



**Underwriting Agency Pty Limited**  
A.F.S Licence 244370  
A.C.N 096 939 169

Public & Products Liability Sample Wording

## **LLOYD'S SERVICE OF SUITE CLAUSE (Australia)**

(applicable to Lloyds Underwriters only)

The Underwriters hereon agree that:-

(i) In the event of a dispute arising under this Policy, Underwriters at the request of the insured (or reinsured) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

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

Lloyd's General Representative  
Level 21 Angel Place  
123 Pitt Street  
Sydney 2000 N.S.W  
AUSTRALIA

who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the insured (or reinsured) to give a written undertaking to the insured (or reinsured) that he will enter an appearance on Underwriters' behalf.

(iii) If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court of any competent Appellate Court.

## **General Insurance Code of Practice**

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

## **Enquiries, Complaints or Disputes (Australia)**

Any enquiry or complaint relating to a policy of insurance or a breach of privacy in relation to a policy of insurance should be addressed to High Street Underwriting Agency Pty Limited in the first instance.

In the unlikely event that this does not resolve the matter or the policy holder is not satisfied with the way a complaint has been dealt with, the policy holder should proceed in one of the following two ways:-

a) If the complaint relates to a policy covered by the Terms of Reference of the Financial Ombudsman Service, then the policy holder should direct their enquiry or complaint to:

Lloyd's Underwriters General Representative Australia  
Level 21 Angel Place  
123 Pitt Street  
Sydney 2000  
SYDNEY NSW 2000

Lloyd's General Representative in Australia is empowered to deal with such disputes and will review them under their Internal Disputes Resolution process. If the policyholder's complaint concerns an insurance agent, assessor, investigator or adjuster, but relates to a Lloyd's policy, it can still be dealt with under this process.

b) If the complaint relates to a policy outside the Terms of Reference of the Financial Ombudsman Service, the policy holder should write to the Lloyd's General Representative in Australia who will refer your dispute to the Policyholder & Market Assistance Department at Lloyd's.

Complaints that cannot be resolved by the Policyholder & Market Assistance Department may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process."

## **Financial Ombudsman Service**

The Financial Ombudsman Service is an independent body which operates nationally in Australia and aims to resolve complaints between policyholders and their insurers in respect of most domestic and some small business general insurance risks as defined by the Financial Ombudsman Service.

Disputes falling within the Financial Ombudsman Service Terms of Reference can be reviewed by the Financial Ombudsman Service if they remain unresolved to the policyholders' satisfaction after the process described above. Disputes must be referred to Financial Ombudsman Service within 3 months of the insurer's written decision.

## **INDEMNITY CLAUSE**

The Companies will pay to or on behalf of the Insured up to the applicable Limit of Liability all sums which the Insured shall incur a civil liability to pay by way of Compensatory Damages by reason of any Claim for Personal Injury or Property Damage which happen during the Period of Insurance, where such Personal Injury or Property Damage is alleged to have been caused by an Occurrence in connection with the Insured's Business.

## **SUPPLEMENTARY PAYMENTS CLAUSE**

In addition, with respect only to Claims falling within the indemnity provided by the INDEMNITY CLAUSE, the Companies will also make Supplementary Payments as provided by this SUPPLEMENTARY PAYMENTS CLAUSE.

Should the Insured's established or agreed liability for Compensatory Damages exceed the applicable Limit of Liability stated in the Schedule, the Companies will only pay that percentage of Supplementary Payments which that Limit of Liability bears to the amount of liability for Compensatory Damages.

Under no circumstances will the total of Supplementary Payments exceed an amount equal to 50% of the applicable Limit of Liability.

## **LIMITS OF LIABILITY CLAUSE**

The limits of the Companies' liability in respect of all Claims directly or indirectly arising out of or in connection with any one Occurrence shall not exceed the Limit of Liability stated in the Schedule. All Occurrences directly or indirectly arising out of or in connection with one source or original cause shall be treated as one Occurrence, for all purposes relating to this Policy.

The limit of the Companies' total aggregate liability in respect of all Claims made upon the Insured during the Period of Insurance and arising directly or indirectly out of or in connection with Occurrences involving the Insured's Products shall not exceed the designated Sub-Limit of Liability stated in the Schedule.

The Companies' total aggregate liability in respect of all Claims made upon the Insured during the Period of Insurance and arising directly or indirectly out of or in connection with Occurrences involving Pollution, shall not exceed the designated Sub-Limit of Liability stated in the Schedule.

## **DEFINITIONS**

For all purposes of this Policy:

1. "The Insured" includes:
  - (a) the Named Insured stated in the Schedule together with all Related Entities as defined in the *Corporations Act 2001* (Cth);
  - (b) any Director, Officer or employee of any entity described in clause 1(a) above, or their personal representative, but only while acting within the scope of their duties in that capacity;

- (c) any Principal of the Named Insured or a Related Entity, but only in respect of liabilities arising out of the performance by the Insured or Related Entity of work for such Principal, and then only to the extent required by the relevant contract.
2. Personal Injury means:
- (a) bodily Injury, sickness, disease or disability, including resultant death;
  - (b) false arrest or false imprisonment, wrongful detention or wrongful eviction, malicious prosecution or humiliation;
  - (c) malicious falsehood, defamation or breach of the right to privacy; or
  - (d) trespass to the person, assault or battery, not committed by or at the Insured's direction unless for the purpose of preventing or eliminating imminent or present danger to persons or property.
3. Property Damage means physical injury to or destruction of tangible property, including the resultant loss of use of that damaged or destroyed property.
4. Occurrence means an event, including continuous or repeated exposure to the same or similar conditions, which causes Personal Injury or Property Damage neither expected nor intended from the Insured's standpoint.
5. Employee means any person employed under a contract of service, by any of the entities referred to in DEFINITIONS clause 1(a) above, and includes persons deemed by Common Law, or by the operation of any Statute, ordinance or regulation, to have been so employed.
6. "Medical Persons" means:
- (a) registered nurses and first aid attendants, legally qualified as such in Australia; and
  - (b) medical practitioners and dentists, not in the employ of the Insured, who are legally qualified as such in Australia.
7. "Insured's Products" means anything, after it has ceased to be in the Insured's possession or under the Insured's control, which is manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured (including any container other than a vehicle).
8. "Vehicle" means any form of mobile, mechanically-powered conveyance which may be used for the transportation of goods or persons by land, sea, air or under the ground. It includes all such machines which are intended wholly or partially for recreational purposes, but does not include any plant or equipment while it is being used as such and is neither being used for haulage nor is in transit to or from or within any work site.
9. "Pollution" means the discharge, dispersal, release or escape of smoke, vapour, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials or any other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.
10. "Policy" means the contract of insurance between the Named Insured and the Companies, as embodied in the Proposal, the Schedule, this policy text and all Endorsements and Memoranda attached to and agreed to form part of it, but does not include any Statutory Notices required to be provided in connection with it or any legislative provisions to which its operation may be subject.
11. "Insured's Business" means all the activities referred to as such in the Schedule.
12. "Claim" means the positive assertion by another person or organisation of a legal entitlement to compensatory damages from an Insured, addressed in writing to the Insured and expressed in terms which indicate an intention to pursue it.

13. “Limit of Liability” and “Sub-Limit of Liability” means the amounts specified as such in the Schedule, where applicable.
14. “Commencement Date” means the date specified in the Schedule as the first calendar day of the Period of Insurance; “Expiry Date” means the last calendar day of the Period of Insurance.
15. “Period of Insurance” means the period during which the cover provided by this Policy is in force, beginning at 4.00 pm on the Commencement Date and concluding at 4.00 pm on the Expiry Date.
16. “The Companies” means the entities referred to as such in the Schedule.
17. “Compensatory Damages” means civil damages, other than punitive, exemplary or aggravated damages, fines or penalties, which an Insured may become liable to pay or may with the Companies’ consent agree to pay, to a claimant in connection with a claim, and includes all charges, expenses and legal costs of the claimant for which the Insured may also become liable or may so agree to pay.
18. “Supplementary Payments” means all charges, expenses and legal costs, incurred by the Companies or by the Insured with the written consent of the Companies, in connection with the investigation, defence or settlement of Claims.

## **EXCLUSIONS**

This insurance does not apply to:

1. Any liability which an Insured may incur, whether under the provisions of any Worker’s Compensation legislation, industrial award, agreement or determination or otherwise, toward any Employee of that Insured for Personal Injury suffered by that Employee.
2. Property Damage to:
  - (a) property owned, leased or hired by the Insured, except for leased premises where the damage is caused by fire, explosion, water leakage or Vehicle impact;
  - (b) property in the Insured’s physical or legal control, except for property of the Insured’s Employees, or Vehicles which are not used by or on the Insured’s behalf but which are damaged whilst in the Insured’s car park, provided that the Insured’s Business does not include ownership or operation of a car park for reward.
  - (c) Property Damage to the Insured’s Products, if such damage is attributable to any defect or deficiency in those Products or their harmful nature or unsuitability.
3. Any Claim for performance of the Insured’s obligations under any contract, including an agreement to indemnify any other person or organisation against a loss or liability, or for damages for the Insured’s failure to perform such an obligation. This includes but is not limited to contractual obligations toward others arising out of or involving injuries to the Insured’s Employees. This Exclusion, however, shall not apply to statutory warranties, or to any liability for Personal Injury or Property Damage which would nevertheless have been imposed upon the Insured even in the absence of such a contractual obligation.
4. Damages claimed for the withdrawal, recall, inspection, repair, replacement or loss of use of the Insured’s Products, or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency in them.
5. Any liability arising out of the ownership, maintenance, operation or use by an Insured of any Vehicle.

6. Any liability arising out of or in connection with the provision of, failure to provide or any error or omission in connection with, professional advice or services, including but not limited to plans, designs, specifications, recommendations or instructions and irrespective of whether or not a fee is charged for the advice or service, on the part of any Insured. This Exclusion, however, shall not apply to:
  - (a) the rendering of or failure to render professional medical advice or assistance by medical persons employed by the Insured to provide first aid and/or other medical services on the Insured's premises;
  - (b) commercial representations or recommendations, manuals, standard operating directions or instructions for use, made or issued in connection with the Insured's Products; or
  - (c) errors in design, formulation, specification or preparation of the Insured's Products, before they have ceased to be in the Insured's possession or under the Insured's control.
7. Any liability, of whatever nature and however arising, directly or indirectly arising out of or in connection with Pollution, including but not limited to the prevention, clean up or containment of it, any Personal Injury or Property Damage caused by it and the remediation of any environment affected by it; provided, however, that this Exclusion shall not apply where the Insured has proved, that the discharge, dispersal, release or escape involved:
  - (a) did not occur gradually over a period of time but suddenly, at an identifiable point in time; and
  - (b) was entirely unexpected, unintended and fortuitous from the standpoint of the Insured.
8. Any Claim made or prosecuted against an Insured in any court of any jurisdiction within the United States of America or Canada, their territories, protectorates or other dominions, including proceedings brought in any jurisdiction to enforce any judgment obtained in such a court.
9. Claims in respect of Personal Injury or Property Damage (including loss of use of property) directly or indirectly arising out of or in connection with:
  - (a) the mining, processing, transportation, distribution, processing and/or storage of asbestos or asbestos-related products;
  - (b) any process or procedure for the extraction, removal, disposal, treatment or control of asbestos, or for the decontamination or remediation of property affected by asbestos.
10. Any Claim arising out of any defamatory publication or utterance or malicious falsehood:
  - (a) made prior to the commencement of the Period of Insurance; or
  - (b) made at the Insured's direction with knowledge of its falsity or reckless disregard for its truth or falsity; or
  - (c) made in connection with advertising, broadcasting, telecasting or publishing activities conducted by or on the Insured's behalf.

11. Any Claims directly or indirectly arising out of or in connection with war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power. This includes expropriation, seizure, confiscation, nationalisation, damage or destruction of the Insured's Products or of any other Property, by or under the order of any de facto or de jure government or authority.
12. Claims directly or indirectly arising out of or in connection with ionising radiation or contamination by radio activity from any man-made source.
13. Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from 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.

An act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or groups(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.

This also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

14. Any Claims directly or indirectly caused by or arising from the ownership possession or operation by or on behalf of the Insured of any
  - a) airlines, aircraft, aerodromes, airports, and/or other aviation risks, spacecraft, launch sites and/or other space risks.
  - b) hovercraft or watercraft other than hand propelled watercraft or other watercraft not exceeding 8 metres in length and then only whilst on inland waterways or up to 5 Kilometres offshore.

## CONDITIONS

1. The Insured must give written notice, to High Street Underwriting Agency Pty Ltd on behalf of the Companies, of every Claim or Occurrence out of which a Claim might reasonably be expected to arise, as soon as reasonably possible after the Insured itself becomes aware of that Claim or Occurrence.
2. The Insured shall not without the Companies' consent in writing make any admission, offer, promise, payment or settlement in connection with any Occurrence or Claim and the Companies, if they so desire, shall be entitled to take over and conduct on behalf of the Insured and in its name the investigation, defence, negotiation or settlement of any Claim, in such manner and upon such terms as they may consider appropriate.
3. The Insured shall use their best endeavours to preserve any property, Products, equipment or other evidence which might prove relevant, necessary or useful in connection with the investigation of any Occurrence or the negotiation, defence or settlement of any Claim and, so far as may be reasonably practicable, no alternation, disposal or repair shall be effected without the Companies' consent, until the Companies have had full opportunity to inspect and preserve any evidence.

4. The Companies shall be subrogated to and shall be entitled to prosecute in the Insured's name, at their own expense and for their own benefit, any cause of action (including a claim for contribution or indemnity) which the Insured may have against any other person or organisation, arising out of an Occurrence which has given rise to a Claim in respect of which indemnity for Compensatory Damages or a Supplementary Payment has been provided by the Companies under this Policy. It is not a requirement of the pursuit of subrogation, under this Condition, that actual payment first be made by the Companies.

The Insured shall do nothing to restrict, compromise, prejudice or limit the Companies' rights of subrogation after an Occurrence. If the Insured does anything of the sort, including entering into any compromise or release of liability with any other party, the Companies may adjust the indemnity for Compensatory Damages and any Supplementary Payments provided under this Policy by the monetary equivalent of the prejudice caused to them.

The Companies shall have first right to the proceeds of any such recovery action but shall account to the Insured for any amount which they may recover, in excess of the total amount of indemnity for Compensatory Damages and Supplementary Payments paid under this Policy, after deduction of the Companies' costs of recovery.

5. The Companies shall have full discretion in the conduct of the investigation, defence, negotiation or settlement of any legal proceedings, in connection with any Claim or any subrogation recovery, and the Insured shall provide all necessary information, cooperation and assistance as the Companies may reasonably require in connection with any Claim or recovery. This shall be at the Insured's own expense, except that the Companies shall promptly reimburse the Insured for any out of pocket expenses, other than remuneration, lost profits or opportunity costs, incurred in the provision of such information, cooperation or assistance.
6. In the event of an Occurrence, the Insured shall promptly take at its own expense all reasonable steps to prevent or to mitigate Personal Injury or Property Damage, arising from that Occurrence or similar Occurrences, and to reduce the likelihood of Claims. Under no circumstance shall the expense of complying with this condition be recoverable under this Policy.
7. In respect of all Claims directly or indirectly arising out of one source or original cause, the Companies may at any time tender to the Insured the balance of the Limit of Liability in respect of those Claims, or such lesser amount as the persons making the Claims are willing to accept, at that time, in full and final settlement. The Companies shall then be under no further liability under this Policy in respect of those Claims, except for:
  - (a) charges, expenses and legal costs which may subsequently be recoverable from the Insured only in respect of the period prior to the date on which the Limit of Liability was tendered; and
  - (b) charges, expenses and legal costs incurred by the Insured, with the Companies' written consent, prior to that date.
8. The Insured shall take all reasonable precautions to prevent Personal Injury and Property Damage from arising out of or in connection with its Business, and shall comply with and ensure that its Employees, contractors, agents and other representatives comply with all statutory obligations, Codes, bylaws or regulations which may be applicable to the Business from time to time. In particular, and without limiting the generality of the foregoing, the Insured shall at its own expense take all reasonable steps to trace, recall and/or modify any of its Products which it knows or has reason to suspect may contain any defect or deficiency which may render them injurious to persons or property, and shall comply promptly with all statutory obligations which may be imposed upon it in this regard.
9. Each of the persons or entities comprising the Insured shall be treated, for the purposes of this Policy, separately and distinctly from all of the others and the word "Insured" shall be applied to them in the same manner as if a separate policy had been issued to each, however under no circumstances shall this Condition operate in such a manner as to increase the Companies' Limit of Liability or any Sub-Limits, beyond those which would apply if there were only a single Insured.

10. This Policy also insures the liability of any Principal of the Insured, arising out of the performance by the Insured of any work for such Principal, but only to the extent required under the relevant contract and subject always to the Limits of Liability and to the other terms, Conditions and Exclusions of the Policy. In the case of any conflict between the terms of the relevant contract and this Policy, this Policy shall prevail.
11. The Insured must ensure payment of the premium specified in the Schedule to the Companies within sixty days of the commencement of the Period of Insurance.
12. The insured must provide the Companies, as soon as reasonably practicable, with written notice of every change which materially varies or alters any of the facts or circumstances, relating to any of the parties falling within the definition of the Insured or to the Insured's Business, as they were disclosed in the Proposal or known to the Companies at the commencement date of this Policy.

This includes the entry by an Insured, after the commencement of the Policy, into any contract, arrangement or understanding which may limit its legal rights against any other party, to which the Companies might otherwise be subrogated.

In the event of such a material change, the Companies reserve the right to cancel or to amend the terms of this Policy, as they may consider appropriate, or to charge such additional premium as may be reasonable in the circumstances. If the Insured does not provide notice of a material change sufficiently before the happening of an Occurrence as to give the Companies adequate opportunity to exercise their rights under this Condition, the Companies may refuse coverage, in whole or in part, in respect of any Claim arising out of that Occurrence.

13. In the event of any Claim for which the Insured is entitled to coverage under this Policy and also under any other policy or policies, then in the event that the Insured elects to pursue its rights under this Policy the Insured must inform the Companies of the full details of all such other insurances, and must provide all reasonable assistance to the Companies in enforcing their rights to rateable contribution.
14. The Named Insured may cancel this Policy, on behalf of all other persons or entities falling within the definition of Insured or otherwise entitled to the benefit of the insurance, at any time by giving immediate written notice to High Street Underwriting Agency Pty Limited, which shall receive it on behalf of the Companies. The Companies may cancel this Policy by giving three business days' notice in writing to the Named Insured, in any of the circumstances permitted by Section 60 of the *Insurance Contracts Act 1984* (Cth).

In the event of cancellation by either party, the Companies may retain pro-rata premium for the time on risk. In the event of cancellation by the Insured, a penalty loading of 20% of the full adjusted annual premium will also apply. When the premium is subject to adjustment, cancellation by either party will not affect the Insured's obligation to supply such information as the Companies may reasonably require for the adjustment of the premium. Neither will cancellation effect the Insured's obligations to pay the amount of the adjustment, as applied to the pro-rata premium.
15. The Companies shall be permitted but not obliged to inspect the Insured's Business and operations at any time. Neither the Companies' right to make inspections nor the making of any inspection nor any report of an inspection shall constitute any form of undertaking, acknowledgement or representation regarding the safety or appropriateness of the Insured's Business or the manner in which it is being carried on, or a waiver of any of the Companies' other rights. The Companies may examine and audit the Insured's books and records at any time during the Period of Insurance, including any renewals or extensions of it, and within three years after the final renewal has concluded, in so far as they may relate to the subject matter of the insurance.
16. Should the premium for this Policy or any renewal have been calculated on estimates furnished by the Insured, and subject to adjustment at the end of the Period of Insurance, then the Insured must keep accurate records and all necessary evidence of all particulars required to enable the adjustment to be promptly and efficiently calculated, and must permit the Companies to inspect this evidence at such times and in such manner as they may reasonably

require. Within thirty days of the expiry of each Period of Insurance the premium for which is subject to adjustment, the Named Insured shall furnish to High Street Underwriting Agency Pty Limited, which shall receive it on behalf of the Companies, a statement containing full particulars and supporting information required to calculate the adjustment. The premium for the expired Period of Insurance shall then be adjusted accordingly and any extra premium or return premium required shall be paid by or credited to the Named Insured, as the case may be, within thirty days. Nothing in this Condition precludes the retention, by the Companies, of any minimum premium applicable to the relevant Period of Insurance.

17. This Policy shall, at all times and in all respects, be governed by and subject to the laws of the Commonwealth of Australia, including but not limited to the *Insurance Contracts Act 1984* (Cth), and the Insured and the Companies agree to submit to the jurisdiction of competent Australian Courts in relation to all matters arising under or in connection with it. This Condition shall not preclude the parties from agreeing to submit any dispute to Arbitration, or to any other form of Alternative Dispute Resolution, after it has arisen.
18. It is hereby declared and agreed that unless approved by the insurer in writing, the insured must adhere to all instruction from the mines at all times. Failing to do so will render this policy void.
19. It is hereby declared and agreed that if a contract with Insurance requirements is in force with the mine/s, a copy must be supplied before cover is provided.

## **Endorsements:**

### **EN008 Welding Endorsement**

We will not be liable for claims arising directly or indirectly out of or caused by, through, or in connection with arc or flame cutting, flame heating, arc or gas welding or any similar operation in which welding or cutting equipment is used, unless such used is carried out in strict compliance with the prevailing Australian Standards (Safety in Welding and Allied Processes) issued by the Standards Association of Australia.

### **Worker to Worker Extension**

Exclusion 1 shall not apply to

1. Claims for recoveries of any payment made by any compulsory workers or accident compensation insurer under the provisions of any compulsory workers or accident compensation legislation or policy, but only where the claim is being made against an Assured who is not the direct employer of the worker in respect of whom the recovery is being sought;

2. Claims made by an injured worker (as defined by applicable workers or accident compensation legislation ) against any Assured other than the workers' direct employer.

The excess in respect of claims brought under this Extension shall be as stated in the Schedule as applicable to this Extension