



Woodina
Underwriting Agency

**Excess of Loss Insurance
Policy Wording**

Section 1 Preamble

- 1.1 Subject to payment of the **Premium** or as agreed in writing, **We** agree to provide indemnity in accordance with and subject to the terms and conditions of the **Policy**.
- 1.2 Before this **Policy** commenced **We** received information provided on behalf of the **Insured** in the **Proposal** and in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms. If any of this information is wrong or false it may affect the cover provided by this **Policy**.
- 1.3 Any word or expression to which a specific meaning has been attached shall bear that special meaning wherever they appear. If a word has a specific meaning it appears in the **Policy** in bold black type and with a capital letter. The meanings of these words can be found in Section 5 Definitions.

Section 2 Insuring Clause

- 2.1 **We** agree to indemnify the **Insured**, up to the **Limit of Indemnity**, in excess of the **Underlying Insurance**.
- 2.2 **We** will only be liable under this **Policy** after the **Underlying Insurers** have granted indemnity or have been held liable in respect of indemnity by final judgement, award or adjudication.

Section 3 General Conditions

3.1 Assignment

This **Policy** cannot be assigned by the **Insured** without **Our** written consent.

3.2 Alteration to risk

The **Insured** must notify **Us** as soon as reasonably practicable of any material change in the risk insured by this **Policy**. **We** are entitled to amend the terms of this **Policy** and / or charge an additional premium based on **Our** assessment of any change in the risk insured by this **Policy**.

A material change in the risk shall include, but is not limited to;

- i. an **Insured** going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an **Insured** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;

- ii. any material change to the nature of the **Professional Services** offered by the **Insured**;
- iii. any material change in the **Insured's** business;
- iv. any alteration change or amendment to any **Underlying Insurance**.

3.3 Cancellation

- i. The **Insured** may cancel this **Policy** at any time in writing to **Us**. Upon receipt of such request **We** will retain a short period premium calculated at the pro rata portion of the annual premium for the time they have been on risk plus ten percent (10%), subject to a minimum retained premium of \$500, and the **Insured** shall receive a refund of any balance of the **Premium** actually paid.
- ii. **We** may cancel this **Policy** in accordance with the Insurance Contracts Act 1984.
- iii. If there have been any **Claims** made under the **Policy** no refund shall be given.

3.4 Governing Law

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued, which is stated in the **Schedule**. The courts of that place have jurisdiction in any dispute about or under this **Policy**.

3.5 Inability to Pay of Underlying Insurers

The inability of any **Underlying Insurer** to meet its financial obligations under the **Underlying Insurance**, for whatever reason, does not reduce or exhaust the **Underlying Insurance** and **We** shall only be liable to the extent that **We** would have been liable had such **Underlying Insurer(s)** been able to meet its financial obligations.

3.6 Interpretation

In this **Policy**;

- i. the single includes the plural and the masculine includes the feminine and visa versa
- ii. the titles and headings to the various sections of the **Policy** are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

3.7 Limit of Indemnity

- i. **Our** total liability for any one **Claim**, including **Costs and expenses**, will not exceed the **Limit of Indemnity** specified in the **Schedule**, and **Our** total liability in the aggregate in respect of all **Claims**, during the **Period of Insurance**, will not exceed the **Aggregate Limit of Indemnity** specified in the **Schedule**.

- ii. Where the **Limit of Indemnity** is specified in the **Schedule** as costs in addition, **We** will pay, **Costs and expenses**, in addition to the **Limit of Indemnity**, an amount not exceeding the **Limit of Indemnity**. Provided that:
 - (a) where the **Insured's** liability exceeds the available **Limit of Indemnity**, **We** shall only pay such proportion of **Costs and Expenses** as the available **Limit of Indemnity** bears to the **Insured's** liability;
 - (b) where the amount **We** have paid or incurred as **Costs and Expenses** exceeds the share that **We** are obliged to pay under Clause 2.2, the **Insured** shall upon demand pay to **Us** the excess amount, or **We** may deduct the excess amount from any entitlements the **Insured** might have at any time under this **Policy**
 - (c) Where the **Limit of Indemnity** is specified in the **Schedule** as costs inclusive, **Costs and expenses**, shall be included in, and not in addition to, the **Limit of Indemnity** specified in the **Schedule**.
 - (d) This clause does not increase any sub-limit in the **Policy**.

3.8 Maintenance of Underlying Insurance

This **Policy** only provides cover if the **Underlying Insurance** is maintained in full force and effect during the currency of this **Policy**.

3.9 Primary Retention

If this **Policy** applies in place of the **Primary Policy** as a result of all **Underlying Insurance** being exhausted, then all self-insured retention, deductible or excess specified to apply under the **Primary Policy** shall then also apply under this **Policy** in respect of any further **Claims**.

3.10 Provision of the Primary Policy

In the event of a conflict between the provisions of the **Primary Policy** and the provisions of this **Policy**, the provisions of this **Policy** shall prevail. Under no circumstances shall this **Policy** provide cover which is broader than the cover provided by the **Primary Policy** or any other **Underlying Insurance**.

3.11 Reduction or Exhaustion of Underlying Insurance

Notwithstanding the Insuring Clause of this **Policy**, if the **Underlying Insurance** is reduced or exhausted as a result of payment for losses thereunder, this **Policy** will:

- i. in the event of reduction, cover subsequent losses as excess insurance over and above the amount of any remaining **Underlying Insurance**, provided that such losses are not excluded by the provisions of this **Policy**; or
- ii. in the event of exhaustion, apply in place of the **Primary Policy**.

3.12 Reinstatement of the Limit of Indemnity

If the **Limit of Indemnity** is either partially or totally exhausted by the payment of a **Claim** under this **Policy**, **We** agree to reinstate the Limit of Indemnity by an amount equal to the **Limit of Indemnity** (or a multiple of such **Limit of Indemnity** if there is more than one reinstatement under the **Policy**) provided that:

- i. **Our** total liability in respect of all **Claims** under this **Policy** shall not exceed the **Limit of Indemnity** as specified in the **Schedule**;
- ii. such reinstatement is only available for subsequent **Claims** totally unrelated to those that give rise to the partial or total exhaustion of the **Limit of Indemnity**.

3.13 Sanctions

We shall not provide cover and **We** shall not be liability to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United States resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

3.14 Variation of the Policy

- i. No variation of this **Policy** will be effective, unless made by **Endorsement** which is signed by a properly authorised employee of **Woodina Underwriting Agency Pty Ltd**.
- ii. No variation of the **Underlying Insurance** will alter or change this **Policy**, unless agreed by **Endorsement** which is signed by a properly authorised employee of **Woodina Underwriting Agency Pty Ltd**.

Section 4 Claims Conditions

4.1 Claims Notification

The **Insured** shall, as soon as practicable and prior to expiry of the **Period of Insurance**, give **Us** written notice of any **Claim** made against the **Underlying Insurer(s)**. Furthermore every letter, demand, writ summons and legal process pertaining to such **Claim** shall be forwarded to **Us** as soon as practicable after receipt.

All **Claim** notifications should be forwarded to:

The Claims Manager
Woodina Underwriting Agency Pty Ltd
GPO Box 3313
Brisbane Qld 4001

Or Email: claims@woodina.com.au

It is the **Insured's** responsibility to ensure such notification has been forwarded to and received by **Woodina Underwriting Agency Pty Ltd.**

4.2 Claims Conduct

We may, at **Our** sole discretion, elect to participate in the investigation, settlement or defence of any **Claim** made against an **Insured** which is covered under this **Policy** even if the **Underlying Insurance** has not been exhausted.

4.3 Subrogation

- i. If any payment is made under this **Policy** **We** are subrogated to the **Insured's** right of recovery and the **Insured** must assist and provide such information as **We** reasonably require to exercise such rights.
- ii. **We** agree not to exercise any such rights against any director, principal or **Employee** of the **Insured** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director, principal or **Employee**.
- iii. The **Insured** shall not without **Our** prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the **Insured** may have in respect of any **Claim** covered by this **Policy**.

4.4 Several Liability

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

4.5 Fraudulent claims

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 loss hereunder be occasioned by the wilful act or with the connivance of the **Insured**, **We**, without prejudice to any other right(s) **We** might have under this **Policy**, shall be entitled to refuse to pay such **Claim**.

Section 5 Definitions

5.1 Deductible

shall mean the amount shown as the **Deductible** in the **Schedule**.

5.2 Insured

shall mean the **Named Insured**.

5.3 Limit of Indemnity

shall mean the limit of **Our** liability under this **Policy** as specified in the **Schedule**.

5.4 Named Insured

shall mean the person, persons, partnership, company, corporation or other entity specified as the **Named Insured** in the **Schedule** and as otherwise defined in the **Primary Policy**.

5.5 Period of Insurance

shall mean the period specified in the **Schedule**.

5.6 Policy

shall mean:

- i. The **Schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;
- ii. Any endorsement attaching to and forming part of this **Policy** either at inception or during the **Period of Insurance**; and
- iii. The **Proposal**.

5.7 Premium

shall mean the **Premium** specified in the **Schedule** or in any endorsement to the **Schedule**.

5.8 Primary Policy

shall mean the **Policy** specified in the **Schedule**.

5.9 Proposal

shall mean the **Proposal** made by the **Insured** to **Us** containing particulars and statements which, together with other information provided by the **Insured**, are the basis of this **Policy**

and are considered as incorporated herein.

5.10 Schedule

shall mean the **Schedule** to this **Policy**.

5.11 Underlying Insurance

shall mean all those policies specified in the **Schedule**, including the **Primary Policy**.

5.12 Underlying Insurer

shall mean those insurers specified in the **Schedule**.

5.13 We or Us or Our

shall mean certain underwriters at Lloyd's through their coverholder **Woodina Underwriting Agency Pty Ltd**.

5.14 Woodina Underwriting Agency Pty Ltd

shall mean **Woodina Underwriting Agency Pty Ltd** ABN 24 151 854 698

Notices

The information contained in this section is general information only and does not form part of your contract with us.

Your Duty of Disclosure

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

You have this duty until we agree to insure you.

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

- that diminishes the risk to be undertaken by the insurer
- that is common knowledge
- that the insurer knows, or in the ordinary course of business as an insurer, ought to know

- as to which compliance with your duty is waived by the insurer.

Non-Disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from the beginning.

Claims Made Policy

This policy is a claims made policy of insurance. This means that the policy covers you for claims made against you and notified to the Insurer during the period of insurance. The policy does not provide cover in relation to:

- events that occurred prior to the retroactive date, if any, specified in the policy;
- claims notified or arising out of circumstances notified under any previous policy (whether made or issued by the insurer or any other insurer);
- claims made against you prior to commencement of the period of insurance;
- claims arising out of claims and circumstances noted on the proposal form for the current period of insurance or on any previous proposal form;
- subject to what is said in the next paragraph, claims made after expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance.

However, where you give notice in writing to the insurer of facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts but before expiry of the period of insurance, the policy will, subject to its terms and conditions, cover you notwithstanding that a claim is only made after expiry of the period of insurance.

Privacy

Woodina Underwriting is committed to protecting the privacy of the personal information you provide us. Woodina Underwriting collects, uses and retains your personal information in accordance with the National Privacy Principles.

We need to collect the personal information on the applicable proposal form to consider your application for insurance and to determine the premium (if your application is accepted) when you are applying for, changing or renewing an insurance policy with us. This information will also be used if you lodge a claim under your policy. We may also need to request additional information from you in connection with your application or a claim. If you do not provide us with this information, or any additional information we request, we may not be able to process your application or offer you insurance cover or respond to any claim.

We may disclose the personal information we collect:

- To our relevant employees involved in delivering our services;

- If your insurance broker collects this form from you, to that broker;
- To facilitators such as legal firms, professional experts such as accountants, actuaries, engineers and technology experts;
- To the insurance companies with whom we transact business;
- To the Lloyd's Syndicates we represent (which are located in the United Kingdom);
- To insurance reference bureau or credit reference bureau;
- To reinsurers or reinsurance brokers (which may include reinsurers located outside of Australia).

Where we do disclose the information as above the recipient may hold the information in accordance with its own privacy statement / policies. Those may include, by way of example, disclosing the information to and storage of that information by its associated entities which may be located overseas. We may also be required to provide your personal information to others for purposes of public safety and law enforcement and if required by law or by a law enforcement body to do so.

You may request access to your personal information, and where necessary, correct any errors in this information (some restrictions and costs may apply). If you would like to access a copy of your personal information or you wish to correct or update your personal information, please also contact us on (07) 3222 9400.

By completing and returning a proposal form and/or providing us with any additional information in connection with your application, you agree to us using and disclosing your information as set out above. This consent to the use and disclosure of your personal information remains valid unless you alter or revoke it by giving us written notice.

From time to time, we may use your personal information to send you details of new insurance products or other insurance related information that may be of interest to you. If you do not wish to receive such information, please advise us on (07) 3222 9400.

Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

Complaints Procedures

If you have any concerns or wish to make a complaint in relation to this policy, our services

or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact in the first instance:

Complaints Officer
Woodina Underwriting Agency Pty Ltd
Post: GPO Box 3313
Brisbane Qld 4001
Email: info@woodina.com.au
Telephone: (07) 3222 9400

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited
Post: Suite 1603, Level 16, 1 Macquarie Place,
Sydney NSW 2000
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

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

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

(i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

(ii) any summons notice or process to be served upon the Underwriters may be served upon:

*Lloyd's Underwriters' General Representative in Australia
Suite 1603, Level 16, 1 Macquarie Place
Sydney NSW 2000*

who has authority to accept service on the Underwriters' behalf;

(iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance notice should be given as soon as practicable to:

The Claims Manager
Woodina Underwriting Agency Pty Ltd
GPO Box 3313
Brisbane Qld 4001
Or Email: claims@woodina.com.au