

calliden

Annual Construction & Legal Liability

Insurance Policy

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Calliden Annual Construction & Legal Liability Insurance Policy

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Important Information

This document contains information designed to help you decide whether to buy our Annual Construction & Legal Liability Policy.

Understanding Your Policy and Its Important Terms and Conditions

To properly understand the Policy's significant features, benefits and risks you need to carefully read:

1. the rest of this "Important Information" section which outlines the basis on which we insure you, the duty of disclosure you need to meet before we insure you, our privacy information and our dispute resolution procedures;
2. the "Definitions" which set out what we mean by certain words used in the policy. To assist you these words have been indicated in bold print throughout this document;
3. the "Exclusions" which set out the exclusions and limits that apply to the policy;
4. the "Conditions" which set out the rights and obligations that you and we have. If you do not meet them we may be able to refuse to pay a claim;
5. the Schedule and any endorsements or other written changes to the cover we issue you with, which contain specific details relevant to you and can affect the cover.

About Calliden

Calliden Insurance Limited ABN 47 004 125 268, AFS License No. 234438 is the insurer of this Policy.

Calliden specialises in manufacturing general insurance products for individuals, the SME sector and groups across metro and regional Australia. To find out more about us, visit www.calliden.com.au

GST Notice

This policy has a GST provision in relation to premium (see definition of premium) and our payment to you for claims (see general condition 20). It may have an impact on how you determine the amount of insurance you need. Please read it carefully.

Basis on Which We Insure You

We agree to insure you:

- a) based on the information provided in your proposal and subject to payment of the required premium by the required date.
- b) in accordance with the policy terms and conditions – your policy is made up of your proposal, this policy document, the Schedule and any written endorsements we issue to you. You should carefully read all of these as if they are one document and keep them in a safe place.

Your Duty of Disclosure

This policy is subject to the Insurance Contracts Act 1984. Under that Act you have a Duty of Disclosure.

Before you take out insurance with us, you have a duty to tell us of everything that you know, or could reasonably be expected to know, is relevant to our decision to insure you and to the terms of that insurance. If you are not sure whether something is relevant you should inform us anyway.

You have the same duty to inform us of those things before you renew, extend, vary, or reinstate your contract of general insurance.

Your duty however does not require disclosure of matters that:

- reduce the risk;
- are common knowledge;
- we know or, in the ordinary course of our business, ought to know, or
- we have indicated we do not want to know.

If you do not comply with your Duty of Disclosure, we may be entitled to:

- reduce our liability for any claim;
- cancel the contract, or
- refuse to pay the claim
- avoid the contract from its beginning, if your non-disclosure was fraudulent.

Important Information (cont'd)

Privacy

Calliden respects your privacy and operates at all times in accordance with its privacy policy. This privacy notification provides a summary of how Calliden treats your privacy, and it is recommended that you read the policy in conjunction with this notice.

Calliden collects personal information to assess your request for insurance, to administer your Policy, provide other insurance services as requested by you, and also to notify you about other Calliden services or promotions from time to time. At the time of collecting your information we will inform you of the purpose for the collection and the consequences if you choose not to provide the information.

In order to provide its insurance services Calliden may need to share your information with third parties including your agent or broker and Calliden's reinsurers and claims providers (for a full list see Calliden's privacy policy).

In accordance with Calliden's privacy policy you may obtain access at any time to information that Calliden or its service providers hold on you. If you would like to contact Calliden about privacy, or would like to obtain a copy of the privacy policy you may do so through one of the following means:

- obtain the privacy policy online at www.calliden.com.au
- by phone 02 9551 1111
- by email to privacy@calliden.com.au
- by letter to Privacy Officer, PO Box 348, Milsons Point NSW 1565.

Dispute Resolution Process

How You Can Resolve A Complaint You Have With Us

If you would like to make a complaint, we will do everything we can to try to resolve it as quickly and fairly as possible. The following paragraphs provide details on how you can lodge your complaint and how Calliden will try to resolve it.

You may contact us at any time if you are dissatisfied with any matter relating to your insurance with Calliden, including:

- our decision on your claim;
- our handling of your claim;
- the service of our representatives, assessors, loss adjusters or investigators; and
- your insurance policy.

Contact Us

- If you have a complaint regarding your claim, please contact your claims consultant.
- If you have a complaint regarding your insurance policy, please contact us on 02 9551 1111 and we will try to resolve your complaint straight away.
- You can write to us at:
 - Fax: 02 9551 1155
 - Address: PO Box 348, Milsons Point NSW 1565

How We Resolve Complaints

- We will address all complaints, except where specific circumstances apply, in accordance with Calliden's Complaints Handling Process. This process is compliant with the Insurance Council of Australia's Code of Practice. Both the Code of Practice and our Complaints Brochure, which contains a guide to our process, are available upon request.
- We will handle all complaints without cost to you.
- A complaints consultant will be assigned to the management of your complaint and will acknowledge your complaint within 2 business days of receipt. If further information is required to consider the complaint, it will be requested at this time.
- The complaints consultant will aim to resolve your complaint within a further 13 business days. In certain circumstances a longer period may be required, and we will request a later response date.
- The outcome of the complaint will be advised to you in writing, stating our reasons and any corrective action that will be undertaken.

Important Information (cont'd)

If Your Complaint is Still Unresolved

If we cannot resolve your complaint within 15 business days or you are not happy with our response to your complaint, you can seek an external review via our external dispute resolution scheme, administered by the Financial Ombudsman Service (FOS).

This national scheme is for consumers, free of charge and is aimed at resolving disputes between insureds and their insurance companies.

For more information call 1300 78 08 08 or visit www.fos.org.au

If the FOS is unable to address your complaint then Calliden may be able to provide you with details of an alternative external dispute resolution service.

Terrorism Insurance Act

We have determined that this policy (or part of it) is a policy to which the Terrorism Insurance Act 2003 applies.

We have reinsured our liability under the Act with the Commonwealth Government reinsurer, the Australian Reinsurance Pool Corporation (ARPC).

As a consequence, we are required to pay a premium to ARPC and that amount (together with the cost of that part of the cover provided by us and administrative costs associated with the legislation) is reflected in the premium charged to you. As with any other part of our premium, it is subject to Government taxes and charges such as GST and Stamp Duty.

For further information contact us.

General Insurance Code of Practice

Calliden is a signatory to the General Insurance Code of Practice (Code). The Code aims to raise standards of service between insurers and their customers.

Calliden's service standards are in accordance with the Code.

For any information about the Code, including a copy of the Code, contact us or the Financial Ombudsman Service on 1300 78 08 08 or visit www.codeofpractice.com.au

Definitions

The intended meaning of some of the important words used in this policy are shown below you should read them carefully. For convenience they appear with capitals and in bold type throughout this policy:

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:

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

Aircraft

Any vessel, craft, device or thing designed to fly in or through the atmosphere or space including any vessel, craft, device or thing made or intended to be propelled on a cushion of air over the surface of land or water.

Average

In the event it is found that the relevant **Sum Insured** of the **Construction Works** is less than 85% of the sum required on a replacement basis, then the amount you can recover under this **Policy** shall be reduced in the same proportion as the **Sum Insured** bears to 85% of the **Sum Insured** required to be insured.

Business

The business, trade or profession specified in the **Schedule** including:

- i. The provision and management of canteen, social, sports, welfare and child care facilities by **you** for **your** employees' benefit; and
- ii. **Your** ownership or occupation of **your** premises.

Completed Operations

Any thing or things (including any packaging, containers, directions, markings, instructions, warnings or specifications) manufactured or deemed manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by **you** or on **your** behalf in the course of **your Business** after physical possession has been passed to others.

Completed Operations Liability

Liability for **Personal Injury** or **Property Damage** arising out of **your Completed Operations** but only if the **Personal Injury** or **Property Damage** occurs away from **your Premises** or **Premises** leased or rented to **you** and after physical possession of **your Completed Operations** have been passed to others.

Construction Period

The **Construction Period** shall commence:

- i. at the date of possession of each **Construction Site** by the contractor, or at the commencement date of the **Construction Works** provided that such date is within the **Period of Insurance** stated in the **Schedule**;
- ii. where no written contract exists or no date of possession is specified then on the actual date of possession or commencement of the **Construction Works**;

and ends:

- i. at the time of practical completion of the **Contract**, being when the **Construction Works** are complete, except for minor omissions and minor defects which do not prevent the **Construction Works** from being reasonably capable of being used for their intended purpose; or
- ii. with respect to any portion of the **Contract** from the time it is taken into use by the Principal; or
- iii. with respect to any separable portion of the **Construction Works** at the time it is completed pending sale or leasing; or
- iv. on the date specified in the **Schedule**;

whichever occurs first.

Definitions (cont'd)

Construction Site

The location at which any one **Insured Contract(s)** is to be completed and handed over to the principal/owner.

Construction Works

The works, of the type referred to in the **Schedule**, located at a **Construction Site** which shall include:

- i. all engineering materials supplied, freight, packaging, fees, customs duties, construction, electrical or mechanical, installation or erection as per the contract, and
- ii. principal/owner supplied materials for incorporation in the works, and
- iii. all formwork, hoardings, temporary buildings or works, and scaffolding, and
- iv. Employees' effects (but only where such effects are required to be insured by any work place agreement); and
- v. Tools owned by **you** or for which **you** are responsible.

Owned by **you**, or in **your** care, custody or control and for which **you** are contractually liable or have assumed the responsibility to insure, and which is to be used in the course of construction of, or in connection with, and for the purpose of the **Contract**.

and,

- vi. Contractors Plant and Equipment owned and declared by **you**, and in respect of which a **Sum Insured** appears in the **Schedule**.

Contract

A **Contract** or agreement between any of the **Persons Insured**, i) and ii), and which gives rise to the **Construction Works**, and includes any sub contract or sub agreement entered into pursuant to such **Contract** or agreement.

Electronic Data

Facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

Event

A happening causing sudden and unforeseen physical loss of or damage to the **Insured Property**.

Excess:

The amount which **you** have to pay towards the cost of any claim under this policy, excluding costs and expenses incurred by **you** in the investigation, settlement or defence of any claim for compensation.

Limit of Liability

The amount(s) specified in the **Schedule**.

Maintenance Period

Commences immediately at the end of the **Construction Period** and ends:

- i. a maximum of twelve months thereafter or any lesser period as may be specified by the insured **Contract**; or
 - ii. on the date specified in the **Schedule**.
- whichever occurs first.

Occurrence

Any:

- i. event or series of events, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended by **you**; or
- ii. intentional act, by **you** or at **your** direction, resulting in **Personal Injury** but only if such **Personal Injury** arises solely from the use of reasonable force for the purpose of protecting persons or property.

Period of Insurance:

The policy shall operate during the **Construction Period** and if required by the **Contract** conditions for the **Maintenance Period** for all insured **Contracts** commenced by **you** during the **Period of Insurance** stated in the **Schedule**.

Personal Injury

- i. Bodily injury, sickness or disease, including death, shock, fright, mental anguish, mental injury or disability; or
- ii. unlawful arrest, wrongful detention or false imprisonment; or

Definitions (cont'd)

- iii. wrongful entry or eviction or other invasion of privacy; or
- iv. a publication of a libel or utterance of a slander or other defamatory material.

Persons Insured

1. **You**, the insured contractor as **Policy Holder** and/or:
 - i. any principal, or
 - ii. the project manager, or
 - iii. sub contractors to entities noted in i. or ii. above being a legal entity with whom the sub contractor has entered into a sub contract agreement for the purpose of performance of any part or parts of the insured **Contract(s)**, but only to the extent required by the sub contract or agreement, or
 - iv. architects', consulting engineers and professional consultants, but only for their on site activities at the **Construction Site**

not being the **Policy Holder** noted in the **Schedule** but being a legal entity with whom the **Policy Holder** has entered into a contract for the performance of any part or parts of the insured **Contract(s)** but only to the extent required by the **Contract**.

- 2) All subsidiary companies of **your Business** incorporated within the **Territorial Limit** and notified to **us**, existing before the inception date of this policy and declared in the **Proposal**.
- 3) Any:
 - i. director, executive, officer, employee, partner, or shareholder of **your Business**.
 - ii. office bearer or member of a canteen, social, sports, welfare or child care facility provided by **your Business** for employees' benefit; and
 - iii. voluntary worker

While acting in such capacity.

Policy Holder

The legal entity having completed the **Proposal** forming part of this policy and having paid the **Premium** to **us** and who is named as such in the **Schedule**.

Pollutants

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

Premises

The **Business** premises specified in the **Schedule**.

Premium

The amount payable by **you** for the insurance provided by **us** under this policy including all applicable taxes, duties and imposts, as invoiced by **us** or on **our** behalf.

Property Damage

- i. Physical loss, destruction or damage to tangible property, including loss of use of that property at any time resulting there from; or
- ii. Loss of use of tangible property not physically lost, destroyed or damaged where such loss of use results from physical loss, destruction or damage to other tangible property.

Proposal

The form completed by **you** giving answers, particulars and statements in respect of the insurance required by **you**.

Replacement Value

The cost of replacement of the **Construction Works** by new property of the same kind and capacity including packing, freight, government charges, and installation costs.

Schedule

The certificate issued by **us** which forms part of this policy and shows **your** policy number, the **Premium**, the insurance cover selected by **you**, and any special terms and conditions or endorsements.

Sum Insured

The relevant amount specified as such in the **Schedule**.

Territorial Limit

Anywhere in Australia or New Zealand or their external Territories.

Turnover

Contract price(s) for work performed including all materials, components and principal supplied materials of **Contract(s)** indemnifiable under this policy during the **Period of Insurance**.

Definitions (cont'd)

Vehicle

Any machine on wheels or self-laid tracks, designed to be propelled by other than manual or animal power and any trailer or other attachment designed to be drawn by any such machine but not including an aircraft or watercraft.

Watercraft

Any vessel, craft, device or thing designed to float on or in water or to travel on or through water, the hull length of which exceeds 8 metres.

we/our/ours/us

Calliden Insurance Limited (Calliden) (ABN 47 004 125 268, AFSL No. 234438).

you/your/yours

The **Persons Insured**.

Our Cover: Section 1 - Material Damage

Insuring Clauses

Subject to the payment of the Premium, we hereby extend insurance cover to you in the manner and subject to the Terms, Conditions and Exclusions described in this policy, including the Schedule, Limit of Liability and Excess.

1. Extent of Cover

Subject to the Terms, Conditions and Exclusions of this Policy, **we** agree with **you** that, if any part of the **Construction Works** suffer(s) any unforeseen physical loss or damage as a result of any event at the **Construction Site** occurring and detected:

- a) During the **Construction Period**; or
- b) During the **Maintenance period**, caused by the Contractor(s) or subcontractor(s) in the course of work carried out for the purpose of complying with the maintenance obligations of the **Contract**; or
- c) During the **Maintenance Period** provided that such loss or damage was caused on the **Construction Site** during the **Construction Period**.
- d) During testing and commissioning of the **Construction Works** by their own electrical or mechanical breakdown, failure or derangement arising out of testing and commissioning at the **Construction Site** and occurs during the testing period (not exceeding 4 weeks).

In circumstances requiring their repair or replacement, **we** will indemnify **you** in respect of such loss or damage as provided in this policy.

We will, at **our** option, replace or repair the **Construction Works** or any part thereof or pay its value to an amount not exceeding the **Sum Insured**.

2. Additional Cover

We will also pay to **you**, if an insured **Event** has occurred, up to the **Sum Insured** stated in the **Schedule**, the cost of:

- 2.1 **Removal of Debris**
Demolishing, cleaning and removal of debris, including dewatering, following any occurrence giving rise to a claim under this policy;
- 2.2 **Professional Fees**
Architect's, engineers', surveyors' and consultants' fees necessarily incurred by **you** for the replacement or repair of the **Construction Works** following loss or damage from any cause insured under this **Policy**, but exclusive of any fees incurred for the preparation of a claim or estimation of a loss;
- 2.3 **Expediting Expenses**
The costs of express delivery within Australia, overtime rates of wages, the hire of additional labour and equipment and the costs of purchasing resources necessary to reinstate, repair or replace insured damage to the **Construction Works**.

Our Cover: Section 1 - Material Damage (cont'd)

Express delivery will include carriage by airfreight within the **Territorial Limit** by use of licensed airline(s) only, operating on a regular scheduled service. Costs associated with aircraft specifically chartered for the purpose are not covered.

2.4 Mitigation Expenses

Costs and expenses incurred to contain, mitigate, suppress, save, protect, or prevent imminent physical loss or damage, insured under this policy, to the **Construction Works**.

The amount payable will not exceed 10% of the amount payable under this policy for the original loss or damage and excluding any amounts payable under additional cover items 2.1, 2.2 and 2.3.

2.5 Escalation Allowance

If during the **Construction Period** there is an increase in the cost of the **Construction Works** (which exceeds the value stated in the **Schedule**) then the **Sum Insured** for the **Construction Works** as specified in the **Schedule** will be increased by the same proportion, provided the amount of such increase will not exceed 15% for the specified **Construction Works Sum Insured** unless expressly agreed in writing by **us**.

2.6 Materials Stored Offsite

For locally procured materials intended for use in the **Construction Works** and stored offsite (for a period not exceeding 90 days) and within the **Territorial Limits** of the policy **we** will, in the event of unforeseen physical loss or damage, indemnify **you** up to the amount specified in the **Schedule**.

2.7 Materials in Transit

For locally procured materials belonging to **you** or in **your** care, custody or control and intended for use in the **Construction Works**, only whilst in transit within Australia, **we** will indemnify **you**, in the event of unforeseen physical loss or damage.

Provided always that the **Event** occurs during the **Construction Period**, and commences on the completion of loading in an undamaged condition and expires upon completion of the unloading at the **Construction Site**.

The amount payable will not exceed \$10,000 or the **Sum Insured** stated in the **Schedule** for any one carry, whichever is the greater.

3. Limit of Liability

3.1 **Our** liability will not exceed in all the **Total Sum Insured** stated in the **Schedule**.

3.2 **Our** total liability for any claim arising out of one **Event** or a series of **Events** will not exceed the **Sum Insured** noted in the **Schedule** against the lost or damaged insured item, plus, any additional covers insured and allowed under this policy.

4. Exclusions Applicable to Section 1

We will not indemnify **you** for:

- 4.1 Consequential loss of any kind or description whatsoever, including penalties, losses due to delay, lack of performance, loss of **Contract**.
- 4.2 Loss or damage due to any fault, defect, error or omission in design, plan or specification.
- 4.3 The cost of replacement, repair or rectification of any loss or damage caused by any fault, defect, error or omission in material or workmanship, but this Exclusion will be limited to the **Construction Works** immediately effected and will not exclude loss of or damage to **Construction Works** properly carried out.
- 4.4 Wear and tear, corrosion, oxidation, or deterioration due to lack of use or atmospheric conditions.
- 4.5 Mechanical and/or electrical and/or electronic breakdown or malfunction of construction plant, equipment and machinery.
- 4.6 Loss of or damage to vehicles or contractors' machinery or plant unless in use on the **Contract Site** in direct connection with the **Construction Works** and listed on the **Schedule**.
- 4.7 Loss of or damage to **Watercraft** or **Aircraft**.
- 4.8 Loss of or damage to files, drawings, bills, currency, stamps, deeds, evidence of debt, notes, securities, cheques or any other documents of whatever nature.

Our Cover: Section 1 - Material Damage (cont'd)

- 4.9 Loss or damage discovered only at the time an inventory is taken.
- 4.10 Loss arising out of the exercise of any lawful right of seizure, removal, repossession or lien in relation to any materials or components forming part of the **Construction Works** regardless of the cause of the action.
- 4.11 Loss or damage occurring during the course of ocean marine transit.
- 4.12 Loss or damage due to embezzlement or fraudulent misappropriation by an employee.
- 4.13 Loss or damage caused by the action of vermin, termites, moths, or other insects.
- 4.14 Normal upkeep of the **Construction Works**.
- 4.15 Any temporary repairs, unless such repairs are necessary to prevent further damage or loss to the **Property**;
- 4.16 Loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

Mould, mildew, fungus, spores or other micro organism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This exclusion applies regardless whether there is:

- a) Any physical loss or damage to the **Property**;
- b) Any insured peril or cause, whether or not contributing concurrently or in any sequence;
- c) Any loss of use, occupancy, or functionality; or
- d) Any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This exclusion replaces and supercedes any provision in the policy that provides insurance, in whole or in part, for these matters.

5. Basis of Settlement

5.1 In the event of loss or damage under this policy to items i. and ii. of the **Construction Works**, the basis of any settlement will be:

5.1.1 In the case of damage which can be repaired, the cost of repairs necessary (including a reasonable margin of overhead costs and profit) to restore the item(s) to their condition immediately before the occurrence of the damage less any salvage; or

5.1.2 In the case of a total loss, the **Replacement Value** of the damaged section.

however, only to the extent to which the costs claimed had to be borne by **you** and to the extent to which they are included in the **Sum Insured** in the **Schedule** and provided always that the provisions and conditions of the policy have been complied with.

5.2 In the event of loss or damage under this **Policy** to items iii., iv., v. and vi. of the **Construction Works**, the basis of any settlement will be:

5.2.1 In the case of damage which can be repaired, the reasonable cost of repairs necessary to restore the item(s) to their condition immediately before the occurrence of the damage less any salvage; or

5.2.2 In the case of a total loss, if the cost of repairs equals or exceeds the Market Value of the insured item immediately before the occurrence of the loss or damage, settlement will be made on the basis of total loss. **We** will at **our** option either supply an equivalent replacement item similar in type, capacity and condition to the insured item immediately prior to the loss or damage or pay the Market Value of the insured item immediately prior to the loss or damage.

Our Cover: Section 1 - Material Damage (cont'd)

however, only to the extent to which the costs claimed had to be borne by **you** and to the extent to which they are included in the **Sum Insured** in the **Schedule** and provided always that the provisions and conditions of the **Policy** have been complied with.

- 5.3 All damage which can be repaired must be repaired, but if the cost of repairing any damage equals or exceeds the value of the item(s) immediately before the occurrence of the damage, settlement will be made on the basis provided for under **5.2.2)** above.
- 5.4 **We** will not be liable to make any payment under this **Policy** unless **you** have produced to **our** reasonable satisfaction all accounts, invoices receipts and other documentation indicating that repairs have been affected or replacement has taken place, as the case may be.
- 5.5 **We** will not pay for:
- 5.5.1 The cost of any provisional repairs unless such repairs constitute part of the final repairs and do not increase the total repair cost.
- 5.5.2 The cost of any alterations, additions and/or improvements; or
- 5.5.3 Any additional damage to any item caused by the failure to repair that item properly and without delay.
- 5.6 If in the event of loss or damage it is found that the relevant **Sum Insured** for **Construction Works** items i., ii., iii., iv., v. or vi. is less than 85% of the sum required, then the amount **you** can recover under this **Policy** shall be reduced in the same proportion as the **Sum Insured** bears to 85% of the sum required to be insured.

The following formula will be used to calculate **our** payment when **Average** is applied

$$\frac{\text{Loss} \times \text{Sum Insured}}{85\% \text{ of value}} = \text{Settlement}$$

The **Excess** will be subtracted from the amount calculated in accordance with the above.

Our Cover: Section 2 - Legal Liability

Insuring Clauses

Subject to the payment of the premium, we hereby extend insurance cover to you in the manner and subject to the Terms, Conditions and Exclusions described in this policy, including the Schedule, Limit of Liability and Excess.

1. Extent of Cover

We insure **you** against all sums which **you** become legally liable to pay as compensation in respect of:

- a) **Personal Injury**;
- b) **Property Damage**

first occurring during the **Period of Insurance** within the **Territorial Limit** as the result of an **Occurrence** in connection with **your Business** not otherwise excluded.

2. Claim Costs

2.1 In addition to the cover provided under subsection **1**, but subject always to subsection **3**, **we** will pay:

- a) Costs and expenses incurred by **us**, or by **you** with **our** prior written consent, in the investigation, settlement or defence of any claim for compensation for which **you** are entitled to indemnity under this policy; and
- b) Legal costs taxed or assessed against **you** in any claim referred to in paragraph 2.1 a) and all interest accruing from the entry of judgment against **you** until **we** have paid, tendered or deposited in court such part of the judgment as does not exceed the **Limit of Liability**.

3. Limit of Liability

3.1 Except as provided in **3.2**, **our** total liability under this policy to indemnify **you**:

- a) in respect of any one **Occurrence** will not exceed the **Limit of Liability**; and
- b) for all claims in respect of **Completed Operations** during the **Period of Insurance** is limited in the aggregate to the **Limit of Liability**.

3.2 Subject to paragraph **3.3**, **we** will indemnify **you** for up to \$500,000 in addition to the **Limit of Liability** for amounts that **we** pay to **you** or on **your** behalf under subsection **2.1**:

- a) in respect of any one **Occurrence**; and
- b) for all claims in respect of **Completed Operations Liability** during the **Period of Insurance** and in the aggregate.

3.3 All **Personal Injury** and **Property Damage** consequent upon or attributable to one source or originating cause shall be deemed one **Occurrence**. Any entitlement to indemnity under this policy for such an **Occurrence** will be determined by reference to the date on which the **Personal Injury** or **Property Damage** from the one source or originating cause first occurred.

4. Additional Cover

4.1 Excavation and Underpinning

We will only indemnify **you** for **Personal Injury** or **Property Damage** as a result of an **Occurrence** happening in connection with any excavation or underpinning work carried out subject to the following conditions:

- a) The excavation or underpinning work does not exceed five (5) metres in depth; and
- b) The excavation or underpinning work is carried out in strict accordance with the plans and specifications for such work and at the direction of the design engineer; and
- c) Any surrounding structures that could be affected by such excavation or underpinning work have, prior to the commencement of such work, a "conditions report" produced on the existing condition of such structures.

4.2 Principals

We insure the **Policy Holder** for liability to indemnify any principal with whom the **Policy Holder** has entered into a contract or agreement for the performance of work if the terms of the contract or agreement require that the **Policy Holder** must indemnify the principal but only:

- a) in relation to work carried out by the **Policy Holder**; and
- b) if the liability would have been implied by law in the absence of the Contract or agreement; and

Our Cover: Section 2 - Legal Liability (cont'd)

- c) in respect of claims for which the **Policy Holder** would be entitled to indemnity under this policy if the claim was made against the **Policy Holder**.

5. Exclusions Applicable to Section 2

We will not indemnify **you** for, any actual or alleged liability:

5.1 Aircraft and Watercraft

caused by or arising directly or indirectly out of or in connection with:

- a) the ownership, possession, use, existence, working, navigation, operation, repair, maintenance, servicing, construction or installation by **you** or on **your** behalf of any **Aircraft** or **Watercraft**; or
- b) the use of **your Completed Operations** with **your** knowledge in the construction, operation, maintenance, servicing or repair of any **Aircraft** or **Watercraft**.

5.2 Contractual Liabilities

assumed by **you** under any contract or agreement (not being an insured contract) except where the liability would have been implied by law in the absence of the contract or agreement.

5.3 Defamation

caused by or arising directly or indirectly out of or in connection with publication of a libel, utterance of a slander or defamation:

- a) first made prior to the **Period of Insurance**; or
- b) made by **you** or with **your** authority, with knowledge of its falsity or defamatory character; or
- c) in any way related to advertising, broadcasting, publishing or telecasting activities conducted by **you** or on **your** behalf, including but not limited to the publication of material on the Internet.

5.4 Design

caused by or arising directly or indirectly out of or in connection with the design, plan, formula or specification of the works of **your Completed Operations** or any instructions, warnings, advice or information on the characteristics, use, storage or application of **your Completed Operations**.

5.5 Employer's Liability

- a) for **Personal Injury** to any person employed by **you** or deemed by law to be employed by **you**; or
- b) imposed or implied by or under:
 - i. any workers compensation act or any other similar law, act or ordinance relating to compensation for injury to any person employed by **you** or deemed by law to be employed by **you**; or
 - ii. any industrial award, agreement or determination or any contract of employment or workplace agreement, to the extent that **you** would not have been liable in the absence of that award, agreement, determination or contract; or
 - iii. any law relating to wrongful or unfair dismissal, denial of natural justice, defamation, false or misleading conduct or advertising, misrepresentation, harassment or discrimination in respect of employment by **you**.

5.6 Fines and Penalties

for fines, penalties, liquidated, aggravated, exemplary, multiple or punitive damages.

5.7 Fraudulent and Intentional Conduct

caused by or arising directly or indirectly out of or in connection with:

- a) dishonest, fraudulent, criminal or malicious conduct; or
- b) wilful breach of statute; or
- c) conduct intended to cause **Personal Injury** or **Property Damage** (or conduct with reckless disregard for **Personal Injury** or **Property Damage**)

by **you** or anyone acting on **your** behalf or with **your** knowledge or connivance.

5.8 Loss of Use

for loss of use of tangible property (not physically lost, destroyed or damaged) caused by or arising directly or indirectly out of:

- a) delay or lack of performance by **you** or on **your** behalf under any contract or agreement; or

Our Cover: Section 2 - Legal Liability (cont'd)

b) the failure of **your Completed Operations** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by **you**, except for loss of use of other tangible property resulting from the sudden and accidental physical loss, destruction or damage to **your Completed Operations** after **your Completed Operations** have been put to use by any person or organisation other than **you**.

5.9 Molestation

caused by or arising directly or indirectly out of or in connection with the molestation of, or physical or psychological interference with, any person.

5.10 Money and Securities

for loss or damage to cash, securities, bullion, gold or negotiable instruments owned by **you** or for which **you** have assumed a responsibility.

5.11 More Specific Insurance

for which **you** are or would be entitled to indemnity under one or more of the specific policies stated in the **Schedule**.

5.12 Pollution

for:

- a) **Personal Injury** or **Property Damage** or financial loss or loss of, damage to, or loss of use of property directly or indirectly arising out of the actual, alleged or threatened discharge, dispersal, release, seepage, migration, emission or escape of **Pollutants**; or
- b) the cost of testing, monitoring, containing removing, nullifying or cleaning up **Pollutants** except liability otherwise excluded under paragraph (a) or (b) that:
 - i. arises from a sudden identifiable, unintended and unexpected happening, which takes place in its entirety at a specific time and place; and
 - ii. is indemnified in not more than one annual **Period of Insurance**.

5.13 Prior Knowledge

caused by or arising directly or indirectly out of or in connection with a fault, defect, **Occurrence, Personal Injury** or **Property Damage** known, or deemed by law to be known, by **you** prior to the **Period of Insurance**.

5.14 Completed Operations Defect, Recall and Faulty Work

- a) for **Property Damage** to **your Completed Operations** caused by or arising directly or indirectly out of or in connection with any defect or lack of quality in **your Completed Operations**, the harmful nature of **your Completed Operations** or unsuitability or ineffectiveness of **your Completed Operations**;
 - b) caused by or arising directly or indirectly out of or in connection with the withdrawal, inspection, removal, reinstallation, repair, replacement or loss of use of **your Completed Operations**, or of any property of which **your Completed Operations** forms a part, if **your Completed Operations** are recalled from the market or from use because of any known or suspected defect or deficiency in it; or
 - c) for the cost of repairing, correcting, performing or improving any work or service undertaken or provided by **you** or on **your** behalf.

5.15 Completed Operations Liability

for any claim or claims in respect of **Personal Injury** or **Property Damage** directly or indirectly arising out of, resulting from or in consequence of, or in any way involving the nature, condition or quality of **your Completed Operations** unless specifically agreed by **us** in writing and by endorsement noted on the **Schedule**.

5.16 Professional Liability

caused by or arising directly or indirectly out of or in connection with the rendering of or failure to render professional advice or service by **you** or on **your** behalf or an error or omission in connection therewith.

Our Cover: Section 2 - Legal Liability (cont'd)

5.17 **Property in your Physical or Legal Control**

for **Property Damage** to property owned, leased or hired by or under hire purchase or on loan to **you** or otherwise in **your** physical or legal care, custody or control, other than:

- a) buildings and their contents at **your Premises**, which are leased or rented to **you** for **your Business**;
- b) other property not owned by **you**, leased to **you** or rented to **you** but temporarily and legally occupied by **you** or in **your** possession or control for work thereon, however **we** will not indemnify **you** for damage to that part of such property on which **you** are working or have been working and which arises out of that work;
- c) employees' and visitors' clothing and personal effects; and
- d) **Vehicles** (not owned or used by **you** or on **your** behalf or liability for **Vehicles** not otherwise excluded by this policy) whilst in a car park owned or operated by **you** other than for reward.

5.18 **Territorial Limit**

occurring or arising outside the **Territorial Limit** or caused by or arising directly or indirectly out of or in connection with the application of laws other than those of Australia or New Zealand.

5.19 **Tobacco and Smoking**

caused by or arising directly or indirectly out of or in connection with the inhalation or ingestion of, or exposure to, tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

5.20 **Underground Services**

caused by or arising directly or indirectly out of or in connection with **Property Damage** to any underground services except where **you** have contacted the appropriate authorities to verify the existence and location of underground services and have obtained from them a plan detailing the location of such services prior to commencement of work.

5.21 **Vehicles**

caused by or arising directly or indirectly out of or in connection with the ownership, possession, maintenance, use or control of any **Vehicle**:

- a) which is registered or required to be registered by any legislation or competent authority, except where such liability is caused by:
 - i. the loading or unloading of any **Vehicle**, or the delivery or collection of goods to or from any **Vehicle** where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare declared as a designated road, or
 - ii. the use of any mechanical tool or plant attached to or forming part of any **Vehicle**, whilst the **Vehicle** is being used at **your Premises** or another work site for the purpose of **your Business** but not whilst the **Vehicle** is in transit or is being used for transport or haulage; or
- b) where such liability is insured or required to be insured by any legislation or competent authority.

5.22 **Waiver of Rights of Subrogation**

Liability in respect of all, or part, of which, any **Persons Insured**, by an agreement have released or waived the right of any of the **Persons Insured** to recover indemnity or contribution from another.

Exclusions Applicable to All Sections

We will not indemnify **you** for any loss or damage of whatever kind arising directly or indirectly out of:

1. Computers and Technology

- a) **Property Damage to Electronic Data** caused by or arising directly or indirectly out of the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **Electronic Data** or any error in creating, amending, entering, deleting or using **Electronic Data** or total or partial inability or failure to receive, send, access or use **Electronic Data** for any time at all or any consequential loss resulting there from;
- b) the use of an intranet or the Internet (including but not limited to the World Wide Web and electronic mail systems) by **you** or on **your** behalf;

2. War, Terrorism and Nuclear Material

- a) or in connection with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion, coup, military rising, insurrection, military or usurped power, rebellion, revolution, confiscation, nationalisation, requisition or looting, sacking or pillage, destruction of or damage to property by or under the order of any government or public or local authority;
- b) death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
- c) death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any **Act of Terrorism**; or

- d) in connection with nuclear weapons material or ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste or from the combustion of nuclear fuel or from any other self-sustaining process of nuclear fission.

3. Cessation or Abandonment of Work

any cessation of work exceeding 30 consecutive days, or immediately following abandonment.

4. Insolvency

your business being wound up, or carried on by a receiver, or being permanently discontinued or due to the non-availability of funds to finance the **Construction Works**, or for the repair or replacement of the **Construction Works**.

5. Asbestos

any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

6. Welding and Allied Processes

or in connection with non-compliance by **you** or by others working on **your** behalf with all applicable laws and standards relating to welding and allied processes including, but not limited to, AS 1674.1-1997 "Safety in Welding and allied processes – Fire precautions" published by Standards Australia and as amended or substituted from time to time.

7. Demolition

or in any way involving the demolition of buildings or structures exceeding 10 metres above ground level and/or 5 metres below ground level and/or not forming part of a new **Construction Works** project insured hereunder, unless specifically agreed by **us** in writing and by endorsement noted on the **Schedule**.

General Conditions

As a condition to **your** entitlement to indemnity under this policy, **you** must comply with these conditions. If **you** do not comply, **we** reserve **our** rights to refuse to pay a claim or to reduce (in some cases to nil) the amount **you** would otherwise be entitled to receive.

1. Claims Procedures

- 1.1 In circumstances that give rise to or may give rise to a claim under this policy:
- a) **You** must notify **us** as soon as possible of all such circumstances and provide all reasonable information and assistance that **we** may require, including details of any other insurance or indemnity to which **you** may be entitled in relation to the **Occurrence** giving rise to the claim;
 - b) **You** must not admit liability or settle or attempt to settle any claim without **our** written consent;
 - c) **We** may take over and conduct, in **your** name, the defence or settlement of any claim and **we** will have full discretion in the conduct of any proceedings in connection with a claim;
 - d) Take all reasonable steps within **your** power to minimise the extent of the loss or damage;
 - e) Preserve the parts affected and make them available for inspection by **us**, **our** employees or agents;
 - f) Furnish all such information and documentary evidence as **we** may require; and
 - g) In the event of loss or damage caused by theft or burglary, inform the Police.
- 1.2 Upon notification of any loss or damage being given to **us**, **you** may carry out minor repairs or make good any minor damage, but in all other cases, **you** must give **us**, **our** 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 **us** or on **our** behalf within a period of time which is reasonable having regard to the location of the risk, weather conditions, and any other relevant factors, **you** may proceed with such repairs or replacement

- 1.3 Nothing contained in this clause or in any other clause of this policy will relieve **you** of any obligation to take such steps as are necessary to ensure that the operations at the **Construction Site** are at all times carried out so as to minimise the risk of any claim being made under this policy.

2. Discharge of Liabilities

- 2.1 **We** may at any time pay to **you**, or on **your** behalf, in respect of any claim:
- a) the amount of the **Limit of Liability**; or
 - b) any lesser sum for which the claim can be settled
- after deduction of any sum already paid as compensation in respect of the claim.
- 2.2 Upon the payment set out in paragraph a), **we** will relinquish control of the claim and be under no further liability under this policy in connection with the claim except for costs, charges and expenses:
- a) recoverable from **you** in respect of the period prior to the date of the payment, whether or not pursuant to an order made subsequently; and
 - b) incurred by **us** or incurred by **you** with **our** written consent prior to the date of the payment.
- 2.3 **We** will not pay for any claim or judgment or defend any claim after **our Limit of Liability** has been exhausted.

3. Provisional Premium

The Provisional Premium stated in the **Schedule** will be a deposit and will be calculated by applying the agreed rate to one hundred percent (100%) of the estimated **Turnover** of all construction **Contracts** which may become insurable under this Policy and adjusted as shown below.

General Conditions (cont'd)

4. Premium Adjustment

Within thirty days of expiry of the **Period of Insurance** stated in the **Schedule** or the anniversary date of cancellation or non-renewal **you** are required to declare the **Turnover** of all **Contract(s)** insured under this Policy since the commencement of the **Period of Insurance**.

The premium will be determined by applying the agreed rate to the **Turnover**.

The premium shall be compared to the provisional premium and **you** will pay or **we** will refund the difference as the case may be.

Provided always that **we** will not be called upon to refund more than twenty five percent (25%) of the provisional premium.

5. Inspection

If required by **us**, **you** must allow **us** and **our** agents and representatives to:

- a) inspect **your Premises** and operations at any time during normal business hours; and
- b) examine and audit **your** books and records at any time during the **Period of Insurance** and within three years of the final termination of cover under this policy

but **we** make no representation or warranty that either **your Premises** or **your Business** complies with any law or meets any standard.

6. Interests of Other Parties

We will not be required to recognise the interests of any third party under this Policy unless written notice of such interest has been given to and accepted by **us**.

7. Reasonable Care

You must:

- 7.1 take all reasonable precautions to prevent or minimise loss, damage or liability including preserving, without alteration, damaged property, defective property and property that may provide evidence in relation to any claim, until **we** have had an opportunity to inspect it;

- 7.2 at **your** own expense take all reasonable precautions to prevent **Personal Injury** and **Property Damage** and comply with all statutory obligations for the safety of persons and property including all reasonable steps:

- a) to trace, recall or modify any **Completed Operations** containing any defect or deficiency of which **you** have knowledge or which **you** have reason to suspect contains any defect or deficiency;
- b) in the event of an **Occurrence**, to prevent other **Personal Injury** or **Property Damage** from arising out of the same or similar circumstances; and
- c) to ensure the safety and sound condition of **your Premises** and **your Product** including complying with all applicable statutory obligations concerning **your Premises** and **your Completed Operations**;

- 7.3 only employ competent employees; and

- 7.4 comply with all statutory obligations, laws and regulations imposed by any competent authority in relation to any matter covered by this policy.

8. Maintenance of Completed Operations

You must keep and maintain, for at least 10 years after the date upon which they are brought into existence or come into **your** possession or control, documents and records:

- a) relating to research and development, specification, design and manufacturing of **your Completed Operations**;
- b) showing the source and quality of components of **your Completed Operations**;
- c) identifying persons and entities comprising the distribution chain for **your Completed Operations**;
- d) comprising sales records, including batch number and destination of **your Completed Operations**; and
- e) detailing quality control, inspection, testing, repairs, replacements and recalls of **your Completed Operations**.

General Conditions (cont'd)

9. Alteration of Risk

You must immediately notify **us** in writing of any alteration to the facts or circumstances relating to **your Business** that existed when **we** agreed to insure **you** under this policy. If **we** agree in writing to insure the altered risk, **you** must pay any additional premium requested by **us**. If **we** do not agree to insure the altered risk or if **you** do not pay the additional premium, **we** will not indemnify **you** for any loss, damage or liability caused by or arising directly or indirectly out of or in connection with such alteration.

10. Joint Insureds

Where **you** comprise more than one party:

- a) the **Proposal** is deemed to have been furnished by and on behalf of all parties and any information supplied to **us** or any omission, misrepresentation, or non-disclosure in relation to the **Proposal** or any renewal or extension of this policy is deemed to have been furnished, supplied, omitted, misrepresented or not disclosed on behalf of all parties; and
- b) the conduct (other than conduct referred to in 10 a) of one or more of **you** will not prejudice the rights of the remainder of **you** provided that the remainder of **you**, immediately on becoming aware of any conduct that increases the risk of liability insured by this policy, gives notice in writing to **us** and pays any additional premium that **we** may require.

11. Cross Liability

Subject to condition 10 where **you** comprise more than one party, each of **you** is considered as a separate legal entity and the expressions '**you**' and '**your**' apply to each party as if a separate policy had been issued to each of the parties but **our** aggregate liability is limited to the **Limit of Liability**.

12. Subrogation

If **we** make or agree to make a payment under this policy to **you** or on **your** behalf then, subject to the Insurance Contracts Act 1984 as amended from time to time, **we** will be subrogated to all of **your** rights of recovery against all persons before or after we have

paid your claim or we have paid your claim in part or full and **you** must, at **our** request and expense, take all reasonable steps and provide all assistance reasonably necessary to assist **us** in the exercise of **our** rights.

13. Cancellation

This policy may be cancelled by:

- a) **You** at any time notifying **us** in writing, in which case cancellation takes place when **we** receive the notice; and
- b) **us** on any grounds set out in the Insurance Contracts Act 1984, as amended from time to time.

You must supply **us** with such particulars as **we** may require for the adjustment of the **Premium** following any cancellation.

14. Excess

In respect of any liability for which **you** are entitled to indemnity under this policy, **you** will bear the amount of the **Excess** and **we** will only be liable to indemnify **you** for that part of any loss or claim which is greater than the **Excess**.

Costs and expenses incurred by **you** in the investigation, settlement or defence of any claim for compensation for which **you** are entitled to indemnity under this policy are not included in the **Excess** and shall not be applied to erode the **Excess**.

15. Loss Accumulation

For the purpose of the application of the **Excess** all loss or damage to **Construction Works** arising during any period of seventy two consecutive hours caused by storm, tempest, flood, cyclone or earthquake shall be deemed to be a single **Event** and therefore to constitute one **Occurrence**. **You** may select the time from which any such period will commence but no two such periods will overlap.

16. Jurisdiction

All disputes arising out of or under this Policy will be subject to determination by any Court of competent jurisdiction within Australia.

General Conditions (cont'd)

17. Severability

A term or condition of this policy that is illegal or unenforceable may be severed from this policy and the remaining terms and conditions of this policy, or parts thereof, continue in force.

18. Interpretation

The singular includes the plural and vice versa, unless the context otherwise requires. A reference to a person includes a body corporate, an unincorporated body or other entity. Headings are for convenience only and do not affect interpretation. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

19. Reinstatement of Sum Insured

Following any claim being paid under this policy **we** will reinstate the **Sum Insured**, provided **you** pay any additional premium that may be required by **us**.

20. GST

Claim Settlements - Where We Agree to Pay

When **we** calculate the amount we will pay **you**, **we** will have regard to the items below:

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) and **we** agree to pay the claim, **we** will pay for the GST amount.

All GST amounts are included in the Limit of Liability or other limits shown in the policy or in the **Schedule**.

Where **we** make a payment under this policy as compensation instead of payment for a relevant acquisition, **we** will reduce the amount of the payment by the amount of any input tax credit that **you** would have been entitled to had the payment been applied to a relevant acquisition.

Disclosure - Input Tax Credit Entitlement

If **you** register, or are registered, for GST **you** are required to tell **us** **your** entitlement to an input tax credit on **your** premium. If **you** fail to disclose or understate **your** entitlement, **you** may be liable for GST on a claim **we** may pay. This policy does not cover **you** for this GST liability, or for any fine, penalty or charge for which **you** may be liable for due to **your** failure to disclose or a misstatement made by **you** in relation to **your** entitlement to an input tax credit for the **premium**. "GST", "input tax credit", "acquisition", "supply", "tax invoice" have the meaning given in the A New Tax System (Goods and Services Tax) Act 1999.

powered by
calliden

Product Issued by
Calliden Insurance Limited

Level 7, 100 Arthur Street
North Sydney NSW 2060
Australia
Tel: +61 2 9551 1111
Fax: +61 2 9551 1155
www.calliden.com.au

ABN 47 004 125 268
AFSL 234438

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