



## **PUBLIC AND PRODUCTS LIABILITY INSURANCE CERTIFICATE (OCCURRENCE WORDING) GL 0906**

This is to certify that in accordance with the authorisation granted under the Contract No. SPRGL0800459 to Winsure Insurance Group Pty Limited by certain Underwriters at Lloyd's whose definitive numbers and the proportions underwritten by them, which will be supplied upon application, can be ascertained by reference to the said Contracts which bear the Seal of Lloyd's Policy Signing office, and in consideration of the premium specified herein, the said Underwriters are hereby bound, severally and not jointly, each for his own part and not for one another, their Executors and Administrators, to insure in accordance with the Terms and Conditions contained herein or endorsed heron.

### **IIINDEMNITY CLAUSE**

The Underwriters will pay to or on behalf of the Insured up to the applicable Limit of Liability all sums which the Insured shall incur a legal liability to pay by way of Compensatory Damages in respect of Personal Injury or Property Damage happening during the Period of Insurance, where such Personal Injury or Property Damage is caused by an Occurrence during the Period of Insurance in connection with the Insured's Business

### **SUPPLEMENTARY PAYMENTS**

In addition to the indemnity provided by this Certificate, the Underwriters will also make Supplementary Payments as provided by this Supplementary Payments clause.

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

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

### **LIMITS OF LIABILITY**

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

The limit of the Underwriters total aggregate liability during the Period of Insurance for all claims arising directly or indirectly out of or in connection with the Insured's Products shall not exceed the designated Limit of Liability stated in the Schedule.

## DEFINITIONS

For the purposes of this Certificate:

1. The Insured includes:
  - (a) the Named Insured stated in the Schedule together with all related entities as defined in the Corporations Act 2001;
  - (b) any Director, Officer or Employee of any entity described in clause 1 (a) above, or their personal representative, but only while acting within the scope of their duties in that capacity;
  - (c) any Principal of the Named Insured, but only in respect of liability arising out of the performance by the Insured of work for such Principal, and then only to the extent required by the relevant contract or agreement.
2. Personal Injury means:
  - (a) bodily injury, sickness, mental anguish, mental injury, disease or disability, including resultant death;
  - (b) false arrest or false imprisonment, wrongful detention or wrongful eviction, malicious prosecution or humiliation;
  - (c) malicious falsehood, defamation or breach of the right to privacy; or
  - (d) trespass to the person, assault or battery, not committed by or at the Insured's direction unless for the purpose of preventing or eliminating imminent or present danger to persons or property;
3. Property Damage means physical damage to or destruction of tangible property happening during the Period of Insurance, including the resultant loss of use of that damaged or destroyed property.
4. Occurrence means an event during the Period of Insurance, including continuous or repeated exposure to the same or similar conditions during that period, which results in Personal Injury or Property Damage neither expected nor intended from the insured's standpoint.
5. Employee means any person employed under a contract of service, by any of the entities referred to in Definition 1(a) above, and includes persons deemed by Common Law, or by the operation of any statute, ordinance or regulation, to have been so employed.
6. Act of Terrorism means an act including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for or in connection with political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any sector of the public, in fear.
7. Medical Persons means:
  - (a) registered nurses and first aid attendants, legally qualified as such in Australia; and
  - (b) medical practitioners and dentists, not in the employ of the Insured, who are legally qualified as such in Australia.
8. Insured's Products means anything, after it has ceased to be in the Insured's possession or under the Insured's control, manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured (including any container other than a Vehicle).

9. Vehicle means any form of mobile or mechanically powered conveyance which may be used for the transportation of goods or persons by land, sea, air, space or under the ground. It includes all such machines which are intended wholly or partially for recreational purposes, but does not include any plant or equipment while it is being used as such and is neither being used for haulage nor is in transit to or from or within any work site.
10. Pollution means the discharge, dispersal, release or escape of smoke, vapour, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials (including materials to be recycled, reconditioned or reclaimed) or any other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.
11. Certificate means the contract of insurance between the Named Insured and the Underwriters, as embodied in the Proposal, the Schedule, this Certificate text and all Endorsements and Memoranda attached to and agreed to form part of it, but does not include any Statutory Notices required to be provided in connection with it or any legislative provisions to which its operation may be subject.
12. Internet Operations means:
  - (a) transfer of computer data or programs by use of electronic mail systems by the Insured or the Insured's employees, including for the purpose of this Definition only, part-time and temporary staff, contractors and others within the Insured's organisation whether or not such data or programs contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb or Trojan horse;
  - (b) access through the Insured's network to the world wide web or a public internet site by the Insured's employees, including for the purpose of this Definition only, part-time and temporary staff, contractors and others within the Insured's organisation;
  - (c) access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for the Insured's customers or others outside the Insured's organisation; and
  - (d) the operation and maintenance of the Insured's web site.
13. Insured's Business means all the activities referred to as such in the Schedule.
14. Limit of Liability means the amounts specified as such in the Schedule, where applicable
15. Period of Insurance means the period during which the cover provided by this Certificate is in force.
16. The Underwriters means the entity referred to as such in the Schedule.
17. Compensatory Damages means civil damages, other than punitive, exemplary or aggravated damages, fines or penalties; which an Insured may become liable to pay or may with the Underwriters' consent agree to pay, to a claimant in respect of Personal Injury or Property Damage, and includes all charges, expenses and legal costs of the claimant for which the Insured may also become liable or may so agree to pay.
18. Supplementary Payments means all charges, expenses and legal costs, incurred by the Underwriters or by the Insured with the written consent of the underwriters, in connection with the investigation, defence or settlement of claims.

## EXCLUSIONS

This insurance does not apply to:

1. any liability which an Insured may incur, whether under the provisions of any Worker's Compensation legislation, industrial award, agreement or determination or otherwise, toward any Employee of that Insured for Personal Injury suffered by that Employee.

2. liability for Property Damage to:
  - (a) property owned, leased or hired by the Insured, except for leased premises where the damage is caused by fire, explosion, water discharging or leaking from any pipe or water system or Vehicle impact;
  - (b) property in the Insured's physical or legal control, except for property of the Insured's Employees, or Vehicles which are not used by or on the Insured's behalf but which are damaged whilst in the Insured's car park, provided that the Insured's Business does not include ownership or operation of a car park for reward.
3.
  - (a) Property Damage to the Insured's Products if such Property Damage is attributable to any defect therein or the harmful nature or unsuitability thereof;
  - (b) claims in respect of the cost of performing, completing, repairing, correcting or improving any work undertaken by or on behalf of the Insured.
4. any liability arising out of or in connection with the performance of the Insured's obligations under any contract, including an agreement to indemnify any other person or organisation against a loss or liability, or for damages for the Insured's failure to perform such an obligation. This includes but is not limited to contractual obligations toward others arising out of or involving injuries to the Insured's Employees.

This Exclusion, however, shall not apply to statutory warranties or to any liability for Personal Injury or Property Damage which would nevertheless have been imposed upon the Insured in the absence of such a contractual obligation.
5. any liability for the withdrawal, recall, inspection, repair, replacement or loss of use of the Insured's Products, or of any property of which such Products forms a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
6. any liability arising out of or in connection with the ownership, maintenance, operation or use by the Insured of any Vehicle.
7.
  - (a) any liability in respect of the rendering of or failure to render professional advice or service by the Insured or any error and omission connected therewith;
  - (b) liability arising out of advice, design, formula or specification;

Provided that this Exclusion does not apply to:

- (i) the rendering of or failure to render medical advice or service by Medical Persons employed by the Insured to provide first aid and other medical services on the Insured's premises;
  - (ii) advice given in respect of the use of the Insured's Products, which is not given for a fee.
8. any liability, of whatsoever nature and howsoever arising, directly or indirectly out of or in connection with Pollution, including but not limited to the prevention, clean up or containment, Personal Injury or Property Damage caused by or the remediation of any environment affected by Pollution.

Provided, that this Exclusion shall not apply where the Insured has proved that such Pollution:

- (i) did not occur gradually over a period of time but suddenly, at an identifiable point in time; and
  - (ii) was entirely unexpected, unintended and fortuitous from the standpoint of the Insured.

9. (a) claims made and actions instituted within the United States of America or Canada or any other territory coming within jurisdiction of the courts of the United States of America or Canada;
- (b) claims and actions to which the laws of the United States of America or Canada apply;
- (c) claims in respect of Personal Injury or Property Damage caused by or arising out of the Insured's Products exported to the United States of America or Canada;

Provided that this Exclusion 9. does not apply to claims and actions arising from:

1. the presence of any travelling executives or salesmen who are normally resident in Australia or its territories whilst in the United States of America or Canada;
  2. the Limit of Liability in respect of coverage provided under Item (i) is inclusive of all Supplementary Payments
10. any liability arising out of or in connection with Personal Injury or Property Damage (including loss of use of property) directly or indirectly arising out of or in connection with:
    - (a) the mining, processing, transportation, distribution, processing and/or storage of asbestos or asbestos related products;
    - (b) any process or procedure for the extraction, removal, disposal, treatment or control of asbestos, or for the decontamination or remediation of property affected by asbestos.
  11. any liability arising out of or in connection with any defamatory publication or utterance or malicious falsehood:
    - (a) made prior to the commencement of the Period of Insurance; or
    - (b) made at the Insured's direction with knowledge of its falsity or reckless disregard for its truth or falsity; or
    - (c) made in connection with advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured.
  12. any liability directly or indirectly arising out of or in connection with war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power. This includes expropriation, seizure, confiscation, nationalisation, damage or destruction of the Insured's Products or of any other Property, by or under the order of any de facto or de jure government or authority.
  13. Personal Injury or Property Damage directly or indirectly caused by contributed to or arising from:
    - (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion, combustion shall include any self sustaining process of nuclear fission;
    - (b) nuclear weapons material
  14. (a) Personal Injury or Property Damage arising directly or indirectly out of or in any way involving the Insured's Internet Operations.

This Exclusion does not apply to Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.

This Exclusion also does not apply to liability which arises irrespective of the involvement of the Insured's Internet Operations.

Nothing in this Exclusion shall be construed to extend coverage provided under this Certificate to any liability which would not have been covered in the absence of this Exclusion.

- (b) Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
  - (i) the use of computer hardware or software; or
  - (ii) the provision of computer or telecommunication services by or on behalf of the Insured; or
  - (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including Property Damage caused by any computer virus.

- 15. Personal Injury or Property Damage of whatsoever nature directly or indirectly caused by, resulting from or in connection with any:
  - (a) Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Personal Injury or Property Damage; or
  - (b) action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

In any claim or suit or other proceedings where the Underwriters allege that by reason of this Exclusion 16. any liability is not covered by this Certificate the burden of proving that such liability is covered shall be upon the Insured.

- 16. liability arising directly or indirectly, out of or in connection with the failure or inability of any:
  - (a) electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device;
  - (b) media or systems used in connection with any of the foregoing;

whether the property of the Insured or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date, including but without being limited to, any failure or inability

to recognise, capture, save, retain or restore and/or to correctly manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:

- (i) anything referred in (a) or (b) above, recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time;
  - (ii) the operation of any command or logic which has been programmed or incorporated into anything referred to in (a) or (b) above.
- 17. liability for claims arising out of:
  - (a) any of the Insured's Products or services directly affecting the integrity of the structure, navigation or propulsion of any Aircraft where such products or services are knowingly supplied by the Insured for this purpose;

- (b) the ownership, maintenance, operation or use by or on behalf of the Insured of any Aircraft

For the purpose of this Exclusion "Aircraft" shall mean any vessel, craft or thing made or intended to fly or travel in or through the atmosphere or space.

#### CONDITIONS

1. The Insured shall as soon as practicable after the same shall have come to their knowledge give notice to Winsure Insurance Group Pty Limited in writing of the happening of any claim (including any writ, summons, proceedings impending prosecution and/or inquest) against the Insured or Occurrence out of which a liability might reasonably be expected to arise as soon as reasonably possible after the Insured itself becomes aware of that claim or Occurrence.
2. The Insured shall not without the Underwriters consent in writing make any admission, offer, promise, payment or settlement in connection with any claim against it or alleged liability and the Underwriters, if they so desire, shall be entitled to take over and conduct on behalf of the Insured and in its name the investigation, defence, negotiation or settlement of any claim, in such manner and upon such terms as they may consider appropriate.
3. The Insured shall use their best endeavours to preserve any property, Products, equipment or other evidence which might prove relevant, necessary or useful in connection with the investigation of any Occurrence or the negotiation, defence or settlement of any claim and, so far as may be reasonably practicable, no alteration, disposal or repair shall be effected without the Underwriters consent, until the Underwriters have had full opportunity to inspect and preserve any evidence.
4. The Underwriters shall be subrogated to and shall be entitled to prosecute in the Insured's name, at their own expense and for their own benefit, any cause of action (including a claim for contribution or indemnity) which the Insured may have against any other person or organisation, arising out of any liability in respect of which indemnity for Compensatory Damages or a Supplementary Payment has been provided by the Underwriters under this Certificate. It is not a requirement of the pursuit of subrogation, under this Condition, that actual payment first be made by the Underwriters.

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

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

5. The Underwriters shall have full discretion in the conduct of the investigation, defence, negotiation or settlement of any Occurrence or legal proceedings, in connection with any claim by or against the Insured or any subrogation recovery, and the Insured shall provide all necessary information, cooperation and assistance as the Underwriters may reasonably require in connection with any claim or recovery. This shall be at the Insured's own expense, except that the Underwriters shall promptly reimburse the Insured for any out of the pocket expenses, other than remuneration, lost profits or opportunity costs, incurred in the provision of such information, cooperation or assistance.
6. In the event of an Occurrence, the Insured shall promptly take at its own expense all reasonable steps to prevent or to mitigate Personal Injury or Property Damage, arising from that Occurrence or similar Occurrences, and to reduce the likelihood of a claim. Under no circumstance shall the expense of complying with this condition be recoverable under this Certificate.

7. In respect of all Occurrences or claims by or against the Insured, directly or indirectly arising out of or in connection with one source or original cause, the Underwriters may at any time tender to the Insured the balance of the Limit of Liability in respect of those claims, or such lesser amount as the persons making claim against the Insured are willing to accept, at that time, in full and final settlement. The Underwriters shall then be under no further liability under this Certificate in respect of those claims except for:
  - (a) charges, expenses and legal costs which may subsequently be recoverable from the Insured only in respect of the period prior to the date on which the Limit of Liability was tendered; and
  - (b) charges, expenses and legal costs incurred by the Insured, with the Underwriters written consent, prior to that date.
8. The Insured shall take all reasonable precautions to prevent Personal Injury and Property Damage from arising out of or in connection with its Business, and shall comply with and ensure that its Employees, contractors, agents and other representatives comply with all statutory obligations, Codes, bylaws or regulations which may be applicable to the Business from time to time. In particular, and without limiting the generality of the foregoing, the Insured shall at its own expense take all reasonable steps to trace, recall and/or modify any of its Products which it knows or has reason to suspect may contain any defect or deficiency which may render them injurious to persons or property, and shall comply promptly with all statutory obligations which may be imposed upon it in this regard.
9. Each of the persons or entities comprising the Insured shall be treated, for the purposes of this Certificate, separately and distinctly from all the others and the word "Insured" shall be applied to them in the same manner as if a separate Certificate had been issued to each, however under no circumstances shall this Condition operate in such a manner as to increase the Underwriters Limit of Liability or any Sub-Limits, beyond those which would apply if there were only a single Insured.
10. This Certificate also insures the liability of any Principal of the Insured, arising out of the performance by the Insured of any work for such Principal, but only to the extent required under the relevant contract and subject always to the Limits of Liability and to the other terms, Conditions and Exclusions of the Certificate. In the case of any conflict between the terms of the relevant contract and this Certificate, this Certificate shall prevail.
11. The Insured must ensure payment of the premium specified in the Schedule to the Underwriters within thirty (30) days of the commencement of the Period of Insurance.
12. The insured must provide the Underwriters, as soon as reasonably practicable, with written notice of every change which materially varies or alters any of the facets or circumstances, relating to any of the parties falling within the definition of the Insured or to the Insured's Business, as they were disclosed in the Proposal or known to the Underwriters at the commencement date of this Certificate.

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

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

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

In the event of cancellation by either party, the Underwriters may retain pro-rata premium for the time on risk. In the event of cancellation by the Insured, a penalty loading of 20% of the full adjusted annual premium will also apply. When the premium is subject to adjustment, cancellation by either party will not effect the Insured's obligation to supply such information as the Underwriters may reasonably require for the adjustment of the premium. Neither will cancellation affect the Insured's obligations to pay the amount of the adjustment, as applied to the pro-rata premium.

15. The Underwriters shall be permitted but not obliged to inspect the Insured's Business and operations at any time. Neither the Underwriters rights to make inspections nor the making of any inspection nor any report of an inspection shall constitute any form of undertaking acknowledgement or representation regarding the safety or appropriateness of the Insured's Business or the manner in which is being carried on, or a waiver of any of the Underwriters other rights. The Underwriters may examine and audit the Insured's books and records at any time during the Period of Insurance, including any renewals or extensions of it. And within three years after the final renewal has concluded, in so far as they may relate to the subject matter of the insurance.
16. Should the premium for this insurance or any renewal have been calculated on estimates furnished by the Insured, and subject to adjustment at the end of the Period of Insurance, then the Insured must keep accurate records and all necessary evidence of all particulars required to enable the adjustment to be promptly and efficiently calculated, and must permit the Underwriters to inspect this evidence at such times and in such manner as they may reasonably require. Within thirty days of the expiry of each Period of Insurance the premium for which is subject to adjustment, the Named Insured shall furnish to Winsure Insurance Group Pty Limited, which shall receive it on behalf of the Company, a statement containing full particulars and supporting information required to calculate the adjustment. The premium for the expired Period of Insurance shall then be adjusted accordingly and any extra premium or return premium required shall be paid by or credited to the Named Insured, as the case may be, within thirty days. Nothing in this Condition precludes the retention, by the Company, of any minimum premium applicable to the relevant Period of Insurance.
17. This Certificate shall, at all times and in all respects, be governed by and subject to the laws of the Commonwealth of Australia, including but not limited to the *Insurance Contracts Act 1984* and the Insured and the Underwriters agree to submit to the jurisdiction of competent Australian Courts in relation to all matters arising under or in connection with it. This Condition shall not preclude the parties from agreeing to submit any dispute to Arbitration, or to any other form of Alternative Dispute Resolution, after it has arisen.
18. The Underwriters hereon agree that:
  - (i) In the event of a dispute arising under this Certificate, Underwriters at the request of the insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
  - (ii) Any summons notice or process to be served upon the Underwriters may be served upon

**Lloyd's General Representative in Australia  
Lloyd's Australia Limited  
Suite 2, Level 21,  
Angel Place,  
123 Pitt Street,  
Sydney,  
NSW 2000,  
Australia**

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

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

**In witness whereof this insurance has been signed in Sydney on**

---

**For and on behalf of Winsure Insurance Group Pty Limited**