



# **Construction Projects Professional Indemnity Policy Wording**

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## General Information & Important Notices

### How We protect your privacy

We use information provided by Our customers to allow Us to offer Our products and services. This means We may need to collect Your personal information, and sometimes sensitive information about You as well (for example, Your claims history). We will collect this information directly from You where possible, but there may be occasions when We collect this information from someone else.

We will only use Your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give Us Your information, but this may affect Our ability to provide You with insurance cover.

We may share this information with companies within Our group, government and law enforcement bodies if required by law and others who provide services to Us or on Our behalf, some of which may be located outside of Australia.

By applying for, using or renewing any of Our products or services, or providing Us with Your information, You agree to this information being collected, held, used and disclosed as set out in this policy.

You can access Our privacy policy at [www.pacificindemnity.com.au/privacy-policy](http://www.pacificindemnity.com.au/privacy-policy)

### General Insurance Code of Practice

We 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.

The objectives of the Code are:

- to commit Us to high standards of service;
- to promote better, more informed relations between Us and You;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes between Us and You; and
- to promote continuous improvement of the general insurance industry through education and training.

We have adopted and support the Code and are committed to complying with it. Please contact Us if You would like more information about the Code.

Details of the Code of Practice can be found on-line at: [www.codeofpractice.com.au/](http://www.codeofpractice.com.au/)

### Our service commitment

We are proud of Our service standards and support the General Insurance Code of Practice. In an unlikely event that You are not satisfied with the way in which We have dealt with You, as part of

Our commitment to customer service, We have an internal dispute resolution process in place to deal with any complaint You may have.

Please contact Us if You have a complaint, including if You are not satisfied with any of the following:

- one of Our products;
- Our service;
- the service of Our authorised representatives;
- Our claims representatives; or
- Our decision on Your claim.

Our staff will help You in any way they can. If they are unable to satisfy Your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to Our Internal Dispute Resolution Department.

Details of Our internal dispute resolution process are available from Our office.

### Intermediary Remuneration

We may pay remuneration to insurance intermediaries when We issue, renew or vary a policy the intermediary has arranged or referred to Us. The type and amount of remuneration varies and may include commission and other payments. If You require more information about remuneration We may pay Your intermediary You should ask Your intermediary.

### We

For the purposes of this **General Information and Important Notices**, 'We' means Pacific Indemnity Underwriting Solutions Pty Ltd ABN 14 606 511 639 - on behalf of CGU Insurance Limited ABN 27 004 478 371.

### About Pacific Indemnity

Pacific Indemnity Underwriting Solutions Pty Ltd, ABN 14 606 511 639, specialises in Professional Risk insurance (including Professional Indemnity Insurance, Malpractice Insurance, Information & Computer Technology Insurance, Management Liability Insurance and similar products). Pacific Indemnity's Australian Financial Service Licence number is 480863.

In arranging this insurance, Pacific Indemnity is acting on behalf of the insurer, CGU Insurance Limited ABN 27 004 478 371. CGU's Australian Financial Service Licence number is 238291.

### Wholesale only

Pacific Indemnity Underwriting Solutions Pty Ltd is only licensed to offer or provide General Insurance products or services which do not include any of the following types of General Insurance (which are defined by the Corporations Act as "retail"): Motor Vehicle, Home Building, Home Contents, Sickness and Accident, Consumer Credit, Travel, Personal or Domestic Property, Medical Indemnity or any other kind of General Insurance which has been prescribed by the Corporations Regulations.

## Design & Construction Projects Policy

### Insuring Clauses

We will pay to or on **You** behalf all awards of damages and awards of claimants costs against **You** resulting from any **Claim** for **Civil Liability** arising from the provision of **Professional Services** by or on behalf of the **Named Insured**.

We do this only for **Claims** which are

- (i) made against **You** during the **Period of Insurance**; and which
- (ii) **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**; and which
- (iii) Arise out of an act error or omission after the Retroactive Date, if any, specified in the **Schedule**.

We will also pay on **You** behalf (and as needed advance) **Claim Investigation Costs**. We are not however obliged to defend, or to continue to defend, any **Claim** or pay, or continue to pay, any **Claim Investigation Costs**, once the **Policy Limit** (or the **Sub-Limit**, as the case may be) has been exhausted.

All **Cover** provided under this **Policy** is subject to the Insuring Clauses and all the **Policy** terms, conditions, exclusions and limits contained in or endorsed on this **Policy** and the payment of the Gross Premium stated in the **Schedule**.

### Insuring Clause clarifications

For clarity, **Civil Liability Covered** by this **Policy** includes (but is not necessarily limited to) liability arising from the provision of **Professional Services** for the following:

- Breach of professional duty
- Breach of confidentiality
- Breach of privacy
- Breach of fiduciary duty
- Defamation
- Loss of or damage to **Documents** (to the full policy limit)
- Liability for the dishonest, fraudulent, criminal or malicious acts or omissions of persons for whom **You** are responsible – vicarious liability
- **Intellectual Property** breaches
- Breaches of the Competition and Consumer Act and the Fair Trading Acts (Australian & New Zealand)
- Misleading and deceptive conduct breaches under Australian Securities and Investment Commission Act 2001
- Vicarious Liability
- Unintentional breaches of Warranty of Authority

## Extensions

Each of the following Extensions automatically applies unless otherwise stated in the endorsements or the **Schedule**. Each of the Extensions is subject to the Insuring Clause and all other terms, exclusions, conditions and the **Policy Limit** of this **Policy** unless otherwise expressly stated in the extension or in the endorsements.

### Loss Mitigation and Rectification

We will reimburse **You** the direct costs and expenses reasonably and necessarily incurred by **You** with **Our** prior written consent (which will not be unreasonably withheld) in taking reasonable and necessary steps to rectify or to mitigate the effects of any of **Your** acts, errors or omissions done or omitted in the provision of **Professional Services** by or on behalf of the **Named Insured** that would otherwise result in a **Claim Covered** by the **Policy**. Provided always that **You** first discover such act, error or omission during the **Period of Insurance** and immediately notify **Us** of such act, error or omission during the **Period of Insurance**;

**Our** total liability for payment of such direct costs and expenses under the **Policy** shall not exceed \$100,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

### Hold Harmless Agreements

Notwithstanding the Assumed Duty of Obligation Exclusion in this **Policy**, to the extent that in the course of the provision of the **Professional Services** **You** contract with another party to carry out all or part of the **Professional Services** and such contract includes a **Hold Harmless Clause** to the benefit of that other party, then **Cover** under this **Policy** will not be excluded or limited solely by reason that **You** have agreed to be bound by such **Hold Harmless Clause**.

### Contracting out of Proportionate Liability

Notwithstanding the Assumed Duty of Obligation Exclusion in this **Policy**, to the extent that **You** have legally contracted out of the operation of the proportionate liability provisions of any legislation then this **Policy** extends to provide cover for resultant **Civil Liability** incurred.

### Implied Warranties and Conditions

A **Civil Liability Covered** by this **Policy** shall include a **Civil Liability** arising from a breach of a warranty or condition (as to merchantable quality, due care and skill or fitness for purpose) which is implied into a contract under common law or by the effect of the Competition and Consumer Act 2010 (Cwlth) or any Fair Trading legislation of any state or territory of Australia.

## Enquiries – legal costs Cover – including for regulatory, licensing, disciplinary or coronial enquiries

For those **Enquiries** of which **You** first become aware (and of which **We** are told about in writing as soon as reasonably possible) while this **Policy** is in force, **We Cover You** and **Your Employees** up to \$250,000 in the aggregate in respect of **Claim Investigation Costs** for **Your** representation at any such **Enquiry**. This **Cover** does not extend to paying **Your** regular or overtime wages, salaries or fees, or those of **Your Employees**.

## Public Relations Cover

**We** will pay the reasonable and necessary fees, costs and expenses of a public relations consultant retained by **You** with **Our** prior written consent (which shall not be unreasonably delayed or withheld) to design and implement a **Publicity Campaign** approved by **Us**, which is designed to prevent or mitigate damage to **Your** reputation in consequence of a **Covered Claim** arising from the provision of **Professional Services**.

**Our** total liability for the payment of such fees, costs and expenses of a public relations consultant under the **Policy** shall not exceed a Sub-Limit of \$50,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

Notwithstanding the **Policy** excess specified in the **Schedule**, the **Excess** applicable to the **Cover** provided under this Section is \$1,000 for each and every **Publicity Campaign**.

## Vicarious Liability

The performance of **Professional Services** by **You** includes, for the purpose of this **Policy**, acts, errors or omissions of **Your** agents or consultants while undertaking work pursuant to the contract with **You** which is reasonably incidental to **Your Professional Services** and for which **You** are liable. Such agents and consultants, however, are not **Covered** by this **Policy**.

## Cover to Spouse, domestic partner, Estates, Administrators & Executors and Legal Representatives

If **You**, or anyone entitled to **Cover** under this **Policy**, dies or becomes legally incompetent or insolvent, **We Cover Your** spouse, domestic partner, estate, legal representative or assigns, or the party entitled to **Cover**, to the same extent as **Cover** would otherwise have been available to **You**, but only in respect of **Your** acts errors or omissions and not of the spouse, domestic partner, estate, administrator, executor, legal representatives or assigns.

## Covered and uncovered loss

In the event that there are a number of causes which contribute to the loss, damage or injury in respect of which a **Claim** is made, **We** will only **Cover You** for the **Civil Liability** that **You** incur in respect of that proportion of the loss, damage or injury which is attributable to the performance of the **Professional Services** which are **Covered** by this **Policy** only. **We** will **Cover You** against that **Civil Liability** irrespective of whether one or more of the

other causes of the loss is excluded or otherwise not covered under the **Policy**.

## Optional Extensions

Each of the following Optional Extensions will only be **Covered** if specified in the **Policy Schedule** as “included”. Further, each of the Extensions is subject to the Insuring Clause and all other terms, exclusions, conditions and the **Policy Limit** of this **Policy** unless otherwise expressly stated.

### Novation

Notwithstanding the Assumed Duty of Obligation Exclusion in this **Policy**, this **Policy** extends to **Cover Civil Liabilities** arising in connection with the provision of **Professional Services** under or in respect of a novated contract where the:

- a) The **Named Insured** purchases or acquires another business or contract (which business or contract – as the case may be – is consistent with the business or contract disclosed to **Us** in the proposal for this insurance); and
- b) the **Named Insured** assumes responsibility for the **Professional Services** previously provided by another party;

Where the **Named Insured's** contract to provide **Professional Services** is novated to another party, then **Cover** under this **Policy** is only extended in respect of **Civil Liabilities** arising out of the provision of the **Professional Services** conducted by the **Named Insured** prior to the novation of such contract to a another party.

**We** do not **Cover**, under this extension, any **Claims** or **Covered Claims** arising from or in connection with:

- (i) liabilities arising from such novated contracts that are not otherwise **Covered** by the **Policy** prior to such contracts being novated; or
- (ii) any liabilities the **Named Insured** has assumed in a novated contract, other than such liabilities which the **Named Insured** would otherwise have at common law.

### Indemnity to Your Client

**We** will pay on behalf of **Your** client the **Civil Liability** that **Your** client incurs as a direct result of a **Claim** made against **Your** client by any person or entity (other than any of **You**) which results directly from **Civil Liability** that **You** incur in the performance of **Professional Services**.

## What is not Covered

We do not **Cover You** for or in respect of:

### Claims or Facts Which May Give Rise To Any Claim or Loss or Liability or Enquiry

- a) Known to **You** at the inception date of this **Policy**; or
- b) Arising from a **Known Circumstance**; or
- c) Directly or indirectly based upon, attributable to, or in consequence of any **Known Circumstance** or known **Claims, Losses, liabilities or Enquiries**; or
- d) Disclosed in the **Proposal** or arising from or associated with facts or circumstances disclosed in the **Proposal**; or
- e) If the **Policy** is endorsed or amended mid term, for any **Claim** or **Covered Claim** or any associated costs that arose from a **Known Circumstance** (as at the effective date of the amendment/endorsement) to the extent that the **Claim** or **Covered Claim** or any associated costs would not have been **Covered** by the **Policy** before such amendment/endorsement.

### Foreign Courts

#### Claims:

- a) first brought in or determined pursuant to the laws of, the United States of America or the Dominion of Canada, or their territories or protectorates; or
- b) In respect of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their territories or protectorates; or
- c) Where the proper law of the United States of America or the Dominion of Canada, or their territories or protectorates is applied to any of the issues in any **Claim** or **Covered Claim, Covered** by this **Policy**.

### Assumed duty or obligation

#### Claims:

- a) Which allege a liability under a contractual warranty, guarantee or undertaking (unless the liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- b) Which arise from circumstances where a right of contribution or indemnity has been given up by **You**; or
- c) Which arise from circumstances where someone has done work or provided services under an arrangement or agreement with **You** which limits any potential right for **You** to receive contribution or indemnity from that person; or
- d) Which arise from any **Civil Liability** which **You** agree to accept in connection with the provision of the **Professional**

**Services** which is more onerous than that which **You** would otherwise have at common or Statute law; or

- e) Which arise from any business not conducted for or on behalf of the **Named Insured** Firm or entity.

### Related parties

**Claims** against any of **You** brought by or on behalf of:

- (i) any other of **You**; or
- (ii) any company in respect of which **You** or any person or party specified in (i) above holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role; or
- (iii) any trust in respect of which **You** or any person or party specified in (i) above is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or
- (iv) any other person, firm or incorporated body having control of over 10% or more of the voting shares or rights or an executive role in the operation of the **Named Insured** Firm or entity.

### Refund of Professional Fees

#### Claims:

For (or calculated by reference to) the refund of professional fees or charges (by way of damages, offset or otherwise).

### Commercial Risks

- a) **Your** failure to provide, effect or maintain any bond, surety or insurance; or
- b) Any liability or loss directly or indirectly arising out of or in any way connected with **Your** insolvency, receivership, administration, bankruptcy or liquidation; or
- c) Any forgone or un-realised profit. In particular, there is no **Cover** under this **Policy** for any component of profit which would have been derived or derivable by **You** from the sale or supply of any goods, services or rights by or on **Your** behalf; or
- d) Related to a liability to pay trading debts, or the repayment of any loan; or
- e) The insolvency, receivership, administration, bankruptcy or liquidation of any of **You**; or
- f) For the costs and expenses incurred by or on **Your** behalf in complying with any contractual obligations or making good any faulty product; or
- g) Directly or indirectly arising from the provision of cost guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or
- h) Any express fitness for purpose term of a contract.

### Acquired & Novated Liability

- a) Any liability that **You** assume for **Professional Services** which are undertaken by another party, other than one of your sub-consultants; or
- b) **Professional Services** performed by any of **You** prior to any acquisition by, or merger with the **Named Insured**.

However, this exclusion does not exclude **Cover** for any **Claim** arising from **Professional Services** performed by any of **You** while **You** are covered by this **Policy**.

### Anti-Competitive Practices

Any contravention of the provisions in Part IV, IVA and IVB of the Competition and Consumer Act 2010 (Cth), or any similar law anywhere in the world regulating monopolisation, anti-trust, price fixing, price discrimination, predatory pricing, restraint of trade or similar activities.

### Goods & Workmanship

**Claims** directly or indirectly arising from:

- a) the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by or on **Your** behalf; or
- b) 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 or on **Your** behalf; or from supervision of such workmanship by any of **You**.

### Product Defects

Any defect in any product, good or material unless such defect arises out of the performance of **Professional Services**.

### Employers Liability, Directors' & Officers' Liability, Occupier's Liability, Motor, Marine, etc

**Claims:**

- a) Directly or indirectly based upon, attributable to or in consequence of **Your** liability as an employer; or
- b) Bodily injury (including mental anguish or emotional distress), sickness, disease or death of any employee, apprentice, contractor, volunteer or any worker who is under **Your** direction, control and/or supervision or for whose workplace safety **You** are responsible;
- c) Arising out of or in respect of actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any of **You** against any employee or employment applicant; or
- d) Arising out of or in respect of actual or alleged acts, errors or omissions of any of **You** who is a director or officer of any incorporated body and while acting in that capacity; or

- e) Arising from occupation (or alleged occupation) of land or buildings by any of **You**; or
- f) Arising from or in respect of **Your** liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

### Punitive & Exemplary Damages

For punitive, aggravated or exemplary damages or for fines or penalties. Further, this **Policy** does not provide **Cover** for any investigation or defence costs associated with such **Claims** or **Covered Claims**.

### Intentional Damage or Loss

- a) Arising from **Your** acts, errors, omissions or conduct, or acts, errors, omissions or conduct by a party otherwise entitled to **Cover** under this **Policy**, with the intention (or with reckless disregard for the consequences) of either:
  - (i) causing loss, damage or injury (including mental or emotional damage), or
  - (ii) depriving a third party (or another of **You**) of a tangible or intangible asset or thing to which they are entitled;
- b) Arising from any wilful breach of any statute, contract or duty by **You**.

This exclusion does not restrict **Cover** otherwise provided under the **Policy** for vicarious liability for the dishonest, fraudulent, criminal or malicious acts or omissions of persons for whom **You** are responsible.

### Asbestos

**Claims** which would not have arisen but for the existence of asbestos.

### Radioactivity & Nuclear Hazards

**Claims** arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear material; or
- b) the hazardous properties of any nuclear explosive, assembly or component.

### War & Uprisings

**Claims** arising directly from:

- a) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or
- b) property being taken, damaged or destroyed by a government or public or local authority.

## Terrorism

**Claims** directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:

- a) any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or
- b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

## Pollution

**Claims** arising directly or indirectly from any discharge, dispersal, release or permitting **Pollutants** to escape into or upon land, the atmosphere, or any water course or body of water.

## Limits & GST

**Cover** under this **Policy** shall not exceed the **Policy Limit** for any one **Claim** or series of **Claims** (including **Covered Claims**) arising from the same or interrelated acts, errors or omissions. For the purposes of this **Policy**, all such **Claims** shall be deemed to have been made against **You** in the earliest **Period of Insurance** in which such a **Claim** is first made against **You** (or during which **You** first become aware of facts that might give rise to a **Claim**).

Where the same **Claim** is made against more than one of **You** then the limit is not increased by reason of the number of persons against whom the **Claim** is made.

### Aggregate Policy Limit

Subject to the above and the following qualifications, **We** will provide **Cover** to a maximum of twice the **Policy Limit** for all **Claims Covered** by this **Policy**.

### Aggregate Limit qualifications

If there is other insurance **Cover** available to **You**, then **Cover** in excess of one **Policy Limit** (up to a maximum of twice the **Policy Limit**) is only available for so much of the liability (otherwise **Covered** by this **Policy**) which is not **Covered** by such insurance.

### Limit of Cover for Claim Investigation Costs

Where **Cover** is provided under this **Policy** for any **Claim**, then **Claim Investigation Costs** are payable in respect of that **Claim** in addition to the **Policy Limit** but only up to an amount equal to the **Policy Limit**. In this case, the aggregate amount **We** pay in total for **Claim Investigation Costs** for or in respect of all **Claims Covered** by this **Policy** does not exceed an amount equal to twice the **Policy Limit**.

### Sub-Limits

If this **Policy** or the **Schedule** indicates any **Sub-Limits** for specific types of **Cover** under this **Policy**, then the applicable **Sub-Limits** and not the **Policy Limit** apply only to these **Claims**. These **Sub-Limits** are included within and not in addition to the

## Policy Limit.

### GST Input Tax Credits

- a) Where and to the extent that **We** are entitled to claim an Input Tax Credit for a payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make such a payment, shall be net of **Our** entitlement to the Input Tax Credit.
- b) Where and to the extent that **You** are entitled to claim an Input Tax Credit for a payment required to be made by **You** as an **Excess**, then the amount of the **Excess** shall be net of **Your** entitlement to the Input Tax Credit.
- c) Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that **You** are, or will be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.
- d) Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that **You** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

## Claim Conditions

### Investigation, defence and settlement of Claims

#### We must be told about Claims

**You** must tell **Us** in writing about any **Claims** or losses as soon as possible and while this **Policy** is in force. If this is not done the **Your** right to **Cover** under this **Policy** may be affected.

#### Claims co-operation

Each of **You** must:

- a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen **Your** liability in relation to a **Claim** (or **Covered Claim**) or loss otherwise **Covered** by this **Policy**;
- b) promptly give to **Us** all the help and information that **We** may reasonably require to:
  - (i) investigate, mitigate and defend a **Claim** or loss; and
  - (ii) determine **Our** liability under this **Policy**.

### We can protect Our position

When **We** receive a notification of a **Claim**, or **Covered Claim**, then **We** can take whatever action **We** consider appropriate to protect **Our** position.

This does not, however:

- a) indicate that any of **You** is entitled to be **Covered** under this **Policy**; or
- b) prejudice **Our** rights under the **Policy** or at law.

### We can manage the Claim (or Covered Claim) on Your behalf

**We** can:

- a) take over and defend or settle any **Claim** (or **Covered Claim**) in **Your** name; and
- b) claim in **Your** name, any right that **You** may have for contribution or indemnity.

### You must not admit liability for or settle any Claim (or Covered Claim)

**You** must not:

- a) admit liability for, or settle any **Claim** (or **Covered Claim**); or
- b) incur any **Claim Investigation Costs** without first obtaining **Our** written consent. If **Our** prior written consent is not obtained, **Your** right to **Cover** under this **Policy** may be affected.

### Your right to contest

If **You** elect not to consent to a settlement that **We** recommend **You** and want to contest or continue the dispute or legal proceedings, then **We** will only **Cover You** (subject to the **Policy Limit**) for:

- a) the amount **We** could have settled the matter for; less
- b) the relevant **Excess** specified in the **Schedule**; plus
- c) the **Claim Investigation Costs** calculated to the date **You** elected not to consent to the settlement.

### Senior Counsel

Unless a Senior Counsel, that **We** and **You** both agree to instruct, advises that the **Claim** or **Covered Claim** should be contested, then neither **We** nor **You** can require the other to contest any legal proceedings about a **Claim** if the other does not agree to do so.

In formulating his or her advice, Senior Counsel must be instructed to consider

- a) the economics of the matter, having regard to but not limited to, the:
  - (i) the damages and costs likely to be recovered; and

- (ii) the likely costs of defence; and

- (iii) **Your** prospects of successfully defending the **Claim** or **Covered Claim**.

The cost of Senior Counsel's opinion will form part of the **Claim Investigation Costs**.

If Senior Counsel advises that the matter should be or is appropriate to be settled and if the terms of settlement which **We** recommend are within limits which are reasonable (in Senior Counsel's opinion and in the light of the matters he/she is required to consider), then **You**:

- (i) cannot (subject to the provisions herein under the heading "Your right to contest") object to the settlement; and
- (ii) must immediately pay the relevant **Excess** specified in the **Schedule**.

### Payments to settle potential Claims

Any money **We** pay to settle anything which might give rise to a **Claim** (or **Covered Claim**), is taken to be:

- (i) a payment to settle a **Claim** (or **Covered Claim**); and in addition,
- (ii) a payment for the purpose of calculating the total of all **Claims** (or **Covered Claims**) under this **Policy**.

### Recovering money from Employees

**We** must not recover any amount paid out in respect of a **Claim** or loss under this **Policy** from any of **Your Employees** or former **Employees** unless the **Claim** (or **Covered Claim**) arose from dishonest, fraudulent, criminal or malicious acts or omissions of such **Employee** or former **Employee**.

### Offsetting of costs & expenses You owe Us against what We owe You

If **We** incur costs or expenses above **Our** liability under the **Policy** for **Claim Investigation Costs**, then **You** must pay whatever amount is above that liability immediately **We** ask for it.

**We** can offset that payment due from **You** against (and deduct that amount from) any amount **We** must pay to or on behalf of **You** under this **Policy**.

### The Excess

- a) **We** only provide **Cover** (up to the **Policy Limit**) for that part of the **Covered Claim** above the **Excess** specified in the **Policy Schedule**.
- b) There is no **Excess** for **Claim Investigation Costs** when **We** **Cover You** for this **Covered Claim**.
- c) only one **Excess** is payable for all **Covered Claims** or losses **Covered** by this **Policy** arising from the one act, error or omission.

- d) in the event of a **Claim, Covered Claim** or loss arising from separate acts, errors or omissions, then one **Excess** shall apply in respect of each such **Claim, Covered Claim** or loss.

#### Advancement of Claims Investigation Costs

If **We** elect not to take over and conduct the defence or settlement of any **Claim**, then **We** will pay all reasonable and necessary **Claims Investigation Costs** provided that:

- a) **We** have not already denied indemnity under the **Policy**; and
- b) **Our** written consent is obtained prior to **You** incurring such **Claims Investigation Costs** (such consent not to be unreasonably withheld).

**We** reserve the right to recover any **Claims Investigation Costs** paid under this provision from **You**, in the event and to the extent that:

- (a) **You** make an admission in writing of any fraudulent, dishonest, malicious or intentional conduct; or
- (b) it is subsequently established, directly or indirectly, by admission, judgment or other final adjudication, that **You** were not entitled to **Cover** under this **Policy**.

#### Allocation

- a) If a **Claim** includes both matters which are **Covered** and matters which are not **Covered** by this **Policy**, then both **You** and **We** will allocate (based upon **Your** relative legal and financial exposures to matters **Covered** and matters not **Covered** by this **Policy**) any amounts which have been incurred by or on **Your** behalf.
- b) If both **You** and **We** cannot agree on an allocation of such amounts incurred by or on **Your** behalf then:
- (i) **We** will advance such portion of the **Defence and investigation Costs** which **We** deem to be **Covered** under this **Policy**, unless and until a different and final allocation is mutually agreed upon between **You and Us** or is arbitrated in accordance with this provision.
- (ii) **We** may, in **Our** sole discretion, pay amounts (other than amounts for **Claim Investigation Costs**) which **We** deem to be **Covered** under this **Policy**, unless and until a different and final allocation is mutually agreed upon between **You and Us** or is arbitrated in accordance with this provision or judicially determined.
- (iii) if **We** are requested by **You**, **We** will submit a dispute between **You and Us** regarding the allocation of amounts for determination by arbitration. Subject to agreement between **You and Us**, the arbitration panel will consist of one arbitrator selected by the President for the time being of the Victorian Law Society. The costs of arbitration undertaken in accordance with this provision shall be borne equally by **You and Us**.

- (iv) any allocation of damages, **Claim Investigation Costs** or other amounts which are mutually agreed upon between **You and Us** or arbitrated in accordance with this provision will be applied retroactively to such amounts notwithstanding any prior payment or advancement, as the case may be, to the contrary.
- (v) any allocation or advancement of **Claim Investigation Costs** will not apply to or create any presumption with respect to the allocation of amounts in respect of a **Claim**, other than in respect of **Claim Investigation Costs**.

#### Disclosure of information to Us in respect of the Cover and the Claim (or Covered Claim)

The solicitors instructed by **Us** for any **Claim** (or **Covered Claim**) can disclose to **Us** any information that they may receive in that capacity, wherever and from whomsoever they obtain it and notwithstanding that they may also be representing **You** in respect of the notified circumstance / **Covered Claim**. By claiming under this **Policy**, **You** (and any person entitled to indemnity under this **Policy**) authorise such solicitors to disclose this information to **Us**.

## Additional Special Provisions for Dishonesty and Fraud

In respect of any **Claim** arising from fraud or dishonesty which involves theft or misappropriation of money, then **We** only provide **Cover** if:

- (i) **You** kept a separate trust account for that money, and the account was audited at least annually by a qualified independent accountant; and
- (ii) all cheques prepared on that trust account are required to be signed by a **Principal** or two authorised people;
- (iii) all electronic fund transfers are required to be authorised by a **Principal** and accounts which are accessible on line are reviewed at least weekly.

**You** must take and continue to take all reasonable precautions to prevent any **Claim** arising from fraud or dishonesty and continue to perform all the supervision, controls, checks and audits reasonably practicable to avoid or lessen a **Claim** arising from fraud or dishonesty.

**We** deduct from any money **We** pay for a **Claim** or loss arising from fraud or dishonesty:

- (i) the amount of any money which **You** would have paid to the fraudulent, dishonest, criminal or malicious person the subject of **Cover** under this **Policy**, if they had not been fraudulent, dishonest, criminal or malicious; and
- (ii) the amount of any money of, or to which the person referred to in paragraph (a) above is entitled, which **You** hold (if **We** can do so by law).

Notwithstanding express **Cover** extensions for vicarious liability arising from fraud or dishonesty of employees, there is no **Cover** under this **Policy** to any person or entity the subject of **Cover** under this **Policy**, for any **Claim** or loss directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions or breach of fiduciary duty of which:

- (a) any of **You** had knowledge, or had reason to suspect, at or prior to the time of such acts or omissions; and
- (b) failed to take any reasonable action to prevent.

There is no **Cover** under this **Policy** for any **Claim** arising from or related to or which involves any dishonest, fraudulent, criminal, malicious acts, errors or omissions or breach of fiduciary duty other than pursuant to the express **Cover** extensions for vicarious liability arising from fraud or dishonesty of employees of this **Policy**.

## General Provisions

### Premium Payment

The **Cover We** provide in this **Policy** is subject to full payment of the Gross Premium as stated in the **Policy Schedule**. If full payment of the Gross Premium is not made, there is no **Cover**.

### Cover Beneficiaries

In so far as **Cover** is extended under this **Policy** to individuals and entities who are not a contracting party under this **Policy**, such **Cover** is subject to those individuals and/or entities (as the case may be) agreeing in writing within a reasonable time of notification to **Us** of the **Claim** or **Covered Claim**:

- (i) to be bound by the terms, conditions, exclusions and limits of this **Policy**;
- (ii) to be bound by obligations of utmost good faith as if they were a contracting party; and
- (iii) to be liable individually, and together with **You**, for paying the **Excess** (or any other payment due to **Us** under this **Policy**) in respect of any **Cover** provided to them under this **Policy**.

### Loss Prevention

**You** shall, as a condition to **Cover** under this **Policy**, take all reasonable steps to prevent any act, error, omission or circumstance which may cause or contribute to any **Claim** or loss which may be **Covered** under this **Policy**.

### Other Insurance Which May Cover The Risk

**You** must immediately advise **Us** in writing of any insurance already affected or which may subsequently be affected **Covering**, in total or in part and whether absolutely or contingently, the Liability, Claim Loss or **Claim Investigation Costs**, or any part of them, **Covered** by this **Policy**.

### Material Change in the Risk

**You** must immediately advise **Us** in writing of any material change in the risk **Covered** by this **Policy**.

### The Proposal – Severability and Non-imputation

The **Proposal We** were given by or on **Your** behalf before this **Policy** commenced, is taken to be a separate **Proposal** for each natural person or entity **Covered** under this **Policy**.

If there is any incorrect fact or misstatement in the **Proposal** that relates to one of **You** who is a natural person then, for the purposes of this **Policy, We** do not attribute it to any other of **You** who was not aware of the incorrect fact or misstatement.

### Authority to accept notices & to give instructions

The persons or entity first listed as the **Named Insured** in the **Schedule** is appointed as agent of:

- a) each of **You**; and
- b) any person or entity who is entitled to a benefit under this **Policy** (when they request **Cover** or suffer a loss under this **Policy**) in all matters relating to this **Policy**, and to **Claims** or **Covered Claims** which are (or are to be) **Covered** by the **Policy**.

In particular (but without limitation) the person or entity first listed in the **Schedule**, as the **Named Insured**, is the agent for the following purposes:

- (i) to give and receive notice of **Policy** cancellation, to pay premiums and to receive any return premiums that may become due under this **Policy**; and
- (ii) to accept endorsements or other notices provided for in this **Policy**; and
- (iii) to give instructions to solicitors or counsel that **We** appoint or agree to, and to receive advice from them and to act on that advice; and
- (iv) to consent to any settlement that **We** recommend; and
- (v) to do anything that **We** or **Our** legal advisers think might help with the procedures set out in this **Policy** for settling and defending **Claims** or **Covered Claims**; and
- (vi) to give **Us** information relevant to this **Policy**, which **We** can rely on when **We** decide whether to accept the risk, and set the **Policy** terms or the premium.

### De-registration

**You** must tell **Us** immediately in writing if **Your** statutory registration or licence, (which you are legally required to hold to provide **Professional Services**) is cancelled, suspended or terminated or has had conditions imposed during the **Period of Insurance** specified in the **Schedule**.

### Payment in Australian dollars in Australia

All premiums and **Claims** must be paid in Australian dollars in Australia.

### Law of the Policy

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued (which is specified in the **Schedule**). The courts of that place have jurisdiction in any dispute about or under this **Policy**.

### Territorial & Jurisdiction Limits

**Cover** under this **Policy** is not restricted by where anything giving rise to the **Claim** occurred. However, **Our Cover** is restricted in accordance with the **Foreign Courts** exclusion in this **Policy**.

### Schedule must be included

This **Policy** is only legally enforceable if it includes a **Schedule** issued by **Us**.

## Cancelling the Policy

### You Can Cancel the Policy

**You** are entitled to cancel this **Policy** from the date **We** receive a written request to cancel the **Policy**, provided that any such cancellation is subject to the following terms:

- a) If a **Claim** has been paid under the **Policy** or if **You** have notified a **Claim** or facts which may give rise to a **Claim** under the **Policy** then no return premium is payable.
- b) If there has been no **Claim** made or notified under the **Policy** then **We** will be entitled to retain premium for pro-rata 'time on risk' subject to a minimum administration charge of \$250 plus applicable statutory charges. (Note stamp duty for a mid term cancellation may not be refundable in some states).

### We can cancel the Policy

- a) **We** may cancel this **Policy** at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984, by giving notice in writing to **You** of the date from which cancellation is to take effect.
- b) **We** may deliver this notice to **You** personally, or post it by certified mail (to **Your** broker or to the address **You** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that **You** received the notice.
- c) Under Section 60 of the Insurance Contracts Act 1984, **We** may cancel this **Policy** at any time where:
  - (i) it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or

- (ii) it is an interim contract of general insurance.

After cancellation pursuant to this Clause, **We** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties, unless any of **You** have made a fraudulent claim under the **Policy**.

## How to read this Insurance Policy

### (a) Words with special meanings

Some of the words in this **Policy** wording have special meanings. These meanings can be found in Definitions.

### (b) Policy Interpretation

Except where the Context otherwise requires it:

- (i) The singular includes the plural and the plural includes the singular
- (ii) If a word or phrase is defined, its grammatical forms have a corresponding meaning
- (iii) Words importing a gender include every other gender

## Definitions

Whenever the following words are used in this **Policy** in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the **Policy Schedule**.

### Civil Liability

Liability for the compensatory damages, costs and expenses which a civil court orders **You** to pay on a **Claim** (as opposed to criminal liability or penalties). It includes the legal costs of the person making the **Claim**, for which **You** become liable.

### Claim (or Claims)

The receipt by **You** of:

- a) any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against **You**; or
- b) any written or verbal demand from a third party claiming compensation against **You**.

### Claim Investigation Costs

The reasonable and necessary legal costs and expenses (other than regular or overtime wages, salaries or fees of any of **You**) incurred by **You** or on **Your** behalf with **Our** prior approval in the investigation, defence or settlement of any **Claim** or **Covered Claim** which is **Covered** by this **Policy** at the time the legal costs

and expenses arise.

### Compensatory Civil Penalties

Means pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

- a) **You** for any civil offence;
- b) **You** for a strict liability offence in connection with a breach of occupational health and safety law or regulation ("OH&S"),

but solely resulting from the conduct of the **Professional Services**.

### Cover (and 'Covered')

Reference to '**Cover**' and '**Covered**' under this **Policy** shall mean indemnity.

### Covered Claim

The term **Covered Claim** means the:

- a) **Claims**, liabilities, losses, costs; or
- b) facts which may give rise to a **Claim**

which **We** may **Cover** or agree to **Cover** under this **Policy**.

### Documents

Documents of any nature including the electronically stored data, software or computer programs for or in respect of any computer system; but not including bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

Loss or damage to **Documents** does not include:

- a) loss or damage (including rearrangement) to such electronically stored data, software or computer programs arising from any computer virus or malware or from any design or programming defect in any computer program or computer operating system.
- b) Normal wear and tear or the action of insects or rodents or other gradual process.
- c) Documents lost, damaged or mislaid outside of Australia or New Zealand

### Employee

A natural person who is not a **Principal**, but who is or was, at the time the relevant act, error or omission giving rise to the **Claim**, a person who:

- a) is a party to a contract of service with the **Named Insured** and is or was remunerated by **You** for that service; or
- b) is neither a party to a contract of service with the **Named Insured**, nor an independent contractor, but a party to

a contract for services with the **Named Insured** for the provision of services to **You** for reward; or

- c) a volunteer worker,
- d) a student

and in respect of (a), (b), (c) and (d) above is (or was) at the time of the act, error or omission which gave rise to the **Claim** under **Your** direct control and supervision in the provision of **Professional Services**.

### Enquiry (or Enquiries)

Any legal or quasi legal enquiry including coronial enquiry (into a matter arising out of the provision of **Professional Services** and such matter is the subject of and is not excluded from **Cover** under this **Policy**) in respect of which **You** are legally required to participate by reason of the fact that the body conducting the enquiry (including a regulatory, licensing or statutory body) has legal jurisdiction over **You** or any of **You** (either by reason of a statutory power or by reason of **Your** membership of a professional association which has the power to discipline its members).

### Excess

The part **You** must pay of each **Covered Claim**.

### Former Principal

A person who has been, but is no longer:

- a) a **Principal** of **You**; or
- b) the **Principal** of any firm or incorporated body declared in the **Proposal**, which previously conducted the **Professional Services** which is now being conducted by the **Named Insured**.

### Hold Harmless Clause/Agreement

Mutual obligations between the **Named Insured** and the other contracting party to:

- a) hold each other harmless against; and/or
- b) indemnify each other against; and/or
- c) release each other from,

any liability for any loss or damage in connection with the **Professional Services**.

### Intellectual Property

Copyright, Design, Patent, Trade Mark or Moral Right, including false attribution of authorship (under the Copyright Act 1968 CwIth).

## Joint Venture

An undertaking (regardless of what it is called) which **You** carry on together with someone else who is not otherwise **Covered** under this **Policy**.

## Known Circumstance

Any fact, situation or circumstance which:

- a) any of **You** was aware of at any time before this **Policy** began or before this **Policy** was amended/endorsed; or
- b) a reasonable person in **Your** professional position would have thought, at any time before this **Policy** began or before this **Policy** was amended/endorsed,

might result in someone making an allegation against any of **You** in respect of a liability or loss that might be **Covered** by this **Policy** or any amendment or endorsement of this **Policy**.

## Named Insured

Means any person or entity expressly identified in the **Policy Schedule** as the **Named Insured**

## Period of Insurance

The **Period of Insurance** specified in the **Policy Schedule** – being the period between the inception date of this **Policy** and the expiry date of this **Policy** at 4.00 PM. The time being determined at the place where the **Policy** was issued.

## Policy

The insurance contract made up of:

- a) this **Policy** document;
- b) the **Schedule** to this **Policy**; and
- c) the endorsements, if any, contained or referred to in the **Policy Schedule**.

## Policy Limit

The **Policy limit** specified in the **Policy Schedule**.

## Pollutants

'**Pollutants**' shall mean any solid, liquid, gases or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalines, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

## Principal

A sole practitioner, a partner of a firm, or a director of a company, which firm or company is **Covered** by this **Policy**.

## Professional Services

The following categories of service performed by or under the supervision of qualified professional persons employed by the **Named Insured** (who hold all appropriate licences, registrations and authorisations):

- a) design, including advice in respect of design
- b) drawings and technical documentation
- c) technical specification
- d) technical calculation
- e) technical advice
- f) feasibility studies
- g) programming and time flow management
- h) land surveying and engineering surveying
- i) project and construction management
- j) quantity surveying
- k) training in respect of a) to j) above

'**Professional Services**' do not include any of the following:

- (i) the performance or supervision of construction-related activities either on or off site which would normally be undertaken by a construction contractor
- (ii) legal and financial advice
- (iii) management of human resources and industrial relations
- (iv) independent certification.

## Proposal

The written **Proposal** form (the date of which is specified in the **Schedule**) together with any other material which was given to **Us** by or on **Your** behalf, and relied on by **Us** to effect this **Policy**.

## Publicity Campaign

Means a publicity and/or public relations campaign designed and implemented by a public relations consultant.

## Run-Off Event

Means any **Named Insured** which, during the **Policy Period**, ceases to exist or operate, or which is disposed of or merged with or acquired by another entity.

## Schedule

The **Schedule** to this **Policy** wording, which is issued by **Us**

### Sub Limit(s)

The limit of **Our** insurance **Cover** for specified exposures as specifically set out within the **Policy** wording or as specified in the **Schedule** under '**Sub-Limits**' and which is included within and not in addition to the **Policy Limit**.

### Subsidiary

Any company or other incorporated entity which, at the commencement of the **Period of Insurance**, and by virtue of Australian law was, or is, either directly or indirectly a subsidiary of any incorporated body identified in the **Policy Schedule**.

### Terrorism

**Terrorism** includes any act, or preparation in respect of action, or threat of action designed to influence the government, whether de jure or de facto, of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) involves violence against one or more persons; or
- b) involves damage to property; or
- c) endangers life other than that of the person committing the action; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

### You

Each of the following, individually and jointly:

- a) each person, firm or incorporated body identified in the **Schedule** as a **Named Insured** and each current or **Former Principal** of any such firm or incorporated body; and
- b) any entity which is engaged in the provision of **Professional Services** and which is created and controlled, while this **Policy** is in force, by anyone identified in the **Schedule** as a **Named Insured**; and
- c) anyone who becomes a **Principal** of the **Named Insured** while this **Policy** is in force (but only in respect of work undertaken for or on behalf of the **Named Insured** firm or incorporated body).
- d) Any person, firm or incorporated body who is entitled to **Cover** under the terms of this **Policy** (as a beneficiary).

### We or Us or Our

Pacific Indemnity Underwriting Solutions Pty Ltd  
**ACN 606 511 639** – on behalf of CGU Insurance Limited

