABLE TO OWNED PREMISES OR INSTALLATIONS FOR WHICH THE INSURED IS RESPONSIBLE

The Insured warrants that in such of the Premises as are protected or as are required by law to be protected by an approved installation of automatic sprinklers, automatic external alarm signal and automatic alarm signal connected with a fire brigade station, in or on the Premises, due diligence shall be used so that the same shall at all times be maintained in good working order.

The Insured further warrants that provision will be made for this regular maintenance of the installation in accordance with Australian Standard AS1851 part 3 Automatic Sprinkler Installation by the installing engineers or firm or, failing this, by a person or organisation who must be approved by the Insurers to carry out such maintenance.

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

## 4. OTHER INSURANCE

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

## 5. CANCELLATION

- a) This Policy may be cancelled at any time at the request of the Insured, in which case the Insurers will retain the customary short-period rate for the time this Policy has been in force.
- b) The Insurers may also cancel this Policy by giving the Insured written notice to that effect where –
  - i) the Insured or any person who was at any time the Insured failed to comply with the duty of utmost good faith;
  - ii) the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
  - iii) the person who was the Insured at the time when this Policy was entered into made a misrepresentation to the Insurers during the negotiations for this Policy but before it was entered into;
  - iv) the Insured or any person who was at any time the Insured failed to comply with a provision of this Policy, including a provision with respect to the payment of the Premium;
  - v) the Insured has made a fraudulent claim under this Policy or any other policy of insurance (whether with the Insurers or some other insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
  - vi) the Insured failed to notify the Insurers of any specific act or omission where such notification is required under the terms of this Policy; or
  - vii) the Insured acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers the Insurers to refuse to pay, or reduce its/their liability in respect of, a claim in the event of such contravention or omission.
- c) The Insurers notice of cancellation takes effect at the earlier of the following times:
  - i) the time when another policy of insurance between the Insured and the Insurers or some other insurer, being a policy that is intended by the Insured to replace this Policy, is entered into; or
  - ii) 4.00 pm on the thirtieth business day after the day on which notice was given to the Insured. In the event that the Insurers cancels this Policy, the Insurers will repay to the Insured a rateable proportion of the Premium for the unexpired Period of Insurance from the date of cancellation.

## 6. NOTIFICATION OF CLAIMS

On the happening of any loss, destruction or damage, the Insured shall forthwith give notice in writing to the Insurers and shall within thirty (30) days after such loss, destruction or damage or such further time as the Insurers may in writing allow), at the Insured's own expense, deliver to the Insurers a claim, in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property lost, destroyed or damaged and of the amount of loss, destruction or damage thereto, having regard to their value at the time of the loss, destruction or damage, together with details of any other insurances on any property hereby insured.

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

No claim under this Policy shall be payable unless the Insured has complied with the terms of this condition.

## 7. FRAUD

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy, or if any destruction or damage be occasioned by the wilful act or with the connivance of the Insured, the Insurers, without prejudice to any other rights the Insurers might have under this Policy, shall be entitled to refuse to pay such claim.

## **8. REINSTATEMENT**

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

## **9. INSURERS RIGHTS**

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

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

## **10. SUBROGATION**

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

## **11. PRECAUTIONS TO PREVENT LOSS**

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

## **12. INSURED'S ACTION AFTER THEFT OR DAMAGE**

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

## **13. TERMINATION OF COVER UNDER SECTION 2**

If during any period of insurance;

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

then the insurance cover provided under Section 2 of this Policy in respect of such Business or Insured shall automatically and forthwith cease.

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

## **14. OBSERVANCE OF TERMS AND CONDITIONS**

The due observance and fulfilment of these Conditions and the other terms of this Policy by the Insured, in so far as the same are capable of being construed as such, are conditions precedent to any liability of the Insurers to make any payment under this Policy.

## **15. PROGRESS PAYMENTS**

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

## **16. HEADINGS**

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.

## **17. GENERAL DEFINITIONS**

- a) Wherever the word Policy appears herein, it is also deemed to mean Certificate.
- b) Wherever the word Insurer(s) appears herein, it is deemed to mean Westport Insurance Corporation.

## **18. TRADES AND SANCTIONS**

No insurer shall be deemed to provide cover and no insurer shall be liable to pay any claim or pay any benefit hereunder 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 any jurisdiction applicable to that insurer.

# ENDORSEMENTS

## 1. THE FOLLOWING ENDORSEMENTS ATTACH TO AND FORM PART OF THE POLICY WHEN NOTED IN THE POLICY SCHEDULE:

### **1A. Statutory Inquiries**

Paragraph (a) of The Indemnity shall extend to include costs and expenses incurred by the Insured in connection with statutory inquiries following Damage to Property Insured. The term "Statutory Inquiries" shall mean any judicial, coronial or other form of inquiry or hearing established by or at the direction of any government, semi-government, local or planning authority as a direct result of Damage to Property Insured.

For the purpose of the application of Provision (iii) of the Reinstatement or Replacement Memorandum, the Insured's declared values at any Situation shall not include any allowance for the costs and expenses referred to in this extension.

### **1B. Exploratory Costs**

Paragraph (c) of the Indemnity extends to include exploratory costs necessarily and reasonable incurred by the Insured to prevent imminent damage or diminish damage to Property Insured by any peril insured against by this Policy.

### **1C. Expediting Expenses**

The policy extends to include costs and expenses incurred by the Insured for express carriage rates and extra payments for overtime, night, Sunday or holiday working incurred in connection with the repair or reinstatement of the Property Insured directly or indirectly arising from an event insured by the policy.

### **1D. Cost of Clearing Drains**

The following clause is added to The Indemnity under Section 1 – Material Loss or Damage

Costs of clearance of drains including expenses necessarily incurred in clearing and/or re[par]ing drains, gutters, sewers and the like, at or in the vicinity of property hereby insured, consequent upon damage recoverable hereunder.

### **1E. Liability for Duty**

The policy extends to include the Insured's liability for customs, excise and other duties, which the Insured becomes liable to pay in the event of Damage to Property Insured.

### **1F. Customer's Goods**

The policy extends to insure goods belonging to the Insured's customers at the premises, to the extent that such goods are not otherwise insured.

### **1G. Heritage Protection**

The following paragraph is inserted after paragraph (i) of the Basis of Settlement Clause:

In the case of a building with architectural features and/or structural materials possessing an ornamentals or historic character, or for which the original materials are not available, the first paragraph of Basis of Settlement (a) shall be deemed to be amended to read:

The cost necessary to replace, repair, rebuild or restore the building to a reasonable equivalent appearance and capacity, using the original design and suitable equivalent materials.

This endorsement shall not be subject to any Co-insurance Clause or Co-insurance Memorandum contained in Section 1 of the Policy.

### **1H. Labels, Containers and Wrappings**

In the event of Damage affecting labels, containers and wrappings, the Insurer(s) shall not be liable for more than an amount sufficient to pay the cost of new labels, containers or wrappings, and the cost of reconditioning the goods, but in no case shall the Insurer(s) be liable for more than the insured value of the damaged merchandise.

### **1I. Application of Deductibles**

Deductibles shall apply to the Limits and Sub-Limits of Liability in accordance with the Schedule but the limits and Sub-Limits of Liability shall only be applied in excess of the relevant deductible.

### **1J. Business Hours**

For the purposes of Property Exclusion 2(c), the Insured's business hours shall mean the period during which the insured's premises are actually occupied for business purposes and during which the Insured or employees of the Insured are in the premises.

### **1K. Latent Pre-Existing Defects**

The following provision shall apply to the perils exclusions:

Perils exclusions 4 (a), 4 (c), 4 (e) and 5 (a) shall not apply to any claim for damage caused directly by an insured peril if the dominant or effective cause of the damage was a condition or defect which was not known to the Insured at the time when the contract of insurance was entered into.

Notwithstanding the exclusion of latent defect, latent damage shall be deemed to have occurred when first discovered.

### **1L. Business Interruption following Resultant Damage**

For the purposes of Section 2 but not Section 1 of this Policy, the term "Property insured" where used in the concluding provision of both Perils Exclusion 4 and 7, is extended to include all property or any part thereof used by the insured at the premises for the purpose of the Business.

### **1M. Unexplained Shortage**

Perils Exclusion 6(b) is amended to read: Unexplained disappearance or unexplained inventory shortage, whether resulting from errors in supply or delivery of materials by or to the Insured or solely from clerical or accounting errors by the Insured.

### **1N. Precedence of Sub-Limits**

If more than one Sub-Limit of Liability applies to any one loss or series of losses arising out of any one event at any one Situation, such Sub-Limits shall not be aggregated; the higher amount shall apply.

### **10. Bushfire Exclusion**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes for a period of seventy two (72) hours from inception loss, damage, cost or expense of whatsoever nature directly or indirectly caused by resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

#### **1. – BUSHFIRE**

This endorsement also excludes loss, damage, cost 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 1 and/or 2 above.

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

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

In all other aspects the Policy remains unaltered.

### **1P. Cyclone Exclusion**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes for a period of seventy two (72) hours from inception loss, damage, cost or expense of whatsoever nature directly or indirectly caused by resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

## **1. – CYCLONE**

This endorsement also excludes loss, damage, cost 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 1 and/or 2 above.

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

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

In all other aspects the Policy remains unaltered.

## **2. WHEN A SUB LIMIT OF LIABILITY IS STATED IN THE POLICY SCHEDULE, THE FOLLOWING ENDORSEMENTS ATTACH TO AND FORM PART OF THE POLICY:**

### **2A. Liability to Make Enquiries**

This policy extends to include costs and expenses incurred by the Insured in respect of any legal liability to make enquiries consequent upon physical loss, destruction or damage insured by this policy, but not exceeding the sub-limit stated in the schedule.

### **2B. Landscaping**

Notwithstanding Property Exclusions 7 and 8, Basis of Settlement (a) is extended to include landscaping; which terms shall mean lawns and garden plots, including rockwork, paving and ornamentation pertaining thereto, ornamental plants, shrubs and trees. The liability of the Insurer(s) for any one loss or series of losses arising out of the one event at any one Situation shall not exceed the Sub-Limit of Liability stated in the Schedule against Landscaping. Perils Exclusion 6(a) and 9 shall not apply to this extension, which is also exempt from Provision (iii) of the Reinstatement or Replacement memorandum.

### **2C. Theft of Property in Open Air (Except Money)**

Perils Exclusion 6(a) is amended to read:

Theft (without forcible entry or threat of violence), of property in the open air. The liability of the Insurer(s) shall not exceed the sub-limit stated in the schedule of the policy against "Theft of property in open air" for any one loss or series of losses arising out of any one event or occurrence at any one location.

### **2D. Contractual Fines and Penalties**

The insurance under this item is limited to fines and/or damages for breach of contract and the amount payable as indemnity hereunder shall be such sum or sums as the Insured shall be legally liable to pay in discharge of fines and/or damages incurred in consequence of the Damage for non-completion or late completion of orders, inability to meet contract specifications or cancellation of orders. The cover hereby granted shall be subject to the sub-limit stated in the Schedule against "Contractual Fines and/or Penalties".

### **2E. Accounts Receivable**

The insurance under this item is limited to the loss sustained by the Insured in respect of all outstanding debit balances if the Insured is unable to effect collection thereof as a direct result of Damage to records of accounts receivable. The Insurers will also pay:

- (i) interest charges at ruling bank rates on any loan to offset impaired collections pending repayment of such amounts rendered uncollectible in consequence of the Damage;
- (ii) interest lost by the insured in consequence of such impaired collections;
- (iii) additional expenditure necessarily and reasonable incurred in tracing and establishing the amounts of accounts receivable;
- (iv) collection expenses in excess of normal costs, incurred in consequence of the Damage.

Where there is proof that a loss covered by the policy has occurred, but the Insured cannot accurately establish the total amount of accounts receivable outstanding at the date of damage, such amount shall be computed as follows:

- (a) Determine the total amount of accounts receivable outstanding on the last working day of the fiscal month which ended twelve months before the beginning of the month in which the Damage occurs;
- (b) Calculate the average increase or decrease in the monthly total amounts of accounts receivable outstanding on the last working day of each of the twelve months immediately preceding the month in which the Damage occurs;
- (c) The amount determined under paragraph (a), increased or decreased by the percentage calculated in accordance with paragraph (b) shall be deemed to be the total amount of accounts receivable outstanding at the time and date of the Damage;
- (d) The amount determined under paragraph (c) shall be adjusted as may be necessary to provide for any demonstrable variance from the amount so determined occurring before but during the month in which the Damage occurs; due consideration also being given to normal monthly trends in receipts

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by the Insured, and an equitable amount to provide for doubtful debts. The cover hereby granted shall be subject to the sub-limit stated in the Schedule against "account Receivable".

## **2F. Gross Rental Specification**

The following clauses are deleted from the policy:

- Item No. 1 (Gross Profit)
- Item No. 3 (Pay-Roll)

Definitions of:

- Gross Profit
- Turnover
- Pay-Roll
- Shortage in Turnover
- Rate of gross profit
- Annual Turnover
- Standard Turnover
- Rate of Pay-Roll

Memoranda entitled:

- Turnover elsewhere after the Damage
- Departmental Clause
- New Business
- Accumulated stock
- Turnover/Output Alternative
- Salvage Sale

And replaced by the following clauses:

### **Item No. 1**

The Insurance under this Item is limited to loss of Gross Rentals due to (a) **Reduction in Gross Rentals** and (b) **Increase in Cost of Working** and the amount payable as indemnity thereunder shall be:

- (a) **In respect of reduction in Gross Rentals:** The amount by which the Gross Rentals during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Gross Rentals,
- (b) **In respect of increase in Cost of Working:** The additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Gross Rentals which but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the loss of Gross Rentals thereby avoided, less any sum saved during the Indemnity Period in respect of such charges and expenses of the Business as may cease or be reduced in consequence of the Damage. Provided that if the estimated value of gross Rentals declared at the commencement of each Period of Insurance is less than the Annual gross rentals (or the appropriate multiple if the Indemnity Period exceeds twelve months), the amount payable hereunder shall be proportionately reduced.

Definitions:

**Gross Rentals:** The money paid or payable to the Insured by tenants in respect of rental of the premises and for services rendered by or on behalf of the insured.

**Standard Gross Rentals:** The Gross Rentals during that period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period.

**Annual Gross Rentals:** The gross Rentals earned during the twelve months immediately before the date of the damage.

To which such adjustments shall be made (to Standard Gross Rentals and Annual gross rentals) as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the damage or which would have affected the Business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may reasonable be practicable the results which but for the Damage would have been obtained during the relative period after the Damage.

**Gross Rentals elsewhere after Damage:** If during the Indemnity Period the Business shall be conducted elsewhere that at the Premises, the gross Rentals derived from such other premises shall be brought into account in arriving at the gross Rentals during the Indemnity Period.

**Departmental Clause:** If the Business be conducted in departments, the independent trading results of which are ascertainable, the provisions of clauses 9a) and 9b) of Item No. 1 shall apply separately to each department affected by the Damage.

**New Business:** In the event of Damage occurring at Premises before completion of the first year's trading of business, the terms "Standard Gross Rentals" and "Annual gross rentals" shall bear the following meanings and not as within stated:

**Standard Gross Rentals:** The proportional equivalent, for a period equal to the Indemnity Period of the Gross rentals realised during the period between the commencement of the Business and the date of the Damage.

**Annual Gross Rentals:** The proportional equivalent, for a period of twelve months of the gross Rentals realised during the period between the commencement of the business and the date of the damage

To which such adjustments shall be made (to Standard gross Rentals and/or Annual gross rentals) as may be necessary to provide for the trend of the business and for variations in or other circumstances affecting the Business either before or after the Damage or which would have affected the business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been obtained during the relative period after the Damage.

## **2G. Unspecified Suppliers' and/or Customers Premises (Fixed Limit)**

Loss resulting from interruption of or interference with the Business in consequence of Damage to property at the premises, anywhere in Australia, of any producer or merchant (or in the vicinity of such premises, which prevents or hinders the use of or access to such premises) shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

The liability of the Insurer(s) under this endorsement, in respect of any one loss or series of losses arising out of any one event or occurrence at any one premises, shall be limited to five per cent (5%) of the total of the values of Gross Profit and Pay-roll declared as at the day of commencement of the Period of Insurance.

For the purposes of this endorsement, the term "premises of a producer" refers to premises, other than those described in the public utilities Extension to Section 2 of the policy, at which any of the goods including any constituents of such goods) or services used by the Insured are produced, assembled or stored. The term "premises of a merchant" refers to premises to which the insured provides goods or services.

## **DEFINITION**

For the purpose of this policy, the term Accidental Damage mentioned under sub-limits of liability and/or deductibles shall mean:

### **ACCIDENTAL DAMAGE:**

Physical loss, destruction of or damage to the Property Insured (subject to the Exclusions Applicable to Sections 1 and 2) arising out of any one source or original cause other than: fire, lightning, thunderbolt, earthquake, subterranean fire and/or volcanic eruption, aircraft and/or other aerial devices and/or articles dropped or falling therefrom and/or impact by space debris, sonic boom, explosion, implosion or collapse, smoke and/or steam, spontaneous fermentation or heating, spontaneous combustion, subsidence, earth movement or collapse resulting therefrom or landslip, flood, water from or action by the sea, tsunami, tidal wave or high water, storm, tempest, wind, hail and/or rainwater, water and/or other substance discharged, overflowing and/or leaking from apparatus, appliances, pipes, sprinkler and/or any other system(s), the acts of persons taking part in riots or civil commotions or the acts of strikers or locked out workers or persons taking part in labour disturbances, the acts of malicious persons, the acts of any lawfully constituted authority in connection with any of the aforementioned events, impact by any waterborne craft, land vehicles or animals, burglary, theft, loss of money, fraudulent or dishonest acts, fusion, or any other event or circumstance which is more specifically mentioned under any other Sub Limit of Liability and/or Deductible.