

Contractors Plant & Equipment Insurance

Important Information

About us

This policy is issued by Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034, AFS Licence 466713), which is authorised by the Australian Prudential Regulation Authority to carry on general insurance business in Australia, and holds a financial strength rating of A++ from AM Best and AA+ from Standard & Poor's.

Duty of disclosure

Under the Insurance Contracts Act 1984 (Cth), before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract.

The duty of disclosure applies to every person to be covered under the insurance.

You do not need to tell us anything that reduces the risk we insure you for, that is of common knowledge, that we know (or should know), or in respect of which we have waived the duty of disclosure.

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both. If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

Privacy

We, along with all companies in the Berkshire Hathaway group of insurance companies, are committed to safeguarding your privacy and the confidentiality of your personal information. We, and entities acting on our behalf, only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including managing and administering any claim made by you.

Without your personal information, we may not be able to issue insurance cover, administer your insurance or process your claim.

We will only use your personal information in accordance with the Privacy Act 1988 (Cth) and for the purposes outlined above.

We may disclose your personal information to other companies in the Berkshire Hathaway group and other third party service providers for the purposes outlined above or where disclosure is permitted by law. These entities may be located in Australia or overseas, including in India, Singapore, Hong Kong, Malaysia, New Zealand, Germany, the United Kingdom and the United States of America. Where such disclosure is made, we make all reasonable efforts to ensure that the arrangements we have in place with overseas parties impose appropriate privacy and confidentiality obligations on those parties to ensure that imparted personal information is kept secure and that such information is only used for the purposes noted above.

If you wish to obtain details of the personal information we hold about you (including contacting us to correct or update the personal information we hold about you), or if you have a complaint about a breach of your privacy, please refer to our privacy policy, available at <http://www.bhspecialty.com/privacy-policy.html>, or contact our Privacy Officer by email to australasia.privacy.compliance@bhspecialty.com.

We reserve the right to refuse access under the grounds permitted by the Privacy Act 1988 (Cth) and if you are seeking information on another person's behalf, we will require written authorisation from that individual.

Complaints

If you have a complaint or concern about our insurance products or services we provide, please contact your intermediary or your usual BHSI contact.

If you are not satisfied with our response, you may escalate your complaint by contacting complaints.australia@bhspecialty.com. Our internal dispute resolution process is free of charge and we will aim to respond to your escalated complaint within fifteen (15) business days.

General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice.

You can find further information about and download a copy of the Code from <http://codeofpractice.com.au>.

Electronic delivery of policy documents

We will send your policy documents by email. If however you wish to receive your policy documents in hard copy, please tell us.

Our rights of recovery

This policy contains a clause which limits our liability for your claim where you have agreed to exclude or limit your rights to recover damages from another person in respect of a loss you suffer. Please refer to the Policy Wording and ensure you fully understand the cover provided.

Policy Wording

This Policy has the following sections of cover:

Part A – Section 1 Material Damage; Part A – Section 2 Consequential Loss (optional); Part B – Section 3 Road Risk Liability; and Part B - Section 4 General and Products Liability.

General Section

The *insured* must pay the *premium* by the due date.

In consideration of the *insured* having paid the *premium* and in reliance upon the statements in the *schedule*, the *insurer* agrees to provide cover to the *insured* as set out in the *policy*.

Words that appear in italics have special meaning. Headings in bold type do not form part of this wording and only serve for reference or identification purposes.

General Definitions (Applicable to all sections)

- 1 **accessories, tools and spare parts** means the standard ancillary equipment supplied with a *machine* when new.
- 2 **advertising injury** means:
 - 2.1 infringement of copyright of, or passing off of a title or slogan;
 - 2.2 unfair competition, piracy or idea misappropriation contrary to an implied contract;
 - 2.3 invasion of privacy; or
 - 2.4 defamation, libel, slander

committed or alleged to have been committed during the *period of insurance* through any manner of communication given to the public including any advertisement, publicity article, press release, broadcast, telecast, electronic mail, internet, world wide web or exhibit, arising out of the *insured's* advertising activities or any advertising activities conducted on the *insured's* behalf, in the course of advertising the *products*, goods or services related to those *products*.
- 3 **agreed value** means where the *sum insured* for the *machine* listed in the *schedule* is noted as "Agreed Value".
- 4 **aircraft** means any vessel, craft or thing made or intended to fly, move in or through the atmosphere or space.
- 5 **asbestos** means:
 - 5.1 that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or
 - 5.2 that group of man-made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres,

and includes *asbestos products* and *products* containing *asbestos*.
- 6 **business** means the business of the *insured* as shown in the *schedule*.

- 7 **capacity** in relation to a *machine* is determined by factors including:
- 7.1 recognised standards;
 - 7.2 legislation and regulations; and
 - 7.3 manufacturers' recommendations.
- 8 **company** means a legal entity other than a natural person.
- 9 **compensation** means monies paid or payable as a result of any judgment or settlement together with any liability on the *insured's* part to pay legal costs and expenses (other than any Defence Costs).
- 10 **damage** means sudden and unforeseen physical loss, physical damage to or physical destruction of a *machine* and:
- 10.1 includes permanent loss by theft;
 - 10.2 does not include breaking, distortion, seizing, failure or breakdown of a part of a *machine* which is caused by a defect of the part.
- 11 **dangerous or hazardous goods** means items or substances so classified in the relevant Australian Dangerous Goods Code in force during the *period of insurance*. This does not include items or substances classified as "Goods too Dangerous to be Carried" in the Code.
- 12 **electronic data** means including, but is not limited to information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 13 **employment practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise), withholding of salary, wages, entitlements or other employment related benefits in respect of employment by the *insured*.
- 14 **excess** means the amount stated in the *schedule* for the relevant operative section which the *insurer* will not pay in respect of a claim.
- 15 **hired in machines** means machinery and equipment of a nature, type and function as that listed in the *schedule* and that corresponds with the declared business activities of the *insured*. It does not include any *light commercial vehicle*.
- 16 **hook liability** means liability for *property damage* to property not owned by the *insured* but temporarily in the *insured's* possession and only whilst such property is being attached to or detached from, lifted, moved or lowered by any hoist or crane operated by the *insured*.
- 17 **injury** means:
- 17.1 bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
 - 17.2 false arrest, wrongful detention or imprisonment, or malicious prosecution;
 - 17.3 wrongful entry or eviction;
 - 17.4 assault and battery not committed by or at the direction of the *insured* unless committed for the purpose of preventing *injury* and/or *damage* or eliminating danger; or
 - 17.5 libel, slander, defamation of character or invasion of privacy.

- 18 **insured** means the named insured noted in the *schedule*.
- 19 **insurer** means Berkshire Hathaway Specialty Insurance Company (incorporated in Nebraska, USA) ABN 84 600 643 034.
- 20 **law** means any statutory, regulatory or code requirement imposed by the authority of any Act of Parliament or regulation or by-law promulgated by any lawful authority.
- 21 **lessor** means the party identified as the Lessor in the *schedule*.
- 22 **light commercial vehicle** means sedans, utility vehicles, 4x4's, station wagons and any other "motor vehicle" within the meaning prescribed by the Corporations Regulations 2001 (Cth) which when covered by a motor vehicle insurance product would be provided to a person as a "retail client".
- 23 **limit any one loss** means the value stated in the *schedule* for 'Limit Any One Loss'.
- 24 **machine** means an item of machinery identified in the *schedule* and includes any attachment acquired by the *insured* with or for the *machine* that is identified in the *schedule*. A *machine* does not include a *light commercial vehicle*.
- 25 **market value** means the cost to purchase an equivalent model and type of *machine*, taking into account factors including but not limited to: age; wear and tear; and overall condition but not to include secondary ancillary costs such as registration or stamp duty.
- 26 **material change** means any change in the facts or circumstances existing at the commencement of the *period of insurance* which could increase the potential risk of loss or *damage*, including but not limited to changes to the value of any assets and changes to the *business*.
- 27 **occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in *injury*, *property damage* and/or *advertising injury* neither expected nor intended from the standpoint of the *insured*.
- With respect to *injury* or *property damage*, all events of a series consequent on or attributable to one source or original cause during the *period of insurance* shall be deemed one *occurrence*.
- With respect to *advertising injury*, all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants, shall be deemed to arise out of one *occurrence*.
- 28 **official body** means any regulator, disciplinary body, criminal authority, government body, government agency, official trade body, or any other person or body having legal authority to conduct an investigation.
- 29 **overloading** means:
- 29.1 in relation to a *machine*, either being a crane or being engaged in a lifting operation:
- (a) lifting, carrying, moving or lowering; or
 - (b) attempting to lift, carry, move or lower;
- a load that is or becomes greater than the *capacity* of the *machine* at any time during the lifting operation, having regard to the *machine's* configuration; and
- 29.2 in relation to all other *machines*, placing on the *machine* a load heavier or larger than allowed by *law* or the *machine's* specifications.
- 30 **period of insurance** means the period of cover of the contract of insurance as shown in the *schedule*.

- 31 **policy** means this document and any endorsement, specification, attachment or memoranda affixed (or referred to as being affixed) to it and the *schedule*.
- 32 **pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 33 **premium** means the amount that the *insurer* will charge for insurance under this *policy* including any amounts for GST, and other charges.
- 34 **product(s)** means any goods or products (after they have ceased to be in the possession or under the control of the *insured*) which are or are deemed (whether by *law* or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the *insured* or by others trading under the name of the *insured* (including any packaging or container thereof other than a motor vehicle).
- 35 **property damage** means:
- 35.1 physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or
- 35.2 loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the *period of insurance*. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.
- For the purposes of this insurance tangible property does not include any information, facts, programmes, instructions, commands, *electronic data*, and anything else stored as or on, created or used on, or transmitted to or from computers or their software, including, but not limited to, systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices, networks, clouds, or other media used with electronically controlled equipment.
- 36 **registered** means, *with respect to* any *machine* listed in the *schedule* or *substitute machine*, registered for public road use.
- 37 **replacement value** means the cost to replace the *machine* which is a *total loss* with a new *machine* of an equivalent type and model so far as is possible, including any import duties, if applicable.
- 38 **schedule** means the schedule attached to and forming part of the *policy*.
- 39 **substitute machine** means a *machine*:
- 39.1 used by an *insured* as a temporary replacement for a *machine* while the *machine* is undergoing repair, maintenance or servicing because of *damage*;
- 39.2 which is equivalent in size, function and market value to the *machine* for which it is a substitute.
- 40 **sum insured** means the amount specified for the relevant policy section in the *schedule*.
- 41 **territorial limits** means:
- 41.1 with respect to Sections 1 – 3, Australia only;
- 41.2 with respect to Section 4, worldwide, except United States of America and Canada.

- 42 **tool of trade** means with respect to a *registered machine* or *vehicle*, any operational function for which the *machine* or *vehicle* was designed other than road transportation or travel.
- 43 **total loss** means a *machine* which:
- 43.1 is lost or stolen and not recovered; or
 - 43.2 is *damaged* to such an extent it cannot be repaired; or
 - 43.3 the *insurer* considers the cost of repairing to be uneconomical or greater than the *sum insured* for that *machine* less the value of any salvage.
- 44 **vehicle** means any type of machine on wheels or on caterpillar tracks made or intended to be self-propelled by mechanical power.
- 45 **watercraft** means any vessel or craft made to or intended to float on or in or travel on, through or under water.
- 46 **worker** means any person employed by the *insured* or deemed by any *law* or otherwise to be employed by the *insured*.
- 47 **workers' compensation law** means any *law* relating to *compensation* for *injury* to *workers* or employees.

General Conditions (Applicable to all sections)

1 FRAUD

- 1.1 The *insured* will at all times comply with the *insured's* duty of good faith and will not provide false or misleading information to the *insurer*.
- 1.2 The *insured* will answer truthfully, honestly and with due diligence any requests for information made by the *insurer*.

2 EXCESS

- 2.1 The *excess* will apply to each *machine* (including *substitute machines*) for each *occurrence* of *damage*, *injury*, *property damage* or *advertising injury*.
- 2.2 If more than one *excess* applies for any claim or series of claims arising from the one *occurrence*, only the highest single *excess* will be applied.

3 REASONABLE PRECAUTIONS

- 3.1 The *insured* will at all times take all reasonable precautions to prevent any loss, *damage* or liability as insured under this *policy*.

4 MATERIAL CHANGE TO RISK

- 4.1 The *insured* must notify the *insurer* of any *material change* in the *insurer's* exposure under the *policy*.
- 4.2 The *insurer* will not indemnify against any risks arising from the *material change* unless, before any loss, *damage* or liability in connection with those risks occurs, the *insurer* has agreed in writing to extend the *policy* to cover such *material changes*.

- 4.3 Following notification by the *insured* to the *insurer* of such *material changes*:
- (a) the *insurer* will have the right to refuse to extend coverage or to vary the *sum insured, excess, premiums* or terms of the *policy*; and
 - (b) the *insured* will be issued with a revised *schedule* or endorsement, as applicable.

5 COMPLIANCE

- 5.1 The *insured* will at all times:
- (a) service, maintain, use and operate the *machines* strictly in accordance with:
 - (i) manufacturers' and distributors' recommendations and guidelines;
 - (ii) systems and procedures imposed or recommended by *law*, International Standards, Australian Standards and industry standards; and
 - (iii) ensure that anyone servicing, maintaining, using or engagement in the operation of the *machines* or *substitute machines* so complies; and
 - (b) ensure that anyone operating or using a *machine* is:
 - (i) qualified and adequately experienced to operate or use it;
 - (ii) provided with suitable training in its operation or use before operating or using it; and
 - (iii) not suffering from a physical or mental impairment of ability to operate or use it.
- 5.2 If any loss, *damage* or liability results from a failure to comply with any of the above obligations, the *insurer* may be entitled to refuse to pay the indemnity against that loss, *damage* or liability or to significantly reduce the amount that the *insurer* will pay.
- 5.3 Some exclusions do not apply if the *insured* satisfies the *insurer* that the *insured* has complied with the recommendations, guidelines, systems and procedures and taken steps to avoid the loss, *damage* or liability occurring.

6 CLAIMS PROCEDURE

- 6.1 As soon as an *insured* becomes aware of anything that gives rise or could give rise to a claim under the *policy*, the *insured* will:
- (a) immediately notify the *insurer* by telephone or by email at claimsnoticeaustralia@bhspecialty.com;
 - (b) take all precautions to prevent or reduce loss, *damage* or liability as insured under this *policy* (including carrying out necessary minor repairs without first obtaining the approval of the *insurer*); and
 - (c) retain any *damaged machine* or parts thereof, and produce them for inspection; and
 - (d) provide to the *insurer* full details of the claim in writing within three (3) days at Berkshire Hathaway Specialty Insurance Company, GPO Box 650, Sydney NSW 2001, or by email to claimsnoticeaustralia@bhspecialty.com.
- 6.2 No payment will be made to the *insured* under this *policy* if the *insured* has:
- (a) waived any right of recovery or indemnity from others who may be legally or contractually liable for the loss, *damage* or liability;

(b) otherwise prejudiced the *insurer's* ability to settle the claim or pursue a recovery.

7 COOPERATION IN CLAIMS

7.1 The *insured* will:

(a) at its own expense, provide to the *insurer* all cooperation and assistance required by the *insurer*, including but not limited to providing or making available:

i. all information and documents;

) to establish title, ownership and right to possession of property, including but not limited to *machines*;

) to establish the cause of the *damage*;

) relating to the claim for or entitlement to indemnity, including not limited to quantification of the indemnity;

) as to the servicing, maintenance and operation of any equipment, including but not limited to *machines*; and

) constituting any contract or arrangement entered into by or on behalf of an *insured*, including but not limited to contracts of hire; and

ii. all relevant persons for interviews, statements, assistance and the provision of documents and information; and

(b) at its own expense, preserve and protect against *damage* or loss to all *machines*, property, documents and records relevant to a potential or actual claim under the *policy*.

8 RIGHT OF INSPECTION

8.1 The *insurer* has the right to inspect or examine any property or records relating to the *insured's* *business*, including but not limited to *machines* at any time during the *period of insurance*.

8.2 The *insured* will at its own expense assist in the inspections or examinations of the *machines*.

9 SUBROGATION AND RECOVERY

9.1 Upon accepting liability for a claim under this *policy*, the *insurer* is entitled to become subrogated to all of the *insured's* rights of recovery or indemnity from others who may be legally or contractually liable for the loss or expense paid by the *insurer*.

9.2 The *insured* must, at its expense, do and concur with doing anything reasonably required by the *insurer* for the purpose of enforcing this right.

10 SALVAGE

10.1 In the event of the *total loss* of a *machine* or part of a *machine* against which the *insurer* has agreed to indemnify the *insured*, the ownership of the machine or part will pass immediately to the *insurer*.

11 PAYMENT OF CLAIMS

11.1 The *insurer* may, at its election, pay any claim or part claim under Section 1 only to the *lessor* and the *insurer's* obligation to make any payment to an *insured* in terms of this *policy* will be discharged on making that payment to the *lessor*.

12 CANCELLATION - GENERAL

- 12.1 The *insured* may cancel the whole or any section of the *policy* at any time by providing three (3) days' notice in writing to the *insurer*, such cancellation to be effective no earlier than the end of the three (3) days' of notice.
- 12.2 If the *insured* cancels, the *insurer* will refund to the insured the *premium* relating to the cancelled part of the *policy* for the unexpired part of the *period of insurance* on a pro rata basis subject to any minimum deposit *premium*.
- 12.3 The *insurer* may cancel the whole or any part of the *policy* in accordance with the Insurance Contracts Acts 1984.
- 12.4 If the *insurer* cancels, the *insurer* will refund to the *insured* the *premium* relating to the cancelled part of the *policy* for the unexpired part of the *period of insurance*.

13 OFFICE OF FOREIGN ASSETS CONTROL

- 13.1 The *insurer* has obligations under international sanctions regimes, including sanctions administered and enforced by the United States of America's Office of Foreign Assets Control (OFAC), and within 45 days of the inception date of this *policy*, the *insurer* will screen the *insured* and its directors and officers against OFAC's Specially Designated Nationals and Blocked Persons List.

14 JURISDICTION

- 14.1 The *policy* will be interpreted by the courts of and according to the laws of the Australian State or Territory in which the *policy* was issued.

15 GOODS AND SERVICES TAX (GST)

- 15.1 For the purpose of this Condition and whenever used elsewhere in the *policy*, "GST", "Input Tax Credit" and "acquisition" will have the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 and related legislation.
- 15.2 The *insured's* GST status will determine the amount paid to the *insured* by the *insurer* under this *policy*.
- 15.3 The *insured* will provide the *insurer* with their:
- (1) Australian Business Number; and
 - (2) Taxable Percentage, being the entitlement of the insured to an Input Tax Credit on the *premium* as a percentage of the total GST on that *premium*.
- 15.4 If the *insured*:
- (1) is not registered for GST, the *sum insured* and any limit of indemnity will be inclusive of GST;
 - (2) is registered for GST, the *sum insured* and any limit of indemnity will be exclusive of GST and the *insurer* will also pay any GST that the *insured* is liable to pay in any respect of any acquisition included in the indemnity.
- 15.5 The *insurer* will not pay any GST to the extent that the *insured* is entitled, or would if making the relevant acquisition be entitled, to an Input Tax Credit.
- 15.6 The *insured* will refund to the *insurer* or pay any amount of GST payable as a result of any incorrect information provided by the *insured*.

15.7 The *insurer* will pay only the amount of GST (less the entitlement of the *insured* to an Input Tax Credit) based on the amount that the *insurer* pays under the *policy* and any relevant acquisition included in the indemnity.

16 INTERESTS OF OTHER PARTIES

16.1 Except where expressly provided to the contrary, this *policy* does not cover any person or *company* not named as an *insured* even if the person's or *company's* interest is noted in the *schedule*.

17 CROSS LIABILITY

17.1 If the *schedule* names two or more *insureds*:

- (1) each one is both individually and collectively responsible for compliance with all of the conditions of the *policy* that are the responsibility of an "insured"; and
- (2) as against each *insured*, the *insurer* will be entitled to rely on any defence available against any other *insured*.

17.2 This condition does not apply to the *lessor* as a named *insured*.

18 OTHER INSURANCE

In the event of a claim under the *policy*, the *insured* must notify the *insurer* of any other insurance concerning the same loss or *damage* or liability of which the *insured* is aware.

19 TITLES, HEADINGS AND PLURALS

This *policy* and any endorsements attached to this *policy* shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this *policy* or the *schedule* shall bear such specific meaning wherever it may appear. References in the singular shall be deemed to include the plural and vice versa and words depicting any gender include reference to all other genders.

20 ACQUIRED ENTITIES

This *policy* extends to include any company, subsidiary, organisation, firm or other entity formed, purchased or otherwise acquired by the *insured* during the *period of insurance* provided that the *insured*:

- 20.1 holds a controlling interest in such entity;
- 20.2 advises the *insurer* of its interest in such entity within thirty (30) days following the date of attachment of such interest; and
- 20.3 declares to the *insurer* the number of additional *machines* to be *insured* and pays such additional *premium* as may be required by the *insurer*.

21 CONFORMANCE

In the event any term or condition of this *policy* is found to be invalid, illegal or unenforceable, in whole or in part, such term or condition or part thereof shall be deemed not to apply to this *policy*. However, the validity, legality and enforceability of all other terms and conditions remains unchanged.

GENERAL EXCLUSIONS (Applicable to All Sections)

1. This *policy* does not insure against any loss, *damage*, liability or costs directly or indirectly caused by, arising from or in any way connected with:
 - 1.1 confiscation by customs or another government authority;
 - 1.2 war or other acts of foreign enemy (whether war is declared or not), revolution or other civil disturbances or commotion;
 - 1.3 ionising radiation from or contamination radioactivity from nuclear fuel, nuclear waste, the combustion of nuclear fuel;
 - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of a nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
 - 1.5 a weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
 - 1.6 a chemical, biological, biochemical or electromagnetic weapon;
 - 1.7 the use or operation, as a means of inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system;
 - 1.8 an act of terrorism or an action taken to control, prevent or suppress or attempt to control, prevent or suppress an act of terrorism;
 - 1.9 sonic pressure waves in connection with aircraft and other aerial devices;
 - 1.10 fines or penalties;
 - 1.11 exemplary, aggravated or punitive damages;
 - 1.12 additional damages resulting from the multiplication of compensatory damages;
 - 1.13 liquidated damages;
 - 1.14 any business activities other than those declared to the *insurer* in writing;
 - 1.15 *asbestos*.
2. The *insurer* will not indemnify the *insured* for a claim made under this *policy* where payment of such claim would expose the *insurer* to any sanction, prohibition, or restriction under United Nations resolutions, or the trade or economic sanctions, *law*, or regulations of Australia, the European Union, United Kingdom or the United States of America.
3. This *policy* does not provide any coverage for any *machine*, property, location, interest, loss, *damage*, cost, expense, damage or claim that would be in violation of any United States of America laws or sanctions, including, but not limited to, any sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC").
4. No payment will be made for anything in respect of which the *insured* is entitled to indemnity under another contract of insurance that is required to be effected by or under a *law* in Australia.
5. No payment will be made for any loss, *damage*, liability or costs in respect of which the *insured* has released or waived any *insured's* right to recovery, subrogation, indemnity or contribution from another.

6. This *policy* does not insure *damage to light commercial vehicles* or any loss, damage, liability or costs directly or indirectly caused by, arising from or in any way connected with the use or operation of a *light commercial vehicle*.
7. This *policy* does not insure against any *damage*, loss, liability or costs directly or indirectly caused by, arising from or in any way connected with:
 - 7.1 use or operation of a *machine* underground;
 - 7.2 use or operation of a *machine* for or in connection with oil, gas, or geothermal drilling or wells;
or
 - 7.3 placement of a *machine* on a watercraft.

EXCLUSIONS APPLICABLE TO SECTIONS 1 TO 3 INCLUSIVE

- 8 Sections 1 to 3 of this *policy* do not insure any loss, *damage*, liability or costs directly or indirectly caused by, arising from or in any way connected with:
 - 8.1 use of a *machine* for any unlawful purpose, unless the *insured* proves it was unaware and could not reasonably have been aware of such use;
 - 8.2 the operation of a *machine* by any person:
 - (a) not qualified, unlicensed, not suitably licensed or not suitably experienced;
 - (b) suffering from a physical or mental impairment of ability;
 - (c) under the influence of or affected by drugs or alcohol;
 - (d) with a level of drugs or alcohol in the breath, blood or urine in excess of that permitted by *law* to operate a *machine* or drive a *registered machine*; or
 - (e) who refused to provide or allow the taking of a sample of breath, blood or urine for testing by law enforcement or work site safety authorities.

This exclusion will not apply (but only to the extent of coverage for *damage to a machine*) if the *insured* proves that it did not consent to the *machine* being operated by that person, it complied with Condition 5.1 and it was unaware, and could not reasonably have been aware, of the matters in paragraphs (a) – (e) as applicable;
 - 8.3 *overloading* of a *machine*, irrespective of the *insured's* knowledge;
 - 8.4 incorrect loading of a *machine*, irrespective of the *insured's* knowledge;
 - 8.5 operation of a *machine* while its load-measuring instruments or limiters are defective, inoperative or turned off, whether or not with the *insured's* knowledge;
 - 8.6 the failure of:
 - (a) an *insured*;
 - (b) a director or partner of an *insured*;
 - (c) a *worker*; or
 - (d) a person operating the *machine*,

to service, maintain, use or operate the *machine* strictly in compliance with systems and procedures imposed or recommended by applicable *law*, international standards, Australian Standards, industry standards and manufacturer's and distributor's recommendations or guidelines, irrespective of the *insured's* knowledge;

8.7 acts or omissions of:

- (a) an *insured*;
- (b) a director or partner of an *insured*;
- (c) a *worker*; or
- (d) a person operating the *machine*,

with the intent of causing or with reckless disregard to the risk of causing *damage, injury* or *property damage* to any person or property irrespective of the *insured's* knowledge;

8.8 a lack of, inadequate or incorrect lubricant, coolant, oil, or other dry or liquid substance, irrespective of the *insured's* knowledge;

8.9 tests or experiments imposing abnormal operating conditions on a *machine*, irrespective of the *insured's* knowledge;

8.10 defects in design, however this exclusion will not apply to defects that are not known or could not reasonably have been known to the *insured* at the time of the *damage* occurring;

8.11 operation of a *machine* that:

- (a) has not been commissioned as a commercially operating *machine*;
- (b) is a prototype or experimental *machine*; or
- (c) is being developed or is still in the course of development;

8.12 the application of a tool or process to the part during inspection, maintenance, servicing, modification or repair;

8.13 scratching or chipping of painted or polished surfaces;

8.14 wear and tear, corrosion, rusting, erosion, fatigue or gradual deterioration of a *machine* or part of a *machine*;

8.15 any parts, attachments or equipment that, by their nature, require regular and/or periodic replacement; or

8.16 breaking, distortion, seizing, burning, failure or breakdown of any part unless expressly covered.

9 Sections 1 to 3 of this *policy* do not insure *damage* to:

9.1 any safety or protective device(s);

9.2 tyres, including as a result of the application of brakes, or normal wear and tear;

9.3 batteries, including as a result of a defect with the batteries, unless the defect was caused by *damage* to a *machine*; or

9.4 foundations or masonry.

PART A: PROPERTY & CONSEQUENTIAL LOSS

Section 1: Material Damage

Section 2: Consequential Loss

Section 1 - Material Damage to Machines

10 THE INSURING CLAUSE

10.1 Subject to the terms, conditions and exclusions of Section 1 and this *policy* generally, the *insurer* will indemnify the *insured* for *damage* to a *machine* that occurs:

- (a) within the *territorial limits*; and
- (b) during the *period of insurance*

in accordance with Section 1 Basis of Settlement and in accordance with the Additional Covers for Section 1.

11 BASIS OF SETTLEMENT

11.1 Repairable Damage

Where the *machine* is *damaged* but not a *total loss*, the indemnity payable by the *insurer* will be the lesser of:

- (a) repairing the *machine* including re-commissioning, re-erecting and re-installing the *machine* to restore it to a condition equal to its condition immediately prior to the *damage*;
- (b) the *market value* of the *machine* immediately prior to *damage*; or
- (c) the *sum insured* of the *machine* as listed in the *schedule*.

However, in that event:

- (i) no deduction will be made for depreciation in respect to normal working, serviceable, expendable parts that are replaced;
- (ii) no cover is provided for the cost of any alterations, additions, improvements, or overhauls unless the *insurer* has provided its prior written consent to such costs; and
- (iii) if repairing, re-commissioning, re-erecting and reinstalling the *machine*, the *insurer* may, at its option, instead make a cash payment to the insured equivalent to the cost of repairing, re-commissioning, re-erecting and reinstalling the *machine*.

11.2 Total Loss

Where the *machine* is a *total loss*, the indemnity payable by the *insurer* will be the lesser of:

- (a) the *market value* of the *machine* immediately prior to *damage*;
- (b) the *sum insured* of the *machine* as listed in the *schedule*; or
- (c) replacement/reinstatement of the *machine* which is a *total loss* with a new *machine* if the *machine* was less than three (3) years of age, up to a cost equal to the *replacement value*.

11.3 Agreed Value

Where a *machine*, irrespective of age, having been noted in the *schedule* as being subject to *agreed value*, is a *total loss*, the *insurer* will pay the stated *agreed value*.

11.4 The indemnity under clause 11.1 and clause 11.1(c)(iii) will not include any costs covered in **Additional Cover - Recovery Costs (Damage)**.

12 ADDITIONAL COVERS

The indemnity provided under each of these Additional Covers is in addition to any payment under clause 11 (Section 1 Basis of Settlement). The indemnity is limited to the amount and/or indemnity period shown in the *schedule* adjacent to each additional cover.

12.1 Appreciation in Value (Repairable Damage)

The *insurer* will pay up to a maximum of an additional twenty five percent (25%) above a *damaged machine's sum insured* as listed in the *schedule* in order to match the then *market value* of the *machine*, provided:

- (a) upon the occurrence of *damage*, the *damaged machine* was greater than three (3) years' old since its first commission;
- (b) at the time of *damage*, the *market value* of the *machine* has increased beyond the value stated in the *schedule*;
- (c) The *sum insured* accurately reflected the *market value* of the *machine* at the commencement of the *period of insurance*.

12.2 Automatic Additions

This *policy* extends to include any *machines* acquired by the *insured* during the *period of insurance* provided that:

- (a) the *machines* are of a similar kind to the *machines* currently *insured* under the *policy*;
- (b) the *insured* declares to the *insurer* no later than ninety (90) days after the acquisition the value of the acquired *machines*;
- (c) the *insured* must pay the rateable proportion of the *premium* from the date of acquisition of such *machines* to the expiry of the *period of insurance*; and
- (d) the value of such newly acquired *machines* does not exceed the amount shown in the *schedule* as the sub-limit for Automatic Additions.

12.3 Damage to Lifted Goods

- (a) The *insurer* will indemnify the *insured* for *damage* to goods owned by or in the possession, care, custody or control of the *insured* occurring while the goods are suspended from a *machine* designed to lift them.
- (b) No cover is provided under this **Additional Cover – Damage to Lifted Goods** for:
 - (i) *damage* to or destruction of the goods caused directly or indirectly by or arising from a defect in or the fragility of the goods or their container;
 - (ii) *damage* caused by the manner in which the goods were lifted; or
 - (iii) any liability of the *insured* to a third party whatsoever.

- (c) The Basis of Settlement under this **Additional Cover – Damage to Lifted Goods** will be:
- (i) where the goods are *damaged*; the cost to reinstate the *damaged* goods in accordance with the Basis of Settlement in clause 11.1 as if the goods were a *machine*; or
 - (ii) where the goods are lost or destroyed; the cost to replace the goods with similar goods in a condition equal to but not better than their condition immediately prior to the *damage*.

12.4 **Emergency Service Charges**

- (a) In the event the *insurer* indemnifies the *insured* for *damage* to a *machine*, the *insurer* will also indemnify the *insured* for costs or fees charged by the fire brigade or other emergency service where:
- (i) the *insured* is legally required by *law* to pay those costs or fees; and
 - (ii) the costs or fees arise from *damage* to a *machine* which the *insurer* has agreed to indemnify pursuant to this *policy*.

12.5 **Expediting Costs**

- (a) If the *insurer* is liable to indemnify the *insured* for *damage* to a *machine*, the *insurer* will also indemnify the *insured* for the reasonable additional costs necessary to:
- (i) effect immediate temporary repairs to the *machine*; or
 - (ii) expedite permanent repairs to the *machine*, excluding the cost of the permanent repairs themselves,
- provided the *insurer* has provided its written consent prior to the *insured* incurring such expediting costs.

12.6 **Extra Costs of Reinstatement**

- (a) If the *insurer* is liable to indemnify the *insured* for *damage* to a *machine*, the *insurer* will also pay the reasonable extra costs of reinstating the *damaged machine* which are necessarily incurred to:
- (i) repair *damage* to a *machine* where the repair requires a part that is no longer available; or
 - (ii) comply with any *law* to allow the *insured* to re-commence normal use of the *machine*.

Special Provision

The amount payable will not include any cost to comply with a *law* that the *insured* had been required to comply with prior to the *damage* or had the *damage* not occurred.

12.7 **Locks and Keys**

- (a) If the keys to a *machine* are lost, destroyed or *damaged*, or there are reasonable grounds to believe the keys may have been illegally duplicated, the *insurer* will indemnify the *insured* for the cost of replacing and recoding the locks and/or keys.
- (b) This Additional Cover is not subject to there being any *damage* to the *machine*, however an excess of \$250 per claim will apply.

12.8 Recovery Cost (No Damage)

- (a) The *insurer* will indemnify the *insured* for the reasonable costs of recovering or attempting to recover a *machine* which, as a result of a sudden and unexpected event occurring during the *period of insurance*, has without suffering *damage*:
- (i) become immobilized or inaccessible; and
 - (ii) is unable to be fully operated without causing *damage* to the *machine*,
provided such costs are incurred with the *insurer's* prior written consent.
- (b) The standard *excess* applicable to Section 1 will apply to each event.

12.9 Recovery Costs (Damage)

- (a) If the *insurer* is liable to indemnify the *insured* for *damage* to a *machine*, the *insurer* will also cover the reasonable costs of:
- (i) if the *machine* is destroyed, disposing of the *machine*;
 - (ii) if the *machine* is *damaged* but capable of repair, dismantling, recovering and transporting the *machine* then returning the *machine* to where it is usually kept following the completion of the repair;
 - (iii) protecting the *machine* from further *damage* pending repair; and
 - (iv) removing debris and fluids that have escaped from the *machine* as a result of the *damage*,
provided such costs are incurred with the *insurer's* prior written consent.

12.10 Removal of Debris

The *insurer* will indemnify the *insured* for the reasonable costs of removal and clean-up of debris arising from *damage* to a *machine*, including where removal and/or clean-up is required as a consequence of goods/material falling from a *machine* following *damage*.

12.11 Repatriation of Workers

If a *machine* suffers *damage*, the *insurer* will pay the reasonable costs and expenses of overnight accommodation and return of *workers* provided:

- (a) the *machine* is more than 250 kms from its depot or usual place of departure;
- (b) the *machine* is unroadworthy and cannot be driven;
- (c) the *machine* was being used in connection with the *insured's* business;
- (d) the costs do not relate to emergency medical transportation; and
- (e) there was no intention to pay for overnight accommodation on the date of *damage*.

12.12 Signwriting

If a *machine* sustains *damage*, the *insurer* will pay the reasonable costs of any signwriting, fixed advertising signs, artwork or the like in or on the *machine* to restore the *machine* to the state it was in immediately prior to the *damage*.

12.13 Substitute Machines (Material Damage & Hire Costs)

Should an equivalent *substitute machine* not listed in the *schedule* be used by the *insured* owing to a *machine* listed in the *schedule* being lost, *damaged*, repaired, serviced or inoperable:

- (a) Cover for the *substitute machine* will be provided according to the terms and conditions of Section 1 of this *policy*. Cover for the *substitute machine* will cease upon return to its owner; and
- (b) the *insurer* will indemnify the *insured* for the costs of hiring in an equivalent *substitute machine*. However, payments will not continue if:
 - (i) The *machine* is recovered undamaged following a theft;
 - (ii) In the event of a *total loss*, the payment has been finalised; or
 - (iii) The *machine* has been repaired and is awaiting collection.

12.14 Windscreen Replacement

The *insurer* will indemnify the *insured* for the cost to repair or replace a damaged windscreen on a *machine* with nil *excess*, provided no other *damage* has occurred to the *machine*.

Cover for windscreen replacement is limited to a maximum of five (5) excess free windscreen replacements in any one *policy period*.

12.15 Worker's Property Damage

- (a) If the *insurer* is liable to indemnify the *insured* for *damage* to a *machine*, the *insurer* will also indemnify a *worker* for *damage* to the *worker's* personal property as a direct consequence of *damage* to the *machine*.
- (b) The basis of settlement under this **Additional Cover – Worker's Property Damage** will be:
 - (i) where the *worker's* personal property is *damaged*, the cost to reinstate the *damaged* property in accordance with the Basis of Settlement in clause 11.1 as if that property were a *machine*; or
 - (ii) where the *worker's* personal property is lost or destroyed, the cost to replace the personal property with similar property in a condition equal to but not better than its condition immediately prior to the *damage*.

13 Optional Endorsements

The following Optional Endorsements are covered under Section 1 only where they have been listed and noted as 'Insured' in the *schedule*.

13.1 Damage to Hired in Machines (Blanket Cover)

Cover provided by Section 1 will include coverage for the *insured's* contractual obligations, under the terms of any applicable hiring agreement or otherwise, to pay for *damage to hired in machines* whilst in the *insured's* custody, care or control including whilst during any land transit within the *territorial limits*.

Such indemnity is limited to the amount specified in the *schedule* as the Limit of Indemnity applicable to this Optional Endorsement 13.1.

13.2 Continuing Hire Charges

Cover provided by Section 1 will include indemnity in respect of the *insured's* contractual obligations under the terms of any applicable hiring agreement or otherwise to pay continuing hire charges and as a consequence of *damage* but does not include any liability for demurrage and any other consequential loss to any party whatsoever.

Such coverage is limited, in respect of each *damaged machine*, to the lesser of:

- (a) the amount specified as the Limit of Indemnity for 'Hiring Charges' in the *schedule* less the aggregate of all amounts already paid by the *insurer* for hiring charges in respect of the *machine* under this Optional Endorsement 13.2; or
- (b) the amount of hiring charges for the *machine* payable by the *insured* under the hire contract for the period commencing on the fifteenth (15th) day after the *damage* and ending at the earlier of:
 - (i) the end of the 'indemnity period' applying to this Optional Endorsement 13.2 specified in the *schedule*; or
 - (ii) the date on which the *machine* is repaired or replaced.

Section 2 – Consequential Loss

This coverage is not automatic. Cover will only apply where identified as 'Insured' in the *schedule* for the relevant Consequential Loss option(s).

14 DEFINITIONS APPLICABLE TO SECTION 2 ONLY

- 14.1 **income** means the total gross income derived from the *machine* whilst undertaking activities related to the *insured's business*, less the ordinary costs of operating the *machine*.
- 14.2 **increased costs of working** means the additional expenditure reasonably incurred for the purpose of avoiding or diminishing the reduction of *income* resulting from *damage* to a *machine* including using or hiring substitutes or alternatives for the *machine*.
- 14.3 **indemnity period** means the period beginning with the occurrence of *damage* and ending at the earliest of the following:
 - (a) the date the *machine* is fully repaired and returned to the *insured*;
 - (b) the date the *machine* is permanently replaced and given to the *insured*; or
 - (c) the date the *indemnity period* shown in the *schedule* expires.
- 14.4 **interruption** means prevention of or interference with the normal use or operation of a *machine* to perform the functions for which it was designed in the course of the *business*, caused by and commencing upon *damage* thereto.
- 14.5 **lease payments** means payments due under any lease or applicable valid financial agreement for up to twelve (12) months from date of *damage* or the date of repair or replacement of the *machine*, whichever is first in time.
- 14.6 **shortfall in weekly income** means the amount by which the *weekly income* falls short of the *average weekly income* as a result of the *damage*.

- 14.7 **weekly income** means the amount of *income* derived from the operation of the *machine* whilst undertaking activities related to the *insured's business* during the period of a calendar week.

15 CONSEQUENTIAL LOSS COVERAGE OPTIONS

A. Increased Costs of Working (ICOW)

(i) The Coverage

Subject to the terms, conditions, exclusions and definitions for this Consequential Loss section and this *policy* generally, the *insurer* will indemnify the *insured* for the *interruption* to the *business* as a consequence of *damage* to a *machine* indemnified under Section 1 in accordance with ICOW Basis of Settlement.

(ii) The ICOW Basis of Settlement

The *insurer* will pay to the *insured* after deducting the *excess*, the *increased costs of working* during the *indemnity period* up to the *sum insured* applicable for *increased costs of working* as noted in the *schedule*.

B. Loss of Revenue

(i) The Coverage

Subject to the terms, conditions, exclusions and definitions for this Consequential Loss section and this *policy* generally, the *insurer* will indemnify the *insured* for *shortfall in weekly income* to the *business* caused as a consequence of *damage* to a *machine* indemnified under Section 1 in accordance with the Loss of Revenue Basis of Settlement.

(ii) Loss of Revenue Basis of Settlement

The *insurer* will pay to the *insured* after deducting the *excess* the difference between:

- (a) the average weekly revenue derived from the operation of the relevant *machine*; and
- (b) any revenue derived from the *machine* or any substitute *machine* utilised during the *indemnity period*, less any savings in the costs associated with using the *damaged machine* as a result of its inactivity or reduced activity.

C. Financed Machines – Gap Value Protection

(i) The Coverage

Subject to the terms, conditions, exclusions and definitions for this Consequential Loss section and this *policy* generally, in the event of *damage* to a *machine* under Section 1 resulting in *interruption*, the *insurer* will indemnify the *insured* for payments owing under any applicable hire purchase agreement, lease or other financial agreement as at the date of *damage*.

(ii) Basis of Settlement

The *insurer* will pay the difference between the *market value* of the *machine* immediately before the *damage* and that remaining owed under any applicable lease or finance agreement less any payments in arrears (including interest) up to a maximum of twenty five percent (25%) of the *market value*.

D. Financed Machines – Payments Protection

(i) The Coverage

Subject to the terms, conditions, exclusions and definitions for this Consequential Loss section and this *policy* generally, in the event of *damage* to a *machine* under Section 1 resulting in *interruption*, the *insurer* will indemnify the *insured* for *lease payments* under a continuing hire charges owing under any applicable hire agreement, lease or other financial agreement as at the date of *damage* during the *indemnity period*.

(ii) Basis of Settlement

The *insurer* will pay up to a maximum of the Limit of Indemnity as stated in the *schedule* for Financed Machines – Payments Protection in any one *period of insurance* as follows:

- (a) If the *indemnity period* is less than one month – up to one month’s payment under the relevant agreement; or
- (b) If the *indemnity period* is greater than one month – on a daily pro-rata basis.

16 CONDITIONS APPLICABLE TO SECTION 2

- 16.1 The *insured* shall take all reasonable and appropriate actions to minimise or reduce any *interruption* as a consequence of *damage* to a *machine*, including using or hiring substitutes or alternatives for the *machine* during the *indemnity period*.
- 16.2 There shall be no coverage under Section 2 for any *income* that could have been avoided by taking all reasonable steps to reduce the loss of *income* including hiring a *substitute machine* during the *indemnity period*.

PART B - LIABILITY

Section 3: Registered Road Risk Liability

Section 4: Combined General & Products Liability

EXCLUSIONS APPLICATION TO SECTION 3 ONLY

- 17 The *insurer* will not indemnify the *insured* or any other person claiming indemnity under this Section 3 (Registered Machine Liability) for or in respect of:
- 17.1 any liability which is covered by or within the scope of any statutory compulsory insurance or fund, or accident compensation scheme, or insurance required to be effected by or under a *law*, operating anywhere in Australia governing the payment of damages, compensation or expenses (whether limited in amount or not) for *injury*, or the compulsory insurance of any liability for such payment (all referred to in this clause 17 as a “statutory scheme”), caused by, through, or in connection with the use of a *machine*;
 - 17.2 any amount of a kind which would be insured under any statutory scheme, but which amount is not otherwise payable under such statutory scheme because it is in excess of that recoverable under any statutory scheme because of statutory or other limits on amounts payable for that individual loss under such statutory scheme;
 - 17.3 any claim for which the *insured* would have been partially or wholly compensated but for the *insured's* failure to insure or to register the *machine* or to lodge a claim in accordance with a requirement of any statutory scheme;
 - 17.4 any liability for damages, compensation or expenses for which the right to claim has been abolished or in any way limited by any *law*;
 - 17.5 any liability arising from the use of a *machine* in a race, speed trial or reliability trial;
 - 17.6 any liability arising from carrying a larger number of passengers than is permitted by *law* or by the *machine's* specifications;
 - 17.7 any liability arising from carrying or towing a load heavier or larger than is permitted by *law* or by the *machine's* specifications;
 - 17.8 any liability arising from the use of a *machine* for carrying, or otherwise in connection with, a substance identified as “Goods Too Dangerous to Transport” or their equivalent in the Australian Dangerous Goods Code;
 - 17.9 any liability arising from the use of any *machine* as a *tool of trade*;
 - 17.10 any liability arising from the loading or unloading of things on or from a *machine*, except where such loading or unloading occurs on a carriageway or thoroughfare.

EXCLUSIONS APPLICABLE TO SECTION 4 ONLY

18 Section 4 does not provide cover for any liability directly or indirectly caused by, in connection with, contributed to or by or arising from:

18.1 Advertising Injury

- (a) failure of performance of contract, but this shall not relate to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;
- (b) incorrect description of any article or commodity; or
- (c) mistake in advertised price.

18.2 Aircraft, Watercraft, Hovercraft

the ownership, maintenance, operation, possession or use by or on behalf of the *insured* of:

- (a) Any *aircraft* or aerial device;
- (b) Any *watercraft* exceeding ten (10) metres in length; or
- (c) Any hovercraft.

18.3 Aircraft and Watercraft Products

any *product* which is incorporated into the structure, machinery or controls of any *aircraft*, aerial device, *watercraft* or hovercraft.

18.4 Change in Business

any change in the nature of the *insured's business* which:

- (a) occurred during the *period of insurance*; and
- (b) was known by the *insured*, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of *injury* or *property damage* for which indemnity is provided by this *policy*.

For the purposes of this exclusion, where the *insured* is a corporate body, the knowledge of any director or officer of the *insured* shall be deemed to be the knowledge of the *insured*.

18.5 Design, Formula, Plan or Specification

any defective design or error in formula, plan or specification of any of the *insured's products*.

Provided that this exclusion does not apply to liability directly arising out of advice given by or on behalf of the *insured*, where no fee is charged, in respect to the use of the *insured's products*.

18.6 Faulty Workmanship

any liability arising out of or in any way connected with the cost of reinstating, repairing, replacing, performing, completing, correcting or improving any faulty work done or undertaken by or on behalf of an *insured*.

18.7 Injury to Workers

injury to any *worker*, provided that if the *insured*:

- (a) is 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) for such *injury*; or
- (b) is not required to so insure or otherwise fund such liability by reason only that the *injury* is to a person who is not a *worker* or employee within the meaning of the relevant *workers' compensation law* or the *injury* is not an *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 fund, scheme, policy of insurance or self-insurance arrangement had the *insured* complied with its obligations pursuant to such *law*.

18.8 Loss of Use

the 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* of any contract or agreement; or
- (b) the failure of any *product* to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the *insured* but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the *product* after such *product* has been put to use by any person or organisation other than the *insured*.

18.9 Product Guarantee

any product guarantee or warranty given by or on behalf of the *insured* but this exclusion shall not apply to the requirements of any Australian Federal, State or Territory legislation with respect to *product* safety and information.

18.10 Professional Indemnity

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

However, this exclusion shall not apply to:

- (a) the *insured's* liability in respect of *injury*, *property damage*, *advertising injury* resulting from the provision of professional advice or services, or any error or omission in connection with the *insured's products* which is not given for a fee; or
- (b) the rendering of first aid or medical services on the *insured's* premises by persons employed by the *insured*. For the purpose of this sub-section 18.10(b), medical services excludes advice or services provided by a qualified medical practitioner.

18.11 Recall of Products

the withdrawal, recall, inspection, repair, adjustment, removal, replacement or loss of use of any *product* or work completed for the *insured* and/or the withdrawal or recall of any property of which such *product* forms a part.

18.12 Reinstatement, Repair or Replacement of Products

- (a) any *property damage* to any *product* or any property of which such *product* forms a part if such *property damage* is attributable to any defect therein or the harmful nature or unsuitability thereof, however this exclusion shall not apply to *property damage* to other property resulting therefrom.
- (b) any *property damage* to any part of any property that must be repaired, reconditioned, reinstated, corrected or replaced by reason of incorrect work performed by the *insured* or on the *insured's* behalf, or by reason of materials or equipment which are or are proved to be defective or inadequate in connection with such work, however this exclusion does not apply to *property damage* resulting from such work.

18.13 Tobacco

any *injury* sustained due to the inhalation or ingestion of, or exposure to:

- (a) tobacco or tobacco smoke; or
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

18.14 Vehicles

the ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the *insured* of any *registered machine* or *vehicle* or trailer which is required by *law* to be registered or in respect of which there is required by *law* to be in force a policy of compulsory liability insurance or in relation to which there exists a statutory scheme providing compensation for *injury*, but this exclusion does not apply to:

- (a) *injury* for which no indemnity is or would be available to the *insured* under the said policy of compulsory liability insurance had the *insured* complied with its obligations pursuant to that *law* requiring a policy of liability insurance to be in force;
- (b) *injury* caused by the use of any tool or plant forming part of or attached to or used in connection with any *vehicle* or trailer for which no indemnity is or would be available to the *insured* under the said policy of compulsory liability insurance had the *insured* complied with its obligations pursuant to that *law* requiring a policy of liability insurance to be in force;
- (c) *property damage* caused by the use of any tool or plant forming part of or attached to or used in connection with any *registered machine, vehicle* or trailer;
- (d) *property damage* to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any *registered machine, vehicle* or trailer or of the load carried thereon; or
- (e) *property damage* to any *registered machine, vehicle* or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the *insured*) temporarily in the *insured's* custody or control for the purpose of parking which *damage* arises directly out of such parking.

EXCLUSIONS APPLICABLE TO SECTIONS 3 AND 4 ONLY

19 Sections 3 and/or 4 do not provide cover for any liability directly or indirectly caused by, in connection with, contributed to or by or arising from:

19.1 Accident/Workers' Compensation

any liability for:

- (a) any *workers' compensation law*; or
- (b) the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or
- (c) *employment practices*.

19.2 Contractual Liability

- (a) any liability assumed under the terms of a contract, agreement, guarantee or warranty unless and only to the extent that the *insured* would have been liable in the absence of such contract, agreement, guarantee or warranty; or
- (b) any liability assumed where the *insured* may have been able to recover from another party but for an agreement between the *insured* and such party where the *insured* has waived, released or abandoned any right of recourse or recovery against any party.

However, this exclusion 19.2 shall not apply to the extent:

- (i) that such liability would have been implied by *law* or would otherwise have existed notwithstanding such a contract or agreement; or
- (ii) that the liability arises from a provision in a legally binding written contract for the lease of real or personal property; or
- (iii) the liability is assumed by the *insured* under a warranty of fitness of quality on the Insured's *products*.

19.3 Electronic Data

any *injury, property damage, advertising injury* or any other loss, cost or expense of whatsoever nature directly or indirectly caused by or resulting from or in connection with any actual or alleged:

- (a) unauthorized or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of *electronic data*, including, but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information;
- (b) violation of any statute, regulation, common-law, or any other *law* regulating or protecting access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of *electronic data*.

This exclusion applies to, among other things, damages or amounts associated with any notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other loss, cost or expense, whether incurred by the *insured* or others, arising out of any access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information that is subject to this exclusion.

However, this exclusion will not apply to part B of this *policy* for any resultant *injury* or *property damage* as defined in the General Definitions.

19.4 **Pollution**

- (a) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of *pollutants*;
- (b) any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of *pollutants*;
- (c) testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising *pollutants* or their effect; or
- (d) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of *pollutants* caused by any *product* that has been discarded, dumped, abandoned or thrown away by others.

Provided that this exclusion 19.4 (a), (c) and (d) shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place during the *period of insurance*.

The total aggregate liability of the *insurer* for all claims covered in any one *period of insurance* in respect of this exclusion 19.4 shall not exceed the Limit of Indemnity shown in the *Schedule*.

19.5 **Property Owned by or in the Care, Custody or Control of the Insured**

property damage to property owned by the *insured* or held in trust or in the custody or control of the *insured* but this exclusion 19.5 does not apply to *property damage* to:

- (a) personal property of directors, *workers* and visitors of the *insured*;
- (b) premises (including fixtures and fittings) not owned by the *insured*:
 - i. at which the *insured* is undertaking work in connection with the *business* but no indemnity is granted for *property damage* to that part of the property on which the *insured* is working and which arises out of such work;
 - ii. which are leased, rented or loaned to the *insured*; or
- (c) *vehicles* (including *accessories, tools and spare parts* thereon) not owned or used by the *insured* in connection with the *business* whilst within a car park belonging to or under the control of the *insured* provided that the *insured*, as a principal part of the *business*, does not operate the car park for reward

but the total aggregate liability of the *insurer* during any one *period of insurance* under this exclusion 19.5 in respect of all claims arising out of any one *occurrence* is limited to the sub limited amount specified in the *schedule* for property in the *insured's* Physical Possession or Legal Control.

Provided further that no cover is provided under this exclusion 19.5 for any claim, or part of a claim, for which cover is available under Part A of this *policy*.

19.6 **Waiver of Legal Rights**

waiver or release of any legal right(s) either in whole or in part, an *insured* provided, either expressly or impliedly, to recover indemnity, contribution or damages from another.

Section 3 – Registered Road Risk Liability

20 **INSURING CLAUSE**

Subject to the terms, conditions, exclusions and definitions of Section 3 and this *policy* generally, the *insurer* will indemnify the *insured* against those sums the *insured* shall become legally liable to pay as *compensation* to a third party in respect of:

20.1 *injury*; or

20.2 *property damage*;

happening during the *period of insurance*, occurring within the *territorial limits* as a result of an *occurrence* in connection with the use of a *registered machine* being used through or in connection with *insured's business*.

21 **EXTENSIONS**

Section 3 extends to provide cover in respect of those sums which the *insured* shall become legally liable to pay as *compensation*:

21.1 **Conditionally Registered Machines**

arising out of the use of any *machine* or *substitute machine* that is conditionally *registered*, in, through or in connection with the *insured's business* and happening during the *period of insurance* and occurring within the *territorial limits* as a result of an *occurrence*.

21.2 **Dangerous or Hazardous Goods**

arising out of or in connection with *dangerous or hazardous goods*.

In respect of this extension, the *insurer's* liability for any one *occurrence* will be limited to the sub limited amount for *dangerous or hazardous goods* as stated in the *schedule*, inclusive of Defence Costs (Clause 24).

21.3 **Insured's Liability as Principal**

arising out of the use of any *registered machine* not owned or supplied by the *insured* but which is in the charge of or being operated, used or driven by a person authorised to use the *machine* on behalf of the *insured* and in connection with the *insured's business*.

21.4 **Registered Machines covered under 'Hired In Machines (Blanket Cover)'**

arising out of the use of any *hired in machine* covered under **Section 1 – Hired in Machines (Blanket Cover)** in, through or in connection with the *insured's business* and first happening during the *period of insurance* and occurring within the *territorial limits* as a result of an *occurrence*.

21.5 **Substitute Machines**

arising out of the use of any *registered substitute machine* in, through or in connection with the *insured's business* and first happening during the *period of insurance* and occurring within the *territorial limits* as a result of an *occurrence*.

21.6 **Towing**

arising out of the towing of a trailer or another *machine* or vehicle by a *machine* provided that all towing activity is conducted in accordance with any *machine*, trailer and/or vehicle design specifications and/or any applicable *law*.

22 **INDEMNITY TO OTHERS**

Subject to the terms of this *policy* and in accordance with clause 20 (Section 3 Insuring Clause), this *policy* will extend to pay *compensation* on behalf of:

22.1 any person who was authorised by the *insured* to drive or use, or was in charge of, a *registered machine*, provided that person holds a valid driver's licence, (where applicable) has the relevant valid certification to use or operate a *machine* and has neither been deemed ineligible for nor previously refused motor vehicle insurance of any description;

22.2 any passenger travelling in, entering into or alighting from a *machine* that is required by *law* to be registered and authorised to carry passengers.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this *policy* insofar as they can apply as though they were the *insured*.

23 **LIMIT OF INDEMNITY**

The *insurer's* liability to pay *compensation* under this Part B – Section 3 shall not exceed the sum stated for Section 3 in the *schedule* in respect of any one claim or series of claims arising from one *occurrence*.

24 **DEFENCE COSTS**

In addition to the Limit of Indemnity, the *insurer* will pay all reasonable legal costs and/or expenses incurred with the *insurer's* prior written consent in connection with any claim for which the *insured* is indemnified by this *policy*.

Provided that the *insurer* shall not be liable for legal costs and/or expenses:

24.1 where indemnity is not provided by this *policy*;

24.2 for or in respect of representation at any formal legal inquiry involving an accident resulting in *injury* or at any coroner's inquiry or defending any proceedings in a court of summary jurisdiction; or

24.3 in respect of any *occurrence* after the *insurer* has paid *compensation* up to the Limit of Indemnity.

In the event the *insured* is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this *policy*, the *insured* and the *insurer* will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this *policy* which relate solely to what is covered under this *policy*.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by the *insurer* and the *insured* and at the *insurer's* expense) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination the *insurer* may, in its absolute discretion, pay such legal costs and/or expenses or any other amount payable under this *policy* as it considers appropriate.

Section 4 – Combined General & Products Liability

25 INSURING CLAUSE

Subject to the terms, conditions, exclusions and definitions of Section 4 and this *policy* generally, the *insurer* will indemnify the *insured* against those sums the *insured* shall become legally liable to pay as *compensation* to a third party in respect of:

25.1 *injury*;

25.2 *property damage*; or

25.3 *advertising injury*

first happening during the *period of insurance* and occurring within the *territorial limits* as a result of an *occurrence* in connection with the *insured's business*.

26 INDEMNITY TO OTHERS

Subject to the terms of this *policy* and in accordance with clause 25 (Section 4 Insuring Clause), this *policy* will extend to pay to or on behalf of:

26.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the *insured* pursuant to General Definition 18 on page 4 and arising out of the *insured's business*, but this *policy* does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;

26.2 Any director, executive officer or *workers* of the *insured* or, where the *insured* is a partnership, any partner of the *insured*, but only while acting within the scope of their duties in such capacity;

26.3 The officers, committee and members of the *insured's* canteen, social, sports, first aid/medical, firefighting and employee welfare organisations in their respective capacity as such; or

26.4 The legal personal representative of any person entitled to indemnity under this Section 4 in circumstances giving rise to indemnity under this *policy*.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this *policy* in so far as they can apply as though they were the *insured*.

27 LIMIT OF INDEMNITY

The *insurer's* liability to pay *compensation* under this Part B - Section 4 shall not exceed the sum stated for Section 4 in the *schedule* in respect of any one claim or series of claims arising from one *occurrence*.

28 AGGREGATE LIMITS AND SUB LIMITS

28.1 Products

The total aggregate liability of the *insurer* for any one *period of insurance* for all claims in respect of or in any way connected with the *insured's products* shall not exceed the Limit of Indemnity for Section 4 stated in the *schedule*.

28.2 Pollution

The total aggregate liability of the *insurer* for any one *period of insurance* for all claims in respect of or in any way connected with *pollution* shall not exceed the Limit of Indemnity for Section 4 stated in the *schedule*.

28.3 Vibration, Removal/Weakening of Support

The total aggregate liability of the *insurer* for any one *period of insurance* for all claims in respect of or in any way connected with vibration or removal or weakening of or interference with support for land or buildings shall not exceed the Limit of Indemnity for Vibration, Removal/Weakening of Support stated in the *schedule*.

28.4 Hook Liability

The total aggregate liability of the *insurer* for any one *period of insurance* for all claims in respect of or in any way connected with *hook liability* shall not exceed the Limit of Indemnity for *hook liability* stated in the *schedule*.

29 DEFENCE COSTS

In addition to the Limit of Indemnity, the *insurer* will pay all reasonable legal costs and/or expenses incurred with *insurer's* prior written consent in connection with any claim for which the *insured* is indemnified by this *policy* within the *territorial limits*.

Provided that the *insurer* shall not be liable for legal costs and/or expenses:

29.1 Where indemnity is not provided by this *policy*;

29.2 For or in respect of representation at any formal legal inquiry involving an accident resulting in *injury* or at any coroner's inquiry or defending any proceedings in a court of summary jurisdiction; or

29.3 In respect of any *occurrence* after the *insurer* has paid *compensation* up to the Limit of Indemnity.

In the event the *insured* is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this *policy*, the *insured* and the *insurer* will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this *policy* which relate solely to what is covered under this *policy*.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by the *insurer* and the *insured* and at the *insurer's* expense) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination the *insurer* may, in its absolute discretion, pay such legal costs and/or expenses or any other amount payable under this *policy* as it considers appropriate.