

## CORPORATE PUBLIC & PRODUCTS LIABILITY INSURANCE POLICY WORDING 01.06.19



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## 1. PREAMBLE

This Policy consists of:

- (a) this Policy wording; and
- (b) each endorsement issued by the Company and attached or intended to be attached to the Policy wording or intended by the Company to form part of this Policy; and
- (c) the Current Schedule.

The Policy wording and the Current Schedule are to be read together. Any word or expression given a specific meaning in the Clause headed Definitions will mean the same wherever else it appears unless specially stated otherwise. Marginal notes and headings are used only for the purpose of identification and should not be construed as forming part of the wording for the purpose of interpreting this Policy.

## 2. THE AGREEMENT

In consideration of the payment of the Premium set out in the Current Schedule, the Company provides indemnity to the Insured in accordance with this Policy, subject to the limitations, terms and conditions of this Policy for the period set out in the Current Schedule. This Policy is limited to the term specified in the Period of Insurance in the Current Schedule.

## 3. THE COVER

The Company agrees to indemnify the Insured up to the Limit of Liability and subject to all terms, conditions and exclusions of this Policy for:

- (a) all amounts which the Insured becomes legally liable to pay as compensation for Personal Injury, Property Damage and/or Advertising Injury occurring within the Territorial Limits as a result of an Occurrence occurring within the Period of Insurance in connection with the Insured's Business;
- (b) all legal costs taxed/assessed against the Insured arising out of Personal Injury, Property Damage or Advertising Injury for which indemnity is available under clause 3(a); and
- (c) all interest accruing after entry of judgment against the Insured arising out of Personal Injury, Property Damage or Advertising Injury for which indemnity is available under clause 3(a) until the Company has paid, tendered or deposited in court that part of such judgment as does not exceed the Limit of Liability.

The total indemnity available under this clause in respect of the combined amounts in (a), (b) and (c) is restricted to the Limit of Liability.

## 4. DEFENCE COSTS AND SUPPLEMENTARY PAYMENTS

In relation to Claims for which indemnity is available under this Policy, the Company will defend, in the Insured's name and on the Insured's behalf, any claim or suit against the Insured alleging such Personal Injury

or Damage to property and/or Advertising Injury and seeking Compensation on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent and pay:

1. all costs and expenses incurred by the Company and/or by the Insured with the Company's written consent;
2. all interest accruing on the Company's portion of any judgment until the Company has paid, tendered or deposited in court that part of such judgment which does not exceed the Limit of Liability;
3. premium on appeal bonds or security for costs required in any suit, and premium on bonds to release attachments in any suit, for an amount not exceeding the applicable Limit of Liability, but the Company shall have no obligation to apply for or furnish any such bond or security;
4. expenses incurred by the Insured for rendering of first aid or other medical service to others at the time of any Personal Injury (other than the payment of any medical expense by the Company which the Company is prevented from paying by law);
5. temporary protection of property, including temporary repairs or protection of property of others that has been damaged as a result of an Occurrence which is the subject of indemnity under this Policy;
6. all costs incurred by the Insured with the Company's written consent for legal representation at any coronial inquest or inquiry, court or tribunal, royal commission or government inquiry, or any inquiry or hearing of a disciplinary nature held before a legally constituted inquiry board, committee, or authority.
7. up to \$25,000 in respect of each Occurrence for reasonable professional fees or costs incurred by the Named Insured for the preparation of a claim under this Policy with the Company expressed and written consent.

These 'Defence costs and supplementary payments' are payable subject to the following:

The Company is not obliged to pay any 'Defence costs and supplementary payments' or to defend any suit after the Company's liability under this Policy to indemnify the Insured has been exhausted;

If a payment exceeding the Company's liability under this Policy to indemnify the Insured has to be made to dispose of a claim, the Insurer's liability in respect of 'Defence costs and supplementary payments' is limited to the proportion that the Company's liability to indemnify the Insured under this Policy bears to that payment;

In the event of a claim being made against the Insured in any court or before any other legally constituted body in the United States of America, Canada or their respective protectorates and territories, the total amount payable in respect of the claim by the Company under this Policy including 'Defence costs and supplementary payments' will not exceed the Limit of Liability; and

In jurisdictions where the Company is not legally permitted to, or cannot for any other reason, defend any claim or

suit against the Insured, the Company will reimburse the Insured for the expense of such defence provided that such expenses are incurred with the Insurer's written consent.

## 5. CROSS LIABILITY

Where the Insured comprises more than one entity the term Insured shall be considered as applying to each entity in the same manner as though a separate policy had been issued to each entity, provided nothing contained in this Clause shall operate to increase the Company's Limit of Liability as specified in the Current Schedule.

## 6. EXCLUSIONS

This Policy does not cover any Personal Injury or Property Damage directly or indirectly caused by or arising from:

### 6.1 Advertising Liability

advertising Injury resulting from a:

- (a) failure of performance of contract or breach of contract; or
- (b) infringement of trade-mark or trade name; or
- (c) incorrect description of any article or commodity; or
- (d) mistake in advertised price;

first committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the Insured's advertising activity.

### 6.2 Aircraft, Hovercraft, Watercraft and Vehicles

the ownership, possession, maintenance, operation, use or legal control by or on behalf of the Insured of any:

- (a) Aircraft, (also claims arising out of the Insured's Products that are used with the Insured's knowledge in Aircraft or aerial devices); or
- (b) Hovercraft; or
- (c) Watercraft or vessels exceeding 15 metres in length.

This sub-clause (c) shall not apply where the watercraft or vessel is:

- (i) let out on hire or on charter to the Insured and is wholly crewed/manned by a professional crew; and
- (ii) the Insured is not in the business of letting for hire or charter any Watercraft or vessels; and
- (iii) the hiring or chartering of the Watercraft or vessel by the Insured is not undertaken in the normal course of the Insured's Business.
- (d) Vehicle which is registered or is required under any legislation to be registered; or
- (e) Vehicle in respect of which compulsory insurance is required to be effected by virtue of any legislation.

Exclusion 6.2 (d) and (e) does not apply to Personal Injury and/or Property Damage arising from:

- (i) the delivery or collection of goods to or from any

Vehicle where such Personal Injury and/or Property Damage occurs beyond the limits of any carriageway or thoroughfare; or

- (ii) the loading or unloading of any Vehicle; or
- (iii) the use of any Vehicle as a Tool of Trade.

### 6.3 Electronic Data

1. the communication, display, distribution or publication of Electronic Data;
2. the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of Electronic Data;
3. an error in creating, amending, entering, deleting or using Electronic Data; or
4. the total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

However this exclusion does not apply to Personal Injury or Advertising Injury or damage to tangible property arising there from.

### 6.4 Asbestos/Toxic Substances

- (a) any actual or alleged liability, whatsoever for any claim in respect of loss or losses (exclusively or partially) arising out of, resulting from, or in consequence of, or in any way involving asbestos or refractory ceramic fibres, or any materials containing asbestos or refractory ceramic fibres in whatever form or quantity;
- (b) polychlorinated biphenyls (PCBs).

### 6.5 Contractual Liability

liability assumed under any contract or agreement provided that this Exclusion 6.5 does not apply to:

- (a) liability which would have been imposed by law in the absence of such contract or agreement; or
- (b) those contracts or agreements specified in the Current Schedule.
- (c) the contract is an Incidental Contract and liability does not arise due to an obligation to insure rented, leased or hired property or an obligation to indemnify a landlord irrespective of fault.

### 6.6 Electro Transmissions and Nuclear/ Radioactive Contamination

- (a) electromagnetic fields, extremely low frequency electric fields and/or magnetic fields, microwave emissions or radio emissions;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this Exclusion only, combustion shall include any self-sustaining process of nuclear fission;
- (c) the radioactive, toxic, explosive or other hazardous

properties of any explosive nuclear assembly or nuclear component thereof.

Provided that Exclusion 6.6 does not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits

#### **6.7 Employer's Liability**

- (a) Personal Injury to any person arising out of or in the course of the employment of such person in the service of the Insured;
- (b) Personal Injury to any person who is deemed to be the employee of the Insured pursuant to any legislation relating to Workers' Compensation;
- (c) Personal Injury for which the Insured is entitled to seek indemnity under any statutory fund, statutory scheme, self insurance or any policy of Insurance required to be taken out pursuant to any legislation relating to Workers' Compensation, whether or not the Insured is a party to such contract of insurance;
- d) claims made against the Insured under the provisions of any Workers' Compensation legislation, any industrial award, agreement or determination;
- (e) any claim by any person arising out of or in the course of the employment of such person in the service of the Insured for harassment, discrimination or unfair dismissal.

#### **6.8 Fines and Penalties**

finest or penalties imposed by law, punitive, exemplary, aggravated and/or liquidated damages.

#### **6.9 Libel, Slander and Defamation**

the publication of any defamatory material:

- (a) made prior to the commencement of the Period of Insurance; or
- (b) made at the Insured's direction or with the Insured's authority or with knowledge of its falsity; or
- (c) related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured.

#### **6.10 Loss of Use**

loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- (a) a delay in or lack of performance by or on behalf of the Insured in relation to any contract or agreement; or
- (b) the failure of the Insured's Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured.

This Exclusion 6.10 (b) does not apply to the loss of use of other tangible property resulting from the sudden

and accidental physical damage to or destruction of the Insured's Products after such products have been put to use by any person or organisation other than the Insured.

#### **6.11 Molestation**

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

#### **6.12 Pollution**

claims made and/or actions instituted against the Insured worldwide excluding the United States of America and Canada for:

- (a) the actual, alleged or threatened discharge, dispersal, release, escape, seepage or migration of Pollutants; or
- (b) any:
  - (i) governmental direction or request that the insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise Pollutants; or
  - (ii) claim or action instituted against the Insured by or on behalf of any governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising Pollutants; provided that these Exclusions 6.12 a) and b) do not apply to liability which arises out of the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants that is sudden, identifiable, unintended, unexpected and which takes place in its entirety at a specific time and place. In respect of claims made and/or actions instituted against the Insured in the United States of America and Canada, this Policy does not cover any liability arising out of or connected directly or indirectly with:
- (c) the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or
- (d) any governmental direction or request that the Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralise Pollutants; in the United States of America or Canada or any territory coming within the jurisdiction of the courts of the United States of America or Canada.

#### **6.13 Product Defect/Faulty Workmanship**

- (a) Property Damage to the Insured's Products if such damage is attributable to any defect therein or the harmful nature thereof or unsuitability for the purpose for which they were intended; or
- (b) performing, completing, repairing, disposal replacing, correcting or improving any work or service undertaken or provided by or on behalf of the Insured.

#### **6.14 Product Recall**

the withdrawal, recall, inspection, repair, disposal, replacement or loss of use of the Insured's Products or any property of which such products form a part and if the Products are removed from sale.

#### **6.15 Professional Liability**

the rendering of or failure to render professional advice or service by the Insured or any error or omission connected therewith.

This Exclusion 6.15 does not apply to:

1. Liability arising out of the rendering or failure to render medical advice at the Insured's Premises by Medical Persons employed by the Insured to provide first aid and ancillary medical services.
2. Personal Injury or Damage to Property where such breach of duty arises out of advice or services given gratuitously."

#### **6.16 Property in Physical or Legal Control**

Property Damage to:

- (a) property owned by or leased or rented to the Insured; or
- (b) property in the physical or legal control of the Insured.

This Exclusion 6.16 shall not apply to liability for Property Damage to:

- (i) real property, including buildings which are leased or rented to the Insured; or
- (ii) real property including contents, not owned, leased or rented to the Insured but temporarily occupied by the Insured for the purpose of carrying out work in connection with the Insured's Business, but no indemnity is granted for damage to that part of the property on which the Insured is or has been working or which arises out of such work; or
- (iii) vehicles not belonging to or used by or on behalf of the Insured in the physical or legal control of the Insured where such Property Damage occurs whilst any such Vehicles are in a car park owned or operated by the Insured but not where the Insured as part of its business is a car park owner or operator for reward; or
- (iv) property belonging to visitors or Insured's Employees; or
- (v) property in the physical or legal control of the Insured (except whilst undergoing any process or being worked upon) for which the Insured has not assumed any responsibility to obtain Insurance. However, for such claims the Company will indemnify the Insured against such claims, subject to the terms of this Policy to a maximum of AUD \$500,000 for each and every occurrence during the Period of Insurance, subject to payment by the Insured of the Deductible specified in the Current Schedule.

#### **6.17 Tobacco/Tobacco Products**

death or the contraction, aggravation or exacerbation of any disease, sickness, injury, or disorder of the human body or mind as a result of the use or consumption (including passive smoking) of tobacco or tobacco products.

#### **6.18 War/Terrorism**

- (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, riots, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
- (b) any act of terrorism, piracy or hijack; or
- (c) any other civil disturbance or civil unrest, including strike, protest and civil commotion.

#### **6.19 Sanction Limitation and Exclusion**

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, Australia, United Kingdom or United States of America.

### **7. STANDARD CONDITIONS**

#### **7.1 Cancellation**

- (a) The Insured may cancel this Policy by giving notice in writing to the Company.
- (b) The Company may cancel this Policy in any of the circumstances set out in the Insurance Contracts Act 1984.
- (c) For any period during which this Policy has been in force the Company is entitled to keep or charge a pro rata proportion of the premium. If the Insured has requested the cancellation the Company may charge or deduct from any refund its standard cancellation fee which will represent 10% of the premium applicable for the unexpired term of the Period of Insurance.

#### **7.2 Claims Procedure**

- (a) Notice shall be given as soon as possible to the Company of every Occurrence, event, claim, writ, summons, proceedings, impending prosecution and/or inquest in respect of which there may arise a liability under this Policy.
- (b) The Insured shall not without the Company's consent make any admission, offer, promise or payment in connection with any Occurrence, event, claim, writ, summons, proceedings, impending prosecution and/or inquest.

- (c) The Company shall be entitled, if it so desires, to take over and conduct in the Insured's name the defence or settlement of any claim and the Company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient.
- (d) The Insured shall use its best endeavours to preserve any property, products, appliances, plant and other objects which may be required in connection with the investigation of or the defending of any claim made against the Insured and shall not, except to prevent further Personal Injury and/or Property Damage, without the Company's consent and until the Company has had an opportunity of inspection, make any alteration or repair to or dispose of such matter.
- (e) The Company shall be entitled to prosecute in the Insured's name at its expense and for its own benefit any claim for indemnity or contribution towards any loss or damage.
- (f) The Company shall have full discretion in the conduct of any proceedings in connection with any claim and the Insured shall give all information and assistance as the Company may reasonably require in the prosecution, defence or settlement of any claim.
- (g) In the event of an Occurrence, the Insured shall promptly take at its own expense all reasonable steps to prevent further Personal Injury and/or Property Damage from arising out of the same or similar conditions, but such expense shall not be recoverable under this Policy.
- (h) The Company shall be entitled to attend any inquest in respect of which there may arise liability under this Policy.
- (i) In respect of claims for amounts less than the Deductible the Insured shall at all times observe and duly comply with the Claims Procedure referred to above.
- (j) Any person or organisation for which the Company makes a payment under this Policy must transfer to the Company their right to recovery against any other party. After a loss the Insured must do everything necessary to secure and do nothing to impair these rights. Any amount recovered will be apportioned in the inverse order of payment of loss to the extent of actual payment. The expenses of all such recovery proceedings will be apportioned in the ratio of respective recoveries.

### **7.3 Discharge of Liabilities**

The Company may at any time pay to the Insured the applicable Limit of Liability (after deducting all amounts already paid by or on behalf of the Company) or any lesser amount for which a claim or claims may be settled. Upon such payment, the Company will not be under any further liability to the Insured and will be released from all liability, except for expenses including investigation and legal costs incurred by the Insured with the Company's consent prior to the date of such payment. If the Company has a right to recover any costs charges and expenses or other money from the Insured, then this right is not discharged or altered by this clause.

### **7.4 Inspection of Property**

The Company shall be permitted but not obliged to inspect the Insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe.

### **7.5 Jurisdiction/Proper Law**

Should any dispute arise concerning this Policy, the dispute will be determined in accordance with the law of the applicable State or Territory of Australia. In relation to any such dispute the parties agree to submit to the jurisdiction of any competent court in a State or Territory of Australia.

### **7.6 Marginal Notes and Headings**

Where marginal notes and headings are used in this Policy they are purely descriptive in nature and are not intended to be used for interpretive purposes.

### **7.7 Notice of Change**

The Insured shall give notice in writing as soon as practicable of any change in facts or circumstances that comes to the Insured's knowledge which materially varies the risk, the subject of this Insurance, at any time during the Period of Insurance of this Policy.

### **7.8 Other Insurance**

If the Insured makes a claim under this Policy in respect of which the Insured is or may be indemnified in whole or part under any other Insurance(s), then the Insured must advise the Company of the full details of such other Insurance(s) when making the claim under this Policy. Subject to the provisions of the Insurance Contracts Act 1984, the Company reserves its rights to seek contribution from such other insurer(s).

### **7.9 Reasonable Care**

The Insured shall:

- (a) Exercise reasonable care that only competent workers are employed and take reasonable measures to maintain all premises (including fittings and plant) owned or occupied by it, in sound condition; and
- (b) Take reasonable precautions to:
  - (i) prevent Personal Injury and/or Property Damage; and
  - (ii) prevent the manufacture, sale or supply of defective products; and
  - (iii) comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property; and
- (c) At the expense of the Insured take reasonable action to trace, recall or modify any Insured Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.



### 7.10 Subrogation

In the event of a payment under this Policy to or on behalf of the Insured, the Company shall, subject to the Insurance Contracts Act 1984, be subrogated to all the Insured's rights of recovery against all persons and organisations and the Insured shall execute and deliver instruments and papers and do all that is necessary to assist the Company in the exercise of such rights.

The Insurer agrees to waive all rights of subrogation under this Policy against each of the parties described as an Insured. However, where an Insured is protected from liability insured against hereunder by any other policy of insurance or indemnity our subrogation right is not waived to the extent and up to the amount of cover provided by such other policy of insurance or indemnity.

### 7.11 Endorsements

An endorsement does not affect or increase the Limit of Liability or any other term of this Policy, except to the extent specifically provided in the endorsement. For the avoidance of doubt, each endorsement is otherwise subject to the all the terms, conditions, exclusions, definitions and Limits of Liability of this Policy.

## 8. DEFINITIONS

**"Act of Terrorism"** means an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

**"Advertising Injury"** means:

- (a) unintentional libel, slander or defamation,
- (b) piracy or any act, error or omission in the use of advertising or merchandising ideas, under an implied contract,
- (c) infringement of copyright, or passing off of title or slogan;
- (d) invasion of the rights of privacy,
- (e) breach of the misleading or deceptive conduct provisions of any consumer protection legislation or similar legislation of any country, state or territory

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast, telecast or an internet website, and caused by or arising out of the Insured's advertising activities.

**"Aircraft"** means any vessel, craft, object or device made or intended to fly or move in or through the atmosphere or space, other than or model aircraft and unmanned inflatable balloons used for advertising or promotional purposes.

**"Company"** means XL Insurance Company SE, A Australia branch, trading as Brooklyn Underwriting (Brooklyn) ABN: 36 083 570 441.

**"Current Schedule"** means the Schedule or certificate

approved by the Company and attached or intended to be attached to the Public and Products Liability Insurance Policy, or any schedule or certificate which replaces it.

**"Compensation"** means monies paid or agreed to be paid by judgment, award or settlement in respect of Personal Injury and/or Property Damage and/or Advertising Injury. Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies.

**"Deductible"** means the amount specified in the Current Schedule which is the amount (inclusive of supplementary payments) per Occurrence that must be paid by the Insured.

**"Electronic Data"** means concepts, facts and information converted to a form usable for communications, distribution, display, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.

**"Employee"** means any person employed under a contract of service or apprenticeship by the Insured during the Period of Insurance.

**"Employment Practices"** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of the Insured's employees.

**"Hovercraft"** means any vessel, craft or device made and intended to float on or in or travel on or through the atmosphere or water.

**"Insured"** means:

- (a) The Insured named in the Policy Schedule;
- (b) all the Subsidiary companies (now, previously or subsequently constituted) of the Insured named on the Policy Schedule, provided their places of incorporation are within Australia or any Territory of Australia;
- (c) every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the Insured, including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the Business, while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities
- (d) every principal, in respect of that principal's vicarious liability for the acts or omissions of the parties shown in Schedule in the performance by them of work for that principal, but subject always to the extent of coverage and the Limit of Liability provided by this Policy;
- (e) each partner, joint venture company and joint leasee of the parties to whom the Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and Limit of Indemnity as is provided by this Policy;

- (f) every officer, member, employee or voluntary helper of the Insured's canteen, social and/or sporting clubs, first aid, medical, ambulance or firefighting services, charity or welfare work and/or child care facilities, while acting in their respective capacities as such;
- (g) any director, partner, proprietor, officer or executive of the Insured in respect of private work undertaken by the Named Insured's employees for such person, and any employee whilst actually undertaking such work.

**"Incidental Contracts"** means:

- (a) not requiring an obligation to insure such property or be strictly liable regardless of fault;
- (b) any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;
- (c) any written contract with any railway authority for the loading, unloading and/or transport of products, including contracts relating to the operation of railway sidings.

**"Insured's Business"** means the business as described in the Schedule including:

1. any prior operations or activities which have ceased or have been disposed of where the Insured retains a legal liability;
2. the ownership of premises and/or the tenancy thereof by the Insured;
3. participation in any exhibition or conference by or on behalf of the Insured;
4. first aid, medical, ambulance or fire fighting services;
5. the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and/or child care facilities by or on behalf of the Insured, which are primarily for the benefit of the Insured's employees; and
6. private work undertaken by the Insured's employees for any of the Insured's directors, partners, proprietors, officers or executives.
7. the business conducted by the Insured only as specified in the Current Schedule and includes only commercial activities related to that business.

**"Insured's Products"** means anything manufactured or deemed manufactured, produced or processed, constructed, grown, extracted, bottled, labelled, handled, imported or exported, altered, modified, assembled, erected, installed, repaired, serviced, treated, sold, supplied (including services) or distributed by or on behalf of the Insured, including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products after it has ceased to be in the physical possession or under the control of the Insured.

**"Limit of Liability"** means the applicable Limit of Indemnity specified in the Policy Schedule.

**"Medical Persons"** means qualified medical practitioners, ancillary medical workers and dentists.

**"Occurrence"** means:

- (a) with respect to Personal Injury and Property Damage, an event, including continuous or repeated exposure to the same general conditions, which results in Personal Injury or Property Damage neither expected nor intended from the Insured's standpoint. All Occurrences of a series consequent upon or attributable to one source or original cause shall be deemed one Occurrence and the total amount of indemnity payable by the Company in respect of such Occurrence shall be accounted to the Period of Insurance in which the first Personal Injury and / or Property Damage from the one source or originating cause occurred.
- (b) With respect to Advertising Injury, the publishing or broadcasting of the injurious material or act which results in Advertising Injury neither expected nor intended from the Insured's standpoint. All liability involving the same injurious material or act, regardless of the frequency of repetition thereof or the number and kind of media used or the number of claimants, shall be deemed as arising out of one Occurrence.

**"Period of Insurance"** means the period commencing on the effective date and ending on the expiry date specified in the Current Schedule.

**"Personal Injury"** means:

- (a) Bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish, mental injury and loss of consortium resulting therefrom;
- (b) False arrest or imprisonment, wrongful detention, entry or eviction or malicious prosecution or humiliation;
- (c) the effects of discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise not committed by or at the direction of the Insured, but only with respect to liability other than fines and penalties imposed by law;
- (d) Assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Personal Injury and/or Property Damage or eliminating danger;

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

**"Product Hazard"** means Personal Injury or Property Damage arising out of the Insured's Products but only if the Personal Injury or Property Damage occurs after the physical possession of such products has been relinquished to others.

**“Property Damage”** means:

- (a) Physical damage to or destruction of tangible physical property which first occurs during the Period of Insurance including any resultant loss of use; or
- (b) Loss of use of tangible physical property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible physical property which first occurs during the Period of Insurance.

**“Territorial Limits”** means:

- (a) anywhere in the world except the United States of America, Canada and their respective protectorates and territories;
- (b) the United States of America, Canada and their respective protectorates and territories if the

Personal Injury or Damage to Property arises from:

1. Products exported into such countries;
2. Business visits of the Insured’s directors, partners, officers, executives or employees, who are non-resident in the United States of America, Canada, other than where such persons perform manual work.

**“Vehicle”** means any type of machine on wheels or on self laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.

**“Watercraft”** means any vessel, craft or device made and intended to float on or in or travel on or through water other than model boats.

## 9. IMPORTANT NOTICE TO INSURED

### Your duty of disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty under the Insurance Contracts Act 1984 to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer’s decision whether to accept the risk of the insurance and, if so, on what terms. You have this duty until we agree to insure you. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance. Your duty however does not require disclosure of a matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of his business, ought to know;
- as to which compliance with your duty is waived by the insurer.

### Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is fraudulent, the Company may also have the option of avoiding the contract from its beginning.

### Privacy

Brooklyn collects personal information in order to provide its various services which include insurance broking, claims management, risk management consultancy, underwriting management, and reinsurance.

If the personal information Brooklyn requests from you is not provided, Brooklyn or any involved third party may not be able to provide the appropriate services.

Brooklyn discloses personal information to third parties who are involved in the provision of our services. For example, in arranging and managing your insurance needs Brooklyn may provide information (including sensitive information such as health information) to Insurers, reinsurers, other insurance intermediaries, it’s advisors such as loss adjusters, lawyers and accountants, and other parties involved in the claims handling process. By submitting your proposal and continuing to deal with us, you confirm on your behalf and/or on behalf of those you represent consent to Brooklyn and these parties collecting, using and disclosing personal and sensitive information about you.

Brooklyn has a duty to maintain the confidentiality of its client’s affairs which includes their personal information. Our duty of confidentiality applies except where disclosure of your personal information is with your consent or required by law. Brooklyn may make use of your personal information to provide you with information about its products and services.

Simply contact the Brooklyn Privacy Officer on the details below if you would like to:

- Access the personal information Brooklyn holds about you
- Update or correct the information Brooklyn holds about you
- Discuss your privacy concerns
- Be removed from the mailing list to receive information about Brooklyn products and services

**Privacy Officer - Brooklyn**  
**Level 28, 123 Pitt Street**  
**Sydney NSW 2000**  
**t: (02) 8270 1790**  
**e: [privacyaustralia@axaxl.com](mailto:privacyaustralia@axaxl.com)**

### **General Insurance Code of Practice**

Brooklyn supports and has adopted the General Insurance Code of Practice. The

Code aims to:

- Promote more informed relations between insurers and their customers;
- Improve customer confidence in the general insurance industry;
- Provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- Commit insurers and the professionals they rely upon to higher standards of customer service.

The Code confirms details of the policies specifically covered by the Code and it may be that your policy is an excluded policy and therefore outside the requirements of the Code.

### **Financial Claims Scheme**

This Policy may be a protected Policy under Federal Government's Financial Claims Scheme (FCS), which is administered by APRA. The FCS may apply in the event that a general insurance company becomes insolvent. If the FCS applies a person who is entitled to make a claim under this Policy may be entitled to a payment under the FCS. Access to the FCS is subject to eligibility criteria. You may obtain further information about the FCS from [www.fcs.gov.au](http://www.fcs.gov.au) and the APRA hotline on 1300 55 88 49.

XL Insurance Company SE  
trading as Brooklyn Underwriting  
ABN: 36 083 570 441  
Level 28, 123 Pitt Street Sydney  
NSW 2000

**BROOKLYN**   
**UNDERWRITING**