



## EXCESS LIABILITY WORDING

### I INSURING CLAUSE

Subject to the exclusions, conditions and other terms of this Policy, the Insurers agree to indemnify the Insured in respect of their liability to pay compensation (including claimants' costs and expenses) for claims arising out of Personal Injury and/or Property Damage and/or Advertising Liability occurring during the Period of Insurance all as covered by and defined in the Policy specified in the Schedule and issued by the "Primary Insurers" stated therein.

### II LIMITS

PROVIDED ALWAYS THAT:

- (a) liability attaches to the Insurers only after the Primary Insurers have paid or have been held liable to pay the full amount of their respective Ultimate Net Loss liability as specified in the Schedule and designated "Primary Limits(s)" and the Insurers shall only be liable for a further amount of Ultimate Net Loss as is set forth in the Schedule under the designation "Excess Limit(s)" in excess of the Primary Limit(s).
- (b) Neither the inclusion of more than one entity in the name of the Insured nor the addition of any additional Insured under this Policy shall, in any way, operate to increase the Insurers' limit of liability beyond that provided for under Excess Limit(s) in the Schedule.

### III DEFINITIONS

- (a) **Ultimate Net Loss:** The words "Ultimate Net Loss" shall be understood to mean the amount payable in settlement of the liability of the Insured after making deductions for all recoveries and for other valid and collectible insurances, excepting however the policy(ies) of the Primary Insurers, and shall exclude all Costs.
- (b) **Costs:** The word "Costs" shall be understood to mean investigation, adjustment and legal expenses (excluding, however, all office expenses of the Insured, all expenses for salaried employees of the Insured and general retainer fees for counsel normally paid by the Insured).

### IV CONDITIONS

- (a) **INCURRING OF COSTS:** In the event of a claim or claims arising which appear likely to exceed the Primary Limit, no Costs shall be incurred by the Insured without the written consent of the Insurers.
- (b) **APPORTIONMENT OF COSTS:** Costs incurred by or on behalf of the Insured with the written consent of the Insurers and for which the Insured is not covered by the Primary Insurers, shall be apportioned as follows:
  - (i) should any claim or claims become adjustable prior to the commencement of trial for not more than the Primary Limit(s), then no such costs shall be payable by the Insurers



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- (ii) should, however, the amount for which the said claim or claims may be so adjustable exceed the Primary Limit(s) then the Insurers, if they consent to the proceedings continuing, shall contribute to the Costs incurred by or on behalf of the Insured in the ratio that their proportion of the Ultimate Net Loss as finally adjusted bears to the whole amount of such Ultimate Net Loss
- (iii) in the event that the Insured elects not to appeal a judgment in excess of the Primary Limit(s), the Insurers may elect to conduct such appeal at their own cost and expense and shall be liable for the court costs and interest incidental thereto, but in no event shall the total liability of the Insurers exceed the limit of liability as provided for herein, plus the expenses of such appeal.
- (c) **APPLICATION OF RECOVERIES:** All recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Insured and Insurers, provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not payable until the Insured's Ultimate Net Loss has been finally ascertained.
- (d) **ATTACHMENT OF LIABILITY:** Liability to pay under this Policy shall not attach unless and until the Primary Insurers shall have admitted liability for the Primary Limit(s) or unless and until the Insured has by final judgment been adjudged to pay an amount which exceeds such Primary Limit(s) and then only after the Primary Insurers have paid or been held liable to pay the full amount of the Primary Limit(s).
- (e) **MAINTENANCE OF UNDERLYING INSURANCE:** This Policy is subject to the same terms, Definitions, Exclusions and Conditions (except as regards the premium, the obligation to investigate and defend, the renewal agreement (if any), the amount and limits of liability other than any deductible or self-insurance provisions and except as otherwise provided herein) as are contained in or as may be added to the policy of the Primary Insurers prior to the happening of an occurrence for which claim is made hereunder. Should, however, any alteration be made in the premium for the policy of the Primary Insurers during the currency of this Policy, Insurers reserve the right to adjust the premium hereon accordingly.

It is a condition of this Policy that the policy(ies) of the Primary Insurers shall be maintained in full effect during the currency of this Policy except for any reduction of the aggregate limits contained therein solely by payment of claims in respect of occurrences during the Period of Insurance.

In the event of reduction of the aggregate limits of liability of the Primary insurance, this Policy shall pay the excess of the reduced aggregate limit. In the event of exhaustion of the aggregate limits of liability of the Primary insurance this Policy shall continue in force as Primary insurance and the deductible set forth under the said Primary insurance shall apply to this Policy.

- (f) **CANCELLATION:** The Insured may cancel this Policy by giving thirty (30) days' notice in writing to the Insurers.

After cancellation by the Insured the premium for the period to cancellation shall be adjusted on a pro-rata basis and the Insured shall be allowed a return premium of ninety (90) per cent of the premium amount so calculated.

The Insurers may cancel this Policy in any of the circumstances set out in Sections 60 and 61 of the Insurance Contracts Act, 1984 (as amended).

- (g) NOTIFICATION OF CLAIMS: The Insured shall give written notice as soon as reasonably practical to the insurance intermediary through whom you arranged this insurance in the first instance of any claim made against the Insured (or any specific event or circumstance that may give rise to a claim being made against the Insured) which is likely to exceed 25% of the total Primary Limit(s).
- (h) AUSTRALIAN JURISDICTION: In the event of a dispute arising under this Policy, the Insurers at the request of the Insured 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

Any summons notice or process to be served upon the Insurers may be served upon:

Lloyd's General Representative in Australia  
Lloyd's Australia Limited  
Level 9  
1 O'Connell Street  
Sydney NSW 2000

who has authority to accept service and to enter an appearance on the Insurers' behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on Insurers' behalf.

If a suit is instituted against any one of the Insurers all Insurers hereon will abide by the final decision of such Court or any competent Appellate Court.

**Attaching to and forming part of this Contract**

**TERRORISM EXCLUSION ENDORSEMENT**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes liability for loss, injury, 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.

For the purpose of this endorsement 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 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.

This endorsement also excludes loss, injury, 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 Insurers allege that by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

NMA2951  
14/07/2002

**DROP DOWN EXCLUSION**

It is understood and agreed that coverage hereon is excluded in respect of sublimited coverages within the underlying primary policy.

**SANCTION LIMITATION AND EXCLUSION CLAUSE**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall 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 that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

15/09/10  
LMA3100

**Insurance Council of Australia's General Insurance Code of Practice**

This Insurance does not comply with the Insurance Council of Australia's General Insurance Code of Practice.

Within the clauses set out below, the terms 'Retail Business' and 'Wholesale Business', shall carry the meaning ascribed to them within the Insurance Council of Australia's General Insurance Code of Practice.

1. The following clause applies to Retail Business:

**AUSTRALIAN NON-LITIGATION DISPUTE RESOLUTION ENDORSEMENT**

Any enquiry or complaint relating to this insurance should be referred to the insurance intermediary through whom the Insured arranged this insurance in the first instance. If this does not resolve the matter or the Insured is not satisfied with the way a complaint has been dealt with, the Insured should write to:

Lloyd's Underwriters' General Representative in Australia  
Level 9  
1 O'Connell Street  
Sydney NSW 2000

Telephone Number: (02) 8298 0753  
Facsimile Number: (02) 8298 0788  
Email: idraustralia@lloyds.com

If the Insured's dispute remains unresolved the Insured may be referred to the Financial Ombudsman Service Limited under the terms of the General Insurance Code of Practice. For other disputes the Insured will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

2. The following clause applies to Wholesale Business:

**AUSTRALIAN LITIGATION DISPUTE RESOLUTION ENDORSEMENT**

The Insurers hereon agree that:

- (i) In the event of a dispute arising under this Insurance, the Insurer at the request of the Insured 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 served upon the Insurers may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Level 9  
1 O'Connell Street  
Sydney NSW 2000

Telephone Number: (02) 8298 0753  
Facsimile Number: (02) 8298 0788  
Email: idraustralia@lloyds.com

who has authority to accept service and to enter an appearance on the Insurer's behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on the Insurer's behalf.



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

The amount of Premium specified herein is the amount due to the Insurers and any commission allowed by them is to be regarded as remuneration of the insurance intermediary placing this Insurance.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to the insurance intermediary through whom you arranged this insurance in the first instance.

**Subject otherwise to the Terms, Conditions, Limitations and Exclusions of the Policy**