



 **PRORISK**



General Terms & Conditions

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SECTION 1: IMPORTANT INFORMATION

1.1 This Policy

The **policy** wording, **schedule** and the General Terms and Conditions, together set out the cover provided, the amount insured and the terms and conditions of **your** insurance.

Please read these documents carefully and keep them in a safe place.

Words appearing in bold text have defined meanings in the **policy**. When reading the **policy** please make sure that **you** refer to the various definitions to ensure that **you** understand what is being said.

Where you have purchased more than one **policy** from **us** these General Terms and Condition need to be read together as one document for each and every **policy** purchased. Each **policy** is a separate policy of insurance.

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.

Coverage commences upon payment of the **premium**.

1.2 Limit of Liability and Excess

The **limit of liability** is the maximum liability for all **loss** under the **policy** during the **insurance period**.

Any sub-limit of liability specified in the **policy** or **schedule** will be part of and not in addition to the **limit of liability**. If more than one **limit of liability** or sub-limit of liability is applicable to a claim, then the total payment by **us** will not exceed the highest of the applicable **limits of liability** or sub-limits of liability.

We are only liable to pay to the extent that any loss under the **policy** exceeds the amount of the **excess**.

All covered loss arising out of, based upon, in connection with, or otherwise attributable to: the same act, error, failure to act, event, circumstance or **claim**; or causally connected or interrelated acts, errors, failures to act, events, circumstances or **claims** that have as a common nexus any fact, circumstance, situation or event, will constitute a single policy claim for the purposes of this policy regardless of whether the same or different parties, claimants or causes of action are involved. In this case, the **excess**, which will be the highest applicable, will apply once to any such single policy claim and the single applicable **limit of liability** or sublimit of liability will apply to such single policy claim.

All causally connected or interrelated acts, errors, failures to act, events, circumstances or **claims** that constitute such a single policy claim shall be considered to have occurred, been discovered or made (as applicable) and reported to **us** at the time the required notice with respect to the first of such acts, errors, failures to act, events, circumstances or **claims** was first given to **us**.

Where an **insured** is entitled to indemnity for a claim under one or more insuring clauses, sub-limits or extensions under the **policy**, then the **insured** is only entitled to claim under one of those insuring clauses, sub-limits or extensions and must elect under which one they choose to seek indemnity.

1.3 ProRisk

ProRisk is an underwriting agency and has authority to bind this **policy** on behalf of the **underwriters**.

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

A claims made 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.

This means that if during the **insurance period** you became aware of any facts that might give rise to a **claim** it is in **your** interest to inform **us** of those facts. This will serve to protect **your** rights to make a later **claim** that has arisen from those notified facts.

1.5 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.

1.6 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 **us** 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 **us**;
- (b) that is of common knowledge;
- (c) that **we** know, or in the ordinary course of business, ought to know; or
- (d) where **we** waive **your** duty of disclosure.

1.7 Non-Disclosure

If **you** fail to comply with **your** duty of disclosure, **we** may be entitled to reduce **our** liability under the **policy** 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.

1.8 Waiver of Rights of Subrogation

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. This term is subject to section 54 of the *Insurance Contracts Act 1984* (Cth) which limits **our** right to refuse to pay a **claim**.

1.9 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 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 or broker. 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 have obtained 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 or by mail at the address shown on this **policy**.

1.10 General Insurance Code of Practice

ProRisk and **underwriters** proudly support the General Insurance Code of Practice ('the Code').

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 the website www.codeofpractice.com.au.

This **policy** is compliant with the General Insurance Code of Practice.

1.11 Financial Hardship

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

1.12 Terms and Conditions

Except for these General Terms and Conditions or unless stated to the contrary in any **policy**, the terms and conditions of each **policy** will apply only to that **policy**. The General Definitions apply to all **policies** in addition to any specific definitions that may apply in each **policy**. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any **policy**, the terms and conditions of such **policy** will prevail for purposes of that **policy**. Any words in bold print in these General terms and Conditions not defined will have the meaning indicated in the definitions section of the relevant **policy**.

SECTION 2: CLAIM REPORTING

Each policy wording to which these General Terms and Conditions apply will specify in the Insuring Clause or Extension the basis for claims reporting and notification which is outlined in clauses 2.1 (Notification – Claims Made and Notified), 2.2 (Notification – Discovery), and 2.3 (Notification – Occurrence Based)

2.1 Notification – Claims Made and Notified

The **policyholder** will notify us of any **claim**, as soon as is reasonably practicable after they first became aware of such **claim** and within the **insurance period** or **discovery period** (if a **discovery period** is operable).

Such written notice will include the following, so far as is reasonably practicable and so far as the relevant **policyholder** is aware:

- (a) the identity of the claimant if relevant;
- (b) an outline of the facts alleged;
- (c) an estimate of the likely quantum of any loss; and
- (d) the policy number under which the notification is made.

2.2 Notification – Discovery

The **policyholder** will give written notice to **us** of the **discovery** of a covered loss or any other loss that the **insured** suspects may be covered by the **policy** as soon as practicable within the **insurance period** or

discovery period (if a **discovery period** is operable) but in any event not later than 60 days after any loss is first **discovered**.

Such written notice will include the following, so far as is reasonably practicable and so far as the relevant **insured** is aware:

- (a) the identities of all parties involved, if known;
- (b) an outline of the facts, whether actual or alleged;
- (c) an estimate of the likely quantum of loss; and
- (d) the policy number under which the notification is made.

2.3 Notification – Occurrence Based

The **policyholder** will give written notice of any **occurrence** which may give rise to a **claim**, as soon as is reasonably practicable after they first became aware of such **occurrence** or **claim**.

Such written notice will include the following, so far as is reasonably practicable and so far as the relevant **policyholder** is aware:

- (a) the identity of the claimant if relevant;
- (b) an outline of the facts;
- (c) an estimate of the likely quantum of any loss; and
- (d) the policy number under which the notification is made.

2.4 Written Notice

Notice to **us** will be given in writing, and delivered to:

The National Claims Manager
ProRisk
Level 2, 115 Bridge Road
Richmond, VIC, 3121
Email: newclaims@prorisk.com.au

Any written notice will be considered effective from the date such notice is first received by **us**.

SECTION 3: CONSENT AND LEGAL REPRESENTATION

3.1 Consent

The **insured, insured person** or any agent of the **insured's** must not:

- (a) incur any costs or expenses or make any payment that is or may be covered under this **policy** without our prior written consent (unless expressly stated otherwise by an Extension of Cover), such consent not to be unreasonably withheld. **We** accept no liability for any costs or expenses incurred or payment made by an **insured, insured person** or any agent of the **insured** without **our** prior consent;
- (b) take any action which is prejudicial to **our** interests; or
- (c) admit or assume liability, consent to any judgment, enter into any settlement agreement or settle any **claim**.

This term is subject to section 54 of the *Insurance Contracts Act 1984* (Cth) which limits **our** right to refuse to pay a **claim**.

3.2 Legal Representation

We will be entitled at any time, but not obligated, to take over and conduct in the **policyholder's** name:

- (a) the defence of any suit, legal proceeding or action the subject of a **claim**;

- (b) the investigation of any **claim**; or
- (c) the handling of any **investigation**.

We may appoint legal representatives of **our** choice for these purposes.

We shall not agree to any settlement in connection with any **claim** unless **we** have reasonably engaged with **you** and considered **your** interest in relation to defending the **claim**.

- 3.3** **We** will advance **costs** as incurred prior to a final determination or adjudication or up until the time that a **claim** is withdrawn. If such a **claim** is finally determined not covered or is excluded under this **policy** then all such **costs** already advanced must be repaid to **us**.
- 3.4** The **insured** will provide its reasonable co-operation and any information that **we** may reasonably require to assist **us** in defending any **claim** against the **insured**.
- 3.5** Legal advisers retained by **us** to act on the **insured's** behalf in relation to any **claim** or **investigation** are at liberty to disclose to **us** any information they receive in that capacity, wherever they obtain it from, including from the **insured**. By claiming under this **policy**, the **insured** authorises such legal advisers to disclose this information to **us** and waives all claim to legal professional privilege which might otherwise prevent those legal advisers from disclosing this information to **us**.
- 3.6** The legal advisers retained by **us** to conduct the investigation, defence or settlement of any **claim** or **investigation**, may provide advice to **us** on any issue regarding **our** liability to indemnify the **insured** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **claim** or **investigation** on behalf of both **us** and the **insured**.
- 3.7** The **insured** agrees 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** or **investigation** in relation to the **insured's** entitlement to indemnity from **us** are privileged between **us** and the legal advisers and the **insured** agrees that it is not entitled, under any circumstances, to access or obtain any such communications.
- 3.8** If any actual or apparent conflict arises between the interests of the **insured** and **us**, the legal advisers retained by **us** to conduct the investigation, defence or settlement of any **claim** or **investigation** may cease acting on the **insured's** behalf and may continue to act on **our** behalf in relation to any dispute between **us** and the **insured** with respect to the **insured's** entitlement to indemnity from **us**.
- 3.9** **We** will not agree to any settlement of any **claim** without consultation with **you**. 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 the settlement and decide to contest the **claim**, then **we** are only liable under this **policy** for no more than:
- (a) the recommended settlement amount; and
 - (b) **costs** up to the date of the **insured's** refusal to settle.
- 3.10** **You** may conduct the defence of any suit, legal proceedings or action the subject of a **claim** or **investigation** without **our** written consent, if the settlement amount and any costs for such **claim** does not exceed the **excess**. **You** are required to provide **us** with reasonable progress reports and we reserve the right to take over the conduct of the defence of the **claim** or **investigation** should we consider it be reasonable to do so.

SECTION 4: GENERAL CONDITIONS

4.1 Allocation

Our liability under this **policy** is limited to the proportion of **loss**, **direct financial loss**, or any other form of covered loss or loss that could be covered under the **policy** which is a fair and equitable allocation as between:

- (a) covered and uncovered parties; and/or
- (b) covered and uncovered matters; having regard to the relative legal and financial exposures attributed to the covered and uncovered matters and/or parties.

Only **loss** incurred by covered parties in relation to covered matters will be covered by this **policy** and is subject always to the terms and conditions of this **policy**. **We** will use our best endeavours to agree with the **insured** upon a fair and equitable allocation of the proportion covered under the **policy**, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of New South Wales.

The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing. Pending Senior Counsel's determination, **we** will agree to pay **loss** on an interim basis at the percentage, which **we** contend should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel's determination.

4.2 Alteration or Assignment of Interest

No change in, modification of, or assignment of interest under this **policy** will be effective except when made by a written endorsement to this **policy** issued by **us**.

4.3 Alteration to Risk and Change in Exposure

The **policy** requires **you** to notify **us** within thirty days of any material change in the nature of the **insured's** business, or any act of insolvency or bankruptcy of the **policyholder**, or the appointment of an administrator, liquidator, receiver or manager or any other **change in exposure**. 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. **Loss** arising from conduct which occurs subsequent to the cancellation, suspension or termination of an **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**.

4.4 Complaints Handling & Dispute Resolution

Any inquiry or complaint relating to this **policy** 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

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
Telephone: 1800 931 678

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

4.5 Goods & Services Tax

If **you** are entitled to an input tax credit for the premium paid for this **policy**, then **you** should advise **us** of the extent of that entitlement at or before making a claim under the **policy**. The deductible paid by **you** will be net of any input tax credit that is or may be available in connection with your payment of **loss** within the **excess**.

4.6 Interpretation, Governing Law and Jurisdiction, and Assumptions

The construction of the terms and conditions of this **policy**, and interpretation of any issue relating to its construction will be determined by the laws of New South Wales and it is agreed that the courts of Australia will have exclusive jurisdiction to determine any disputes which arise in relation to this **policy**.

4.7 Non-Avoidance

We will not avoid this **policy** in the event of non-disclosure or misrepresentation of information to **us** if **you** be able to establish, to the reasonable satisfaction of **us** that such non-disclosure or misrepresentation was innocent and free from any fraudulent conduct or intent to deceive.

We may avoid this policy if the non-disclosure or misrepresentation of information to **us** was made fraudulently.

In either case, to the extent that the non-disclosure or misrepresentation has prejudiced our right to effectively associate with **you** in the defence and settlement of any **claim**, then we reserve the right to deduct from any **loss** an amount that we believe would have been payable had such prejudice not occurred.

4.8 Non-Imputation

The **proposal** for this insurance will be construed as a separate **proposal** by each **insured** under this **policy**. With respect to the declarations and statements contained in the **proposal**, no statement in the **proposal** or knowledge possessed by any **insured** will be imputed to any other **insured** under this **policy**.

Only knowledge possessed by and facts known to any past, present or future chairman, director, chief executive officer, chief financial officer partner, proprietor, or person occupying an equivalent position of the **policyholder** will be imputed to the **policyholder**.

For the purposes of determining whether an exclusion applies, no fact pertaining to or knowledge possessed by any **insured** will be imputed to any other **insured** under this **policy**.

4.9 Order of Payment

If the payment of **loss** in respect of a **claim** or **direct financial loss** is due under this **policy** but the amount of such **loss** or **direct financial loss** in the aggregate exceeds the remaining available **limit of liability**, **we** will:

- (a) first pay such **loss** or **direct financial loss** for which coverage is provided to **insured persons**; then
- (b) to the extent of any remaining amount of the **limit of liability** available after payment under subparagraph (a) above, pay such **loss** or **direct financial loss** for which coverage is provided under any other provision of this **policy**.

4.10 Other Insurance

As permitted by the *Insurance Contracts Act 1984 (Cth)*, the **policy** will only cover **loss** or **direct financial loss** to the extent that the amount of such **loss** or **direct financial loss** is in excess of any indemnity or cover available to the **insured** in respect of that **loss** or **direct financial loss** under the **other insurance** policy or policies listed in the **schedule**.

4.11 Policy Cancellation

The **policyholder** may cancel this **policy** at any time during the **insurance period** by giving **us** written notice. If the **policyholder** cancels this **policy**, **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**.

We will only cancel this **policy** as permitted by law and will be entitled to retain the pro rata proportion of the **premium**.

This **policy** may otherwise be cancelled in writing following mutual agreement between the **policyholder** and **us**. A **subsidiary** cannot cancel the **policy**.

This **policy** will automatically terminate in the event that a **discovery period** has been purchased. In this case, **we** will return the unearned portion of the **premium** for this **policy** calculated pro rata as at the date of cancellation or offset it against any **premium** payable for the **discovery period**.

4.12 Retroactive Liability

If specified in the schedule, the **policy** is limited by a **retroactive date**. The **policy** does not cover any **loss** arising from **your** conduct, or any acts, errors or failure to act, event or **direct financial loss** that occurs prior to the **retroactive date**.

4.13 Representations

It is understood and agreed that all statements and declarations made to **us** have been relied upon by **us**, but only to the extent that those statements and declarations are material.

4.14 Subrogation

Should any payment be made under this **policy**, **we** will retain the right to be subrogated to all rights of recovery in respect of such payments. 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 liability**, then against any payment made by **us**, and finally against the **excess**.

SECTION 5: GENERAL EXCLUSIONS

The following exclusions will apply to each **policy** purchased by the **policyholder**.

5.1 Asbestos & Toxic Dust

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from or attributable to any actual or alleged liability for property damage, personal injury, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to

- (a) asbestos, asbestos dusts, asbestos products, asbestos fibres; or
- (b) silica, silica dust, silica products or silica fibres.

5.2 Nuclear

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from, based upon or attributable to:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or
- (c) the storage, transport assembly, disassembly, maintenance or operation of any nuclear weapon or nuclear compound thereof.

5.3 Pollution

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from, or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants** whether such discharge, dispersal, release or escape is intentional or accidental; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **pollutants**

5.4 Sanctions Limitation

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** or to provide any other benefit to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance.

5.5 War, Terrorism and Unlawful Acts

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from, or attributable to:

- (a) **war**;
- (b) **terrorism**; or
- (c) any unlawful, wanton or malicious act committed by a person or persons acting on behalf or in connection with any **unlawful association**;

regardless of any other cause or event contributing concurrently or in any other sequence to the **claim**, **loss** or **direct financial loss**.

SECTION 6: GENERAL DEFINITIONS

6.1 **Change in exposure** means any of the following events:

- (a) the **policyholder** is acquired by another person or entity;
- (b) the **policyholder** merges or consolidates with another entity;
- (c) any person, entity or affiliated group of persons or entities obtains the right or power to elect, appoint or designate at least fifty percent (50%) of the directors of the **policyholder**;
- (d) any person, entity or affiliated group of persons or entities acquires fifty percent (50%) or more of the issued capital or equity of the **policyholder** specified in the **schedule**.

6.2 **Continuous cover date** means the **continuous cover date** stated and specified in the **schedule**.

6.3 **Discovered** or **discovery** means when any **director** or **officer**, **partner** or **proprietor** (who is not in collusion with an **employee** or third party who has committed or is attempting to commit a **dishonest act**) becomes aware of;

- (a) any facts which would cause a reasonable person to believe that a **direct financial loss** which may be covered by this **policy** has been or may be incurred, even though the exact amount or details of the **direct financial loss** are not known at that time; or
- (b) a **cyber incident** or **cyber crime**, which may be covered by this **policy**, even though the exact amount or details are not known at that time.

Such awareness constitutes **discovery** by the **policyholder**.

- 6.4 Excess** means the amounts stated and specified as the excess or excesses in the **schedule**. In the event that any **claim** falls under more than one insuring clause, extension or endorsement, then the applicable **excess** will be applied to each insuring clause, extension or endorsement. However, the total amount payable by the **insured** in respect of each **claim** covered by this **policy** will not exceed the highest applicable **excess**.
- 6.5 Greenhouse gases** means those gases defined by applicable law as a greenhouse gas including but not limited to carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), fluorinated gases and high global warming potential gases.
- 6.6 Industrial Instrument** means any award, agreement, arrangement or other instrument which is certified or registered by an industrial tribunal in Australia including the Australian Industrial Relations Commission, Fair Work Australia and the Industrial Relations Commissions of the States or Territories of Australia, or similar provisions of any body anywhere in the world.
- 6.7 Insurance period** means the period of time stated and specified as the insurance period of the **schedule**.
- 6.8 Investigator** means any independent investigator, accountant or other consultant, who does not have a conflict of interest, selected by the **insured** with **our** prior written consent (which will not be unreasonably delayed or withheld), to establish the nature and extent of any **direct financial loss**.
- 6.9 Limit of liability** means the amounts stated as the **limit of liability** in the **schedule**. For the avoidance of doubt, the **limit of liability** includes any sub-limits. Sub-limits of liability are part of and not in addition to the **limit of liability**.
- 6.10 Other insurance** means the other insurance policy or policies stated and specified as other insurance in the **schedule** or any other insurance policy that provides coverage in whole or in part, for the same claim.
- 6.11 Policy** means this **policy** wording, any endorsements to it, the **schedule**, the General Terms & Conditions, the **proposal** and any other documents that **we** advise form part of the **policy**. Where the General Terms & Conditions refer to **ProRisk policies** or **ProRisk policy**, this means the **policy** and any other **policy** issued to **you** by **ProRisk**.
- 6.12 Policyholder** means the organisation, individuals or entities specified and stated as the **policyholder** in the **schedule**.
- 6.13 Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant, infectious or medical waste, toxic or hazardous substance, or contaminant, including but not limited to lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals, nuclear waste, oil or oil products, **greenhouse gases** and/or any noise.
- 6.14 Premium** means the amount of money paid for the **policy** as stated in the invoice.
- 6.15 Proposal** means the application form, together with any supplementary material completed by **you** or on **your** behalf, that was given to **us**, and relied on by **us** to underwrite and effect this **policy**. For the avoidance of doubt, the application form will include any online questions submitted to **us** through an internet portal.
- 6.16 ProRisk** means Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076.
- 6.17 Retroactive date** means the retroactive date stated and specified in the **schedule**.
- 6.18 Schedule** means the schedule and any Endorsements attached to this **policy**.
- 6.19 Subsidiary** means any organisation of which the **policyholder** controls or has controlled:
- a) any legal entity in which the **policyholder** owns or controls, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors;

- b) any legal entity that ceases to be a subsidiary of the **policyholder** during the **insurance period** or prior to commencement of the **insurance period**, provided that the cover provided will only apply in respect of a acts, errors or failure to act that occurred whilst the entity was a subsidiary of the **policyholder**;
- c) any legal entity which is created or acquired by the **policyholder** during the **insurance period**, provided that the legal entity:
 - (i) has total gross assets which are less than 25% of the total gross assets of the **policyholder**;
or
 - (ii) has gross annual turnover of less than 25% of the total gross annual turnover of the **policyholder**; or
 - (iii) has total gross assets which are less than 25% of the total gross assets of the **policyholder** in the **USA** or Canada.

The cover provided in this **policy** will only apply in respect of acts, errors, failures to act or conduct occurring after the date of creation or acquisition.

6.20 Territorial limits means the territorial limits and areas of sovereign control of the sovereign nations, states or areas, stated and specified in the **schedule**.

6.21 Terrorism means the use of force or violence and/or the threat of force or violence, by any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organisations(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.

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

6.23 Unlawful association means any organisation which is engaged in **terrorism**.

6.24 Us, our and we means **ProRisk** on behalf of **underwriters**.

6.25 USA means the United States of America, its territories, possessions and includes its states or political subdivisions.

6.26 War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.



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ABN 80 103 953 073


AFSL 308076

Contact Us

 03 9235 5255

 enquiries@prorisk.com.au

 www.prorisk.com.au

 Level 2, 115 Bridge Road
Richmond, VIC, 3121

Find us on

