

**Contractors Pollution Legal Liability Policy  
Occurrence Coverage  
<Insured>**

**Important Notice** - The Insured should carefully read all of this Policy, including all definitions and, in particular, the exclusions, to ascertain the precise scope of cover afforded by this Policy. The Insured is advised to consult its insurance agent or broker to ensure a clear understanding of the Insured's rights and obligations under this Policy.



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

## Policy Schedule

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<b>Policy Number</b>	Policy Number
<b>Item 1: Named Insured Address</b>	Insured Name Insured Address
<b>Item 2: Policy Period</b>	From: 4.00pm on (Inception Date) To: 4.00pm on (Expiry Date) Standard time at the address of the named insured as stated herein.
<b>Item 3: Limits</b>	In consideration of the payment of the premium, and subject to all the terms of this Policy, LIU agrees with the Insured to provide the insurance stated in this Policy.  A. Each Incident Limit: \$Incident Limit B. Policy Aggregate Limit: \$Aggregate Limit
<b>Item 4: Deductible</b>	\$Deductible
<b>Item 5: Covered Operations</b>	Covered Operations means those activities performed at a job site by the Insured or others for whom the Insured is legally obliged as specifically defined.
<b>Item 6: Policy Premium</b>	\$Premium plus charges Premium due 90 days after the effective date shown above.

This Schedule attaches to and forms part of LIU Contractors Pollution Legal Liability Policy Form LIU-ENV-AUS-ES-UB 2008 and is valid only if it is signed and dated below, for and on behalf of Liberty International Underwriters by a person duly authorised.

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For and on behalf of  
Liberty International Underwriters

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Date

## Contractors Pollution Liability Occurrence Policy

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In consideration of the premium being paid by the Insured to LIU and in reliance upon the written statements and declarations contained in the proposal or insurance broker's quotation submission, LIU agrees to pay to or on behalf of the Insured in accordance with the attached Schedule, Policy wording and endorsements where applicable.

### SECTION I - COVERAGE

#### 1. Insuring Agreement

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LIU will pay to or on behalf of the Insured those sums the Insured becomes legally obliged to pay for Loss arising from Pollution Conditions caused by Covered Operations performed by the Insured or any entity for which the Insured is legally liable.

This insurance applies only to Bodily Injury, Environmental Damage or Property Damage that occurs during the Period of Insurance.

Progressive, continuous, intermittent or indivisible Bodily Injury, Environmental Damage or Property Damage that occurs over a period of days, weeks, months or longer caused by Pollution Conditions shall be deemed to have occurred only on the date of first exposure to such Pollution Conditions. The date of first exposure is:

- (i) in the case of Bodily Injury, the date of the first exposure of any person to the Pollutants; and
- (ii) in the case of Environmental Damage or Property Damage, the date of the first discharge, dispersal, seepage, migration, release or escape of the Pollutants.

If the date of first exposure as described above is before the inception date of the first Policy issued to the Insured by LIU providing coverage for Bodily Injury, Environmental Damage or Property Damage caused by Pollution Conditions resulting from Covered Operations, or can not be immediately determined, but the progressive, continuous, intermittent or indivisible Bodily Injury, Environmental Damage or Property Damage continues in fact to exist during the Period of Insurance, the date of first exposure will be deemed to have occurred only on the inception date of the first Policy issued to the Insured by LIU that is applicable to the Covered Operations from which the Bodily Injury, Environmental Damage or Property Damage caused by Pollution Conditions arose. Further, no other policy issued to the Insured by LIU will be applicable to the Covered Operations from which the Bodily Injury, Environmental Damage, or Property Damage caused by Pollution Conditions arose.

#### 2. Investigation and Defence

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LIU shall be entitled to take over the conduct in the name of the Insured of the defence or settlement of any Claim or to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any Claim. The Insured shall give all such information and assistance as LIU shall require.

Within the Limits, LIU will pay Defence Expense in connection with any Claim for which the Insured is indemnified by this Policy.

In the event the Insured is a party to a demand, legal proceeding, inquiry or hearing which is covered only in part by this Policy, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of Defence Expense or any other amount insured under this Policy which relates solely to what is covered under this Policy.

In the event that an agreement on reasonable prospects for success cannot be reached between LIU and the Insured, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, make such allocation determination of legal costs and/or Defence Expense. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or Defence Expense or any other amount insured under this Policy as it considers appropriate.

In the event that agreement on the appointment of a Senior Counsel cannot be reached, such Senior Counsel shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.

All LIU's duties under this Policy end when the applicable Limits are exhausted. This applies to Claims pending at the time and those filed thereafter. Defence Expenses are included in Loss, reduce the applicable limits of liability and are included within the Deductible stated in the Schedule.

## SECTION II – EXCLUSIONS

This Policy does not apply to:

**1. Contractual Liability**

Loss arising from the Insured's assumption of liability in a contract or agreement. This exclusion does not apply to liability for Loss:

- a. Assumed in a contract or agreement that is an Insured Contract, provided the Bodily Injury, Environmental Damage or Property Damage occurs subsequent to the execution and before the termination of the contract or agreement; or
- b. That the Insured would have in the absence of the contract or agreement.

**2. Civil and Criminal Fines and Penalties**

Loss arising from civil fines, civil penalties, criminal fines and criminal penalties.

**3. Damage to the Insured's Product and the Insured's Work**

Property Damage to the Insured's Product or to the Insured's Work or any part of the Insured's Product or the Insured's Work.

This exclusion does not apply to Property Damage which first occurs after the Covered Operations have been completed.

**4. Employers Liability**

Loss arising from Bodily Injury to:

- a. An employee of an Insured arising out of and/or in the course of employment by the Insured or while performing duties related to the conduct of the Insured's business; or
- b. Any person whose right to assert a Claim against the Insured arises by reason of any employment, blood, marital or other relationship with the employee.

This exclusion applies whether the Insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the Bodily Injury. This exclusion does not apply to liability assumed by the Insured under an Insured Contract.

**5. Insured vs. Insured**

Loss arising from any Claim made by or on behalf of an Insured, including any trustee in bankruptcy, receiver or any other successor-in-interest to the Insured, against any other Insured.

This exclusion shall not apply with respect to:

- a. Claims against the Insured made by any Insured who is a client for whom the Insured or any entity for which the Insured is legally liable is performing or has performed Covered Operations; or
- b. Claims that arise out of an indemnification given by one Insured to another Insured in an Insured Contract.

**6. Intentional and Illegal Acts**

Loss arising from any dishonest, criminal, fraudulent, malicious, intentional or illegal act or omission of any Responsible Insured.

7. **Known Circumstances and Non Disclosure**  
Loss arising from any Pollution Conditions caused by Covered Operations which occurred prior to the Period of Insurance if any Responsible Insured knew or could have reasonably foreseen that such Pollution Conditions would give rise to a Claim.
8. **Mould**  
Loss directly or indirectly caused by, arising out of or in any way connected with:
- Any actual, alleged or threatened inhalation, discharge, dispersal, seepage, migration, absorption, release, exposure to, or escape of any mould, mildew or fungus in any form from any source, at any time;
  - The prevention of the actual, alleged or threatened inhalation, discharge, dispersal, seepage, migration, absorption, release, exposure to, or escape of any mould, mildew or fungus in any form from any source; or
  - Any testing, monitoring, clean up, removal, containment, treatment, disposal, detoxifying or neutralising or in any way responding to or assessing the effects of mould, mildew or fungus in any form from any source, at any time.
9. **Non-compliance**  
Loss arising from any Responsible Insured's intentional, wilful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order or instruction of any governmental agency or body.
10. **Owned Property**  
Loss arising from Property Damage or Clean-up Costs to real or personal property owned, leased, loaned or rented by or to the Insured. However, this exclusion does not apply to:
- Property Damage or Clean-up Costs to real or personal property of others in the Insured's care, custody or control for the purpose of having Covered Operations performed on such property; or
  - Any person or organisation qualifying as a client of the Insured under the definition of Insured.
11. **Products Liability**  
Loss arising from the Insured's Product.
12. **Professional Services**  
Loss arising from the performance of or failure to perform professional services or providing or failing to provide professional advice, whether or not that service or advice is ordinary to the Insured's business, regardless of whether a Claim is made by a client or any other person or organisation.
- This exclusion does not apply to improper or inadequate supervision of any entity for which the Insured is legally liable when performing Covered Operations at a job site.
13. **Radioactive Matter**  
Loss arising from the actual, alleged or threatened exposure of person or property to any radioactive matter, whether naturally occurring or otherwise.
14. **Related or Affiliated Entities**  
Loss arising from any Insured's involvement in Covered Operations performed by or on behalf of any business enterprise that wholly or partly owns the Insured or which to any extent controls, operates, or manages the Insured, or that is wholly or partly owned by an Insured, or in which an Insured is an officer, partner or employee, or which is to any extent controlled, operated, or managed by the Insured.
15. **Terrorism**  
Loss arising from any actual or threatened act of Terrorism or any action taken to, or taken in an attempt to control, prevent or suppress any act of Terrorism.
16. **Transported Materials**  
Loss arising from any waste or any products or materials transported, shipped, or delivered via Motor Vehicle, aircraft, mobile equipment, watercraft, rolling stock or any other transportation mode, to a location beyond the boundaries of a job site at which the Insured or any entity for which the Insured is legally liable is performing or has performed Covered Operations.

**17. Vehicles**

Loss arising from the ownership, maintenance, use, operation, or entrustment to others of any Motor Vehicle aircraft, mobile equipment, watercraft, rolling stock or any other transportation mode. Use includes loading and unloading.

This exclusion does not apply to Loss arising from the ownership, maintenance, use, operation, or entrustment to others of any Motor Vehicle, aircraft, mobile equipment, watercraft, rolling stock or any other transportation mode used in the performance of Covered Operations within the boundaries of a job site.

**18. War**

Loss arising from war and military action which includes without limitation the following:

- a. War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war 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;
- b. 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; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**19. Workers Compensation**

Loss arising from any obligation of the Insured under workers' compensation, unemployment compensation or disability benefits law or similar law.

## SECTION III – COVERAGE TERRITORY

This Policy applies to Claims made in Australia and New Zealand.

## SECTION IV – LIMITS AND DEDUCTIBLE

The Limits shown in the Schedule and this section prescribe the maximum LIU will pay regardless of the number of Insureds, Pollution Conditions, Claims or persons or organisations making Claims.

The Limits apply to the entire Period of Insurance and not separately to any portion (whether annual or otherwise) thereof. If the Period of Insurance is extended after the Policy comes into effect, the additional period will be deemed part of the last preceding period for the purposes of determining the applicable Limits.

**1. Policy Aggregate Limit**

The Policy Aggregate Limit stated in the Schedule is the most LIU will pay for all Loss covered under this Policy.

**2. Each Incident Limit**

Subject to the Policy Aggregate Limit, the Each Incident Limit stated in the Schedule is the most LIU will pay for all Loss arising from one Pollution Condition or the same, related or continuous Pollution Conditions.

**3. Multiple Periods of Insurance and Multiple Claims**

If the same, related or continuous Pollution Conditions result in Bodily Injury, Environmental Damage, or Property Damage which occurs during the Periods of Insurance of different Contractor Pollution Liability policies LIU have issued to the Insured:

- a. All such Bodily Injury, Environmental Damage or Property Damage shall be deemed to have occurred only during the first Period of Insurance of such Contractors Pollution Liability policies in which any of the Bodily Injury, Environmental Damage or Property Damage occurred;
- b. All Loss arising from all such Bodily Injury, Environmental Damage or Property Damage shall be subject to the Each Incident Limit applicable under the Policy described in clause 3.a. above.

**4. Deductible**

LIU's obligation to make payments under this Policy for Loss is excess of the Deductible amount shown in the Schedule.

LIU may advance payment of part or all of the Deductible and, upon notification of such payment made, the Named Insured shall promptly reimburse LIU within 30 days. The Named Insured stated in the Schedule is responsible for the payment of all Deductible amounts on behalf of all persons or organisations insured.

Payment of Defence Expense or amounts within the Deductible will not create any obligations or be construed as a waiver or estoppel of LIU's rights under this Policy.

The deductible amount applies to all Loss arising from the same, related, or continuous Pollution Conditions.

## SECTION V – CONDITIONS

**1. Audit of Books and Records**

LIU may audit the Insured's books and records as they relate to this insurance at any time during the term of this Policy and up to 3 years afterwards.

**2. Bankruptcy**

Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve LIU of its obligations under this Policy.

**3. Cancellation**

The Named Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

- a. It is entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto;
- b. The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy; or
- c. The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the 3rd business day after the date on which notice was given to the Insured by LIU, whichever is the earlier.

**4. Changes**

This Policy contains all the agreements between the Insured and LIU concerning the insurance afforded. LIU's consent is necessary for any changes to the terms of this Policy and any such terms will be amended, deleted, or waived only by endorsement issued by LIU and made a part of this Policy.

**5. Discharge of Liability**

LIU may at any time discharge its total liability to the Insured in respect of any one Claim or series of Claims arising from one Pollution Condition by paying to or on behalf of the Insured up to the Policy Aggregate Limit as stated in the Schedule:

- a. The total amount in respect of such Claim to which the Insured is entitled to indemnity under this Policy;
- b. The total amount sought by the claimant for such Claim; or
- c. The total amount for which such Claim can be settled.

In such an event, LIU will pay Defence Expense incurred up to the date of payment of any Claim or series of Claim. That payment together with the Claim payment will not exceed the Policy Aggregate Limit.

Upon such payment, LIU shall relinquish conduct or control of such Claim and be under no further liability under this Policy in connection with such Claim including but not limited to Defence Expense.

## 6. Duties in the Event of Pollution Conditions or Claim

- a. The Insured must notify LIU in writing as soon as practicable of any Pollution Conditions. To the extent possible, such written notification must include:
1. How, when and where the Pollution Conditions took place;
  2. The names and addresses of any injured persons and of any witnesses; and
  3. The nature and location of any injury or damage arising out of the Pollution Conditions.

All Pollution Conditions reported to LIU in accordance with this provision shall be subject to the Automatic Extended Reporting Period provisions of this Policy.

- b. If a Claim is received by any Insured, the Insured must:
1. Immediately record the specifics of the Claim and the date received; and
  2. Ensure that LIU receives written notice of the Claim as soon as practicable, but in no event later than the end of this Period of Insurance.
- c. The Insured must:
1. Immediately send to LIU copies of any demand, notice, summons or legal paper received in connection with the Claim;
  2. Authorise LIU in writing to obtain records and other information;
  3. Cooperate with LIU in the investigation, settlement or defence of the Claim; and
  4. Assist LIU in the enforcement of any right against any person or organisation which may be liable to the Insured because of Bodily Injury, Property Damage, or Environmental Damage to which this Policy may also apply.
- d. Written notice of Pollution Conditions or a Claim must be sent to:
- The Claims Department,  
Liberty International Underwriters,  
Level 27, 'Gateway',  
1 Macquarie Place,  
Sydney, New South Wales, Australia, 2000  
Tel: 61-2-8298-5800  
Fax: 61-2-8298-5887
- e. The Insured shall have the duty to incur Mitigation Expense and to clean up Pollution Conditions to the extent required by Environmental Laws by retaining competent professionals or contractors mutually acceptable to LIU and the Named Insured. LIU shall have the right but not the duty to review and approve all such actions. The Named Insured shall notify LIU of actions and measures taken pursuant to this paragraph.

## 7. Duties of Named Insured

The Named Insured shown in the Policy Schedule shall act for all Insureds for the following purposes:

- a. To pay all premiums and Deductibles when due and be the payee for any return premiums which LIU pays;
- b. To give written notice of any Pollution Conditions or Claim in accordance with this Policy;
- c. To give and receive notice of cancellation or non-renewal;
- d. To request changes made to this Policy and to receive and accept any endorsements to this Policy; and
- e. To report changes in scope or nature of Covered Operations to LIU.

## 8. Inspections and Surveys

LIU has the right but is not obliged to make inspections, surveys or to give the Insured reports on the conditions LIU finds or any recommendations which result from any inspections or surveys. Any inspections, surveys, reports or recommendations relate only to insurability of the risk and the premiums to be charged. LIU does not make safety inspections. LIU does not undertake to perform the duty of any person or organisation to provide for the health or safety of workers or the public. LIU does not warrant that

conditions are safe or healthy or comply with laws, regulations, codes or standards. This condition applies not only to LIU, but also to LIU's representatives who may conduct such inspections or surveys and make reports for LIU.

**9. Joint Duties in a Non-admitted Jurisdiction**

For Loss arising in a Non-admitted Jurisdiction, LIU has the right but not the duty to investigate, defend or settle such Claims for Loss.

If LIU does not exercise the right to investigate, defend or settle such Claims for Loss, the Insured may under LIU's supervision:

- a. Make such investigation and defence as is reasonably necessary; or
- b. Effect settlement of such Claims for Loss.

LIU shall reimburse the Insured for the reasonable cost of such actions, subject to all other terms and conditions of this Policy.

This Policy shall not serve as proof of insurance in any country of Non-admitted Jurisdiction.

LIU may issue, at its sole discretion, proof of insurance documents to a third party upon the Insured's request, but LIU is not obliged to do so.

**10. Legal Action Against LIU**

No person or organisation has a right under this Policy:

- a. To join LIU as a party or otherwise bring LIU into a Claim asking for damages from an Insured; or
- b. To bring an action under this Policy,

Unless all of the terms of the Policy have been fully complied with.

Any person or organisation may bring an action to recover on an Agreed Settlement or on a final judgment against an Insured obtained after an actual trial in a civil, arbitration or alternative resolution proceeding but LIU will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable Limits.

**11. Singular/Plural**

- a. Words importing persons shall include corporations and other legal entities;
- b. References in the singular shall be deemed to include the plural and vice versa; and
- c. Words depicting any gender include references to all other genders.

**12. Representations**

By accepting this Policy, the Insured agrees:

- a. The statements in the Proposal and any material submitted in connection with such Proposal are the Insured's agreements and representations;
- b. That this Policy is issued in reliance upon the truth of such representations; and
- c. That this Policy embodies all agreements existing between the Insured and LIU relating to this insurance.

**13. Rights of LIU in the Event of Pollution Conditions**

LIU shall have the right but not the duty to clean-up or mitigate Pollution Conditions upon receiving written notice as provided in SECTION V, clause 6. of this Policy.

Any sums expended by LIU under the preceding paragraph will be deemed incurred or expended by the Insured, shall be subject to the applicable Deductible and shall reduce the Limits.

**14. Separation of Insureds**

Except with respect to the Limits, SECTION II - EXCLUSION 5 and any rights or duties specifically assigned to the Named Insured, this Policy applies:

- a. As if each Insured were the only Insured; and
- b. Separately to each Insured against whom a Claim is made.

Misrepresentation, concealment, breach of a term or condition or violation of any duty under this Policy by one Insured shall not prejudice another Insured under this Policy. Notwithstanding the foregoing, this condition shall not apply to any Insured that is a parent, subsidiary or affiliate of the Named Insured.

**15. Transfer of Duties When a Limit of Insurance is Used Up**

- a. When a Limit has been exhausted in payment of Loss:
  1. LIU will notify the Named Insured and any other Insured against whom a Claim is pending in writing as soon as practicable that:
    - (i) Such Limit has been exhausted; and
    - (ii) LIU's defence of Claim subject to that Limit has also ended, regardless of whether such Claim is still pending.
  2. The Named Insured and any other Insured against whom a Claim is pending will, as soon as practicable, arrange for the transfer of control of the defence from LIU of all such Claims against any Insured.
  3. LIU will assist and all Insureds must cooperate in the transfer of control of the defence of all Claims which are subject to that Limit and which are reported to LIU before that Limit is exhausted.
  4. LIU will take steps which LIU deems appropriate to avoid a default in or to continue the defence of such Claims until the transfer is completed, provided the appropriate Insured is cooperating in completing such transfer. The Named Insured and any other Insured against whom a Claim is pending will reimburse LIU for any Defence Expense LIU incurs (for which Defence Expense each Named Insured and each other Insured against whom a Claim is pending are jointly and severally liable) to take such steps on and after the date on which the applicable Limit is exhausted.
  5. LIU will take no action whatsoever with respect to any Claim reported to LIU after the applicable Limit has been exhausted.
- b. The duty to reimburse LIU will begin on the date the applicable Limit is exhausted. The exhaustion of any Limit by the payment of Loss will not be affected by LIU's failure to comply with any of the provisions of this condition.

**16. Subrogation**

In the event of any payment under this Policy, LIU shall be subrogated to all of the Insured's rights of recovery against any person or organisation and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including without limitation, assignment of the Insured's rights against any person or organisation who caused Pollution Conditions on account of which LIU has made any payment under this Policy. The Insured shall do nothing to prejudice LIU's rights under this condition. Any recovery as a result of subrogation proceedings arising out of the payment of Loss covered under this Policy shall accrue first to the Insured to the extent of any payments in excess of the Limits; then to LIU to the extent of its payment under this Policy; and then to the Insured to the extent of the Insured's Deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

**17. Assignment**

The Insured's rights and duties under this Policy may not be assigned without LIU's written consent except in the case of death of an individual Named Insured.

If the Insured dies, the Insured's rights and duties will be assigned to the Insured's legal representative but only while acting within the scope of duties as the Insured's legal representative. Until the Insured's legal representative is appointed, anyone having proper temporary custody of the Insured's property will have the Insured's rights and duties but only with respect to that property.

**18. Voluntary Payments**

No Insured will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without LIU's written consent.

**19. Governing Law & Exclusive Jurisdiction**

This Policy is governed by the law in force in the Australian State or Territory in which the Policy is issued. All matters arising from or relating to the construction or operation of the provisions of the Policy shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of that State or Territory.

## SECTION VI – DEFINITIONS

1. "Agreed Settlement" means a settlement and release of liability signed by LIU, the Insured and the claimant or the claimant's legal representative.
2. "Bodily Injury" means physical injury or sickness, disease, or when accompanied by physical injury, mental anguish or emotional distress, sustained by any person including death resulting therefrom.
3. "Claim" means a written or oral demand received by the Insured seeking a remedy or asserting liability or responsibility on the part of the Insured for Loss and includes any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or served upon the Insured.
4. "Clean-up Costs" means costs, charges and expenses including reasonable and necessary legal expense incurred with LIU's written consent to investigate, neutralise, remove, remediate, monitor or dispose of Pollutants to the extent required by Environmental Laws or costs, charges and expenses that have actually been incurred by any governmental entity duly acting under the authority of Environmental Laws, or that have actually been incurred by third parties. "Clean-up Costs" also includes Restoration Costs.
5. "Covered Operations" means those operations stated in the Schedule.
6. "Defence Expense" means fees charged by any lawyer designated by LIU and all other fees, costs and expenses resulting from the investigation, adjustment, defence and appeal of a Claim if incurred with LIU's prior written consent but without any obligation on LIU's part to appeal a Claim. "Defence Expense" shall not include the wages, overtime, or travel of the Insured's employees.
7. "Environmental Damage" means the injurious presence of Pollutants resulting in Clean-up Costs.
8. "Environmental Laws" means any legislatively or administratively enacted law, rule, regulation or order applicable within the jurisdiction in which Covered Operations are being or have been performed.
9. "Insured" means:
  - a. The Named Insured;
  - b. Any person or organisation named in the Schedule or any endorsement attached to this Policy;
  - c. Any past or present director, officer, partner, or employee of each Insured as identified in a., and b. above, including a temporary or leased employee while acting within the scope of their duties as such;
  - d. Any organisation the Insured newly acquires or forms during the Period of Insurance and over which the Insured maintains ownership or majority interest, but only with respect to Covered Operations rendered on or after the acquisition or formation date of such organisation.

In the event such newly acquired or formed organisation increases the Named Insured's gross revenue by more than 20% or a material change in the overall nature of Covered Operations performed by the Insured or any entity for which the Insured is legally liable occurs, the Insured must notify LIU in writing of such newly acquired or formed organisation and LIU must consent to such newly acquired or formed organisation being added as an Insured before such coverage applies to that organisation. LIU reserves the right to request additional premium for such consent which shall not be unreasonably withheld.

No person or organisation is an Insured with respect to Loss arising from Pollution Conditions caused by Covered Operations that occurred before the Insured acquired or formed such organisation;

- e. Any client for whom the Insured performs or performed Covered Operations, provided the Insured is contractually obliged to add such person or organisation as an insured to the Policy. However such clients are covered under this Policy solely with respect to Loss arising from Pollution Conditions caused by Covered Operations performed by the Insured and are not covered for any Loss arising from the clients' own liability. The Insured's clients are covered under this Policy only for the Limits up to and not exceeding the amount required by the written contract with the Insured and further subject to the Limits of this Policy;
- f. Any lessor of equipment leased to the Insured is an insured, but only with respect to Bodily Injury, Environmental Damage or Property Damage arising out of the maintenance, operation or use by the Insured of the equipment and only if the Insured is contractually obliged to provide such coverage as is afforded by this Policy.  
No lessor is an insured with respect to any Bodily Injury, Environmental Damage or Property Damage which takes place after the equipment lease expires or the end of the Period of Insurance, whichever occurs first; or any Bodily Injury, Environmental Damage or Property Damage arising out of the sole negligence of the lessor; and
- g. Any organisation in which the Insured maintains a joint venture interest provided the Insured is named as a co-venturer in such joint venture, but only as respects to the Insured's liability arising out of Covered Operations rendered for such joint venture.
- 10.** "Insured Contract" means:
- a. an obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- b. that part of any other written contract or agreement pertaining to the Insured's business (including an indemnification of a municipality in connection with work performed for a municipality) under which the Insured assumes the tort liability of another party to pay for Bodily Injury, Property Damage or Clean-up Costs to a third party or organisation. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- 11.** "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).
- 12.** "Loss" means:
- a. Monetary awards or settlements of compensatory damages arising out of Bodily Injury or Property Damage, and where allowable by law punitive, exemplary, aggravated, liquidated or multiple damages for such Bodily Injury and Property Damage;
- b. Clean-up Costs; or
- c. Defence Expense.
- 13.** "Mitigation Expense" means:
- a. reasonable and necessary costs incurred to mitigate Pollution Conditions constituting an emergency situation whereby in the absence of such mitigation, Bodily Injury or Property Damage to third parties is imminent or
- b. Clean-up Costs which are incurred pursuant to Environmental Laws.
- 14.** "Motor Vehicle" means a motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment.
- 15.** "Named Insured" means the person or entity named in the Schedule of this Policy.
- 16.** "Non-admitted Jurisdiction" means a jurisdiction where LIU is not licensed or permitted by law to issue insurance or is prevented by law or otherwise from investigating, defending or settling any Claim.
- 17.** "Period of Insurance" means the period of time specified in the Schedule unless the Policy is cancelled in which event the Period of Insurance will end on the effective date of the cancellation.
- 18.** "Policy" means this Policy wording, any endorsements to it, the Schedule and the Proposal.

19. “Pollutants” means any solid, liquid, gaseous, thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
20. “Pollution Conditions” means the emission, discharge, dispersal, migration, release or escape of Pollutants, provided such are not naturally occurring. The entirety of any such emission, discharge, release or escape or any series of interrelated, associated, repeated, or continuous emissions, discharges, releases or escapes shall be deemed to be one Pollution condition.
21. “Property Damage” means:
- Physical damage to or destruction of tangible property of parties other than the Insured including all resulting loss of use and diminution in value of that property; or
  - Loss of use but not diminution in value of tangible property of parties other than the Insured that is not physically damaged.

Property Damage does not include Environmental Damage.

22. Responsible Insured means:
- An officer, director or partner of any Insured; or
  - The manager or supervisor of any Insured responsible for environmental affairs, control or compliance.
23. “Restoration Costs” means reasonable and necessary costs incurred by the Insured with LIU’s consent, which shall not be unreasonably withheld or delayed, to restore, repair or replace real or personal property of *third parties* to substantially the same condition it was in prior to being damaged during work performed in the course of incurring Clean-up Costs. However such restoration shall not exceed the net present value of such property immediately prior to incurring Clean-up Costs or include costs associated with improvements or betterments.
24. “Terrorism” means an act or acts by any person or group of persons or government causing or threatening to cause any harm of any nature for political, religious, ideological, ethnic or similar purpose or to intimidate or influence any government or the public or any section of the public.
25. The Insured’s Product means any goods or products (other than real property) manufactured, sold, handled, distributed or disposed of by the Insured, others trading under the Insured’s name, or a person or organisation whose business or assets the Insured has acquired; and containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

The Insured’s product includes warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of the Insured’s product; and the providing of or failure to provide warnings or instructions.

The Insured’s product does not include vending machines or other property rented to or located for the use of others but not sold.

26. “The Insured’s Work” means work or operations performed by the Insured, or any entity for whom the Insured is legally liable; and materials, parts or equipment furnished in connection with such work or operations.

The Insured’s work includes warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of the Insured’s work; and the providing of or failure to provide warnings or instructions.

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



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N. MacCarthy  
Senior Vice President, Casualty – Asia Pacific