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## CONSTRUCTION PLANT & MACHINERY INSURANCE POLICY

Dated 1<sup>st</sup> July 2008

Issued by Australis Group (Underwriting) Pty Ltd ("Australis") (ABN 80 082 459 372, AFS Licence No. 238170) acting under a binder as an agent of Great Lakes Reinsurance (UK) PLC (ARBN 127 740 532, ABN 18 964 580 576, AFS Licence No. 318603), trading as Great Lakes Australia ("Great Lakes Australia").

### Your Insurer

This insurance is underwritten by Great Lakes Australia, an authorised Australian insurer. As an authorised insurer, Great Lakes Australia is regulated by the Australian Prudential Regulation Authority ('APRA').

### Our Services

All services that are provided to you regarding this product are provided by Australis Group Underwriting (Australis). If you have any questions about this policy, or you wish to lodge a claim, please contact Australis on the contact details below. Claims are managed by Australis in conjunction with Great Lakes Australia.

### Contact Details

You can contact Great Lakes Australia through Australis on the number shown in your policy schedule or from these details;

Australis Group (Underwriting) Pty Ltd

Level 3, 117 Clarence St Sydney NSW. GPO Box 247 Sydney NSW 2001, Australia

Telephone: (02) 9200 4000 Facsimile: (02) 9200 4099 Website: [www.ausuw.com](http://www.ausuw.com)

### More Insurer Details

Great Lakes Australia is a branch office of Great Lakes Reinsurance (UK) PLC which is a limited liability company incorporated in England and Wales and a wholly owned subsidiary of the Munich Re Company, part of the Munich Re Group. The Munich Re Group is one of the largest insurance groups in the world.

Great Lakes Australia has strong financial security characteristics. However, please note that ratings can vary from time to time. You can check Great Lakes Australia's current rating at the following website:

Standard & Poors: [www.standardandpoors.com](http://www.standardandpoors.com)

Great Lakes Australia can be contacted as follows:

143 Macquarie Street, Sydney, NSW, 2000  
PO Box H35 Australia Square, Sydney, NSW, 1215  
Telephone: (02) 9272 2050  
Email: [reception@gla.com.au](mailto:reception@gla.com.au)  
Website: [www.gla.com.au](http://www.gla.com.au)

Great Lakes Australia is a party to the General Insurance Code of Practice. You can access the Code at [www.codeofpractice.com.au](http://www.codeofpractice.com.au) or via GLA's website

## Definitions

**We, Us** and **Our** means Australis acting under a binder as an agent of Great Lakes Australia

**Company** means the entity name in the Policy Schedule as the Company

**You, Your** and **Insured** mean the person(s) or entity(ies) named in the Policy Schedule as the Insured

## Duty of Disclosure

Under the Insurance Contracts Act 1984 (the Act), the Insured has a Duty of Disclosure. The Insured is required before they enter into, renew, vary, extend or reinstate your Policy, to tell the Company everything the Insured knows and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to the Company's decision whether to insure the Insured, and anyone else to be insured under the Policy, and if so, on what terms.

ÿ You do not have to tell us about any matter

- that diminishes the risk
- that is of common knowledge
- that the Company knows or should know in the ordinary course of their business as an Insurer, or
- which the Company indicates they do not want to know.

ÿ If you do not tell the Company

If the Insured does not comply with its Duty of Disclosure the Company may reduce or refuse to pay a claim or cancel this Policy. If the non-disclosure is fraudulent the Company may treat this Policy as never having worked.

Subject to the payment of the Premium, the Company provides insurance cover to the Insured as stated in this Policy, including the Policy Schedule and any Endorsement.

In issuing this Policy, the Company relies upon the information contained in the Proposal and any written statements made by the Insured or anyone acting on behalf of the Insured.

The maximum liability of the Company will not exceed in all the Total Sum Insured, less the applicable Deductible(s).

## Privacy

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

If the Insured does not provide Australis Group Underwriting with complete information, Australis Group Underwriting cannot properly quote for the insurance and cannot provide insurance cover to the Insured. The Insured can check the personal information Australis Group Underwriting hold about them at any time.

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

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

Details on Great Lakes Australia's Privacy Policy can be found at [www.gla.com.au](http://www.gla.com.au) or by contacting them:

Address: The Privacy Officer, 143 Macquarie Street, Sydney, NSW, 2000  
Telephone: (02) 9272 8000  
Email: [privacyofficer@gla.com.au](mailto:privacyofficer@gla.com.au)

### **Dispute resolution**

Australis Group Underwriting will do everything possible to provide a quality service to the Insured. However, Australis Group Underwriting recognise that occasionally there may be some aspect of a service or a decision Australis Group Underwriting have made that the Insured wish to query or draw to the attention of Australis Group Underwriting.

If the Insured would like to make a complaint or access the internal dispute resolution service please contact:

The Complaints Officer  
Australis Group Underwriting  
Level 3  
117 Clarence Street  
Sydney NSW 2000

We will acknowledge receipt of Your complaint within 3 working days.

If the complaint relates to the insurance cover We will work with Great Lakes Australia to resolve the complaint. We will, provided We have sufficient information, complete the review within 15 working days. Where We are unable to do so, We will agree a new timeframe for responding to You. In any case, We will provide You with an update every 10 working days.

If You are a natural person or a small business, and You are not satisfied with the final decision, You may wish to contact the Financial Ombudsman Service ("FOS"). The FOS is a free independent external disputes resolution service provided to customers to review and resolve complaints where We have been unable to satisfy Your concerns.

For further details you can visit their website [www.fos.org.au](http://www.fos.org.au) or contact them:

Address: GPO Box 3, Melbourne, VIC, 3001  
Telephone: 1300 78 08 08  
Email: [info@fos.org.au](mailto:info@fos.org.au)

### **Cooling-off information**

If the Insured wants to return their insurance after their decision to buy it, they may cancel it and receive a full refund. To do this the Insured may notify their Financial Services Provider electronically or in writing within 21 days from the date the Policy commenced.

This cooling-off right does not apply if the Insured has made or is entitled to make a claim. Even after the cooling off period ends, the Insured still has cancellation rights however the Insured's Financial Services Provider may deduct certain amounts from any refund for administration costs or any non-refundable taxes.

If Policy is for an event that will start and finish within the 21 day cooling-off period, you can only exercise your right before the event starts or the expiry of the cooling-off period, whichever is the earlier. For example, for travel insurance, the commencement of the journey is the event.

#### **Other party's interests**

The Insured must tell Australis Group Underwriting of the interests of all parties (e.g. financiers, owners, lessors) who will be covered by this insurance. The Company will protect their interests only if the Insured has told us about them and Australis Group Underwriting have noted them on the Policy Schedule.

#### **Preventing our right of recovery**

If the Insured has agreed not to seek compensation from another person who is liable to compensate them for any loss, damage or liability which is covered by this Policy, the Company will not provide cover under this Policy for that loss, damage or liability.

#### **How Goods and Services Tax affects any payments the Company makes**

The amount of premium payable by the Insured for this policy includes an amount on account of the GST on the premium.

When a claim is paid, the GST status of the Insured will determine the amount paid.

When the Insured is:

- a) not registered for GST, the amount paid is the sum insured limit of indemnity or the other limits of insurance cover including GST.
- b) registered for GST, the Company will pay the sum insured/limit of indemnity or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a Damaged item insured under the Policy) we will pay for the GST amount.

The Company will reduce the GST amount paid by the amount of any input tax credits to which the Insured is or would be entitled if the Insured made a relevant acquisition. In these circumstances, the input Tax Credit may be claimable through Business Activity Statement (BAS) of the Insured.

The Insured must advise Australis Group Underwriting of their correct Australian Business Number & Taxable Percentage.

Any GST liability arising from the incorrect advice of the Insured is payable by the Insured.

Where the settlement of a claim is less than the sum insured/limit of indemnity or the other limits of insurance cover, the Company will only pay an amount for GST (less the Insured's entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover the Insured's loss, the Company will only pay the GST relating to their settlement of the claim.

The Company will (where relevant) pay the Insured on their claim by reference to the GST exclusive amount of any supply made by any business of the Insured's which is relevant to their claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is the entitlement of the Insured to an Input Tax Credit on their premium as a percentage of the total GST on that premium.

### **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".

## **DEFINITIONS APPLYING TO SECTIONS ONE AND TWO**

### **1. DEDUCTIBLE**

Deductible being the amount(s) stated in the Policy Schedule which will be deducted from the amount otherwise payable for each and every Insured Damage.

### **2. DRY HIRE**

Dry Hire being the hire of an Insured Machine to another party where the Insured does not supply and is not responsible for the costs in respect of the operator, consumables, delivery, set up and collection.

### **3. INDEMNITY PERIOD**

Indemnity Period being the period

- (i) beginning with the occurrence of Insured Damage  
and
- (ii) ending on
  - (a) the date on which the results of The Business are no longer affected  
by the Insured Damage
  - or
  - (b) three months thereafterwhichever occurs first.

### **4. INSURED DAMAGE**

Insured Damage being sudden and unforeseen physical loss of or damage to an Insured Machine stated in the Policy Schedule from any cause, not hereinafter excluded, occurring and discovered during the Period of Insurance and requiring immediate repair or replacement to allow continuation of use.

### **5. INSURED MACHINE**

Insured Machine being either

- (i) a mobile machine excluding machine any machine designed to carry passengers or goods including any mechanically propelled item stated in the Policy Schedule and trailers intended to be attached to such items and including
  - (a) alarms, immobilisers and other security equipment

- (b) chains, tarpaulins and gates
  - (c) non-standard accessories noted on the Policy Schedule
  - (d) standard accessories fitted by the manufacturer or dealer
  - (e) sign writing or advertising fixed to the Insured Machine to a maximum of \$1,000 any one Insured Machine any one event of Insured Damage
  - (f) spare parts and non standard tools for the Insured Machine to a maximum of \$500 any one Insured Machine any one event of Insured Damage
- but excluding any static machine
- (ii) a static machine being any Insured Machine noted on the Policy Schedule but excluding any mobile machine described in 5.(i) above.

## **6. MARKET VALUE**

Market Value being the cost to buy an equivalent Insured Machine of similar make, model, age and condition.

## **7. PERIOD OF INSURANCE**

Period of Insurance being the period noted on the Policy Schedule.

## **8. POLICY SCHEDULE**

The Policy Schedule or any Renewal Schedule or Endorsement Schedule.

## **9. REVENUE**

Revenue being money received or receivable by The Insured for services rendered in the conduct of The Business.

## **10. SUM INSURED**

Sum Insured being the sum(s) of the actual Market Value(s) noted on the Policy Schedule

## **11. THE BUSINESS**

Being The Business of The Insured noted on the Policy Schedule

## **12. THE COMPANY**

The Company named in the Policy Schedule through its agent Australis Group (Underwriting) Pty Ltd (ABN 80 082 459 372) trading as Australis Group Underwriting (ABN 38 077 515 327)

## **13. THE INSURED**

The person(s), companies or firms named on the current Policy Schedule as the Insured including, as if they were the Insured;

(1) all the subsidiary companies (now or subsequently constituted) of the Insured specified in the Policy Schedule provided their places of incorporation are within Australia or any Territory of Australia

(2) every director, executive officer, employee, partner or shareholder of the Insured or of the parties shown in paragraph (1) above, but only while acting within the scope of their duties in such capacity

(3) each partner, joint venturer, co-venturer or joint lessee of the Insured named in the Policy Schedule but only if the Company agrees to insure them and the Insured named in the Policy Schedule agrees to pay the premium the Company requires.

(4) any person, partnership or company that has a financial and insurable interest in an Insured Machine.

However, the Insured does not include the interest of any other person other than as described in this definition.

#### **14. TIME DEDUCTIBLE**

Being the number of days noted on the Policy Schedule during which The Insured must bear for each and every loss for any increased cost of working or loss of revenue.

## **SECTION ONE**

### **SCOPE OF COVER**

The Company will indemnify the Insured against Insured Damage to an Insured Machine which occurs during the Period of Insurance as stated in the Schedule provided that the item is used and located in the manner in which it was designed to be used or while in transit anywhere in the geographic location noted on the Policy Schedule or while working, at rest, being dismantled for the purpose of cleaning or overhaul or during subsequent reassembly but only after successful initial commissioning of the item.

The Company will also indemnify the Insured for costs and expenses necessarily and reasonably incurred to remove debris resulting from Insured Damage to an Insured Machine to an amount not exceeding \$5,000 per Insured Damage event.

The Company will also indemnify the Insured for costs and expenses necessarily and reasonably incurred in the recovery or return of an Insured Machine following a claim payable under this policy for theft of an Insured Machine.

The Company will also indemnify the Insured for their contribution for general average and salvage charges where such maritime conditions apply where the Insured Machine has been transported by sea in Australian Waters. The liability of the Company will not exceed Market Value of the Insured Machine or the Sum Insured noted on the Policy Schedule whichever is the lesser.

### **BASIS OF SETTLEMENT**

The basis of any settlement for Insured Damage will be:

(a) in the case of damage which can be repaired, the Company will pay all costs reasonably incurred to repair the Insured Machine to its condition immediately prior to the Insured Damage including the costs of dismantling, re-erection, ordinary freight to and from a repair workshop customs duties and other imposts if levied, charges for overtime and work on public holidays (limited to twenty-five percent (25%) of the cost of normal repairs or \$10,000 whichever is the lesser) provided that the sum insured noted on the Policy Schedule is not otherwise exhausted.

If the repairs are carried out by the Insured the Company will pay the reasonable cost of materials and wages incurred by the Insured plus a reasonable amount to cover overhead charges.

No deduction will be made for depreciation of replaced parts but the value of any salvage will be taken into account.

If parts required for the repair of an Insured Machine are unobtainable in Australia the Insured must undertake to obtain those parts and the Company will reimburse the Insured for such costs including air freight by a regular scheduled service but excluding air freight chartered for the purpose.

(b) the Company may, at its' sole discretion consider the item a total loss and settlement will then be made on the basis below.

in the case where the Insured Machine is two (2) years old or less from the date of initial commissioning the Company will pay to replace the Insured Machine with an item of similar type, function, quality and capacity and in a condition equal to but not better than the Insured Machine when new or

in the case where the Insured Machine is more than two (2) years old the current Market Value at the time of the Insured Damage, plus the reasonable costs of freight and erection of a replacement item (if this amount has been included in the sum insured) or

the Sum Insured for the Insured Machine noted on the Policy Schedule, whichever is lower  
less the value of any salvage.

However, only to the extent to which the costs claimed had to be borne by the Insured and to the extent to which they are included in the Sum(s) Insured.

The Company will not be liable to make any payment under this Policy unless the Insured has produced to the reasonable satisfaction of the Company accounts, invoices, receipts and other documentation indicating that repairs have been effected or replacement has taken place.

The Company will not pay for:

- (a) the cost of any provisional repairs unless such repairs constitute part of the final repairs and do not increase the total repair cost.
- (b) the cost of any alterations, additions and/or improvements.

The amount of the Deductible will be subtracted from the amount payable by the Company for Insured Damage. Should more than one Deductible apply, the highest Deductible only will be used.

The liability of the Company will not exceed in respect of any Insured Damage the Sum Insured noted on the Policy Schedule.

## **EXCLUSIONS APPLYING TO SECTION ONE**

The Company will not pay for:

1. The cost of repairs or replacement of all or part of an Insured Machine due to:
  - (a) electrical, electronic or mechanical breakdown failure or malfunction
  - (b) the freezing of any coolant or other fluid
  - (c) defective lubrication or lack of oil or coolant
  - (d) explosion of any boiler, pressure vessel, pressure piping or internal combustion engine subject to internal gas or fluid pressure.

However the Company will pay for Insured Damage that occurs as a result of (1) (a), (b), (c) or (d) above.

2. the cost of replaceable parts and attachments such as blades, knives, drills bits, or other cutting edges, dies moulds patterns, hammers, pulverising or crushing surfaces, screens and sieves, belts, chains, elevating and conveying bands or belts, batteries, tyres, electrical connecting cables and wires, flexible pipes and lines, jointing and packing material which is regularly replaced on any Insured Machine.
3. Insured Damage due to faults or defects known to The Insured or employees of The Insured and not disclosed to the Company at the time this insurance being arranged, renewed, extended, varied or reinstated.
4. Insured Damage due to wear and tear, corrosion, oxidation or deterioration due to atmospheric conditions or lack of use.

5. Loss of use or consequential loss of any kind except as provided for by Optional Extensions 4. (Increase in cost of Working), 5. (Lease Payment), 6. (Loss of Revenue) or 7. (Recovery Costs) and these extensions are noted with a sum insured on the Policy Schedule.
6. Insured damage or loss of use or any consequential loss while any Insured Machine is located underground except where the Company has agreed and this is noted on the Policy Schedule.
7. Insured Damage or loss of use or any consequential loss resulting from theft of or alteration or modification of an Insured Machine by the hirer.
8. Insured Damage when the Insured Machine is hired out without an operator except as provided for by Optional Extension 1. (Dry Hire) where this extension is noted with a sum insured on the Policy Schedule.
9. Damage to tyres caused by the application of brakes or by road punctures, cuts or bursting or damage to self laid tracks caused by the normal operations of the Insured Machine.
10. Damage to any ropes forming part of an Insured Machine other than sudden & unforeseen complete severance of wire ropes forming part of a crane or other lifting device.
11. Insured Damage to any Insured Machine running on rails
12. Insured Damage to any concrete pump, concrete agitator, barrel, bowl or mixer or attached fittings including the costs associated with the removal of concrete caused by hardening or setting of concrete.
13. Costs associated with recovery of an Insured Machine except as noted in Section One Scope of Cover following theft of the Insured Machine or as provided for by Optional Extension 7. (Recovery Costs) and this extension is noted with a sum insured on the Policy Schedule.
14. Insured Damage or loss of use or any consequential loss resulting from:
  - (a) lawful seizure; or
  - (b) operation of law arising from any breach of contract, agreement or obligation.
15. Insured Damage to an Insured Machine after an accident or fire unless reasonable precautions have been taken to safeguard the Insured Machine.
16. Unreported loss or theft of any Insured Machine where such loss is only discovered at the time an inventory is taken.
17. Penalties for delay or non completion or for guarantees relating to performance or efficiency.
18. Legal liability arising from any event.

## **SECTION TWO**

### **DEFINITIONS APPLYING TO SECTION TWO**

#### **1. DEDUCTIBLE**

The amount the Insured must first bear in relation to each occurrence. The deductible applies to all amounts payable under this Policy including the indemnity provided under 'Defence of claims'.

#### **2. EMPLOYEE**

Any person engaged under a contract of or for service or apprenticeship with the Insured, but does not include any person employed under such contract who is excluded from the definition of 'worker' under any workers' compensation legislation.

#### **3. LIMIT OF LIABILITY**

The applicable limit of liability specified in the Policy Schedule

**4. OCCURRENCE**

An event which results in personal injury or property damage neither expected nor intended from standpoint of the Insured. All personal injury or property damage arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one occurrence.

**5. PERIOD OF INSURANCE**

The period shown in the Policy Schedule.

**6. PERSONAL INJURY**

Bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish, mental injury.

**7. PROPERTY DAMAGE**

(a) Physical damage to or loss or destruction of tangible property including any resulting loss of use of that property, or

(b) Loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an occurrence.

**8. POLICY SCHEDULE**

The schedule of insurance or any endorsement schedule or renewal.

**SCOPE OF COVER**

Cover provided by this section of the policy is only in respect of mobile Insured Machines also insured under Section One of this Policy that are registered under a compulsory statutory insurance scheme or accident compensation scheme.

**Liability**

The Company will cover the Insured for their legal liability to pay all sums by way of compensation and all costs awarded against the Insured in respect of property damage happening during the period of insurance and caused by an occurrence which arises from or is caused by:

- (a) The use of a mobile Insured Machine
- (b) Goods falling from a mobile Insured Machine
- (c) Loading or unloading of a mobile Insured Machine but excluding collection from or delivery of the load to a mobile Insured Machine
- (d) a person who is using or driving a mobile Insured Machine with the permission of the Insured as if they were the Insured provided such cover is not otherwise excluded
- (e) sudden and unforeseen contamination or pollution of the atmosphere, water, land or structures which arises from or is caused by either (a), (b), (c) or (d) above but the maximum amount the Company will pay is \$500,000 in respect of each event and in total for any one Period of Insurance.

The Company will also cover the Insured or a person who is using or driving a mobile Insured Machine with the permission of the Insured as if they were the Insured for their legal liability to pay all sums by way of compensation and all costs awarded against the Insured in respect of Personal Injury happening during the period of insurance and

caused by an occurrence which arises from or is caused by the use of a mobile Insured Machine however The Company will not be liable for any claim:

- (a) if indemnity under any compulsory statutory insurance scheme or accident compensation scheme is refused:
  - (i) by reason of the failure of the Insured to register a mobile Insured Machine or to apply for cover under such a scheme
  - (ii) by reason of the failure of the Insured to comply with a term or condition of such a scheme.
- (b) if the Insured or a person who is using or driving a mobile Insured Machine with the permission of the Insured as if they were the Insured is entitled to be indemnified, wholly or partly, by or under any compulsory statutory insurance scheme or accident compensation scheme
- (c) if the Insured or a person who is using or driving a mobile Insured Machine with the permission of the Insured as if they were the Insured is not entitled to be indemnified, wholly or partly, by or under any compulsory statutory insurance scheme or accident compensation scheme only by reason of any deductible or excess applying thereunder.

The Company will cover the Insured for their legal liability to pay for removal of debris except as provided for in Section One, Scope of Cover.

### **Defence of claims**

If the Company agrees to cover the Insured the Company will:

- (a) defend in the name of and on behalf of the Insured any claim or legal action against the Insured seeking damage for personal injury or property damage even if the action is groundless, false or fraudulent, and the Company will investigate, negotiate and settle any claim or legal action as the Company sees fit.
- (b) pay all legal costs and expenses incurred by the Company and all interest accruing after entry of judgement until the Company has paid, tendered or deposited in court such part of the judgement as does not exceed the limit of liability
- (c) reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred by the Insured with the consent of the Company in connection with the defence of a claim or legal action under Section Two of this policy.
- (d) pay reasonable expenses incurred by the Insured for first aid to others at the time of personal injury caused by an occurrence (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973).

Provided that:

- (e) the Company will not be obliged to pay any claim or judgement or to defend any claim or legal action after the limit of liability has been exhausted by payment of judgments or settlements
- (f) If a payment exceeding the limit of liability has to be made to dispose of a claim, the liability of the Company to pay any costs, expenses and interest under (a) to (d) in 'Defence of claims' above will be limited to that proportion of those costs, expenses and interest as the limit of liability bears to the amount paid to dispose of the claim.

Any amount paid, other than payments in settlement of claims, suits and all costs awarded against the Insured, are payable by The Company over and above the limit of liability set out in the Policy Schedule.

### **What the Company will pay**

#### **Limit of Liability**

The Maximum amount that the Company will pay under this Section Two of the Policy, with the exception of Scope Of Cover, Liability (e), in respect of all claims made against the Insured arising out of one accident or series of accidents arising out of the one cause or event shall not exceed the Limit of Liability noted on the Policy Schedule.

#### **Deductible**

'Deductible' means the first amount the Insured must contribute to any claim made under this Section of the Policy. For most claims made on this Section of the Policy, the Insured will have to pay the deductible which is shown on the Policy Schedule.

If more than one deductible is payable under this Section of the Policy for any claim, or series of claims arising from the one event The Insured must pay the highest deductible, but only one deductible.

## **EXCLUSIONS TO SECTION TWO**

The Company will not pay for:

1. Personal injury or property damage (including loss of use of property) directly or indirectly caused by or arising from the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.
2. Personal injury or property damage (including loss of use of property) directly or indirectly caused by or arising from the transportation of compressed gases, corrosive substances, explosives, flammable liquids or other substances, petroleum products, toxic chemicals or any other substances which form explosive or toxic mixtures with organic or other oxidisable substances.
3. Loss or damage to property belonging to, held in the custody of or in the control of the Insured or any partner or director of the Insured.
4. Loss or damage to property belonging to, held in the custody of or in the control of any relative or friend of the Insured normally residing with the Insured or with whom the Insured normally resides.
5. Fines, penalties, aggravated damages or exemplary damages.
6. Personal Injury to any person employed by the Insured whose claim arises from a liability imposed by an industrial award or agreement, Workers Compensation, Accident Compensation Legislation or law,.
7. Personal injury to any member of your family or any person who normally resides with the Insured or with whom the Insured normally resides.
8. Personal injury or property damage (including loss of use of property) to underground sewer pipes, water pipes, gas pipes, electricity cables and associated infrastructure and any other underground pipes, cables or services and associated infrastructure unless the Insured has ascertained the actual position of these underground services from the relevant authorities prior to commencing any work below ground level.

## **OPTIONAL EXTENSIONS**

The following Optional Extensions only apply where they are noted on the Policy Schedule as operative

### **1. DRY HIRE**

Where noted with a Sum Insured on the Policy Schedule the Company will pay for Insured Damage to an Insured Machine while it is on hire from the Insured to a third party and the Insured does not supply an operator with the Insured Machine.

Under this Optional Extension the Company will not pay:

- (a) for theft by any third party to whom the Insured Machine is let on hire;
- (b) for Insured Damage to an Insured Machine unless the Insured has taken all reasonable precautions to ensure that the hirer or any other person who is to operate the Insured Machine is authorised to do so under any relevant legislation;
- (c) for Insured Damage resulting from incorrect operation of an Insured Machine unless the Insured has provided the hirer or any other person who is to operate the Insured Machine with adequate operating instructions;
- (d) for Insured Damage to an Insured Machine where the contract for hire of the Insured Machine states that the hirer is responsible insurance cover however the Company will pay for Insured Damage provided for by this policy which is not provided by the policy effected by the hirer.

## **2. DUAL AND MULTIPLE LIFTING**

Where noted with a Sum Insured on the Policy Schedule the Company will pay for Insured damage or Liability under Sections One and Two of the Policy which is caused by or arises out of the operation of an Insured Machine in connection with dual or multiple lifting provided:

- (a) the dual or multiple lift operation is under the direct supervision of a qualified engineer
- (b) the dual or multiple lift operation is rehearsed without load prior to the actual lifting or lowering
- (c) the supervising engineer and all operators are in direct audio communication during the operation
- (d) the Insured Machine is not loaded to more than 70% of rated capacity at any stage of the operation
- (e) the Insured Machine is not operated by anyone in contravention of any applicable statutory requirement

Exclusion 7(b) of Exclusions Applying to Sections One and Two is deleted.

## **3. GOODS LIFTED**

Where noted with a Sum Insured on the Policy Schedule the Company will pay for accidental damage to property belonging to, held in the custody of or in the control of the Insured or any partner or director of the Insured whilst the property is being lifted, lowered or otherwise handled by an Insured Machine provided that the Company will not pay:

- (a) more than the amount noted in the Policy Schedule for any one occurrence.
- (b) more than \$100,000 for any one occurrence and in the aggregate for any one period of insurance for property belong to the Insured
- (c) for any damage to property arising from any fault in or the fragility of such property or the container or packaging of such property.

The Insured must pay the Deductible noted on the Policy Schedule for this Optional Extension.

Exclusion 3 of Exclusions to Sections Two is deleted.

## **4. INCREASED COST OF WORKING**

Where noted with a Sum Insured on the Policy Schedule the Company will pay for increase in cost of working (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Indemnity Period in consequence of Insured Damage to an Insured Machine for the purpose of avoiding or diminishing reduction in Turnover and/or resuming and/or maintaining normal business operations and/or services provided:

- (a) the Insured immediately notifies details of the Insured Damage to the Company or their authorised representative using the contact details provided on page one of this policy and also provides written confirmation within three normal working days.
- (b) the Insured will with due diligence do and concur in doing and permit to be done all things which may be reasonably practicable to minimise or avoid or diminish the loss
- (c) the Company will not pay for the increased cost of working incurred during the Time Deductible Period noted on the Policy Schedule.
- (d) The Indemnity Period, which includes the Time Deductible Period, does not exceed three (3) months.

The Insured must pay the Deductible noted on the Policy Schedule for this Optional Extension

## **5. LEASE PAYMENT**

Where noted with a Sum Insured on the Policy Schedule the Company will pay the monthly lease cost on an Insured Machine following Insured Damage to an Insured Machine provided:

- (a) the Company will cease to pay monthly lease cost after Twelve consecutive months or the Insured Machine is repaired or replaced or termination of the lease whichever occurs first.
- (b) the Company will not pay for any balloon or residual value payments which may be due to be paid during a repair or replacement period.
- (c) the Insured will with due diligence do and concur in doing and permit to be done all things which may be reasonably practicable to minimise or avoid or diminish the loss.

The amount payable by the Company under this Optional Extension will be calculated as follows:

Where the repair or replacement period is less than seven days	The Company will pay nothing
Where the repair or replacement period exceeds seven days but does not exceed one calendar month	The Company will pay one full monthly lease payment or its equivalent
Where the repair or replacement period exceeds one calendar month	The Company will pay lease payments for the period calculated on a daily pro-rata basis

The Company will not pay:

- (a) any amount exceeding the limit noted on the Policy Schedule for this Optional Extension
- (b) the first ten percent (10%) of each and every claim admitted and agreed under this Optional Extension.

## 6. LOSS OF REVENUE

Where noted with a Sum Insured on the Policy Schedule the Company will pay for loss of revenue incurred during the Indemnity Period in consequence of Insured Damage for which the Company has admitted liability to an Insured Machine and increase in cost of working (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Indemnity Period in consequence of Insured Damage to an Insured Machine for the purpose of avoiding or diminishing reduction in Revenue and/or resuming and/or maintaining normal business operations and/or services provided:

- (a) the total liability of the Company will not exceed the amount noted on the policy Schedule for Loss of Revenue and Increase in Cost of Working
- (b) the amount payable by the Company will be the portion of the Loss of Revenue and Increase in Cost of Working affected by the Insured Machine which has suffered Insured Damage
- (c) the Company will not be liable for any Loss of Revenue or Increase in Cost of Working incurred during the Indemnity Period
- (d) the Indemnity Period will not exceed three (3) months
- (e) the Company will reduce each claim otherwise payable by the amount of the excess noted on the policy Schedule
- (f) the Insured will with due diligence do and concur in doing and permit to be done all things which may be reasonably practicable to minimise or avoid or diminish the Loss of Revenue and Increase in Cost of Working
- (g) ) the Insured immediately notifies details of the Insured Damage to the Company or their authorised representative using the contact details provided on page one of this policy and also provides written confirmation within three normal working days.

## 7. RECOVERY COSTS

Where noted with a Sum Insured on the Policy Schedule the Company will pay costs necessarily and reasonably incurred to recover an Insured Machine which is unintentionally immobilised on or about any contract site where the Insured Machine was working for the business of the Insured and the costs of such recovery will be deemed to be Insured Damage provided that:

- (a) the maximum amount the Company will pay for Recovery Costs in any one Period Of Insurance will be \$50,000
- (b) the Insured will be responsible for the first 10% subject to a minimum of \$500 of the cost of each recovery.

## EXCLUSIONS APPLYING TO SECTIONS ONE AND TWO

The Company will not pay for:

1. Insured Damage or Liability, cost or expense directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with

(a) War, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority, or

(b) Any act(s) of terrorism

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

- involves violence against one or more persons, or
- involves damage to property, or
- endangers life other than that of the person committing the action, or
- creates a risk to health or safety of the public or a section of the public, or
- is designed to interfere with or to disrupt an electronic system.

(c) Radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

(d) The use of an Insured Machine in an unsafe or unroadworthy condition unless that condition could not have been reasonably been detected by the Insured.

(e) The use of the Insured Machine by or in the charge of any person whose faculties are impaired by any drug or intoxicating liquor or any person with a blood or breath alcohol percentage in excess of the amount permitted by law in the state in which the Insured Machine was being used at the time of the accident unless The Insured can prove to The Company that consent was not given for the Insured Machine to be used by or in the charge of the person when so affected.

(f) Any wilful act, omission, or recklessness of the Insured or the agents or employees of the Insured.

(g) The use of any waterborne vessels, aircraft or aerial devices

This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to 1(a), (b) or (c) above.

- (2) Insured Damage to electronic data provided that this exclusion does not apply to Insured Damage caused by or arising out of fire, lightning, explosion, implosion, earthquake, volcanic eruption, subterranean fire, storm, tempest, rainwater, water or other liquids leaking, discharged or overflowing from any pipe, appliance or other apparatus, impact, aircraft and other aerial devices, sonic boom or theft of computers or other electronic hardware containing electronic data, riots, strikes and civil commotion, the actions of strikers or other labour disturbances.
- (3) The amount of the Deductible noted on the Schedule.
- (4) Insured Damage or Liability occurring while any Insured Machine is undergoing any testing or commissioning or during any intentional overloading or experiments.

- (5) Damage to or loss of use of any land, buildings or other fixed property resulting from the removal, weakening or interference with any support of such land, building or other fixed property.
- (6) Insured Damage or Liability occurring while any Insured Machine, at the time of an accident, is being driven or is in the charge of a person who is not trained, authorised or licensed to operate the Insured Machine under any relevant law.
- (7) Insured Damage or Liability occurring while any Insured Machine, at the time of an accident, is:
  - (a) used to convey, tow or lift a load in excess of the safe working load specified by any relevant statutory authority or the manufacturers specifications; or
  - (b) being used in any raising or lowering operation where a single load is shared between two or more cranes or lifting devices unless Optional Extension 2. (Dual and Multiple Lifting) applies and a has been noted on the schedule; or
  - (c) being used contrary to the relevant Australian standard or manufacturers guidelines.
- (8) Insured Damage or Liability caused by or contributed to by a criminal act of any of The Insured.
- (9) Insured Damage or Liability caused by or contributed to by theft or criminal act by you or any of your partners or directors
- (10) Insured Damage or Liability due to a total or partial immersion in water.

## CONDITIONS APPLYING TO SECTIONS ONE AND TWO

### 1. OBSERVANCE OF CONDITIONS

The Insured, its employees and agents must comply with and observe all the Conditions of this Policy insofar as they relate to anything to be done or complied with by the Insured.

### 2. PRECAUTIONS

The Insured, its employees and agents must, at the Insured's expense, use due diligence to:

- (a) take all reasonable precautions to prevent loss or damage.
- (b) comply with all reasonable recommendations made by the Company to prevent loss or damage.
- (c) comply with all statutory requirements and recommendations of manufacturers or suppliers.

### 3. COMPANY'S RIGHT OF INSPECTION

The Company, its employees and agents will at any reasonable time have the right to inspect and examine at the Contract Site and any other location, any item, plant or equipment associated directly or indirectly with the risk the subject of this Policy and the Insured must provide to the Company, its employees or agents all details and information which it may reasonably require.

### 4. ALTERATIONS OF RISK

The Insured must notify the Company as soon as possible by facsimile or email of any material change in the risk or the nature of the risk and confirm such notification by providing full details in writing. In such event the Insured must at its own expense take such additional precautions to minimise the risk of any loss or damage and must comply with any reasonable directions or requirements of the Company. The scope of cover and premium will, if necessary, be adjusted by the Company accordingly. No material alteration will be made or allowed by the Insured whereby the risk is increased unless agreed to in writing by the Company.

Material change will include (but not be limited to) alteration in manufacturers design or specification or the use of inappropriate spare or replacement parts by the Insured or employees of the Insured or by any person responsible for or operating the Insured Machine.

## **5. NOTICE AND CLAIMS**

- 5.1** Following discovery of any loss or damage which might give rise to a claim under this Policy, the Insured must:
- (a) notify the Company as soon as possible by facsimile, email or telephone and confirm such notification in writing giving an indication of the nature and extent of the loss or damage.
  - (b) take all steps within the power of the Insured to minimise the extent of the loss or damage.
  - (c) preserve the parts affected and make them available for inspection by the Company, its employees or agents.
  - (d) furnish all such information and documentary evidence as the Company may reasonably require.
  - (e) notify the Police of any actual or attempted theft, burglary or malicious damage.
- 5.2** Upon notification of any loss or damage being given to the Company, the Insured may carry out repairs or make good any minor damage, but in all other cases the Insured must give the Company, its employees or agents an opportunity to inspect the loss or damage before any repairs or alterations are effected. If no inspection is carried out by or on behalf of the Company within a period of time which is reasonable having regard to the location of the risk, weather conditions and any other relevant factors, the Insured may proceed with such repairs or replacement.
- 5.3** The Company will not pay for any additional damage to any item caused by the failure to repair that item properly and without delay.
- 5.4** Unless agreed by the Company in writing no company, partnership or person making a claim under this policy will make any admission of guilt or promise or offer of payment in connection with any such claim.
- 5.5** The Company will be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for indemnity or damages and will have full discretion in the conduct of any proceedings or in the settlement of any claim
- 5.6** Insurance cover will cease for any Insured Machine which has sustained any damage and it is operated without being properly repaired.
- 5.7** If an Insured Machine is deemed a Total Loss by the Company we will pay according to the cover provided by this policy and will retain all rights to the Insured Machine and its salvage value.

## **6. SUBROGATION**

The Insured will at the request and at the expense of the Company do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Company for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from any parties to which the Company will be or would become entitled or subrogated upon its paying for or making good any loss or damage under his Policy, whether such acts or things will be or become necessary or required before or after their indemnification by the Company. The Insured will not in any case be entitled to abandon any property to the Company.

## **7. INTERESTS OF OTHER PARTIES**

The Company will not be required to recognise the interests of any third party under this Policy.

## **8. OTHER INSURANCE**

Following any claim being made under this Policy, the Insured must notify the Company of any other insurance covering the same loss or damage of which the Insured is aware. If any other insurance is an insurance cover required by or under a law of a State or Territory and covers the same loss, damage or liability the Company will not be liable under this policy

## **9. REINSTATEMENT OF SUM(S) INSURED (SECTION ONE ONLY)**

Following payment of a claim under this Policy the Company will reinstate the Sum(s) Insured, provided the Insured pays any additional premium on the amount of Insured Damage. The additional premium will be the

same proportion of the premium for that Insured Machine as the amount reinstated bears to the Sum Insured for the Insured Machine reinstated.

**10. REASONABLE CARE AND PRECAUTIONS**

The Insured must take reasonable care and precautions:

- (a) to prevent Personal Injury and Property Damage,
- (b) to comply with all laws and statutory obligations, bylaws or regulations imposed by any public authority for the safety of persons or property,
- (c) to employ competent employees
- (d) to maintain all premises, fittings and plant and everything used in the Contract Works in sound condition; and
- (e) to ensure at all times that the operations at the Contract Site are carried out so as to minimize the risk of any claim being made against this policy.

**11. POLICY CANCELLATION**

The policy may be cancelled:

- (a) By the Insured giving written notice to the Company such notice to be effective when received by the Company who may retain or be entitled to the premium for the period during which the Policy was in force plus 10% of the premium for the unexpired Period of Insurance
- (b) By the Company in accordance with the provisions of the Insurance Contracts Act 1984 and the Insured shall be entitled to a refund of the premium in respect of the unexpired Period of Insurance.

**12. JURISDICTION**

All disputes arising out of or under this policy will be subject to determination by any court of competent jurisdiction within Australia

**13. INSURANCE CONTRACTS ACT 1984**

Nothing contained in this Policy is to be construed to reduce or waive either the Insureds or the Companies privileges, rights or remedies available under the Insurance Contracts Act 1984

**14. DUE OBSERVANCE**

If the Insured fails to comply with any term, condition or provision of the Policy the Company may refuse to pay a claim but in any event the Companies rights will be subject to the provisions of Section 54 of the Insurance Contracts Act 1984

**15. JOINT INSURED**

Where more than one party comprises the Insured each of the parties will be considered as a separate and distinct unit and the word Insured shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of them provided that nothing in this clause will result in an increase in the limit of liability in respect of any one occurrence or Period of Insurance.

**16. ASSIGNMENT**

The Company will not be bound to accept notice of the transfer of the Insureds interest in this insurance and nothing contained in this policy will give any rights to any other person except to Insured or others approved by the Company in writing.

**17. INSPECTION**

The Insured must allow the Company or their representative to inspect and examine any Insured Machine at all reasonable times.

**18. HIRED IN MACHINES**

The Company will cover you for Insured Damage to a machine which is hired by the Insured provided the Machine has been specified in the Policy Schedule and the Insured has paid any additional premium required by the Company.

**19. AUTOMATIC ADDITIONS AND DELETIONS**

The Company will provide cover for a maximum period of sixty (60) days for a machine purchased new provided the machine is similar to other Insured Machines under this policy.

The Maximum limit of cover for Insured Damage to such Machine will be the current market value up to but not exceeding \$50,000 (subject to the Insured paying the excess applicable to similar Insured Machines currently insured under this policy) until the Insured provides the Company with notice of the acquisition and value of such Machine and has paid any additional premium required by the Company.