



**UNDERWRITING AGENCY LIMITED**  
A.F.S.L. No. 317217 ABN 65 112 486 361

Underwritten at: Lloyds of London

**Commercial Builders  
Structural Defects Insurance Policy  
(Victoria)**

### **SECTION 1: OPERATIVE CLAUSE**

Whereas the Insured has made to the Insurer a written proposal containing particulars and statements and have paid the premium stated in the Schedule for the following indemnity during the Period of Insurance.

The Insurer agree, subject to the terms, limitations and conditions of this Policy, to indemnify the Insured up to the Limit of Indemnity against all sums which the Insured shall become legally liable to pay as a result of any Claim or Claims first made against the Insured during the Period of Insurance arising out of any act, error or omission on the part of the Insured, in the conduct of the Insured's Business PROVIDED THAT such act, error or omission results in a Structural Defect not discovered or known by the Insured before the date of issue of the occupancy permit in respect of the Building work (whether or not the occupancy permit in respect of the Building work is subsequently cancelled or varied) or, if any occupancy permit is not issued, the date of issue under Part 4 of the Building Act, 1993 (Victoria) of the certificate of final inspection of the Building work or, if any occupancy permit is not required to be issued under the Building Act, 1993 (Victoria), the date upon which the Building work reaches practical completion.

#### **1.1 Excess**

In respect of each Claim made against the Insured, the amount of Excess in the Schedule shall be borne by the Insured at the Insured's own risk and the Insurer shall only be liable to indemnify the Insured for that part of any Claim which is over and above the Excess. For the purpose of this Excess clause, the term Claim shall also include Costs and Expenses.

#### **1.2 Costs and Expenses**

The Insurer shall pay on the Insured's behalf, in addition to the Limit of Indemnity, the costs and expenses incurred by the Insurer or the costs and expenses incurred by the Insured with the Insurer's prior written consent in the investigation, defence or settlement of any claim.

If a payment greater than the Limit of Indemnity has to be made to dispose of a Claim made against the insured, the Insurer's liability in respect of such costs and expenses shall be such proportion of the total costs and expenses incurred as the amount payable by the Insurer under this Policy bears to the amount payable to dispose of the Claim.

The maximum liability of the Insurer for costs and expenses in respect of any one Claim shall be \$100,000 or 20% of the Limit of Indemnity, whichever amount is the greater.

## **SECTION 2: EXTENSIONS**

The following extensions are available under this Policy. Each extension is subject to the terms, Excess and Limit of Indemnity of this Policy, except where the same may be varied by the extension. The inclusion of any extension shall not increase the Limit of Indemnity.

### **2.1 Automatic Reinstatement**

It is hereby agreed that subject to the terms, conditions and exclusions of this Policy (except as herein provided), upon notification to the Insurer during the Period of Insurance of any Claim made against the Insured or of circumstances which give rise to a Claim, this Policy shall be deemed to be reinstated for such amount, if any, as may be ultimately paid by the Insurer in respect of such Claims, so as to remain in force during the Period of Insurance for the Limit of Indemnity stated in the Schedule of this Policy, provided always that the aggregate of the amounts so reinstated shall not exceed an amount equal to the said Limit of Indemnity.

It is the intention of this Policy that the sums thus reinstated shall provide cover in respect of subsequent Claims or losses which are totally unrelated to the Claim already notified. The liability of the Insurer in respect of all Claims or losses resulting from one occurrence or series of occurrences, arising out of the same act, error or omission shall not exceed the Limit of Indemnity stated in the Schedule, except that (subject to the Provisions of this Policy) the Insurer will in addition pay the costs and expenses incurred in the defence or settlement of any Claim.

### **2.2 Trade Practices Act**

This Policy extends to Indemnify the Insured in respect of Claims for damages or compensation made against the Insured for misleading or deceptive conduct or conduct which is likely to mislead or deceive within the terms of Section 52, Section 53, Section 53A and Section 74 of the Trade Practices Act, 1974 (Commonwealth), or Section 11 of the Fair Trading Act, 1985 (Victoria) or the equivalent provision of similar legislation in other states, but excluding any Claims arising from dishonest, fraudulent, malicious or criminal conduct and provided such conduct results in a Structural Defect.

## **SECTION 3: DEFINITIONS**

Wherever appearing in this Policy the following terms shall be interpreted only in the manner described below. The term;

- 3.1     “Building” includes structural, temporary Building, temporary structure and any part of a Building or structure.
- 3.2     “Claim” shall mean the demand for compensation made by a third party against the Insured but shall not include the Insured’s Costs and Expenses. Where an act, error or omission results in more than one claim against the Insured which may be the subject of Indemnity hereunder, all such Claims shall jointly constitute one Claim under this Policy.
- 3.3     “Insurer” shall mean the Insurer stated in the Schedule.
- 3.4     Construct (or Constructions) in relation to a Building includes;
  - 3.4.1     build, rebuild, erect or re-erect the Building
  - 3.4.2     repair the Building;
  - 3.4.3     make alterations to the Building
  - 3.4.4     enlarge or extend the Building; and
  - 3.4.5     place or relocate the Building on land.

- 3.5 “The Insured” shall mean:
- 3.5.1 the person(s) or entity named as the Insured in the Schedule
  - 3.5.2 any person who is at the commencement of or who becomes during the Period of Insurance a principal, partner, director or employee of the insured who is registered as a Building Practitioner in the Class of Commercial Builder (Structural)
  - 3.5.3 any persons who are a former principal, partner director or employee of the Insured and who are or have been, but no longer are, a registered Building Practitioner in the Class of Commercial Builder (Structural) but only in respect of acts, errors or omissions committed or allegedly committed when such person was a principal, partner, director or employee of the Insured; and
  - 3.5.4 the legal personal representatives of any principal, partner, director or employee as defined in paragraphs (3.5.2) and (3.5.3) above in the event of the death or incapacity of such person;
- but in each case only in respect of work carried out in the conduct of the Insured’s Business by the Insured.
- 3.6 “Insured’s Business” shall mean work for or in connection with the construction or erection, of a Building
- 3.7 “Insurer” shall mean the Insurer(s) stated in the Schedule.
- 3.8 “Limit of Indemnity” shall mean the Limit of Indemnity stated in the Schedule.
- 3.9 “Period of Insurance” shall mean the Period of Insurance stated in the Schedule.
- 3.10 “Structural Defect” shall mean any defect in the structural works which affects the stability or strength of the building or any part thereof and is attributable to defective design, defective or faulty workmanship and/or defective materials and which:
- 3.10.1 results in a regulatory authority(ies) closing or prohibiting the use of the building or any or part thereof; or
  - 3.10.2 does or would prevent the continued practical use of the building or any part thereof; or
  - 3.10.3 results in destruction of the building or physical damage to the building or any part thereof; or
  - 3.10.4 results in threat of imminent collapse that may reasonably be considered to cause destruction of the building or physical damage to the building or any part thereof.
- 3.11 “Structural Works” shall mean:
- 3.11.1 all internal and/or external load-bearing structures essential to the stability or strength of the building or any part thereof, including, but not limited to, foundations, floors, walls, roofs, columns and beams; and
  - 3.11.2 all other works forming part of external walls and roofing, but excluding weatherproofing works not designed to add strength or support to the building, moveable elements of external windows, doors and skylights.

## **SECTION 4: EXCLUSIONS**

The policy shall not indemnify the Insured in respect of any Claim against the Insured;

- 4.1 For any dishonest, fraudulent, willful, malicious or illegal act or omission of the Insured or any employee of the Insured.
- 4.2 Directly or indirectly arising from or in any way connected with asbestos.

- 4.3 For any duty or obligation assumed by the Insured under any contract or guarantee unless liability would have attached to the Insured in the absence of such contract or guarantee.
  - 4.4 Directly or indirectly caused by or contributed to by ionizing radiation or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material whether occurring naturally or otherwise, or by the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
  - 4.5 Any matter where action for damages is not brought in a Court of Law within Australia or New Zealand and subject to Australian or New Zealand law, or where action is so brought, but to enforce a foreign judgment whether by way of reciprocal agreement or otherwise.
  - 4.6 In consequence of war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, martial law or the act of any lawfully constituted authority.
  - 4.7 Directly or indirectly caused or occasioned by or happening through or in consequence of terrorism or any action taken in controlling, preventing, suppressing any act or acts of terrorism or in any way relating thereto.
- For the purposes of this Clause “terrorism” means any act or acts (whether threatened or actual) of any person or persons involving the causing or occasioning of threatening of harm of whatever nature and by whatever means made or claimed to be made in whole or in part for political, religious, ideological or similar purposes.
- 4.8 Arising directly or indirectly out of the insolvency, bankruptcy or liquidation of the Insured.
  - 4.9
    - 4.9.1 by any person, firm or corporation within the definition of the Insured under this Policy;
    - 4.9.2 by any member of the family of any principal, partner, shareholder or director of the Insured; or
    - 4.9.3 by any entity which owns or controls or which is owned or controlled by any party referred to in 4.9.1 or 4.9.2 of this exclusion;

unless such Claim emanates directly from a Claim by an unrelated third party.
  - 4.10 Made, threatened or in any way intimated prior to the Period of Insurance; or arising from or attributable to or in consequence of any fact or circumstance;
    - (a) of which written notice has been given under any previous insurance policy;
    - (b) noted on the Proposal for the current Period of Insurance or on any previous proposal; or
    - (c) of which the Insured first became aware prior to the Period of Insurance and which the Insured knew or ought reasonably to have known may give rise to a Claim;
  - 4.11 Arising out of any activities in which the Insured is engaged as a joint venture or as a partner unless such liability arises directly out of the acts, errors or omissions of a named Insured. For the purposes of this exclusion “joint venture” means an enterprise carried on in common by the Insured or an entity constituting the Insured with a third party or parties not being the Insured or any entity constituting the Insured under this Policy.
  - 4.12 In connection with any domestic Building works as defined in the Domestic Building Contracts Act 1995 or any dwellings, residences or other domestic premises.
  - 4.13 In connection with any Civil Works, including but not limited to roads, railways, bridges, dams, weirs, aqueducts, tunnels, water supply systems, sewage or drainage works, gas or oil pipelines, electricity supply systems or other infrastructure except that forming part of a Building as defined under Definition 3.1 of this Policy.
  - 4.14 For any fines, penalties, punitive, exemplary, aggravated or liquidated damages.

- 4.15 For indirect or consequential loss other than direct costs of rectification of a Structural Defect.
- 4.16 For liability in respect of a bodily injury which expression includes death and illness.

## **SECTION 5: CONDITIONS**

- 5.1 The Insured shall not admit liability for or settle any Claim or incur any costs or expenses in connection therewith without the written consent of the Insurer who shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any Claim.
- 5.2 Upon the making of a Claim against the Insured, the Insured shall notify the Insurer in writing immediately and shall provide whatever information relating to the Claim or possible claim that is in the Insured's possession.
- 5.3 For the purpose of giving and receiving written notices including notification of Claims, these shall be made by or to Prime Underwriting Agencies as agent for the Insurer.
- 5.4 If any payment is made under this Policy in respect of a Claim and the Insurer is thereupon subrogated to the Insured's rights of recovery in relation thereto, the Insured shall assist and co-operate with the Insurer and provide the Insurer with such information (including signed statements) as the Insurer may reasonably require in the exercise of such rights of recovery.
- 5.5 Upon giving any notification pursuant to Condition 5.2, the Insured shall inform the Insurer as to any other insurance or indemnity pursuant to which the Insured is entitled to any benefit in respect of that Claim.
- 5.6 This insurance shall be governed by the Law of the State of Victoria whose courts shall have jurisdiction in any dispute arising hereunder.
- 5.7 The Insured shall keep an accurate record of all information furnished on the proposal form including turnover and estimates and shall at all times allow the Insurer to inspect such records.
- 5.8 The Insured shall immediately notify the Insurer of any material change in the risk made by the Insured during the Period of Insurance including;
  - 5.8.1 any merger with or acquisition of or by another business;
  - 5.8.2 the Insured going into voluntary bankruptcy, receivership or liquidation or the Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
  - 5.8.3 any material change in the nature of the Insured's business;
  - 5.8.4 any anticipated increase of 50% or more in the turnover as estimated in the proposal form.
- 5.9 The Insurer is the Insurer named in the Schedule.
- 5.10 This Policy shall be interpreted in accordance with the laws of the Commonwealth of Australia.

The Underwriters hereon agree that:-

- 5.10.1 In the event of a dispute arising under this Policy, Underwriters at the request of the Insured will submit to the jurisdiction of any competent Australian Court. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- 5.10.2 Any summons notice or process to be served upon the Underwriters may be served upon

Lloyd's General Representative in Australia  
 Lloyd's Australia Limited  
 Angel Place, 123 Pitt Street, Sydney NSW 2000 Australia