



## STATUTORY LIABILITY POLICY

### 1. PREAMBLE

In consideration of payment of the Premium, QBE Insurance (Australia) Limited ABN 78 003 191 035 (hereinafter referred to as QBE) agrees to provide insurance in accordance with, and subject to, the terms of this Policy.

For the sake of clarity, this Policy does not cover any Loss based upon, attributable to or in consequence of any wilful, intentional or deliberate Wrongful Breach or a Wrongful Breach caused by gross negligence or recklessness by the Insured or any dishonest, fraudulent or malicious act or omission of the Insured. In this regard, refer to the full terms and effect of the exclusions contained in clause 4.1 of this Policy.

### 2. INSURING CLAUSES

- 2.1 QBE agrees to pay to and on behalf of the Insured any Loss arising from any Claim first received by the Insured and notified to QBE during the Period of Insurance.
- 2.2 QBE shall not be liable to indemnify the Insured for Defence Costs under clause 2.1 unless the Insured obtains QBE's written consent.  
QBE shall not be obliged to provide such consent unless QBE is satisfied that the Insured has Reasonable Grounds for Defence.
- 2.3 If QBE refuses to provide the consent set out in clause 2.2, QBE shall give to the Insured reasons for its refusal.  
If after receipt of those reasons the Insured contests QBE's refusal to provide such consent the Insured may obtain the written opinion of a Senior Counsel. The Senior Counsel shall be mutually agreed upon by both parties or failing agreement shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.  
If the Senior Counsel is of the opinion that the Insured has Reasonable Grounds for Defence then QBE will:
- 2.3.1 give its consent in accordance with clause 2.2;
- 2.3.2 be responsible for the Senior Counsel's reasonable fees for providing such opinion.
- 2.4 If the Insured continues to defend a Claim where QBE has refused to provide consent in accordance with clause 2.2 and the Insured is successful in respect of that Claim, then the consent set out in clause 2.2 shall be deemed to have been given at the time it was first requested by the Insured. For the purpose of this clause "successful" means that the outcome of the Claim establishes that at the time at which QBE refused consent, the Insured had Reasonable Grounds for Defence.



### 3. LIMIT OF INDEMNITY AND DEDUCTIBLE

- 3.1 QBE's liability under this Policy in respect of all Losses arising out of all Claims covered by this Policy during the Period of Insurance will not exceed the Limit of Indemnity stated in the Schedule.
- 3.2 QBE's liability under this Policy applies only to that part of each Loss in excess of the Deductible.
- 3.3 For the purposes of this Policy, all Losses arising out of any one Wrongful Breach or interrelated Wrongful Breaches are deemed to be one Loss.

### 4. EXCLUSIONS

- 4.1 This Policy does not provide indemnity in respect of any Claim:
  - 4.1.1 based upon, attributable to or in consequence of:
    - 4.1.1.1 any wilful, intentional or deliberate Wrongful Breach;
    - 4.1.1.2 a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act;
    - 4.1.1.3 any Wrongful Breach caused by gross negligence or recklessness by the Insured;
    - 4.1.1.4 a dishonest, fraudulent, malicious act or omission of the Insured;
    - 4.1.1.5 the Insured gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled;
    - 4.1.1.6 any Wrongful Breach in connection with any strike, lockout, picket line, stand down or industrial dispute. This exclusion does not apply to Officers and Employees for Claims arising in the performance of their duties as Officers and Employees;
    - 4.1.1.7 a Wrongful Breach of any Consumer Protection Act. This exclusion does not apply to Officers and Employees for Claims arising in the performance of their duties as Officers and Employees;
    - 4.1.1.8 any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Corporations Law; and any amendment, consolidation or re-enactment of any of those Sections.
    - 4.1.1.9 a Wrongful Breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
    - 4.1.1.10 a Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
    - 4.1.1.11 ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;
    - 4.1.1.12 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
    - 4.1.1.13 war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority; or any act of Terrorism.

- 4.1.2 made, threatened or in any way intimated against the Insured prior to the Period of Insurance;
  - 4.1.3 arising from any matter disclosed to any insurer (including QBE) prior to the Period of Insurance as either a Claim or circumstance which may give rise to a Claim against the Insured;
  - 4.1.4 arising from any circumstances of which the Insured had become aware prior to the Period of Insurance and which the Insured knew (or ought reasonably to have known) to be circumstances which may give rise to a Claim;
  - 4.1.5 arising from any Wrongful Breach where the Insured knew (or ought reasonably to have known) prior to the Period of Insurance that there had been such a Wrongful Breach;
  - 4.1.6 for any Loss or part of any Loss which is attributable to the period after the Insured knew (or ought reasonably to have known) that its conduct was a Wrongful Breach;
  - 4.1.7 deliberately or intentionally solicited by the Insured. This exclusion does not apply to Officers and Employees where such Claims arise in the discharge of their duties as Officers and Employees;
  - 4.1.8 any Defence Costs incurred or paid before the consent of QBE has been given in accordance with the provisions of this Policy;
  - 4.1.9 for any Loss or part of any Loss arising from or which is attributable to the Insured's participation in any Joint Venture. Provided that this exclusion shall not apply to Outside Directorship as stated in Extension 6.4;
  - 4.1.10 for any Penalty
    - 4.1.10.1 imposed pursuant to any law of any country, state or territory outside the Territorial Limits;
    - 4.1.10.2 imposed within the Territorial Limits but arising out of any act or omission occurring outside the Territorial Limits, and any Defence Costs associated with such Penalty.
- 4.2 QBE shall not be liable to pay the amount of the Deductible in respect of each Loss.

## **5. DEFINITIONS**

- 5.1 **“Act”** means:
  - 5.1.1 any Act of the Parliament of the Commonwealth of Australia and any Act of the Parliaments of the States or Territories of the Commonwealth of Australia, including any subordinate or delegated legislation made under those Acts; and
  - 5.1.2 any amendment, consolidation or re-enactment of any of the above Acts or legislation.
- 5.2 **“Appointed Representative”** means the solicitors, barristers, assessors, consultants or investigators appointed in accordance with this Policy in respect of a Claim.
- 5.3 **“Business”** means the business conducted by the Named Organisation as described in the Schedule.
- 5.4 **“Claim”** means any verbal or written notice received by the Insured which alleges a Wrongful Breach and claims that the Insured is liable to pay a Penalty.



- 5.5 “Consumer Protection Act” means any of the following:
- Fair Trading Act 1985 (Vic)
  - Fair Trading Act 1987 (NSW)
  - Fair Trading Act 1987 (SA)
  - Fair Trading Act 1987 (WA)
  - Fair Trading Act 1989 (Qld)
  - Fair Trading Act 1990 (Tas)
  - Fair Trading Act 1992 (ACT)
  - Consumer Affairs and Fair Trading Act 1996 (NT)
  - Trade Practices Act 1974 (Cth)
- and any amendment, consolidation or re-enactment of any of those Acts.
- 5.6 “Deductible” means the amount as stated in the Schedule.
- 5.7 “Defence Costs” means any reasonable legal costs and associated expenses incurred with the written consent of QBE in connection with the investigation, defence (including appeal or resisting appeal) and settlement of any Claim but shall not include wages, salaries or other remuneration of the Insured.
- Provided that where proceedings are commenced to impose a Penalty and those proceedings are also in respect of other matters, then QBE will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.
- 5.8 “Employee” means any person employed by the Named Organisation under a contract of service during or prior to the commencement of the Period of Insurance, but does not include any independent contractor or any employee of any independent contractor.
- 5.9 “Insured” means:
- 5.9.1 the Named Organisation;
  - 5.9.2 any Officer whilst acting in the performance of their duties to the Named Organisation;
  - 5.9.3 any Employee whilst acting in the performance of their employment by the Named Organisation.
- 5.10 “Joint Venture” means any enterprise undertaken jointly by the Named Organisation and another party or parties.
- 5.11 “Limit of Indemnity” means the amount as stated in the Schedule.
- 5.12 “Loss” means any Penalty and Defence Costs.
- 5.13 “Named Organisation” means the organisation described in the Schedule and /or any Subsidiary Company which was a Subsidiary Company prior to the commencement of the Period of Insurance.
- 5.14 “Officer” means any past, present or future director, executive officer (as defined by the Corporations Law) or company secretary of the Named Organisation.
- 5.15 “Outside Directorship” means an executive position held by the Insured in connection with the Business at the specific request of the Named Organisation in any corporation, joint venture, partnership, trust or other enterprise which is not included in the definition of the Named Organisation.



5.16 **“Penalty”** means any monetary sum payable by the Insured to any Regulatory Authority pursuant to any Act for a Wrongful Breach by the Insured but excluding:

- 5.16.1 any amounts payable as compensation;
- 5.16.2 any compliance, remedial, reparation or restitution costs;
- 5.16.3 any damages, including any exemplary or punitive damages;
- 5.16.4 any consequential economic loss;
- 5.16.5 any legal costs and associated expenses.

Notwithstanding clause 5.16.5, QBE will pay any reasonable legal costs and associated expenses payable by the Insured to any Regulatory Authority upon the imposition of a Penalty covered by this Policy. Provided that where the proceedings that lead to the imposition of the Penalty also include proceedings in respect of any of the matters set out in sub-clauses 5.16.1 to 5.16.5, QBE will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in sub-clauses 5.16.1 to 5.16.5.

5.17 **“Period of Insurance”** means the period of insurance stated in the Schedule.

5.18 **“Policy”** means:

- 5.18.1 the Policy wording;
- 5.18.2 the Schedule;
- 5.18.3 the proposal; and
- 5.18.4 any endorsements agreed by the parties attaching to and forming part of this Policy either at inception or during the Period of Insurance.

5.19 **“Premium”** means the amount stated in the Schedule.

5.20 **“Reasonable Grounds for Defence”** means:

- 5.20.1 the Insured has reasonable prospects of success in avoiding or reducing any Penalty alleged in the Claim; or
- 5.20.2 the Insured has reasonable prospects of success in reducing the quantum of any Penalty alleged in the Claim,

and that having regard to the likely legal costs incurred in defending the Claim it is reasonable for the Claim to be defended. Provided that in either scenario 5.20.1 or 5.20.2 above the Claim is not capable of being avoided or mitigated by a settlement into which a reasonable person in the position of the Insured, properly advised, would enter.

5.21 **“Regulatory Authority”** means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

5.22 **“Retroactive Date”** means the date shown in the Schedule. However, unless otherwise agreed in writing by QBE, such date in respect of any entity acquired or created by the Named Organisation shall be the date of acquisition or creation of that entity by the Named Organisation or the date shown in the Schedule, whichever is the later date.



- 5.23 “**Subsidiary Company**” means any entity in respect of which the Named Organisation:
- 5.23.1 controls the composition of the board of directors;  
or
  - 5.23.2 is in a position to cast, or control the casting of, more than 50% of the issued voting shares;  
or
  - 5.23.3 holds more than 50% of the issued share capital,
- and shall include any entity which is deemed to be a subsidiary of the Named Organisation by virtue of any legislation or law.
- 5.24 “**Schedule**” means the document attaching to and forming part of this Policy which is signed by QBE’s authorised representative.
- 5.25 “**Senior Officer**” means any director, chief executive officer, or company secretary of the Named Organisation.
- 5.26 “**Territorial Limits**” means anywhere in Australia.
- 5.27 “**Terrorism**” means an act, including but not limited to the use of force or violence and /or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and /or to put the public, or any section of the public, in fear.
- 5.28 “**Wrongful Breach**” means any act, error or omission which occurs:
- 5.28.1 in connection with the Business;
  - 5.28.2 within the Territorial Limits; and
  - 5.28.3 after the Retroactive Date,
- WHEREBY:
- 5.28.4 the Insured contravenes an Act or is involved in the contravention of an Act;
  - 5.28.5 the Insured commits an offence pursuant to an Act; or
  - 5.28.6 such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.

## 6. EXTENSIONS

- 6.1 **Preamble**
- 6.1.1 QBE agrees to provide indemnity in accordance with the following extensions.
  - 6.1.2 Each extension is subject to the terms of this Policy except to the extent that they are expressly varied by the extension.
  - 6.1.3 The inclusion of any of the extensions shall not increase the Limit of Indemnity.



## 6.2 **Acquired Companies**

Provided that notice has been given to QBE as soon as practicable, it is understood and agreed that the definition of the Named Organisation is extended to include any Subsidiary Company acquired or created subsequent to the commencement of the Period of Insurance but the indemnity granted by virtue of this extension shall only apply in respect of any Wrongful Breach committed or alleged to have been committed by the Insured in respect of such Subsidiary Company subsequent to such acquisition or creation. PROVIDED THAT:

QBE shall be entitled to such additional information as it may require in respect of such acquired or created Subsidiary Company and shall have the right to charge an additional premium.

## 6.3 **Continuous Cover**

QBE agrees to provide indemnity to the Insured in respect of any Claim notified to QBE during the Period of Insurance where that Claim arose from circumstances which the Insured knew (or ought reasonably to have known) to have been circumstances which may have given rise to a Claim prior to commencement of the Period of Insurance. PROVIDED ALWAYS THAT:

- 6.3.1 the Insured has not committed or attempted to commit any fraudulent non-disclosure or fraudulent misrepresentation;
- 6.3.2 QBE was the Insured's Statutory Liability insurer for a continuous (and uninterrupted) period from the date the Insured first became aware of the circumstances which the Insured knew (or ought reasonably to have known) to be circumstances which may have given rise to such a Claim, up to and including when the Claim was first made against the Insured and notified to QBE;
- 6.3.3 QBE agrees to indemnify the Insured under this extension in accordance with this Policy held by the Insured with QBE at the time the Insured first became aware that circumstances existed which the Insured knew (or ought reasonably to have known) to be circumstances which may have given rise to such Claim BUT the Insured shall have no greater cover than otherwise available under this Policy; and
- 6.3.4 QBE reserves the right to reduce its liability in respect of such Claim by the amount which fairly represents the extent to which QBE's interests are prejudiced as a result of the late notification of such circumstances.

## 6.4 **Outside Directorship**

QBE shall indemnify the Insured for a Loss in respect of any Outside Directorship held by an Officer;

PROVIDED THAT:

- 6.4.1 such indemnity shall not be extended to the outside organisation in which such Outside Directorship is held, or to any other director, executive officer, company secretary or employee of such organisation; and
- 6.4.2 the coverage afforded by this extension shall not apply to any part of any Loss covered by any indemnity given by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.





## **7. CLAIMS CONDITIONS**

### **7.1. Notification of Claims / Circumstances**

7.1.1 The Insured shall as a condition precedent to the Insured's right to be indemnified under this Policy give QBE immediate notice in writing:

7.1.1.1 of any Claim made against the Insured; and

7.1.1.2 of any circumstances which the Insured shall become aware which may give rise to a Claim under this Policy,

irrespective of whether the Penalty is likely to be within or above the amount of the Deductible.

7.1.2 If a Claim is made against the Insured during the Period of Insurance and the Insured notifies QBE of such Claim within 21 days after the expiry of the Period of Insurance, such Claim shall be deemed to have been notified to QBE during the Period of Insurance.

7.1.3 If during the Period of Insurance the Insured becomes aware of any circumstances which may subsequently give rise to a Claim against the Insured and the Insured gives written notice of such circumstances to QBE during the Period of Insurance (or within 21 days after the expiry of the Period of Insurance), then any Claim which may subsequently be made against the Insured shall be deemed to be a Claim made against the Insured and notified to QBE during the Period of Insurance.

### **7.2 Settlement / Defence / Co-Operation**

7.2.1 The Insured shall use all reasonable care and do and concur to do all things reasonably practicable to avoid a Wrongful Breach or diminish a Loss.

7.2.2 The Insured shall not make any offer, payment, admission, settlement or effect any resolution in respect of any Claim or agree to pay any Penalty or consent to any order directing the Insured to pay any Penalty without the consent of QBE. QBE shall not be liable for any such Penalty incurred without its consent. However, QBE will not unreasonably withhold such consent.

7.2.3 QBE shall have the right, but not the obligation, to conduct in the name of the Insured, the investigation, defence (including appeal and resisting appeal) and settlement of any Claim. Any amount incurred by QBE shall be deemed to be part of the Defence Costs.

7.2.4 Where QBE recommends to the Insured to agree to pay any Penalty, consent to any order directing the Insured to pay any Penalty or otherwise settle or resolve any Claim, and the Insured does not agree to do so, then QBE is entitled to reduce its liability to the Insured to the extent of any prejudice suffered by QBE by reason of the Insured's failure to so agree.

7.2.5 The Insured may request QBE to nominate the Appointed Representative to act on behalf of the Insured. Alternatively, if the Insured wishes to nominate the Appointed Representative the Insured must obtain QBE's consent to the appointment of the Appointed Representative, which consent shall not be unreasonably withheld. If the parties cannot agree on the appointment of the Appointed Representative then the parties may agree to refer this issue to the then President of the Law Society or Law Institute within the relevant State or Territory to appoint the Appointed Representative.





- 7.2.6 The Insured shall not enter into any agreement to appoint the Appointed Representative without first obtaining the consent of QBE as to the terms of the appointment of the Appointed Representative, including remuneration terms. Further, the Insured shall not represent to the Appointed Representative that all costs and associated expenses are covered by this Policy.
- 7.2.7 The Insured shall do all things reasonably necessary to allow QBE to obtain from the Appointed Representative any information, report, documents or advice relating to the Claim.
- 7.2.8 The Insured shall upon the request of QBE or the Appointed Representative and at its own expense:
- 7.2.8.1 provide all information and assistance as may be required;
  - 7.2.8.2 give a complete and truthful account of the facts relevant to any Claim;
  - 7.2.8.3 supply all documents and other evidence relevant to the Claim; and
  - 7.2.8.4 obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested,
- AND in respect of a Claim made against:
- 7.2.8.5 the Named Organisation, the Named Organisation shall, upon the request of QBE or the Appointed Representative and at its own expense ensure that a Senior Officer attends and if necessary gives evidence, on behalf of the Named Organisation, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against the Named Organisation;
  - 7.2.8.6 any Officer or Employee, the Officer or Employee shall, upon the request of QBE or the Appointed Representative and at their own expense attend, and if necessary give evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against such Officer or Employee.
- 7.2.9 For the purpose of clauses 7.2.1 to 7.2.8 any reference to a Claim includes circumstances notified under clause 7.1.1 of this Policy.

## **8. GENERAL CONDITIONS**

### **8.1 Reasonable Care**

The Insured shall take reasonable care at all times:

- 8.1.1 to only employ competent Officers, Employees, agents and contractors;
- 8.1.2 to comply and ensure that its Officers, Employees, agents and contractors comply with the provisions of any Act; and
- 8.1.3 to maintain all premises, fittings and plant in a safe and sound condition.

### **8.2 Change in Circumstances**

The Insured shall give written notice as soon as possible to QBE of any change in any of the facts or circumstances existing at the commencement of this Policy which materially changes the nature or extent of the risk insured by this Policy.



### 8.3 **Notices Under Acts**

The Insured shall comply with any lawful notice or direction received from, or any enforcement action taken by, any appropriate Regulatory Authority under any Act within the time specified or if no time is specified, within a reasonable time.

### 8.4 **Governing Law / Jurisdiction**

The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the law of the Commonwealth of Australia and the State or Territory where this Policy is issued, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of Australia.

### 8.5 **Cancellation**

8.5.1 QBE may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984. Upon cancellation by QBE (except cancellation for fraudulent non-disclosure or fraudulent misrepresentation), QBE shall refund to the Insured that part of the Premium calculated by reference to the unexpired Period of Insurance.

8.5.2 This Policy may be cancelled at any time at the written request of the Insured in which case QBE retains:

8.5.2.1 that part of the Premium calculated by reference to the proportion that the expired part of the Period of Insurance bears to the whole Period of Insurance, plus

8.5.2.2 twenty percent (20%) of that part of the Premium calculated by reference to the proportion that the unexpired part of the Period of Insurance bears to the whole Period of Insurance.

### 8.6 **Confidentiality**

It shall be a condition of this Policy that (except to the extent that the Insured is compelled by law to do so) the Insured not release to any third party, or otherwise publish, details of the nature of the liabilities insured by this Policy, the extent of cover provided by this Policy, or the amount of the Premium specified in the Schedule, without the written consent of QBE.

### 8.7 **Severability and Non-Imputation**

QBE agrees that where this Policy insures more than one party, any conduct on the part of any party or parties whereby such party or parties:

8.7.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984;

8.7.2 made a misrepresentation to QBE before this Policy was entered into;

8.7.3 failed to comply with any term or condition of this Policy; and /or

8.7.4 acted in a manner which gives rise to the application of an exclusion of this Policy, shall not prejudice the right of the remaining party or parties to indemnity as may be provided by this Policy.

PROVIDED ALWAYS THAT such remaining party or parties shall:

8.7.5 not have participated in and have had no prior knowledge of any such conduct; and

8.7.6 as soon as is reasonably practicable upon becoming aware of any such conduct, advise QBE in writing of all known facts in relation to such conduct.

**8.8 Other Insurance**

8.8.1 In the event that a policy of insurance or policies of insurance are listed in the Schedule, those policies of insurance will act as primary insurance and this Policy will only apply in excess of such policy(ies) of insurance;

8.8.2 The Insured shall notify QBE immediately upon entering into any other policy(ies) of insurance that provides insurance cover in respect of the risks insured by this Policy.

**8.9 Subrogation**

If any payment is made under this Policy, QBE shall be subrogated to the extent of such payment to all of the Insured's rights of recovery. In such case the Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable QBE to effectively bring suit in the name of the Insured.

**8.10 Assignment or Alteration of Interest**

No change in, or modification of, or assignment of interests under this Policy shall be effective except if agreed to in writing by QBE.

**8.11 Authorisation**

The organisation described in the Schedule agrees to act on behalf of all the Insureds under this Policy and each Insured agrees that such organisation is authorised to act on their behalf with respect to the giving and receiving of notice of any Claim, the receiving and giving of notice of cancellation or expiry of this Policy, the payment of Premium and the return of any part of the Premium that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving and receiving of any other notice provided for in this Policy.

**8.12 Preservation**

Any provision of this Policy which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions.

**8.13 Construction**

The marginal notes, titles of paragraphs or headings in this Policy are included for descriptive purposes only and do not form part of this Policy for the purposes of its construction and interpretation.

