



**KEYSTONE**

**Information Technology  
Public and Products Liability  
Wording**

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## Table of Contents

Wording .....	3
1. Definitions.....	3
2. Insuring Clause.....	6
3. Automatic Extensions.....	6
4. Optional Extensions .....	8
5. Exclusions.....	9
6. Claims Conditions .....	13
7. General Conditions .....	15
Important Information .....	19

## Wording

The **Insured** and **Keystone** agree that **Keystone** will provide insurance in accordance with the terms of this **Policy** upon payment of the **Premium** as shown in the **Schedule**, and upon submission by the **Insured** of the **Proposal**, the contents on which **Keystone** will rely.

Paragraph titles used in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purposes of its construction or interpretation.

Words denoting the singular include the plural and vice versa except where the context otherwise requires.

References to statutes include any amendments thereof, regulations thereunder, re-enactments or consolidations thereof and any subsequent replacement or similarly comparable legislation.

### 1. Definitions

Whenever the following words are used in this **Policy** in bold type and with a capital letter, they have the special meanings set out below.

- 1.1 Advertising Liability** means an actual or alleged:
- 1.1.1** libel, slander or defamation; or
  - 1.1.2** any breach of the misleading or deceptive conduct provisions of the *Competition and Consumer Act 2010 (Cth)* or any **Fair Trading Legislation**; or
  - 1.1.3** infringement of any patent, copyright, title, trademark or slogan; or
  - 1.1.4** unfair competition, piracy or misappropriation of ideas; or
  - 1.1.5** invasion of privacy,
- committed in any advertisement, publicity article, broadcast or telecast and caused by or arising out of any **Advertising Activities** conducted by the **Insured** or on the **Insured's** behalf during the **Period of Insurance**.
- 1.2 Advertising Activities** means only those activities undertaken by or on behalf of the **Insured** to advertise products and services offered by the **Insured** and does not include any publications or comments on social media platforms that concern matters of general interest that are not directly related to such sale of products and services.
- 1.3 Aircraft** means any craft or object designed to travel through air or space or intended to be propelled on a cushion of air over the surface of land or water and includes a drone.
- 1.4 Business** means the **Information Technology Services** and includes:
- 1.4.1** property ownership and office occupation by the **Insured** for the purposes of the business; and
  - 1.4.2** a canteen, social or sporting club or first aid, fire or ambulance service, provided by **Insured** and incidental to the **Business**.
- 1.5 Communicable Disease** means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
- 1.5.1** the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - 1.5.2** the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - 1.5.3** the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.
- 1.6 Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the **Insured** or any other party.

- 1.7 Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.
- 1.8 Cyber Incident** means:
- 1.8.1** any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
  - 1.8.2** any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.
- 1.9 Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.
- 1.10 Electronic Data** means 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.
- 1.11 Employee** means a natural person (other than a **Principal**) employed under a contract of service or apprenticeship by the **Insured** and includes any trainee, volunteer, casual, part-time, seasonal, temporary, or work experience personnel.
- 1.12 Employment Practice Breach** means any actual or alleged violation of employment laws or any other employment related obligation or matter including but not limited to any actual or alleged employment related:
- 1.12.1** sexual or other unlawful harassment (including bullying); or
  - 1.12.2** unlawful discrimination; or
  - 1.12.3** denial of natural justice; or
  - 1.12.4** defamation; or
  - 1.12.5** invasion of privacy; or
  - 1.12.6** unlawful termination of employment; or
  - 1.12.7** false or misleading advertising or representation involving terms or conditions of employment; or
  - 1.12.8** failure to employ, promote or grant tenure; or
  - 1.12.9** unfair deprivation of career opportunity; or
  - 1.12.10** unfair discipline or evaluation of employment performance; or
  - 1.12.11** failure to provide or adhere to adequate employment policies or procedures; or
  - 1.12.12** violation of any federal, state or local statute or regulation governing employment practices; or
  - 1.12.13** breach of employment contract, with respect to any natural person, who was, now is or becomes an **Employee** of the **Insured** including prospective employees.
- 1.13 Endorsement** means any document which is described as an endorsement to this **Policy** and intends to vary it.
- 1.14 Excess** means the amount specified in the **Schedule** for the type of cover specified.
- 1.15 Fair Trading Legislation** means the *Fair Trading Act 1987 (NSW)*, or the *Fair Trading Act 1985 (Vic)* or similar legislation enacted by the other states or territories of Australia.
- 1.16 Information Technology Products** means any electronic equipment, communication equipment, or computer hardware or software, once they have been accepted by the **Insured's** customer, or deemed to have been accepted pursuant to a contract between the **Insured** and the **Insured's** customer, as meeting the specifications agreed to in the contract between the **Insured** and the **Insured's** customer.
- 1.17 Information Technology Services** means:
- 1.17.1** software development; and/or
  - 1.17.2** systems integration; and/or
  - 1.17.3** information management consulting; and/or
  - 1.17.4** electronic data processing; and/or

- 1.17.5 computer facilities management; and/or
  - 1.17.6 computer programming; and/or
  - 1.17.7 design, manufacture and installation of **Information Technology Products**; and/or
  - 1.17.8 computer and electronic equipment maintenance and repair; and/or
  - 1.17.9 computer and data network analysis, consulting and design; and/or
  - 1.17.10 telecommunication and data communication services; and/or
  - 1.17.11 internet services; and/or
  - 1.17.12 network consulting and support services; and/or
  - 1.17.13 call centre services; and/or
  - 1.17.14 as detailed in the **Schedule**.
- 1.18 **Insured** means the person or entity named as the insured in the **Schedule** and:
- 1.18.1 any subsidiary company of the **Insured** (and its subsidiaries); and/or
  - 1.18.2 any other entity controlled by the **Insured** and over which the **Insured** assumes active management; and/or
  - 1.18.3 any joint venture in which the **Insured** has an interest, subject to **Keystone's** prior agreement.
- 1.19 **Keystone** means Keystone Underwriting Pty Ltd ABN 78 601 944 763 as Corporate Authorised Representative (No. 000468712) of Keystone Underwriting Australia Pty Ltd ABN 59 634 715 674 AFSL 518224 which is acting on behalf of **Underwriters**.
- 1.20 **Limit of Liability** means the amount specified in the **Schedule** which is per **Occurrence** other than in respect of **Products Liability** where the **Limit of Liability** is in the aggregate.
- 1.21 **Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended from the standpoint of the **Insured**. A series or number of events having the same original cause or attributable to the one source will constitute one occurrence.
- 1.22 **Period of Insurance** means the period specified in the **Schedule**, unless terminated earlier.
- 1.23 **Personal Injury** means:
- 1.23.1 bodily injury, sickness, disease, disability, shock, loss of amenities, discomfort, disfigurement, malformation, fright, mental anguish, mental injury or death of or to any person;
  - 1.23.2 the effects of false arrest, false imprisonment, wrongful detention or malicious prosecution;
  - 1.23.3 the effects of wrongful entry, wrongful eviction;
  - 1.23.4 the effects of libel, slander, humiliation or violation of personal rights; and
  - 1.23.5 the effects of assault and battery committed for the purpose of protecting persons and/or property.
- 1.24 **Personal Injury to Labour Hire Personnel and Contractors** means **Personal Injury** to:
- 1.24.1 labour hire personnel; or
  - 1.24.2 a contractor or sub-contractor of the Insured; or
  - 1.24.3 all tiers of contractors and sub-contractors below a contractor or sub-contractor; or
  - 1.24.4 a director, executive officer, partner or employee of a person or company referred to in 1.24.1, 1.24.2 or 1.24.3 above.
- 1.25 **Personal Injury to Labour Hire Personnel and Contractors Excess** means the amount specified in the **Schedule** in relation to **Personal Injury to Labour Hire Personnel and Contractors**.
- 1.26 **Policy** means the **Schedule**, the terms of this document and any **Endorsement**.
- 1.27 **Pollutants** means any solid, liquid, gaseous, biological, radiological, nuclear, radioactive, or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to fumes, acids, alkalis, smoke, vapour, soot, fibres, nuclear or radioactive material of any sort, chemicals, or waste materials.
- 1.28 **Premium** means the amount specified in the **Schedule**.
- 1.29 **Principal** means where the **Insured** is an individual, that individual, where the **Insured** is a firm, a partner of that firm, or where the **Insured** is a company, a director of that company.

- 1.30 Principal Insured** means the **Insured** or if the **Insured** is more than one person or entity, the first person or entity listed as the **Insured** in the **Schedule**.
- 1.31 Product** means any physical property after it has left the **Insured's** custody or control, which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by the **Insured** or on the **Insured's** behalf, but will not include food or drink supplied by the **Insured** or on **Insured's** behalf primarily to the **Insured's Employees** as a staff benefit.
- 1.32 Products Liability** means liability for **Personal Injury** or **Property Damage** caused by the sale or supply by the **Insured** of a faulty **Product** that left the **Insured's** custody or control during the **Period of Insurance**.
- 1.33 Property Damage** means:
- 1.33.1** loss or destruction of, or physical damage to tangible property, including any resulting loss of use of that property; and
- 1.33.2** loss of use of tangible property which has not been lost, destroyed or physically damaged, where the loss of use arises out of an **Occurrence**.
- 1.34 Proposal** means the written proposal or declaration made by the **Insured** to **Keystone** containing particulars and statements together with other information provided by the **Insured**.
- 1.35 Schedule** means the current schedule issued by **Keystone** to the **Insured**.
- 1.36 Subsidiary** means a subsidiary of the **Insured** as defined in the *Corporations Act 2001* which:
- 1.36.1** was a subsidiary at the commencement date of the **Period of Insurance**; or
- 1.36.2** is created by the **Insured** during the **Period of Insurance**.
- 1.37 Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.
- 1.38 Underwriters** means certain Underwriters at Lloyd's participating in this contract of insurance.
- 1.39 Vehicle** means 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**.
- 1.40 Watercraft** means any vessel, craft, device or thing designed to float on or in water or to travel on or through water other than model boats.

## 2. Insuring Clause

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**Keystone** will indemnify the **Insured** against all sums which the **Insured** becomes legally liable to pay as compensation, including claimants' costs, fees and expenses, for **Personal Injury** or **Property Damage** first occurring during the **Period of Insurance** because of an **Occurrence** in connection with **Information Technology Services**.

## 3. Automatic Extensions

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The Automatic Extensions are all subject to the terms and conditions of this **Policy** unless expressly stated otherwise. The **Excess** and the **Limit of Liability** (including any sub-limits) specified in the **Schedule** apply to the Automatic Extensions and the Automatic Extensions do not increase the **Limit of Liability**.

### Advertising Liability

- 3.1 Keystone** will indemnify the **Insured** against all sums which the **Insured** becomes legally liable to pay as compensation, including claimants' costs, fees and expenses for any **Advertising Liability** conducted by the **Insured** or on the **Insured's** behalf during the **Period of Insurance**.

- 3.2 **Keystone's** total liability under this Automatic Extension will not exceed the limit specified in the **Schedule** for any one **Occurrence** and in the aggregate during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Liability**.

#### **Costs and Expenses in Addition**

- 3.3 **Keystone** will, in addition to the **Limit of Liability** pay:
- 3.3.1 the necessary costs and expenses incurred by the **Insured** with **Keystone's** prior consent (which consent will not be unreasonably withheld) in the investigation, defence or settlement of any claim made or which might be made against the **Insured**, including:
    - 3.3.1.1 the investigation of any circumstances of which the **Insured** will become aware which might reasonably be expected to give rise to a claim being made against the **Insured**; or
    - 3.3.1.2 representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to such claim; or
    - 3.3.1.3
    - 3.3.1.4 the necessary expenses of immediate emergency medical assistance to third parties in respect of **Personal Injury** for which the **Insured** may have a legal liability to the injured person.
- 3.4 **Keystone's** liability under this Automatic Extension will be limited to the lowest amount of the following options:
- 3.4.1 the proportion of costs and expenses that the **Limit of Liability** bears to the total amount required to dispose of any claim or series of claims arising out of one **Occurrence**, if the total amount, inclusive of compensation, costs and expenses required to dispose of any claim, exceeds the **Limit of Liability**; or
  - 3.4.2 thirty percent (30%) of the **Limit of Liability** for any one **Occurrence** (other than in respect of **Products Liability** which is thirty percent (30%) in the aggregate). For example, in relation to a non-**Products Liability Occurrence**, if this **Policy** has a **Limit of Liability** of \$10,000,000, the maximum liability of **Keystone** is \$13,000,000 inclusive of all **Costs and Expenses** for any one **Occurrence**. Specifically, in relation to a **Products Liability Occurrence**, if this **Policy** has a **Limit of Liability** of \$10,000,000, the maximum liability of **Keystone** is \$13,000,000 inclusive of all costs and expenses in the aggregate for all **Products Liability Occurrences**.

#### **Cross Liabilities**

- 3.5 Each named **Insured** is separately indemnified in respect of claims made by any of them against any other of them, subject to **Keystone's** total liability not exceeding the **Limit of Liability**.

#### **Free Legal Consultation**

- 3.6 The **Insured** is entitled to up to thirty (30) minutes of free legal advice from **Keystone's** appointed legal firm on any matter relating to the **Insured's Business** during the **Period of Insurance**, subject always to the following:
- 3.6.1 the **Schedule** must be presented to the appointed legal firm when requesting legal advice under this Automatic Extension. No legal advice can be sought under this Automatic Extension if the **Schedule** is not presented; and
  - 3.6.2 entitlement to the legal advice is limited to a maximum of thirty (30) minutes per year and any unused time cannot be aggregated from one **Period of Insurance** to another; and
  - 3.6.3 **Keystone** reserve the right to change the appointed legal firm at any time. Changes to the appointed firms will be notified to the **Insured** on request; and
  - 3.6.4 the **Insured** may not seek legal advice on this **Policy** or other indemnity issues concerning insurance policies issued by **Keystone**; and
  - 3.6.5 the **Insured** authorises **Keystone** (at **Keystone's** discretion) to engage with the appointed legal firm to represent the **Insured** and authorise the appointed firm to disclose to **Keystone** any information obtained in the cause of tendering advice to the **Insured** if cover under this **Policy** is sought by the **Insured** in respect of any matter on which the **Insured** may have sought legal advice. The **Insured** waives all claims to legal professional privilege with **Keystone** to the extent necessary; and
  - 3.6.6 contacting the appointed legal firm for legal advice does not constitute a claim notification under Claims Condition [6.1 Notification](#) of this **Policy**. The **Insured** must still comply with this **Policy** terms and conditions in relation to a claim and give immediate written notice or written notice as soon as practically possible to **Keystone**.

### Indemnity to Others

3.7 The indemnity granted under the Insuring Clause extends to:

- 3.7.1 at the **Insured's** request, any party who enters into an agreement with the **Insured** for any purpose of the **Business**, but only to the extent required by such agreement to grant indemnity and only to the extent that such liability would have attached to the **Insured** in the absence of the agreement; or
- 3.7.2 at the **Insured's** request, any person or firm for their liability arising out of the performance of a contract to provide labour only services to the **Insured**; or
- 3.7.3 **Principals** in their business capacity for their liability arising out of the performance of the **Business** or in their private capacity arising out of their temporary engagement of the **Employees**; or
- 3.7.4 the **Insured's Employees** and shareholders but only whilst acting within the scope of their duties in their respective capacities as such; or
- 3.7.5 the officers, committee and members of the **Insured's** canteen, social, sports, and welfare organisations, and the **Insured's** medical, first aid, and fire-fighting services in their respective capacities as such; or
- 3.7.6 the personal representatives of the estate of any person indemnified under this clause in respect of liability incurred by such person, provided always that all such persons will observe, fulfil and be subject to the terms, conditions and exclusions of this **Policy** as though they were the **Insured**.

### Liability for Conduct of Contractors, Consultants or Agents

3.8 The indemnity granted under the Insuring Clause extends to the **Insured's** liability arising out of the conduct of a contractor, consultant or agent that is engaged by the **Insured**. Such contractors, consultants or agents, however, are not covered by this **Policy** except to the extent provided for in Optional Extension 4.1 *Contractors, Consultants or Agents*.

### Products Clarification

3.9 For the avoidance of doubt, **Keystone** will indemnify the **Insured** against all sums which the **Insured** becomes legally liable to pay as compensation, including claimants' costs, fees and expenses, for **Personal Injury** or **Property Damage** arising from **Products Liability**.

### Property in Care, Custody or Control Extension

3.10 Exclusion 5.44 *Property in Care, Custody or Control* will not apply to liability for **Property Damage** to:

- 3.10.1 premises or the contents thereof temporarily occupied by the **Insured** for work therein or thereon, but no indemnity is provided for **Property Damage** to that part of the property on which the **Insured** are working and which arises out of such work;
- 3.10.2 clothing and personal effects belonging to the **Insured's Employees** and visitors;
- 3.10.3 premises tenanted by the **Insured** to the extent that the **Insured** would be held liable in the absence of any specific agreement; or
- 3.10.4 any vehicle (including its contents, spare parts and accessories while they are in or on such vehicle) not belonging to or used by the **Insured**, whilst any such vehicle is in a car park owned or operated by the **Insured**, provided that the **Insured** does not operate the car park for reward; or
- 3.10.5 other property not owned by the **Insured** (and not being properly referred to in 3.10.1 – 3.10.4) temporarily in the **Insured's** physical or legal control.
- 3.10.6 **Keystone's** total liability under 3.10.4 and 3.10.5 will not exceed the limit specified in the **Schedule** for any one **Occurrence** and in the aggregate during the **Period of Insurance**.

### Trade Fairs, Shows and Markets

3.11 **Keystone** will indemnify the **Insured** under the Insuring Clause or the Extensions for any claim in respect of the **Insured's** attendance at a conference, trade fair, show or other similar event.

## 4. Optional Extensions

The following Optional Extensions are all subject to the terms and conditions of this **Policy** unless expressly stated otherwise. The **Excess** and the **Limit of Liability** specified in the **Schedule** apply to the Optional Extensions and the Optional Extensions will not increase the **Limit of Liability**. An Optional Extension will only apply if specifically shown as included in the **Schedule**.



### Contractors, Consultants or Agents

4.1 The definition of **Employee** is extended to include independent contractors, consultants or agents while acting on the **Insured's** behalf in the conduct of the **Business**.

### United States of America Jurisdiction

4.2 Exclusion 5.50 *United States of America* is deleted in its entirety.

4.3 **Keystone's** total liability under this Optional Extension will not exceed the amount indicated in the **Schedule** for any one **Occurrence** and in the aggregated during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Liability** in relation to any action brought in a court of law or in respect of any judgement, award, payment or settlement within countries which operate under the laws of United States of America (or to any order made anywhere in the world to enforce such judgement, award, payment or settlement either in whole or in part).

4.4 **Keystone** will not indemnify the **Insured** for any liability arising, indirectly or directly, or in any way connected with:

4.4.1 any fines, penalties, punitive, exemplary and/or liquidated damages under the laws of the United States of America (or to any order made anywhere in the world to enforce such judgement, award, payment or settlement either in whole or in part); or

4.4.2 the actual, alleged or threatened discharge, release, or escape of **Pollutants** in the United States of America.

## 5. Exclusions

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**Keystone** will not indemnify the **Insured** for any liability arising, indirectly or directly, or in any way connected with:

### Advertising Liability

5.1 any **Advertising Liability**:

5.1.1 made by the **Insured** or at the **Insured's** direction with knowledge of its falsity; or

5.1.2 resulting from an intentionally incorrect description of **Products** or services; or

5.1.3 resulting from any mistake in the advertised price of **Products** or services; or

5.1.4 arising out of the failure of the **Insured's Products** or services to conform with an advertised performance, quality, fitness or durability;

### Aggravated, Punitive or Exemplary Damages

5.2 any aggravated, punitive or exemplary damages;

### Aircraft and Watercraft

5.3 the ownership, possession, use, existence, working, navigation, operation, repair, maintenance, servicing, construction or installation by the **Insured** or on the **Insured's** behalf of any **Aircraft**, or

5.4 the ownership, possession, use, existence, working, navigation, operation, repair, maintenance, servicing, construction or installation by the **Insured** or on the **Insured's** behalf of any **Watercraft** exceeding eight (8) metres in length, except where such **Watercraft** are owned or operated by others and used by the **Insured** for business entertainment; or

5.5 the use of the **Insured's Product** with the **Insured's** knowledge in the construction, operation, maintenance, servicing or repair of any **Aircraft**; or

5.6 the use of the **Insured's Product** with the **Insured's** knowledge in the construction, operation, maintenance, servicing or repair of any **Watercraft** exceeding eight (8) metres in length;

### Asbestos

5.7 the inhalation of, or fears of the consequences of exposure to or inhalation of, asbestos, asbestos fibres or any derivatives of asbestos; or

5.8 the cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any asbestos, asbestos fibres or any derivatives of asbestos;

#### Assault or Battery

5.9 assault or battery committed by the **Insured** or at the **Insured's** direction, unless it was committed for the purpose of preventing or eliminating danger to persons or property;

#### Australian Standards for Imported Products

any **Product(s)** imported by the **Insured** or on the **Insured's** behalf that do not meet any applicable safety requirements, Australian standards or comply with Australian consumer laws;

#### Communicable Disease

5.10 **Communicable Disease** or the fear or threat (whether actual or perceived) of a **Communicable Disease** including, but not limited to, any cost to clean-up, detoxify, remove, monitor or test for a **Communicable Disease**; or

5.11 any disease, or the fear or threat of any disease, which:

5.11.1 is notifiable to the government or a local authority under any law, order, act or statute; and/or

5.11.2 is declared a Public Health Emergency of International Concern (PHEIC) by the World Health Organization.

#### Component Parts

5.12 any **Information Technology Products** which are incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft;

#### Computers and Technology

5.13 **Property Damage** to **Electronic Data** causing 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 therefrom; or

5.14 the use of an intranet or the Internet (including but not limited to the World Wide Web and electronic mail systems) by the **Insured** or on the **Insured's** behalf;

#### Contractual Liability

5.15 liability assumed by the **Insured** under any liquidated damages, penalty or forfeiture clause, express warranty, contract, agreement or guarantee other than to the extent that such liability would have attached to the **Insured** in the absence of such assumption of liability;

#### Criminal Acts

5.16 any criminal proceedings;

#### Cyber Act or Cyber Incident

5.17 any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:

5.17.1 **Cyber Act** or **Cyber Incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**; or

5.17.2 loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any **Data**, including any amount pertaining to the value of such **Data**; regardless of any other cause or event contributing concurrently or in any other sequence thereto.

#### Damage to Products

5.18 **Property Damage** to any **Product** or part thereof;

#### Deliberate Acts

5.19 the deliberate, conscious or intentional disregard by the **Insured's** technical or administrative management of the need to take all reasonable precautions to prevent **Personal Injury** or **Property Damage**;

#### Employment Liability

5.20 **Personal Injury** to any **Employee**. However, if the **Insured** is:

5.20.1 required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) against liability for any such **Personal Injury**, or

5.20.2 not required to so insure or otherwise fund such liability by reason only that the **Personal Injury** is to a person who is not an **Employee** or worker within the meaning of the relevant

workers' compensation law or the **Personal Injury** is not a **Personal Injury** which is subject to such law,

then this **Policy** will respond to the extent that the **Insured's** liability would not be covered under any such policy of insurance, self-insurance arrangement, fund or scheme had the **Insured** complied with its obligations pursuant to such law;

- 5.21 any other liability imposed by any workers' compensation law; or
- 5.22 any other liability imposed by the provision of any industrial award, agreement or determination; or
- 5.23 any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination, or any such contract of employment; or
- 5.24 workplace agreement;

#### **Employment Practices Breach**

- 5.25 an **Employment Practice Breach**;

#### **Fines and Penalties**

- 5.26 any fines, penalties, punitive, exemplary and/or liquidated damages;

#### **Fungi, Moulds and Other**

- 5.27 the actual, potential, alleged, or threatened formation, growth, presence, release, or dispersal of any fungi, moulds, spores, or mycotoxins of any kind; or
- 5.28 any action taken by any party in response to the actual, potential, alleged, or threatened formation, growth, presence, release, or dispersal of fungi, moulds, spores, or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating, or removing such fungi, moulds, spores, or mycotoxins; or
- 5.29 any governmental or regulatory order, requirement, directive, mandate, or decree that any party take action in response to the actual, potential, alleged, or threatened formation, growth, presence, release, or dispersal of fungi, moulds, spores, or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating, or removing such fungi, moulds, spores, or mycotoxins;

#### **Intercompany Labour**

- 5.30 any claim for **Personal Injury** caused by or caused to an **Employee** that is conducting work for any **Subsidiary** or other business within the **Insured's** overall group. For example, an employment entity set up to service all entities within the **Insured's** overall group;

#### **Legionnaires' Disease**

- 5.31 Legionnaires' disease including but not limited to any action required to replace, remove, clean up, repair, dispose of or relocate any property or party, or any other measure(s) taken to address medical or legal concerns;

#### **Loss of Use**

- 5.32 loss of use of tangible property, which has not been physically damaged or lost or destroyed, resulting from:
  - 5.32.1 a delay in or lack of performance by the **Insured** or on the **Insured's** behalf of any contract or agreement,
  - 5.32.2 the failure of **Products** to meet the level of performance, quality, fitness or durability expressly or implied, warranted or represented by the **Insured**, but this Exclusion does not apply to the loss of other tangible property resulting from the sudden, unexpected and unintended physical damage to or loss or destruction of **Products** or work performed by the **Insured** or on the **Insured's** behalf after such **Products** or work have been used by any person or organisation other than the **Insured**;

#### **Molestation**

- 5.33 the actual or alleged sexual molestation, sexual harassment, sexual assault, rape, or the consequences thereof of any person;

#### **Motor Vehicles**

- 5.34 the ownership, possession, maintenance, use or control of any **Vehicle**;

5.34.1 which is registered or required to be registered by any legislation or competent authority, except where such liability is caused by:

5.34.1.1 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

5.34.1.2 the use of any mechanical tool or plant attached to or forming part of any **Vehicle**, whilst the **Vehicle** is being used at the **Insured's** premises or another work site for the **Insured's Business** but not whilst the **Vehicle** is in transit or is being used for transport or haulage; or

5.34.1.3 where such liability is insured or required to be insured by any legislation or competent authority;

#### Occurrence Before or After the Period of Insurance

5.35 **Personal Injury** or **Property Damage** first occurring before or after the **Period of Insurance**;

#### Pollution with Sudden and Accidental Write Back

5.36 the actual, alleged or threatened discharge, release, or escape of **Pollutants**, however this Exclusion does not apply if such discharge, release or escape of **Pollutants** is sudden and accidental;

#### Product Guarantee, Product Refund, Product Recall and Faulty Work

5.37 costs incurred in the repair, reconditioning, modification or replacement of any **Product** or part thereof and/or any economic loss consequent upon the necessity for such repair, reconditioning, modification or replacement; or

5.38 costs incurred for the refund of fees or charges in relation to the return of any **Product** for whatever reason (by way of damages or otherwise); or

5.39 for the **Costs and Expenses** incurred by the **Insured** or on the **Insured's** behalf in complying with any contractual obligations or making good any faulty product; or

5.40 costs or expenses arising out of the recall of any **Product** or part thereof; or

5.41 costs of re-performing, correcting or improving any work undertaken by the **Insured**;

#### Professional Liability

5.42 with the rendering of or failure to render professional advice or service by the **Insured** or on the **Insured's** behalf or an act, error or omission in connection therewith, but this Exclusion does not apply to:

5.42.1 the rendering of or failure to render professional medical advice by medical persons employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises; or

5.42.2 **Personal Injury** or **Property Damage** arising from the rendering of or failure to render professional advice or service, provided such professional advice or service is not given for a fee; or

5.42.3 **Personal Injury** or **Property Damage** arising from advice given in respect of the use or storage of the **Insured's Products**;

#### Property in Care, Custody or Control

5.43 **Property Damage** to property owned, leased, hired, under hire purchase or on loan to the **Insured** or otherwise in the **Insured's** care, custody or control;

#### Radioactivity

5.44 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

#### Recovery Rights

5.45 any claim or action where and to the extent that the **Insured** has, without **Keystone's** prior consent, granted a waiver of any recovery rights whether by express term or because of an assumption of liability under contract;

#### Silica

5.46 the actual or alleged inhalation of, or ingestion, or absorption of silica or silica-related dust;

### Terrorism

**5.47** any act of **Terrorism**, or any action taken in controlling, preventing, suppressing or in any way relating to an act of **Terrorism**;

### Tobacco and Smoking

**5.48** 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;

### Underground Services

**5.49** **Property Damage** to any underground services except where the **Insured** 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;

### United States of America

**5.50** any claims and actions:

- 5.50.1** instituted within the United States of America or its dominions or protectorates; or
- 5.50.2** to which the laws of the United States of America or its dominions or protectorates apply; provided that this Exclusion does not apply to claims and actions arising from the presence of a **Principal** or **Employee** who is usually resident outside the United States of America whilst travelling on the **Insured's** behalf in the course of the **Insured's Business**;

### War

**5.51** war, invasion, acts of foreign enemies, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation, nationalisation, requisition, destruction of, or damage to property by, or under the order of, any government or public or local authority;

### Welding and Allied Processes

**5.52** non-compliance by the **Insured** or by others working on the **Insured's** behalf with all applicable laws and standards relating to welding and allied processes including, but not limited to, Australian Standard 1674.1-1997 "*Safety and Welding and Allied Processes*" or its equivalent.

## 6. Claims Conditions

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The below conditions must be followed if the **Insured** needs to make a claim. **Keystone** may not pay the claim, or any payment may be reduced if the **Insured** fails to comply.

### Notification

**6.1** The **Insured** must give immediate written notice or written notice as soon as practically possible to **Keystone**, via the **Insured's** intermediary in the event of a claim arising under this **Policy**.

**6.2** Notice should be given to:

Claims Department - Keystone Underwriting Australia Pty Ltd  
104/266-268 Bay Road  
Cheltenham, VIC 3192  
Telephone: 1300 946 530  
Email: [claims@ksua.com.au](mailto:claims@ksua.com.au)

### Co-operation and Mitigation

**6.3** The **Insured** must give **Keystone** such information and assistance as relevant and necessary to:

- 6.3.1** determine an appropriate course of action in relation to any claim; and
- 6.3.2** identify any parties that the **Insured** may have rights against in connection with any claim.

**6.4** The **Insured** must take reasonable steps to avoid, minimise or mitigate any liability, loss or damage that is or may be the subject of a claim.

**6.5** Compliance with this Claims Condition will be at the **Insured's** own expense.

### Discharge of Liability

**6.6** **Keystone** may at any time pay to the **Insured** the amount of the **Limit of Liability** remaining under this **Policy**, or any lesser amount for which such claim or claims can be settled, less any sums already paid in the event of a claim or series of claims under this **Policy**. **Keystone** will

relinquish the conduct and control of and be under no further liability in connection with such claims or costs and expenses incurred after the date of such relinquishment upon such payment being made.

- 6.7** **Keystone** will pay under clause [7.24 Limit of Liability](#) the reasonable costs and expenses incurred up to the date of relinquishment in such proportion as the amount of the indemnity available under this **Policy** bears to the total amount which in **Keystone's** opinion at the time of relinquishment will be necessary to dispose of the claim if **Keystone** exercise the option in clause [6.6](#) above, and the total amount required to dispose of any claim or series of claims exceeds the **Limit of Liability**.

#### Foreign Currency

- 6.8** Any payments made or costs and expenses incurred in a currency other than Australian dollars will be converted to and paid in Australian dollars based upon the rate of exchange published by the Reserve Bank of Australia on the date that the payments were made or costs and expenses were incurred, or the preceding date should they be incurred on a weekend or public holiday.

#### Management of Claims

- 6.9** The **Insured** or the **Insured's** legal representatives must not:
- 6.9.1** take any action which is prejudicial to **Keystone's** interests; or
  - 6.9.2** admit liability for or settle any claim; or
  - 6.9.3** incur any costs and expenses without **Keystone's** prior consent. **Keystone** accept no liability for any costs and expenses incurred without **Keystone's** prior consent.
- 6.10** **Keystone** will be entitled at any time, but not obligated, to take over and conduct in the **Insured's** name:
- 6.10.1** the defence of any suit, legal proceeding or action the subject of a claim; or
  - 6.10.2** the investigation of any claim.
- 6.11** Legal advisers retained by **Keystone** to act on the **Insured's** behalf for any claim are at liberty to disclose to **Keystone** any information they receive in that capacity, wherever they obtain it from, including from the **Insured**. The **Insured** authorise such legal advisers to disclose this information to **Keystone** by claiming under this **Policy**, and waive all claim to legal professional privilege which might otherwise prevent those legal advisers from disclosing this information to **Keystone**.
- 6.12** The legal advisers retained by **Keystone** to conduct the investigation, defence or settlement of any claim, may provide advice to **Keystone** on any issue regarding **Keystone** liability to indemnify the **Insured** and, whilst doing so, may continue to act in the investigation, defence or settlement of the claim on behalf of both **Keystone** and the **Insured**.
- 6.13** The **Insured** agrees that all communications between **Keystone** and the legal advisers retained by **Keystone** to act in the conduct of the investigation, defence or settlement of any claim in relation to the **Insured's** entitlement to indemnity from **Keystone** are privileged between **Keystone** and the legal advisers and the **Insured** agrees that the **Insured** is not entitled, under any circumstances, to access or obtain any such communications.
- 6.14** The legal advisers retained by **Keystone** to conduct the investigation, defence or settlement of any claim may cease acting on the **Insured's** behalf and may continue to act on **Keystone's** behalf in relation to any dispute between **Keystone** and the **Insured** with respect to the **Insured's** entitlement to indemnity from **Keystone** if any actual or apparent conflict arises between the interests of **Keystone** and the **Insured**.
- 6.15** **Keystone** have the discretion to negotiate the settlement of any claim. If **Keystone** recommends the settlement of a claim for a certain amount, and the claim can be settled for that amount but the **Insured** refuse to agree to the settlement and decides to contest the claim, then **Keystone** are only liable under this **Policy**:
- 6.15.1** for the recommended settlement amount; and
  - 6.15.2** costs and expenses up to the date of the **Insured's** refusal to settle.
- 6.16** **Keystone** may allow the **Insured** to conduct the defence of any suit, legal proceeding or action the subject of a claim if **Keystone** believe that the claim will not exceed the **Excess**. The **Insured** is required to provide **Keystone** with regular progress reports if **Keystone** do this, and **Keystone** reserves the right to take over conduct of the defence of the claim at any time.

## Recoveries

**6.17** Recoveries (whether effected by **Keystone** or by an **Insured**), less the cost of recovery, will be distributed as follows:

**6.17.1** first, to the **Insured** for the amount of loss otherwise covered but in excess of the **Limit of Liability** less any applicable **Excess**; and

**6.17.2** second, to **Keystone** for the amount paid to the **Insured** for covered losses; and

**6.17.3** third, to the **Insured** for the applicable **Excess**.

## 7. General Conditions

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These are the conditions of the cover which apply throughout the **Policy**. There may be additional conditions under each section of cover and any applicable **Endorsements**. The **Insured** may not receive payment for a claim, a claim may be reduced, or all rights to cover may be lost under this **Policy** if the **Insured** does not comply with these conditions.

Contact with the **Insured's** insurance intermediary should be made in the first instance if the **Insured** is unsure about any of these conditions or the circumstances under which the **Insured** should notify **Keystone** about any matter.

### Assignment

**7.1** This **Policy** cannot be assigned by the **Insured**.

### Authorisation

**7.2** The **Principal Insured** is the agent for each **Insured** and each **Insured** is bound by any statement, act or omission of the **Principal Insured** for all purposes under this **Policy**.

### Cancellation

**7.3** Keystone may only cancel this **Policy** pursuant to the *Insurance Contracts Act 1984 (Cth)*.

**7.4** The **Principal Insured** may cancel this **Policy** at any time by giving written notice to **Keystone**.

**7.5** **Keystone** may retain the pro rata proportion of the **Premium**. However, the **Premium** will be regarded as fully earned and may be retained by **Keystone** in the event of the notification of a **Claim** which is covered under this **Policy**.

### Consideration

**7.6** The indemnity provided by **Keystone** under this **Policy** is in consideration of the payment of the **Premium**.

**7.7** The **Insured** must pay the **Premium** specified in the **Schedule** for the **Period of Insurance** to **Keystone** by the due date. The due date is on or before thirty (30) days after the inception date of the **Period of Insurance** or such other time that **Keystone** agrees in writing. **Keystone** is entitled to cancel this **Policy** in accordance with the *Insurance Contracts Act 1984 (Cth)* if the **Insured** fails to pay the **Premium** by the due date.

### Dishonesty

**7.8** If any claim made under this **Policy** shall be in any way fraudulent or if any fraudulent means or devices are used by the **Insured** (or anyone acting on the **Insured's** behalf) to obtain any benefit under this **Policy**, **Keystone** will, without prejudice to any other right(s) that **Keystone** may have under the **Policy**, be entitled to refuse to pay such claim or loss, including any defence costs.

**7.9** Where a claim is determined to be fraudulent, dishonest, malicious, or criminal, either by final and non-appealable judgment or adjudication; or the **Insured's** own admission, and **Keystone** have advanced defence costs, **Keystone** will seek reimbursement of any amounts paid to the **Insured** under the **Policy** including any advancement of defence costs made by **Keystone**.

### Duty of Disclosure

**7.10** The **Insured** has a duty to tell **Keystone** anything that the **Insured** knows, or could reasonably be expected to know, before entering an insurance contract, that may affect **Keystone's** decision to insure the **Insured** and on what terms. The **Insured** has this duty until **Keystone** agrees to insure the **Insured**.

**7.11** The **Insured** has the same duty before the **Insured** renews, extends, varies, or reinstates an insurance contract.

- 7.12** The **Insured** does not need to tell **Keystone** anything that:
- 7.12.1** reduces the risk for which the **Insured** is insured; or
  - 7.12.2** is common knowledge; or
  - 7.12.3** **Keystone** knows, or should know; or
  - 7.12.4** **Keystone** waives the **Insured's** duty to tell **Keystone**.
- 7.13** If the **Insured** does not tell **Keystone**, **Keystone** may if the **Insured** does not tell **Keystone** anything the **Insured** is required to tell:
- 7.13.1** cancel the **Insured's** contract, or
  - 7.13.2** reduce the amount to be paid to the **Insured** if the **Insured** makes a claim, or
  - 7.13.3** both the above.
- 7.14** **Keystone** may refuse to pay a claim and treat the contract as if it never existed if the **Insured's** failure to tell **Keystone** is fraudulent.

#### **Endorsements**

- 7.15** An **Endorsement** does not affect or increase the **Limit of Liability** or any other term, except to the extent specifically provided in the **Endorsement**. For the avoidance of doubt, each **Endorsement** is otherwise subject to all the terms of this **Policy**.

#### **Enforceability**

- 7.16** This **Policy** must have a **Schedule** attached to it which has been signed by an authorised officer of **Keystone** to be enforceable.

#### **Excess**

- 7.17** The **Insured** is liable to pay the **Excess** for each claim as specified in the **Schedule**.
- 7.18** The **Excess** is inclusive of costs and expenses and the **Insured** is liable to pay costs and expenses as they are incurred up to the amount of the **Excess**.
- 7.19** In calculating the **Excess** which is payable by the **Insured** for the acquisition of goods, services or other supply including costs and expenses, this is net of any input tax credit which the **Insured** is or may be entitled to receive or claim under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 7.20** The **Insured** will, if directed by **Keystone**, pay to **Keystone** (or as directed by **Keystone**), the **Excess** as soon as reasonably practicable in the event of a claim by the **Insured** under this **Policy**. Any delay, failure or refusal by the **Insured** to pay the **Excess** will entitle **Keystone** to deduct such amount from any amount(s) required to settle any claim or judgment, order or any other payment to be made by **Keystone** under this **Policy**. In the event that a failure or refusal to grant access to monies for any **Excess** results in a failure of a settlement or an increase in costs and expenses, **Keystone's** liability in connection with such claim will not exceed the amount for which the claim could have been so settled plus the costs and expenses incurred with **Keystone's** written consent up to the date of such failure or refusal, less the **Excess**.
- 7.21** The **Insured** will, within fourteen (14) working days of receipt of **Keystone's** written request, reimburse **Keystone** for payment where **Keystone** have elected to pay all or part of the **Excess** in respect of any claim.

#### **Goods and Services Tax (GST)**

- 7.22** **Keystone** will charge the **Insured** an amount for GST as part of the **Premium**. The **Insured** must inform **Keystone** of the extent to which there is an entitlement to an input tax credit for that GST amount each time that it notifies a claim under this **Policy**. No payment will be made to the **Insured** for any GST liability that it may incur on the settlement of a claim if it does not inform **Keystone** of its entitlement or correct entitlement to an input tax credit. **Keystone's** liability to the **Insured** will be calculated considering any input tax credit to which the **Insured** is entitled for any acquisition which is relevant to the claim, or to which it would have been entitled had it made a relevant acquisition despite the other terms of this **Policy**. 'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.



### Governing Law

7.23 This **Policy** will be governed in accordance with law of the State or Territory of Australia in which this **Policy** was issued. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

### Limit of Liability

7.24 **Keystone's** maximum total liability under this **Policy** in respect of:

7.24.1 any one **Occurrence** (other than in respect of **Products Liability**) will not exceed the **Limit of Liability**; and

7.24.2 in respect of **Products Liability** is limited in the aggregate to the **Limit of Liability** from all **Occurrences**.

7.25 Where a sub-limit is specified in the **Schedule**, or this **Policy**, that sub-limit will form part of and erode the **Limit of Liability**.

### Material Change

7.26 The **Insured** must notify **Keystone** as soon as reasonably practicable of any material change in the risk insured by this **Policy**. **Keystone** is entitled to amend the terms of this **Policy** and/or charge an additional premium based on **Keystone's** assessment of any change in the risk insured by this **Policy**. A material change in the risk includes, without limitation:

7.26.1 activities that are materially different from those declared in the **Proposal**; or

7.26.2 activities outside the normal activities of the **Business**; or

7.26.3 the **Insured** being insolvent; or

7.26.4 any loss of, or conditions imposed upon, any licence or other authority required by the **Insured** to conduct the **Business**.

7.27 **Keystone** may at its election, instead of cancelling or avoiding this **Policy**, give notice in writing to the **Insured** that any claim which has arisen or may arise which is related to such facts, activities or circumstances will be excluded from indemnity under this **Policy** in the event of **Keystone** being at any time entitled to cancel or avoid this **Policy** because of the **Insured** failing to give notice in accordance with Condition 7.26.

### Other Insurance

7.28 The **Insured** will promptly give to **Keystone** full details of other insurance, including the identity of the insurer and the policy number, and such further information as **Keystone** may reasonably require if at the time any claim arises under this **Policy** there is any other insurance in force covering the same liability.

### Sanction Limitation Clause

7.29 Neither **Keystone** nor the **Underwriters** shall be deemed to provide cover or be liable 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 either **Keystone** or the **Underwriters** to any sanction, prohibition or restriction under United Nations' resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

### Severability and Non-Imputation

7.30 Where this **Policy** insures more than one party, any failure on the part of any of the parties to:

7.30.1 comply with the duty of disclosure under the *Insurance Contracts Act 1984 (Cth)*;

7.30.2 comply with any obligation under this **Policy** (other than the obligation to pay premium);  
or

7.30.3 refrain from conduct which is dishonest, fraudulent, criminal or malicious, will not prejudice the right of the remaining party or parties to indemnity under this **Policy**, provided that such remaining party or parties will:

7.30.3.1 have had no prior knowledge of any such failure; and

7.30.3.2 as soon as practicable after becoming aware of any such failure, advise **Keystone** in writing of all its relevant circumstances.

### Subrogation

7.31 **Keystone** will become subrogated to all rights and remedies that the **Insured** may have against any party in relation to that claim where **Keystone** have paid a claim under this **Policy**. The **Insured** must at **Keystone's** request, assist **Keystone** (including giving evidence at any civil



hearing) and provide such information and documentation (including signed statements) as **Keystone** reasonably require in exercising such rights.

**7.32** **Keystone** agree not to exercise the **Insured's** rights of subrogation against any **Principal** or **Employee** of the **Insured's**, notwithstanding Condition *7.30 Severability and Non-Imputation*, unless the claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the **Principal** or **Employee** if any payment is made or may be made under this **Policy**.

**Variation of this Policy**

**7.33** No variation of this **Policy** will be effective unless made by **Endorsement**.

## Important Information

This Policy is issued by:

Keystone Underwriting Pty Ltd ABN 78 601 944 764 (Keystone)

Keystone Underwriting Pty Ltd is a Corporate Authorised Representative (No. 000468712) of:

Keystone Underwriting Australia Pty Ltd ABN 59 634 715 674 AFS License No: 518244

This document is designed to assist in the understanding of important issues. The Insured should contact their insurance adviser with any questions or if assistance is required.

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### Who is the Insurer?

Certain Underwriters at Lloyd's ("Underwriters") will be providing the financial service. Keystone is authorised to quote, bind and issue Certificates of Insurance under a Binding Authority Agreement (Binder) granted to Keystone by those Underwriters. Keystone acts as agent for the Underwriters in performing its duties under the Agreement. Keystone will provide details of the syndicate numbers and the proportions underwritten by them on request.

### General Insurance Code of Practice

Lloyd's supports the General Insurance Code of Practice and its purpose of raising the standards of practice and service in the general insurance industry.

### What makes up the Insurance Contract?

This contract of insurance is made up of the Schedule, this Policy and any Endorsements that Keystone issues when an application is accepted or an existing Policy is renewed or amended.

### Significant Features, Benefits and Exclusions

This Policy provides many significant features and benefits, subject to Conditions and Exclusions. Exclusions apply to this Policy and all of them are important. It is important that this Policy is read carefully to be aware of and understand the extent of cover that it offers. It will give full details of the Exclusions.

### Significant Risks

The Insured should make sure that the sum insured and the limits to be purchased will be sufficient. All the terms and conditions contained in this Policy need to be understood.

### Alteration to Risk and Deregistration

This Policy requires an Insured to notify Keystone within thirty (30) days of any material change to the business, or in the event of insolvency or bankruptcy. This Policy requires an Insured to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of an Insured's statutory registration. Claims arising from conduct which occurs subsequent to the cancellation, suspension or termination of the Insured's statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing the Insured's profession are excluded from indemnity under this Policy. However, this condition does not apply if the suspension relates purely to the late payment of

registration fees.

### Doctrine of Utmost Good Faith

Every insurance contract is subject to this doctrine which requires the parties to the contract to act toward each other with the utmost good faith. Failure to do so may prejudice any claims and/or the continuation of the insurance contract.

### The Insured's Duty of Disclosure - (this applies to non-consumer insurance contracts only)\*

The Insured has a duty to tell Keystone anything that the Insured knows, or could reasonably be expected to know, before entering an insurance contract, that may affect Keystone's decision to insure the Insured and on what terms. The Insured has this duty until Keystone agrees to insure the Insured.

The Insured has the same duty before the Insured renews, extends, varies, or reinstates an insurance contract.

The Insured does not need to tell Keystone anything that:

- reduces the risk for which the Insured is insured; or
- is common knowledge; or
- Keystone knows, or should know; or
- Keystone waives the Insured's duty to tell Keystone.

### If the Insured does not tell Keystone

Keystone may if the Insured does not tell Keystone anything the Insured is required to tell:

- cancel the Insured's contract, or
- reduce the amount to be paid to the Insured if the Insured makes a claim, or
- both the above.

Keystone may refuse to pay a claim and treat the contract as if it never existed if the Insured's failure to tell Keystone is fraudulent.

### Change of Circumstances

The terms and conditions of this Policy will be based on information the Insured provided to Keystone. It is essential Keystone are advised of any material change that occurs to this information prior to the inception of this Policy. Failure to do so by the Insured may prejudice any subsequent claims under the Policy and/or jeopardise the continuation of the insurance contract.

\* From Schedule 1, Part 1 Insurance Contracts Regulations 2017. A "Consumer Insurance Contract" is a policy of insurance that is wholly or predominantly obtained for personal, domestic, or household purposes.

## Buying Insurance

Set out below are important matters that apply to the initial enquiry, buying of insurance, and renewal of cover. Defined terms are the same as in the Policy.

### Information that Keystone ask

Keystone will only ask for and consider relevant information when assessing the Insured's application for cover.

### Assessing Applications

The Insured will have access to information that Keystone has relied on in assessing their application and an opportunity to correct any mistakes or inaccuracies. Keystone may decline to release information in special circumstances, but will not do so unreasonably. Keystone will give reasons in these circumstances, and the Insured will have the right to request Keystone to review the decision through Keystone's complaints handling procedures. Keystone will provide reasons in writing upon request.

### Mistakes

Keystone will immediately initiate action to correct an error or mistake in assessing the Insured's application for cover where it is identified.

### Misrepresentation

Keystone's sales process will be conducted in a fair, honest and transparent manner.

### Declining Cover

If Keystone cannot provide insurance cover, Keystone will:

- (a) give reasons; and
- (b) refer the entity/person seeking insurance to another insurer, AFCA or NIBA, for information about alternative insurance options (unless they already have someone acting on their behalf).

Keystone will make available information about Keystone's complaints handling procedures if the entity/person is unhappy with Keystone's decision.

### Policy Information

Information about Keystone's policy wordings will be available when the Insured buy insurance from Keystone as well as on request. They will also be available on Keystone's website at [www.keystoneunderwriting.com.au](http://www.keystoneunderwriting.com.au).

### Subrogation

The Insured may prejudice their rights regarding a claim if, without prior approval from Keystone, the Insured makes an agreement with a third party that would prevent Keystone from recovering any applicable loss (in whole or in part) from that, or another party.

This Policy contains provisions that have the effect of excluding or limiting Keystone's liability for a claim under this Policy if you have entered into any agreement that excludes, limits or delays the Insured's right to recover damages from another party in respect of such claim.

### Cost of Policy

The cost of this Policy is made up of premium plus any applicable policy fees, government taxes and charges. Keystone may cancel this Policy if the Insured fails to pay the total premium due.

### Deductibles

The Insured may be required to pay a deductible or excess if a claim is made under this Policy. Details of applicable deductibles or excess are provided in the Schedule. This Policy sets out the terms relating to the payment of deductibles or excesses.

### Taxation

All taxes and charges are shown as separate items (e.g. fire and emergency services levy, stamp duty depending upon location and GST).

### Cooling-off Period

The Insured has the right to cancel this Policy with Keystone within 14 days of the date that the Policy inception, unless a claim is made. Keystone will refund the full amount of the premium less any duties or taxes payable if this cancellation occurs during the cooling-off period. This Policy will be terminated from the date Keystone receive the request to cancel.

### Making a Claim

Benefits are payable if the Insured suffers a loss that is covered under this Policy during the Period of Insurance, except if an Exclusion or Condition applies. The Insured must immediately notify Keystone or their insurance adviser if there is a loss under this Policy.

### Cancelling the Policy Before the Due Date

The Insured may cancel this Policy at any time by notifying us in writing, detailing the date that the cancellation will take effect. Keystone will refund any unearned premium to the Insured or their insurance adviser within 15 working days after the date of cancellation unless a claim has been made. Unearned premium will be computed pro rata for the unexpired term of this Policy, unless agreed in advance through the insurance adviser and set out in this Policy.

### Privacy

Keystone are committed to safeguarding and protecting the Insured's privacy. Keystone is bound by the provisions of the *Privacy Act 1988* which sets out the standards to meet in the collection, use and disclosure of personal information.

The Act defines "personal information" as "information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion".

### Purpose of Collection

Keystone will only use personal information the Insured provides to quote on and insure risks and matters incidental thereto, including investigating and managing claims.

It may be necessary for Keystone to provide the Insured's personal information to others, such as other insurers or reinsurers, claims investigators, lawyers and other professionals, and government bodies. Keystone will not under any circumstances trade, rent or sell the information.

Keystone cannot properly quote insurance and cannot insure the Insured if they do not provide Keystone with complete, accurate and up-to-date information. If the Insured provide Keystone with personal information about anyone else, Keystone will rely on the Insured to have told them that their information will be provided to Keystone, to whom Keystone may provide it, the purposes for which Keystone will use it and that they can access it. Keystone relies on the Insured to have obtained their consent on these matters if the information is sensitive.

### Access to Information

The Insured can check the personal information Keystone holds about them at any time. Requests for access can be made in writing to:

The Privacy Officer  
Keystone Underwriting Australia Pty Ltd  
104/266-268 Bay Road,  
Cheltenham, VIC 3192

Keystone will keep the Insured informed of any delays in responding to the Insured's request throughout the process.

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](http://www.codeofpractice.com.au)

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 Keystone Underwriting Australia Pty Ltd in the first instance:

The Complaints Officer  
Keystone Underwriting Australia Pty Ltd  
104/266-268 Bay Road  
Cheltenham, VIC 3192  
Phone: 1300 946 530  
Email: [complaints@ksua.com.au](mailto:complaints@ksua.com.au)

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  
Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)  
Telephone: (02) 8298 0783  
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

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:

Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Post: GPO Box 3 Melbourne VIC 3001  
Website: [www.afca.org.au](http://www.afca.org.au)

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 possible to:

Claims Department - Keystone Underwriting Australia Pty Ltd  
104/266-268 Bay Road  
Cheltenham, VIC 3192  
Telephone: 1300 946 530  
Email: [claims@ksua.com.au](mailto:claims@ksua.com.au)

The amount of Premium specified herein is the amount due to the Underwriters and any commission allowed by them is to be regarded as remuneration of the Broker/Coverholder placing this Insurance.