



**Liberty**  
**International**  
**Underwriters™**  
Member of Liberty Mutual Group

**LIBERTY INTERNATIONAL UNDERWRITERS**  
(a member company of Liberty Mutual Insurance Group)

**EXCESS LIABILITY**

**Policy Form LIU-CAS-AUS-XOL-1000002**

In consideration of the premium being paid by the Insured to Liberty International Underwriters (hereinafter called LIU) and in reliance upon the written statements and declarations contained in the proposal or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the attached Schedule, Policy Wording and endorsements (where applicable).

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**Excess Liability Policy –LIU-CAS-AUS-XOL-1000002**

*Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company  
ABN 61086 083 605. Incorporated in Massachusetts, U.S.A. (The liability of members is limited)*



**LIBERTY INTERNATIONAL UNDERWRITERS**  
(a member company of Liberty Mutual Insurance Group)

**Excess Liability Policy**

Whereas the Insured named in this Policy carrying on the Business as described in the Schedule for the purposes of this insurance has applied to LIU for the insurance hereinafter contained and has paid or agreed to pay the Premium in consideration for such insurance and the Underlying Insurer(s) has issued to the Insured the underlying policy(ies) of liability insurance.

Now this Policy witnesseth that subject to the terms contained herein or endorsed hereon, LIU will indemnify the Insured in accordance with the applicable terms, exceptions, conditions and endorsements of the lead underlying policy on a follow form basis with which this Policy shall run concurrently.

Provided that such loss is covered by, or but for the relevant limit of indemnity, would have been covered by the lead underlying policy and LIU shall only be liable after the Underlying Insurer(s) has paid or has been held legally liable to pay the respective limit(s) of indemnity under the underlying policy(ies) and then only up to the Limit of Indemnity as provided for in the Schedule.

The liability of LIU for all sums which the Insured shall become legally liable to pay by way of compensation in respect of any one occurrence or series of occurrences arising from one originating cause shall not exceed the Limit of Indemnity stated in the Schedule or such amount(s) as may be substituted therefore by endorsement or memorandum hereon or attached hereto.

The insurance afforded by this Policy shall follow that of the lead underlying policy provided that:

1. LIU shall not be obliged to assume charge of the settlement or defence of any claim or suit brought or proceedings instituted against the Insured, but LIU shall have the right and be given the opportunity to participate with the Insured or the Insured's Underlying Insurer(s), or both, in the defence and control of any claim, suit or proceedings relative to an occurrence where the claim or suit or proceedings involve or appears reasonably likely to involve LIU in which event the Insured, the Underlying Insurer(s) and LIU shall co-operate in all things in the defence and control of such claim, suit or proceedings.
2. The Insured shall co-operate with the Underlying Insurer(s) as required by the terms of the lead underlying policy, and comply with all the terms and conditions thereof, and shall enforce any right of contribution or indemnity against any person, corporation or organisation who may be liable to the Insured in respect of any occurrence.
3. The Insured shall not, without LIU's written consent, make any admission, offer, promise or payment in connection with any occurrence or claim. In the event that the amount of the

excess loss becomes certain either through trial, court judgement or agreement among the Insured, the claimant and LIU, then the Insured may pay the amount of excess loss to the claimant to effect settlement and upon submission of due proof thereof, LIU will, upon request of the Insured, pay such amount to the claimant on behalf of the Insured.

4. Any costs or expenses provided for in the underlying policy(ies) shall not be taken into account in relation to the application of this Policy.

## Definitions

1. "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ARBN 086 083 605) incorporated in Massachusetts, USA (The liability of members is limited).
2. "Asbestos" means:
  - 2.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite.
  - 2.2 That group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres.

And includes Asbestos Products and Products containing Asbestos.

3. "Terrorism" means an act or acts:
  - 3.1 That are violent in nature or are dangerous to human life:
    - 3.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia; and
    - 3.1.2 That have the apparent intent of:
      - 3.1.2.1 Intimidating or coercing any civilian population;
      - 3.1.2.2 Influencing the policy of any government by intimidation or coercion;or
    - 3.1.2.3 Affecting the conduct of any government by mass destruction, assassination, or kidnapping,

Or

- 3.2. That result in:

- 3.2.1 The denial of access to or services from web sites, computer networks, or telecommunications equipment; or
- 3.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, or mechanical equipment, or that otherwise interrupt the functioning of web sites or such properties

And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

### **Premium**

The premium for this Policy is the amount stated in item 8 of the Schedule. Unless the premium is minimum and non adjustable, the premium for this Policy shall be based upon the turnover and/or wageroll from all operations of the Insured during the Period of Insurance. Upon expiration of each Period of Insurance, or if terminated sooner, the actual amount of turnover and/or wageroll during such Period shall be declared to LIU, and the earned premium shall be calculated thereon at the prevailing rate. Such earned premium shall immediately become due and payable to LIU.

### **Underlying Insurance**

The Insured shall maintain in full effect the underlying policy(ies) and renewals or replacements thereof with limits of indemnity as stated in the attached Schedule during this Period of Insurance, except for any reduction or exhaustion of the aggregate limit or limits contained in such policies solely by payment of claims arising out of losses which happened during the Period of Insurance. Failure to comply with the foregoing or bankruptcy or insolvency of any of the underlying insurers or the Insured shall not of itself invalidate this Policy but in the event of such circumstances LIU shall be liable only to the extent that it would have been liable had such circumstances not existed during the Period of Insurance.

### **Notice Of Changes**

The Insured shall give LIU written notice as soon as practicable of any change in the scope of coverage or in the amount of limits, or any material change in the risk under any underlying insurance, and of the termination of any coverage or exhaustion of aggregate limits of any underlying insurer's liability. Failure to give such notice may entitle LIU to rely upon the cancellation provisions of the Insurance Contracts Act 1984 (as amended).

### **Notice Of Loss**

The Insured shall give notice in writing to LIU as soon as practicable of every occurrence, and shall immediately forward to LIU information relevant to such occurrence received or held by the Insured or his representative, in particular every demand, writ, summons, proceedings, impending prosecution, inquest and all information in relation thereto which may exceed 25% of the applicable amount as described in the lead underlying policy.

### **Step-Down Provision**

LIU hereby agrees that if by reason of the payment of any claim or claims by the Underlying Insurer(s) during the Period of Insurance, the amount of indemnity provided by such underlying policy(ies) is

partially reduced, then this Policy shall apply in excess of the underlying policy(ies) until expiry hereof and subject to the terms and conditions of the lead underlying policy.

### **Costs Clause**

LIU will pay in connection with the defence and/or settlement of claims brought against the Insured:

1. All costs and expenses incurred with the written consent of LIU.
2. The legal fees and costs for representation of the Insured at any coroner's inquest or in any court of summary jurisdiction incurred with the written consent of LIU.
3. All charges, expenses and law costs recoverable from the Insured by claimants,

In the proportion that LIU's Limit of Indemnity in respect of such claim bears to the total amount payable, provided that any such costs and expenses to be paid by LIU must relate directly to the indemnity provided by LIU under this Policy.

### **Service Of Suit Clause**

In the event of a dispute arising under this Policy, LIU at the request of the Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

### **Cancellation**

The cancellation provisions applicable to the lead underlying policy shall apply in all respects to cancellation of this Policy and further, upon the Underlying Insurer(s) failing to continue as valid insurer due to exhaustion of the aggregate limit solely by payment of claims or bankruptcy or insolvency of the Underlying Insurer(s), LIU shall be entitled upon expiry of the Period of Insurance to rely upon the cancellation provisions of the Insurance Contracts Act 1984 (as amended).

### **Exclusions Applicable To All Coverages Under This Policy**

Regardless of the provisions of any underlying policy, this Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

1. Asbestos.
2. Any liability which is the subject of a sub-limit as part of any policy specified in the Schedule of Underlying Insurance or any other insurance collectible by the Insured.
3. And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
  - 3.1 War and military action which includes without limitation the following:
    - 3.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or

- confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- 3.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents;
  - 3.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- 3.2. Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:
- 3.2.1 Alone or on behalf of or in connection with any organisation; or
  - 3.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.
- 3.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation, or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or radiation or radioactive contamination in place of any more specific exclusion in the lead underlying policy.

Signed on behalf of Liberty International Underwriters  
on the date stated in the Schedule

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Authorised

N. MacCarthy  
Senior Vice President, Casualty – Asia Pacific

This Policy is valid only if attaching to a signed and current Policy Schedule including any applicable endorsements and it is signed and dated by a duly authorised representative of LIU.