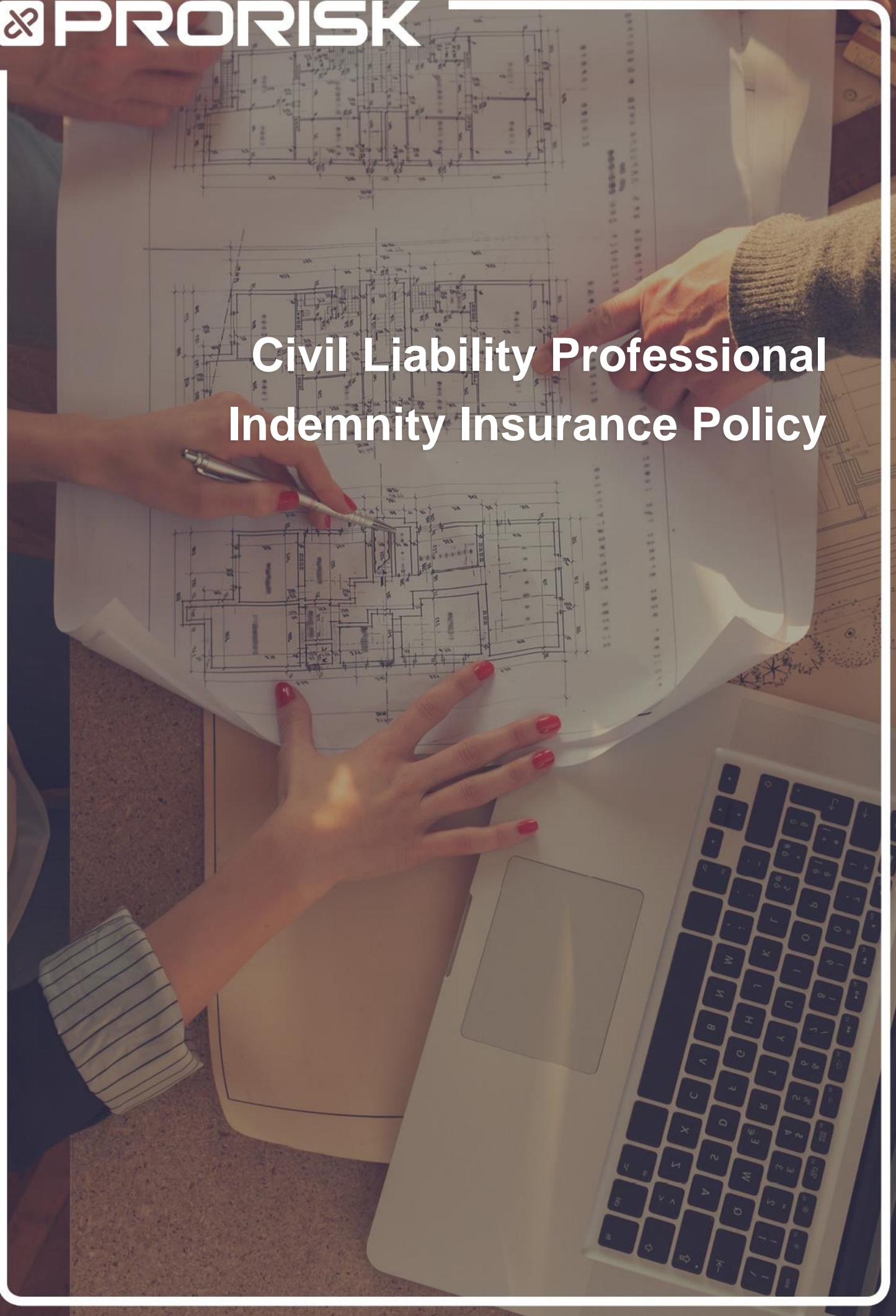


# Civil Liability Professional Indemnity Insurance Policy



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## IMPORTANT INFORMATION

### This Policy

This **Policy** is an important document. The **Policy** wording and **Schedule** together set out the cover provided, the amount insured and the terms and conditions of **Your** insurance. Please read it carefully and keep it in a safe place.

Your Insurance Broker has arranged this **Policy** for **You**. If **You** have any questions about **Your** cover, or **You** wish to contact **ProRisk**, please contact **Your** Insurance Broker for assistance.

### Prorisk

**ProRisk**, Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076, has the authority to bind this **Policy** on behalf of the **Underwriters**.

### Claims Made Policy (Facts Prior to Commencement of Policy)

This **Policy** is issued by **ProRisk** on a **Claims** made and notified basis. This means that the **Policy** only covers **Claims** first made against **You** during the **Insurance Period** and notified to **ProRisk** in writing during the **Insurance Period**. The **Policy** does not provide cover for any **Claims** made against **You** during the **Insurance Period** if at any time prior to the commencement of the **Insurance Period** **You** were aware of facts which might give rise to those **Claims** being made against **You**.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where the insured gives notice in writing to the insurer during the **Insurance Period** of facts that might give rise to a **Claim** against the insured, the insurer cannot refuse to pay a **Claim** which arises out of those facts, by reason only that the **Claim** is made after the **Insurance Period** has expired.

### Insurer May Not Refuse to Pay a Claim in Certain Circumstances

Section 54 of the *Insurance Contracts Act 1984* provides that **We** may not refuse to pay a **Claim** in certain circumstances:

- (a) by reason only of an act (or failure to act) of **you** or another person, if that act (or failure to act), which occurred after the **Policy** was entered into, did not cause any part of the loss giving rise to the **Claim**. For example, if **You** have failed to satisfy a technical requirement of

the **Policy** but able to prove that this technical breach could not reasonably be said to have caused or contributed to the loss that is the subject of **Your Claim**, **We** may not refuse the **Claim** based on the technical breach on **Your** part; or

- (b) where the act was necessary to protect a person's safety, to preserve property or if it was not reasonably possible for the person not to do the act.

**We** can reduce **Our** liability for the **Claim** by the amount that fairly represents the extent to which **We** were prejudiced as a result of **Your** actions or **Your** failure to act.

### Your Duty of Disclosure

Section 21 of the *Insurance Contracts Act 1984* provides that before **You** enter into a contract of general insurance with an insurer, **You** have a duty to disclose to the insurer every matter that **You** know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. **You** have the same duty to disclose those matters to the insurer before **You** renew, extend, vary or reinstate a contract of general insurance.

**Your** duty, however, does not require disclosure of a matter:

- (a) that diminishes the risk to be undertaken by the insurer;
- (b) that is of common knowledge;
- (c) that **Your** insurer knows, or in the ordinary course of its business, ought to know;
- (d) as to which compliance with **Your** duty of disclosure is waived by the insurer.

### Non-Disclosure

If **You** fail to comply with **Your** duty of disclosure, **We** may be entitled to reduce **Our** liability under the contract in respect of a **Claim** or **We** may cancel the contract. If **Your** non-disclosure is fraudulent, **We** may also have the option of avoiding the contract from its beginning.

### Retroactive Liability

The **Policy** is limited by a **Retroactive Date**. The **Policy** does not cover any civil liability arising from **Your** conduct of the **Professional Business** prior to the **Retroactive Date**.

### Alteration to Risk and Deregistration

The **Policy** requires **You** to notify us within thirty days of any material change in the nature of the **Professional Business**, or any act of insolvency or bankruptcy of the **Insured**. The **Policy** requires **You** to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of the **Insured's** statutory registration. **Claims** arising from conduct which occurs subsequent to the cancellation, suspension or termination of the **Insured's** statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing **Your** profession are excluded from indemnity under the **Policy**.

### Limited Liability for Costs

The **Policy** provides that if a payment greater than the **Limit of Indemnity** is required to dispose of a **Claim**, **Our** liability for costs and expenses will be limited to the proportion that the **Limit of Indemnity** bears to the payment required to dispose of the **Claim**.

### Policy Cancellation

In the event of **Policy** cancellation by the **Insured**, **ProRisk's** cancellation rates will apply.

### Waiver of Rights of Subrogation

The **Policy** provides that **You** must not, without **Our** prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which **You** may have in respect of any **Claim** covered under this **Policy**. **Our** consent will not be unreasonably withheld. Further, **You** must not do anything or fail to do anything which excludes, limits or prejudices **Our** rights of subrogation.

### Privacy Statement

**ProRisk** is bound by the obligations of the *Privacy Act 1988* (as amended) regarding the collection, use, disclosure and handling of personal information. **We** will protect the privacy of **Your** personal information.

**We** collect personal information about **You** to enable us to provide **You** with relevant products and services, to assess **Your** application for insurance and, if a contract is entered, to enable **Us** to provide, administer, and manage **Your Policy**, and to investigate and handle any **Claims** under **Your Policy**. **We** may disclose **Your** information to third parties (who may be located

overseas), such as **Underwriters**, lawyers, claims adjusters, and others appointed by **ProRisk** or by **Underwriters** to assist **Us** in providing relevant products and services. **We** may also disclose **Your** information to people listed as co-insured on **Your Policy** and to **Your** agents. By providing **Your** personal information to **Us**, **You** consent to **Us** making these disclosures.

If **You** do not provide all or part of the information required, **We** may not be able to provide **You** with **Our** products and services, consider **Your** application for insurance, administer **Your Policy**, assess or handle **Claims** under **Your Policy**, or **You** may breach **Your** duty of disclosure.

When **You** provide **Us** with personal information about other individuals, **We** rely upon **You** to have made them aware of that disclosure, and of the terms of the **ProRisk** Privacy Statement, and to obtain their consent. For a copy of the **ProRisk** Privacy Statement or to request access to or update **Your** personal information, contact the Privacy Officer at **ProRisk** by email: [enquiries@prorisk.com.au](mailto:enquiries@prorisk.com.au) or by mail at the address shown on this **Policy**.

### General Insurance Code of Practice

**ProRisk** and **Underwriters** proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

This **Policy** and the **Schedule** are Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any **Claims** adjusted outside Australia.

### Financial Hardship

**We** will review any Financial Hardship application in accordance with the General Insurance Code of Practice and any applicable guidelines.

### Complaints Handling

Any enquiry or complaint relating to this insurance should be referred to **ProRisk** in the first instance. **We** have a complaints handling and internal dispute resolution process to assist **You**, and information about **Our** complaints handling procedures is available upon request. If this does not resolve the matter or **You** are not satisfied with the way a complaint has been dealt with, **You** should write to the Complaints Department of the **Underwriters**:

The Complaints Manager  
Swiss Re International SE, Australia Branch  
Level 36, Tower Two, International Towers  
Sydney  
200 Barangaroo Avenue, Sydney NSW 2000  
Telephone: (02) 8295 9500  
Email: [complaints\\_anz@swissre.com](mailto:complaints_anz@swissre.com)

Complaints that cannot be resolved by the Complaints Department of the **Underwriters** may be referred to the:

Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Telephone: 1800 931 678

Further details will be provided at the appropriate stage of the complaints process.

#### **Definitions**

Apart from in the various headings, words appearing in bold type in the **Policy** have specific meanings attached to them, such as "**You**" and "**Us**". When reading the **Policy** please make sure that **You** refer to the various definitions to ensure that **You** understand what is being said.

## CIVIL LIABILITY PROFESSIONAL INDEMNITY INSURANCE POLICY

In consideration of the payment of the **Premium** and in reliance on the contents of the **Proposal** and any other information submitted by or on **Your** behalf, **We** will indemnify **You** in accordance with the terms of this **Policy**.

### 1. INSURING CLAUSES

- 1.1 **We** will cover **You** for any **Claim** falling within Section 2 of this **Policy** for civil liability to pay compensation arising from **Your** conduct of the **Professional Business** which is first made against **You** and reported to **Us** during the **Insurance Period**.
- 1.2 **We** will also cover **You** for the costs and expenses incurred in the defence, settlement or investigation of that **Claim**.

### 2. TYPES OF CLAIM

Insuring Clause 1.1 provides cover for **Claims** against **You** for:

#### Breach of Duty

- 2.1 Breach of professional duty, including a duty of confidentiality.

#### Defamation

- 2.2 Unintentionally making a libellous or slanderous statement.

#### Consumer Protection Legislation

- 2.3 Unintentional breach or alleged breach of any consumer protection provision of the Competition and Consumer Act 2010 (Cth), the Australian Securities and Investments Commission Act 2001 (Cth) or the equivalent provisions in the Fair Trading legislation in any state and territory, including obligations in relation to misleading and deceptive or unconscionable conduct, false or misleading representations, unfair contract terms, consumer guarantees and safety of goods and services, but only where the **Claim** arises directly from such a breach.

#### Intellectual Property

- 2.4 Unintentional infringement of copyright, trademark, registered designs, patents, or plagiarism.

#### Dishonesty

- 2.5 Notwithstanding Exclusion 5.8, dishonest, fraudulent, criminal or malicious acts or failures to act of any **Principal** or **Employee**, provided that:
  - (a) there is no cover for any **Claim** arising directly or indirectly from or in connection with loss of money, negotiable instruments, stamps, bearer bonds or coupons, bank or currency notes, electronic funds, or records of electronic funds; and
  - (b) **We** will not cover any person who commits or condones any such act or failure to act; and
  - (c) there is no cover for any loss sustained after the date of **Your** discovery of any such act or omission, or after the date upon which **You** had reasonable cause for suspicion of any such act or failure to act; and
  - (d) **You** will, at **Our** request and expense, take all reasonable steps to obtain reimbursement from any person committing or condoning any such act or failure to act. The amount of indemnity available under this **Policy** shall be reduced by an amount equal to the sum of any monies recoverable from any person committing or condoning any such act or failure to act, any monies owed by **You** to any such person and any monies held by **You** and belonging to any such person; and
  - (e) the **Excess** shall apply to each and every individual dishonest, fraudulent, criminal or malicious act or failure to act.

#### Documents

- 2.6 Loss of or damage to **Documents** in **Your** physical custody or control, provided that:
  - (a) the loss or damage is sustained and notified to **Us** during the **Insurance Period**; and
  - (b) any **Document** kept in magnetic or electronic form is duplicated with the intention that the back up or duplicate copy be used as the basis for restoring any lost or damaged **Document** to its original status.

### 3. AUTOMATIC EXTENSIONS

These extensions are included automatically and each is subject to the terms of this **Policy** except where varied by the extension. Except for automatic extension 3.1, they do not increase the **Limit of Indemnity**.

#### Reinstatement of the Limit of Indemnity

- 3.1 In the event that the **Limit of Indemnity** is exhausted by a **Claim** or **Inquiry**, the **Limit of Indemnity** will be reinstated subject to the following:
- the number of automatic reinstatements under this Extension is limited to one only; and
  - such reinstatement shall only apply after the total **Limit of Indemnity** available under the applicable policies in excess of this insurance are exhausted by a **Claim** or an **Inquiry**;
  - the reinstated limit will not apply to any **Claim** or **Inquiry** which is related or attributable to a causally connected or interrelated act, error or a failure to act, that has contributed to the exhaustion of the prior limit; and
  - the total aggregate limit available will not exceed the aggregate **Limit of Indemnity** shown in the **Schedule**.

#### Continuous Cover

- 3.2 Notwithstanding Exclusions 5.1 and 5.2, **We** will cover **You** under insuring clauses 1.1 and 1.2 for any **Claim** first made against **You** during the **Insurance Period** arising from circumstances of which **You** were aware prior to the **Insurance Period** provided that:

- you** have maintained without interruption, professional indemnity insurance with an insurer from the date the circumstance was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth); and
- there has been no fraudulent non-disclosure or misrepresentation to **Us** in respect of the **Claim** or circumstance; and
- the cover provided by this Extension 3.2 will be in accordance with all the terms and conditions (including for the avoidance of doubt), the **Limit of Indemnity** and **Excess** amounts, or any sub-limit (of the policy under which the **Claim** or circumstance was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), provided such earlier policy affords

no broader cover in respect of the **Claim** or circumstance than the provisions of this **Policy**; and

- (d) the **Insured** has notified such a **Claim** or circumstance under the prior professional indemnity policy or similar insurance and is unable to obtain cover as it has been notified after such policy expired.

#### Consultants and Agents

- 3.3 **We** will cover **You** under insuring clauses 1.1 and 1.2 where the **Claim** arises from any negligent act, error or failure to act on the part of **Your** consultant or agent in the conduct of the **Professional Business**. Such consultants and/or agents, however, are not covered by this **Policy**.

#### New Subsidiaries

- 3.4 **We** will cover within the definition of **You** any **Subsidiary** (practising in the same professional discipline as the **Professional Business**) incorporated or acquired by **You** during the **Insurance Period**. This cover is for a period of 30 days from the date of incorporation or acquisition or until the **Policy** expires, whichever is the earlier. **We** may agree to extend this period (subject to payment of additional premium) after receipt of a satisfactory underwriting submission in respect of the **Subsidiary**. The **Retroactive Date** applicable for such cover shall be the date of incorporation or acquisition of the **Subsidiary**.

#### Mergers and Acquisitions

- 3.5 **We** will cover within the definition of **You** entities (practising in the same professional discipline as the **Professional Business**) merged with or acquired by **You** during the **Insurance Period**. This cover is for a period of thirty days from the date of merger or acquisition or until the **Policy** expires, whichever is the earlier. **We** may agree to extend this period (subject to payment of additional premium) after receipt of a satisfactory underwriting submission in respect of the merged or acquired entity. The **Retroactive Date** applicable for such cover shall be the date of merger or acquisition.

#### Estates and Legal Representatives

- 3.6 If **You** die or become legally incompetent or insolvent, **We** will cover **Your** estate, legal representative, or trustee to the same extent as cover would otherwise be available to **You**.

#### Run-Off Cover - Insured Entity

3.7 Where the **Insured** is an entity, if the **Insured** ceases to exist or operate, or is consolidated with, merged into, or acquired by any other entity, the cover provided by insuring clauses 1.1 and 1.2 to the **Insured** in respect of **Your** conduct of the **Professional Business**, shall continue until the expiry date of this **Policy** in respect of any **Claim** arising from any act, error or failure to act prior to the date that the **Insured** ceased to exist or operate, or was consolidated with, merged into or acquired by another entity. However, there will be no indemnity provided under this extension if **You** are entitled to indemnity under any policy held by the other entity.

#### Inquiries

- 3.8 **We** will pay on **Your** behalf, all reasonably necessary legal costs incurred in connection with **Your** attendance at any **Inquiry** held in Australia. **We** will only do this if:
- (a) the **Inquiry** is ordered or commissioned during the **Insurance Period**;
  - (b) **You** notify **Us** during the **Insurance Period** that **You** are required to attend the **Inquiry**;
  - (c) **Your** attendance is required because of **Your** conduct of the **Professional Business**; and
  - (d) **Our** consent is obtained before the legal costs are incurred.
- 3.9 **We** at **Our** option, are entitled to nominate or appoint legal representatives to represent **You**.
- 3.10 **We** will not cover any legal costs associated with an appeal of a decision made as a result of an **Inquiry**.

#### Public relations expenses

- 3.11 **We** will pay on **Your** behalf the reasonably necessary fees and expenses of a public relations firm or consultant, crisis management firm or law firm engaged by **You**, with **Our** written consent in order to deal with the adverse effects or negative publicity arising from any **Claim** or **Inquiry**. Our consent will not be unreasonably withheld.
- 3.12 **Our** total liability under this extension will not exceed in the aggregate the amount specified for public relations expenses in the **Schedule**.

#### Court attendance

- 3.13 **We** will pay **You** compensation if any **Principal** or **Employee** is required to attend court as a witness in connection with a **Claim** covered by the **Policy**. Compensation will only be payable where the **Insured** actually pays such **Principal** or **Employee** for the time required at court. Compensation will be paid at such **Principal** or **Employee's** normal salary rate, up to a maximum of \$250 per person for each day on which such attendance is required.

### 4. OPTIONAL EXTENSIONS

Cover for an optional extension is included in this **Policy** when the applicable optional extension is stated in the **Schedule**, and subject to the payment of additional premium. Each of the optional extensions is subject to the terms of this **Policy** except to the extent varied by the terms of the optional extension. The optional extensions do not increase the **Limit of Indemnity**.

#### Prior Corporate Entities

- 4.1 Provided that the prior corporate entity is named in the **Schedule**, **We** will cover within the definition of **You**, corporate entities through which the **Insured** previously traded in the conduct of the **Professional Business**.

#### Principals' Prior Business

- 4.2 Provided that the prior business is disclosed in the **Proposal** and confirmed by **Us** and is in the same professional discipline as the **Professional Business**, **We** will cover **Principals** of the **Insured** under insuring clauses 1.1 and 1.2 where the **Claim** arises from that **Principal's** conduct of the prior business.

#### Joint Venture

- 4.3 Provided that the joint venture is disclosed in the **Proposal** and confirmed by **Us** as covered, **We** will cover **You** under insuring clauses 1.1 and 1.2 for **Your** conduct in any joint venture to which **You** are a party, but cover is limited to **Your** proportion of liability.

## 5. EXCLUSIONS

We will not cover You for any Claim for or arising directly or indirectly from or in connection with:

### Existing Claims And Known Circumstances

- 5.1 any Claim first made against You prior to the Insurance Period; or any Claim arising from any matter disclosed or notified to Us or any other insurer prior to the Insurance Period as being either a Claim or circumstances which could result in a Claim; or any Claim arising from any litigation or Inquiry that was in progress or pending prior to the Insurance Period; or
- 5.2 any fact, situation, or circumstance of which You were aware prior to the Insurance Period and which You were required to give notice of in accordance with the duty of disclosure contained in section 21 of the Insurance Contracts Act 1984, (Cth) under any policy of insurance which this Policy renews, replaces or follows in whole or in part, for which notice could have been given if such a policy was in force at the time.

### Retroactive Liability

- 5.3 Your conduct of the Professional Business prior to the Retroactive Date.

### Assumed Liability

- 5.4 any liability assumed by You which would not be assumed in the normal course of providing the services of the Professional Business;
- 5.5 any actual or alleged liability under a contractual warranty, guarantee or undertaking (unless liability would have existed regardless of the contractual warranty, guarantee or undertaking);
- 5.6 any contract or agreement which excludes, limits or prejudices a right of recovery which You may have in respect of any Claim covered under this Policy unless We have specifically consented in writing to Your entering into such a contract or agreement. This exclusion will not apply to any contracts which You have declared at inception to Us and which are specified in the schedule to this Policy;

### Dishonesty

- 5.7 any dishonest, fraudulent, criminal or malicious act or omission, save to the extent covered by clause 2.5.

### Documents

- 5.8 the loss or destruction of, or damage to any Document, save to the extent covered by Clause 2.6.

### Information Technology

- 5.9 the transmission or receipt of any virus, program or code that causes loss or damage to computer data or loss, damage or impairment to any computer system.

### Previous Business

- 5.10 any business of which You were a Principal before joining the Professional Business, save to the extent covered by optional extension 4.2.

### Trading Debts

- 5.11 any liability to pay trade debts, loans, liabilities arising under guarantee or any failure to account for monies received.

### Property

- 5.12 the ownership, possession or use of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.

### Care Custody and Control

- 5.13 property under Your care, custody or control, except for Documents covered by Clause 2.6.

### Fines and Penalties

- 5.14 fines, penalties or punitive, aggravated or exemplary damages.

### Refund of Professional Fees and Trading Debts

- 5.15 recovery or a refund of any professional fees or charges (by way of damages or otherwise); or
- 5.16 the costs and expenses incurred by or on behalf of the Insured in complying with any contractual obligations or making good any faulty product; or
- 5.17 the provision of any guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded.

### Employers' Liability

- 5.18 the death, bodily injury, illness or disease of or to any Employee; or
- 5.19 any breach of any obligation owed by You as an employer to any Employee, including any Claim for actual or alleged unfair dismissal, harassment, discrimination, or other employment related matter.

**Directors' and Officers' Liability**

5.20 any actual or alleged liability incurred as a director, officer, or trustee of any company or trust while acting in that capacity.

**Goods and Workmanship**

5.21 the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by **You** or on **Your** behalf; or

5.22 workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by **You** or on **Your** behalf, or from **Your** supervision of such workmanship.

5.23 However, Exclusions 5.22 and 5.23 do not apply to the extent that the **Claim** arises directly from the provision of design, advice or specification services provided in the ordinary course of the **Professional Business**.

**Related Persons**

5.24 any actual or alleged liability to any **Related Person**, unless the **Claim** originally emanates from an independent third party.

**USA and Canada**

5.25 any legal proceeding brought in any court of the United States of America or Canada, or their dominions and protectorates, or arising from any judgment registered or lodged in connection with such a legal proceeding; or

5.26 any work or activities undertaken by **You** in the United States of America or Canada, or their dominions and protectorates.

**Insolvency or Bankruptcy**

5.27 the administration, receivership, insolvency or bankruptcy of You.

**Sexual Molestation**

5.28 the actual, attempted, or alleged sexual misconduct, or molestation of any person.

**Pollution**

5.29 the actual, alleged or threatened discharge, release, or escape of **Pollutants**, or any direction or request that **You** test for, monitor, clean-up, remove, contain, treat, detoxify or neutralise **Pollutants**, or any voluntary decision to do so.

**Asbestos**

5.30 asbestos in whatever form or quantity.

**Nuclear**

5.31 nuclear incidents, nuclear material, or any radiation or contamination from any nuclear fuel, waste or component.

**War**

5.32 war, invasion, acts of foreign enemies, civil or military uprisings, rebellion, revolution, insurrection, hostilities (whether war has been declared or not), or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

**Terrorism**

5.33 any act of **Terrorism**, or any action taken in controlling, preventing, suppressing or in any way relating to an act of **Terrorism**.

## 6. CONDITIONS

### Alteration to Risk

- 6.1 The **policy** requires **you** to notify **Us** within 30 days of:
- (a) any material change in the nature of the **Professional Business**; or
  - (b) any act of insolvency or bankruptcy of the **Insured**.

### De-Registration

- 6.2 **You** must notify **Us** immediately in the event that the **Insured's** statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing **Your** profession is cancelled, suspended or terminated, or has conditions imposed during the **Insurance Period**. Any **Claims** arising from the conduct of the **Professional Business** after the date of cancellation, suspension or termination are excluded from indemnity under this **Policy**. However, this condition does not apply if the suspension relates purely to the late payment of registration fees.

### Severability and Non-Imputation

- 6.3 If more than one person or entity is insured under this **Policy**, then any non-disclosure or misrepresentation by one person or entity shall not prejudice the rights of any other person or entity entitled to indemnity under this **Policy**, provided that the other **Insured** is innocent of, and has no knowledge of the facts or matters not disclosed or such misrepresentation (or should not reasonably have had such prior knowledge).

### Reporting Claims

- 6.4 In the event of a **Claim** arising under this **Policy**:
- (a) **You** will notify **Us** in writing as soon as practicable after **You** first become aware of such **Claim** and within the **Insurance Period** or discovery period. Such written notice to be sent to **ProRisk** at Level 2, 115 Bridge Road, Richmond, Victoria, 3121; and
  - (b) So far as reasonably practicable, **You** must give **Us** such information and assistance necessary to determine an appropriate course of action and identify any parties that **You** may have rights against in connection with the **Claim**.

### Management of Claims

- 6.5 **You** must not admit or assume liability, consent to any judgment or any settlement agreement or settle any **Claim**, or incur any costs or expenses in connection with any **Claim**, without **Our** prior written consent, which will not be unreasonably withheld.
- 6.6 **We** may assume conduct of the defence and settlement of any **Claim** and may appoint legal advisers for that purpose, but **We** will not force **You** to contest any **Claim** unless counsel (agreed to by **You** and **Us**) advises that the **Claim** should be contested having regard to the economics and prospects of the defence of the **Claim**. If **You** and **We** are unable to agree on the choice of counsel, such counsel shall be appointed by the Chairman of the Bar Council in the state in which the **Claim** has been made.
- 6.7 Legal advisers retained by **Us** to act on **Your** behalf for any **Claim** are at liberty to disclose to **Us** any information they receive in that capacity, wherever they obtain it from, including from **You**. By claiming under this **Policy**, **You** authorise such legal advisers to disclose this information to **Us** and to the extent necessary waive any claim to legal professional privilege which might otherwise prevent those legal advisers from disclosing this information to **Us**.
- 6.8 The legal advisers retained by **Us** to conduct the investigation, defence or settlement of any **Claim**, may provide advice to **Us** on any issue regarding **Our** liability to indemnify **You** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **Claim** on behalf of both **Us** and **You**.
- 6.9 **You** agree that all communications between **Us** and the legal advisers retained by **Us** to act in the conduct of the investigation, defence or settlement of any **Claim** in relation to **Your** entitlement to indemnity from **Us** are privileged between **Us** and the legal advisers and **You** agree that **You** are not entitled, under any circumstances, to access or obtain any such communications.
- 6.10 If any actual or apparent conflict arises between the interests of **Us** and **You**, the legal advisers retained by **Us** to conduct the investigation, defence or settlement of any **Claim** may cease acting on behalf of **You** and may continue to act on behalf of **Us** in relation to any dispute between **Us** and **You** with respect to **Your** entitlement to indemnity.
- 6.11 **We** may allow **You** to conduct the defence of a **Claim** if **We** believe the **Claim** will not exceed the **Excess**. If **We** do this, **You** will be required to provide us with

reasonable progress reports and **We** reserve the right to take over conduct of the defence of the **Claim** at any time should we consider it reasonable to do so.

6.12 **We** will not agree to any settlement of any **Claim**, without consultation with **You**, however if **We** recommend the settlement of a **Claim** for a certain amount, and the **Claim** can be settled for that amount but **You** refuse to agree to a settlement and decide to contest the **Claim**, then **We** are only liable for no more than the amount for which the **Claim** could have been settled plus **Your** legal costs up to the time of **Your** refusal to settle.

#### Limited Liability

6.13 **Our** liability under this **Policy** for all **Claims**, whether against one or any number of **Insureds**, will not exceed the **Limit of Indemnity** plus any reinstatement under automatic extension 3.1. However, **We** will pay, in addition, the costs and expenses incurred in the defence, settlement or investigation of any **Claim**.

6.14 If a payment greater than the **Limit of Indemnity** is required to dispose of a **Claim**, **Our** liability under insuring clause 1.2 will be limited to the proportion that the **Limit of Indemnity** bears to the payment required to dispose of the **Claim**.

#### Multiple Claims

6.15 All **Claims** which arise from causally connected or interrelated acts, errors or a failure to act, will be regarded as one **Claim**. **We** will apply this condition when determining the **Limit of Indemnity** available, and the **Excess** applicable to **Claims** under this **Policy**.

#### Goods And Services Tax

6.16 The **Premium** includes an amount for **GST**.

6.17 **Our** liability to the **Insured** in respect of a **Claim** under this **Policy** is calculated less any input tax credit to which the **Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which the **Insured** would have been entitled had it made a relevant acquisition. The **Insured** must inform **Us** of the extent to which it is entitled to an input tax credit, and any **GST** liability arising from the **Insured's** provision of incorrect advice is payable by the **Insured**.

#### Excess

6.18 **You** must bear the amount of the **Excess** in respect of each **Claim** under this **Policy**. Where the **Excess** is described in the **Schedule** as "costs inclusive", all external expenses incurred by **Us** in connection with the

**Claim** will be borne by **You**, but only up to the limit of the **Excess**.

6.19 In the event of a **Claim** by **You** under this **Policy**, **You** will pay to **Us** the **Excess** within seven (7) business days. Any delay, failure or refusal by **You** to pay the **Excess** will entitle **Us** to deduct such amount from any amount(s) required to settle any **Claim** or judgment, order or any other payment to be made by **Us** under this **Policy**. In the event that a failure or refusal to grant access to monies for any **Excess** results in a failure of a settlement or an increase in costs and expenses, **Our** liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been settled plus the costs and expenses incurred with **Our** prior written consent up to the date of such failure or refusal, less the **Excess**.

6.20 Where **We** have elected to pay all or part of the **Excess** in respect of any **Claim**, **You** will, within seven (7) business days of receipt of **Our** written request, reimburse **Us** for such payment, unless as otherwise agreed.

#### Cancellation

6.21 **We** will only cancel this **Policy** as permitted by law. The **Policy** may otherwise be cancelled in writing following mutual agreement between **Us** and **You**.

6.22 **You** may cancel this **Policy** at any time in writing to **Us**. In the event of cancellation, **we** will retain the earned proportion of the **premium** calculated pro rata as at the date of cancellation, provided **we** will always retain a minimum of 25% of the **premium**.

#### Subrogation

6.23 Where **We** have paid a **Claim** under this **Policy**, **We** will retain the right to be subrogated to all rights of recovery in respect of such payments. **You** may have against any party in relation to that **Claim**. In addition, all reasonable assistance, including the provision of documentation, will be rendered to **us** in the prosecution of such rights by **you**. Any recovery received will be applied first against any loss insofar as it exceeds the **limit of Indemnity**, then against any payment made by **us**, and finally against the **Excess**.

#### Consideration

6.24 The cover provided by **Us** under this **Policy** is in consideration of the payment of the **Premium**.

6.25 The **Premium** is the amount due to **Underwriters** and any commission allowed by **Underwriters** is to be regarded as remuneration of **ProRisk**.

#### Validity

6.26 To be valid, this **Policy** must have a **Schedule** attached to it which has been signed by an authorised officer of **Ours**.

#### Headings

6.27 Paragraph titles used in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or interpretation.

#### Governing Law

6.28 This **Policy** will be construed in accordance with the laws of Australia and the State or Territory where the **Policy** was issued. All disputes relating to the interpretation of this **Policy** will be determined by the courts (or a Federal court) based in that State or Territory.

#### Service of Suit

6.29 **We** agree that:

- (a) In the event of a dispute arising under this **Policy**, **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.
- (b) Any summons notice or process to be served upon **Underwriters** may be served upon:

Professional Risk Underwriting Pty Ltd  
Level 2, 115 Bridge Road,  
Richmond, VIC 3121

who has authority to accept service and to cause an appearance to be filed on behalf of **Underwriters**, and who is directed at the request of the **Insured** to give a written undertaking to the **Insured** that it will cause an appearance to be filed on behalf of **Underwriters**.

- (c) If a suit is instituted against **Underwriters**, **Underwriters** will abide by the final decision of any such court or any competent appellate court.

#### Sanctions Limitation

6.30 **We** will not be liable under this **Policy** to provide any cover nor make any claim or pay any other benefit to the extent that the provision of such cover, payment of such claim or provision of such other benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction applicable to **Us**.

## 7. DEFINITIONS

**Claim** means:

- (a) any demand for compensation, damages or legal costs or any assertion of a financial right made by a third party in writing to **You**; or
- (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served upon **You**.

**Document(s)** mean deeds, wills, agreements, maps, plans, books, letters, certificates, forms and documents of any nature, whether written, printed or reproduced by any method and includes computer records and electronically stored data, but does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

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

**Excess** means the amount shown in the **Schedule** as the excess.

**GST, input tax credit, and acquisition** have the meaning given to those words in A New Tax System (Goods and Services Tax) Act 1999 (as amended).

**Inquiry** means any official investigation, examination, inquiry, prosecution or other proceedings relating to **Your** professional conduct which is conducted by any official body legally authorised to investigate such conduct, including any coronial inquest.

**Insurance Period** means the period shown in the **Schedule** as the insurance period, unless terminated earlier.

**Insured** means the person or entity named as the insured in the **Schedule**.

**Limit of Indemnity** means the amount shown in the **Schedule** as the limit of indemnity.

**Our** means pertaining to **ProRisk** on behalf of **Underwriters**.

**Policy** means this policy wording, any endorsements to it, the **Schedule**, the **Proposal** and any other documents that **We** issue to **You** and advise **You** that they form part of the policy.

**Pollutants** means any solid, liquid, gaseous, biological, radiological, nuclear, radioactive, or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to germs, mould, mildew, fungus, spores, fumes, acids, alkalis, smoke, vapour, soot, fibres, nuclear or radioactive material of any sort, chemicals, or waste materials.

**Premium** means the amount stated as premium in the **Schedule**.

**Principal** means where the **Insured** is an individual, that individual; where the **Insured** is a firm, a partner of that firm; or where the **Insured** is a company, a director of that company.

**Professional Business** means the professional service provided by the **Insured** as stated in the **Schedule** and which the **Insured** is licensed and or registered to provide, where licensing and or registration is required by law.

**Proposal** means the written proposal form bearing the date stated in the **Schedule** together with any supplementary material submitted to **Us** by or on behalf of the **Insured**.

**ProRisk** means Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076.

**Related Persons** means any person or entity covered by this **Policy**, any **Subsidiary** of the **Insured**, any entity that has control of 10% or more of the voting shares or rights or an executive role in the operation of the **Insured**, or any spouse, domestic partner, parent, parent-in-law, domestic partner of parent, sibling, or child of the **Insured** or any spouse or domestic partner of the **Insured's** sibling or child.

**Retroactive Date** means the date shown in the **Schedule** as the retroactive date. If no date is shown, and the word "Unlimited" is shown, then Exclusion 5.3 will not apply.

**Schedule** means the schedule attached to and forming part of the **Policy**.

**Subsidiary** means any entity over which the **Insured** is in a position to exercise effective direction or control through ownership or control of more than fifty percent of the issued voting shares of that entity, or any subsidiary at law.

**Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or

on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and or to put the public or any section of the public in fear.

**Underwriters** means Swiss Re International SE Australia Branch (ABN 38 138 873 211).

**Us and We** means **ProRisk** on behalf of **Underwriters**.

**You and Your** means:

- (a) the person or entity named as the **Insured** in the **Schedule**;
- (b) any person who is during the **Insurance Period** a **Principal** or **Employee** of the **Insured**; and
- (c) any former **Principal** or **Employee** of the **Insured** but only in respect to their conduct of the **Professional Business**.