Construction Risks Project Specific Insurance

Policy Wording
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About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507. In this document, ZAIL may also be expressed as ‘Zurich’, ‘we’, ‘us’ or ‘our’.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

Our contract with you

Your policy is a contract of insurance between you and Zurich and contains all the details of the cover that we provide.

Your policy is made up of:

- the policy wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the proposal, which is the information you provide to us when applying for insurance cover;
- your most current policy schedule issued by us. The policy schedule is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in your policy schedule are insured.

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.
In consideration of the *insured* having paid or agreed to pay the premium, Zurich, on the basis of all information provided to it, agrees with the *insured* to provide insurance as follows, subject to the provisions of this policy and on the basis that this policy shall not be in force unless it has been signed by an authorised Zurich official.

1. Definitions

When used in this policy, its *schedule* and its Endorsements, the following definitions shall apply:

1.1 Ac**t of terrorism**

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

1.1.1 involves violence against one or more persons;
1.1.2 involves damage to property;
1.1.3 endangers life other than that of the person committing the action;
1.1.4 creates a risk to health or safety of the public or a section of the public; or
1.1.5 is designed to interfere with or to disrupt an electronic system.

1.2 Ad**vertising liability**

*advertising liability* means:

1.2.1 infringement of copyright of or passing off of a title or slogan;
1.2.2 unfair competition, piracy or idea misappropriation contrary to an implied contract;
1.2.3 invasion of privacy; or
1.2.4 defamation, libel, slander,

committed or alleged to have been committed during the *period of insurance* in any advertisement, publicity article, broadcast or telecast arising out of the *insured’s* advertising activities or any advertising activities conducted on the *insured’s* behalf.

1.3 A**ircraft**

*aerial* shall mean any vessel, craft or thing made, or intended, to fly or move in or through the atmosphere or space.

1.4 C**ompensation**

*compensation* means monies paid or agreed to be paid by judgment or settlement for:

1.4.1 personal injury;
1.4.2 property damage; and
1.4.3 advertising liability.

1.5 C**omputer virus**

*computer virus* means an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host, program or other computer code or data, causing undesired program or computer system operation.
1.6 Contract works

_**contract works**_ means the permanent and/or temporary works, materials and supplies used or to be used in relation to completion of the works or services provided or being provided under the _**project**_, including any existing structures and any construction plant and equipment, which are collectively the subject of cover under Contract Works Material Damage Policy No. noted in the _**schedule**_.

1.7 Employee

_**employee**_ means:

1.7.1 any person under a contract of service or apprenticeship with the _**insured**_;  
1.7.2 any labour master or person supplied, or any person supplied by a labour only sub-contractor;  
1.7.3 any self-employed person working under contract with the _**insured**_ and under its direction;  
1.7.4 any person hired by the _**insured**_ from another employer subject to a written agreement under which the person is deemed to be employed by the _**insured**_;  
1.7.5 any student or person undertaking work for the _**insured**_ under a work experience or similar scheme; or  
1.7.6 any voluntary helper,  
whilst engaged in connection with the _**project**_.

1.8 Employment practices

_**employment practices**_ means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by the _**insured**_.

1.9 Excess

_**excess**_ means the amount specified in the _**schedule**_ for which the _**insured**_ will first bear in relation to each _**occurrence**_.

The excess applies to all amounts payable under this policy including the indemnity provided under additional payments.

1.10 Hovercraft

_**hovercraft**_ means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

1.11 Insured

_**insured**_ means:

1.11.1 the Named Insured specified in the _**schedule**_;  
1.11.2 any parent or subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured specified in the _**schedule**_ and over which it is exercising active management, whether now or hereafter incorporated;  
1.11.3 any of the following persons or entities for whom or for which the insured parties under clauses 1.11.1 and 1.11.2 above are obliged to arrange insurance by virtue of any contract or assumption of responsibility, but only to the extent required by such contract or assumed responsibility and in any event only for such coverage and Limit of Liability as provided in this policy:

(a) any principal or owner or agent of the principal or owner or joint venture partner or alliance participant;  
(b) any construction manager or project manager or superintendent;  
(c) any contractor or sub-contractor of any tier, other than those categories more specifically defined elsewhere in this policy; or
(d) any lessor, financier, mortgagee or trustee.
1.12 **Internet operations**  
*internet operations* means:

1.12.1 transfer of computer data or programmes by use of electronic mail systems by the *insured* or the *insured’s* employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within the *insured’s* organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to *computer virus*, worm, logic bomb, or trojan horse;

1.12.2 access through the *insured’s* network to the world-wide web or a public internet site by the *insured* or the *insured’s employees*, including for the purposes of this definition only, part-time and temporary staff, contractors and others within the *insured’s* organisation;

1.12.3 access to the *insured’s* intranet (meaning internal company information and computing resources) which is made available through the world wide web for the *insured’s* customers or others outside the *insured’s* organisation; and

1.12.4 the operation and maintenance of the *insured’s* web site.

1.13 **Motor vehicle**  
*motor vehicle* means any type of machine and attachments thereto, including a trailer designed for use on land only, and which travels on wheels or on self-laid tracks and is propelled by other than manual or animal power.

1.14 **North America**  
*North America* means:

1.14.1 the United States of America and Canada; and

1.14.2 any state or territory incorporated in, or administered by, the United States of America or Canada.

1.15 **Occurrence**  
*occurrence* means an event, including continuous or repeated exposure to conditions, which results in *personal injury*, *property damage* or *advertising liability* neither expected nor intended from the *insured’s* standpoint, during the *period of insurance*.

With respect to *personal injury* or *property damage*, all such exposure to substantially the same general conditions shall be deemed one *occurrence*.

With respect to *advertising liability*, all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants, shall be deemed to arise out of one *occurrence*.

1.16 **Period of insurance**  
*period of insurance* means the Period of Insurance stated in the *schedule* comprising of the *construction period* and *defects liability period* as defined below.

1.16.1 **Construction Period**  
*construction period* means the period from the commencement date of this policy shown in the *schedule*, including any relevant Performance Testing Period of any contract, until the earlier of:

(a) the date the *project* has been formally accepted in its entirety by the principal or owner as having achieved practical completion as defined in the contract(s), notwithstanding that portions of the *project* may have been handed over, put into use and/or have been accepted by the principal or owner prior to that time, including any Performance Testing Periods;

(b) the date specified in item (a) of the *period of insurance* in the *schedule*, or if such date is extended pursuant to Extension of Cover 4.4, that extended date.

Notwithstanding the above, the *construction period* extends to include any period prior to the commencement of this policy, provided that at the commencement date of this policy, the *insured* is not aware of any circumstance that may give rise to an *occurrence*. 
1.16.2 Defects Liability Period

defects liability period means the period described in any contract during which an insured is obliged or legally liable to rectify defects, shrinkages, errors, omissions or other faults and/or to complete the maintenance or other obligations under such contract (the original defects liability period). This period shall not exceed the defects liability period stated in the schedule in respect of any one contract.

Where a contract provides for the defects liability period to be extended upon rectification of a defect, the defects liability period in respect of the rectification can be extended up to a period not exceeding the original defects liability period following completion of the rectification works.

1.17 Personal injury

personal injury means:

1.17.1 bodily injury, death, disease, illness, disability, nervous shock, mental anguish or mental injury or loss of consortium;

1.17.2 false arrest, false detention, wrongful imprisonment, malicious prosecution or humiliation;

1.17.3 wrongful entry or wrongful eviction or other invasion of privacy;

1.17.4 defamation, libel or slander; and

1.17.5 assault and/or battery committed by or at the direction of the insured whilst engaged in the project and for the purpose of preventing or eliminating danger to persons or property.

1.18 Pollutant

pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditions or reclaimed.

1.19 Project

project means the Project specified in the schedule.

1.20 Project location

project location means the Project Location specified in the schedule and any other location where the insured is performing the works or has property stored or being processed together with all surrounding areas in connection with the project. Project location shall extend to include locations subsequently endorsed onto this policy.

1.21 Property damage

property damage means:

1.21.1 physical damage to, or loss of or destruction to tangible property, including the subsequent loss of use of that property;

1.21.2 loss of use and/or loss of value of tangible property that has not been physically damaged, physically lost or physically destroyed provided such loss of use and/or loss of value is caused by physical damage to, physical loss of or physical destruction of other tangible property and includes denial of access to property, premises, services of facilities, interference with or stoppage of vehicular or pedestrian traffic; and

1.21.3 trespass, nuisance or interference with right of way or right to light air or water, easement or quasi-easement.

1.22 Schedule

schedule means the Schedule attaching to and forming part of this policy, including any Schedule substituted for the original Schedule.
1.23 Territorial limits

*territorial limits* means anywhere in the world, except *North America*.

1.24 Watercraft

*watercraft* means any vessel, craft or thing made, or intended to float on or in, or travel on or through or under water.

2. Insuring Clause

Zurich, subject to the terms and conditions of this policy, will indemnify the *insured* for all amounts which the *insured* becomes legally liable to pay as *compensation* arising out of:

2.1 personal injury;
2.2 property damage; or
2.3 advertising liability,

happening during the *period of insurance* within the *territorial limits* as a result of an *occurrence* in connection with the project.

3. Limit of Liability

Zurich’s liability, in respect of all *compensation* under this policy as a result of any one *occurrence* and in the aggregate where applicable, shall not exceed the Limit of Liability specified in the *schedule*.

4. Extensions of Cover

4.1 Additional payments

We will, in addition to the Limit of Liability specified in the *schedule*, pay additional payments for:

4.1.1 legal costs and expenses incurred by us or the *insured*, with our written consent, in the settlement or defence of any claim for *compensation* in respect of which the *insured* is entitled to indemnity under this policy or, if sustained, would be so entitled;

4.1.2 fees incurred with our written consent for any solicitor, defence counsel or the equivalent of, for representation at any inquest, fatal inquiry or criminal proceedings relating to an *occurrence* which gives rise to a claim for *compensation* under this policy; and

4.1.3 the reasonable expenses incurred by the *insured* for first aid to others at the time of personal injury caused by an occurrence (other than medical expenses prohibited by law).

In respect of *occurrences in North America*, or *occurrences* in respect of which a claim for *compensation* is brought in a court of law in *North America*, the Limit of Liability specified in the *schedule* shall be inclusive of all such additional payments.

4.2 Automatic acquisition clause

This policy shall extend to apply on a contingency basis to any company or companies (subsidiaries) acquired or established or created by the *insured* during the *period of insurance*, provided that their activities are restricted to those outlined in the *schedule*.

This cover applies only for 90 days following the takeover or formation of the company or companies. Unless we expressly confirm coverage, this contingent coverage will expire on the 90th day following the takeover or formation of the companies.

We reserve the right to charge an additional premium and/or apply additional terms.
4.3 Compensation for court attendance
If an insured attends court as a witness at our request in connection with an occurrence in respect of which the insured is entitled to indemnity under this policy, we will provide compensation to the insured at the following rates per day for each day on which attendance is required:

4.3.1 any director, officer or partner of the insured $250.00 per day;
4.3.2 any employee of the insured $150.00 per day.

4.4 Extension to period of insurance
We agree to automatically grant any required extension to the original period of insurance. The insured shall notify us as soon as possible (but no later than the estimated end date of the construction period shown in the schedule or any revised date specified in any endorsement to this policy) upon becoming aware that the period of insurance requires amending and agrees to provide the estimated revised completion date.

Extensions of up to 60 days in total from the original agreed period of insurance shall be granted at no additional premium. For extensions beyond 60 days, we shall be entitled to charge an additional premium up to pro rata for the period requested.

5. Exclusions
Zurich shall not be liable under this policy in respect of any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

5.1 Advertising liability
advertising liability arising from:

5.1.1 failure of performance of contract, but this shall not relate to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;
5.1.2 incorrect description of any article or commodity; or
5.1.3 mistake in advertised price.

5.2 Aircraft, watercraft, hovercraft
any liability arising out of the ownership, maintenance, possession, use or operation, loading or unloading, of any aircraft, watercraft or hovercraft (other than watercraft not exceeding 15 metres in length for use on inland or coastal waters).

5.3 Asbestos
any liability directly or indirectly caused by or contributed to by or arising from asbestos or asbestos products or asbestos contained in any products.

5.4 Contractual liability
any liability or obligation assumed by the insured under any agreement or contract except to the extent that:

5.4.1 the liability or obligation would otherwise have been implied by law;
5.4.2 the liability or obligation arises from a provision in a contract for lease of real or personal property other than a provision which obliges the insured to effect insurance or provide indemnity in respect of the subject matter of contract;
5.4.3 the liability or obligation is assumed by the insured under any warranty under the requirement of Federal or State legislation in respect to product safety; or
5.4.4 the liability or obligation is assumed under those agreements specified in the schedule.

5.5 Contract works
property damage to or the costs incurred by anyone in recalling, removing, repairing, rectifying, replacing or reapplying any of the contract works.
5.6 Custody and control

Property damage to property owned by, hired to or in the custody or control of the insured or any employee or any party acting on behalf of the insured, other than:

5.6.1 guests’, visitors’, directors’, officers’, employees’ or partners’ personal effects;
5.6.2 motor vehicles in a car park, unless the car park is owned or operated by the insured for reward;
5.6.3 premises at which the insured is undertaking work in connection with the project;
5.6.4 existing buildings, structures or plant at which the insured is undertaking work in connection with the project but no indemnity is granted for property damage to that aspect of the contract being worked upon and which arises out of such work;
5.6.5 other property in the insured’s charge or control (except while undergoing any process or being worked upon) for which the insured has not assumed any responsibility to obtain insurance, subject to a limit of $500,000 for any one occurrence and in the aggregate during any one period of insurance.

5.7 Deliberate acts

Any deliberate act or omission of the insured or any employee and which could reasonably have been expected, having regard to the nature and circumstances of such an act or omission.

5.8 Information technology hazards

Any liability arising out of:

5.8.1 the insured’s internet operations; or
5.8.2 property damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
  (a) the use of any computer hardware or software; or
  (b) the provision of computer or telecommunication services by the insured or on the insured’s behalf; or
  (c) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

However this Exclusion does not apply to:

(i) personal injury, property damage or advertising liability arising out of any material which is already in print by the manufacturer in support of any of its products, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site; or
(ii) liability which arises irrespective of the involvement of the insured’s internet operations.

5.9 Injury to employees

Any liability to indemnify or pay compensation arising out of:

5.9.1 any policy of insurance required to be taken out pursuant to any legislation relating to workers’ compensation, whether or not the insured is a party to such contract of insurance;
5.9.2 any scheme created by legislation to provide compensation to persons who sustain personal injury arising out of or in the course of their employment; or
5.9.3 any claim for employment practices.

This policy shall not be drawn into contribution with such insurance, scheme or claim.

This Exclusion does not apply with respect to liability of others assumed by the insured under any written contracts.

However if the insured:

(i) is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or any common law liability (whether limited or not) for personal injury; or
(ii) is not required to so insure or otherwise fund such liability by reason only that the personal injury is to a person who is not a ‘worker’ or ‘employee’ within the meaning of the relevant workers’ compensation law or the personal injury is not an injury which is subject to such law, then this policy will cover liability for personal injury to the extent that the insured’s liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement had the insured complied with its obligations pursuant to such law.

5.10 Liquidated or punitive damages
any liability for any amount in respect of:

5.10.1 fines or penalties; or
5.10.2 liquidated, punitive or exemplary damages or multiplication of awards.

5.11 Loss of use
any liability for any amount in respect of loss of use of tangible property which has not been damaged, lost or destroyed as a result of:

5.11.1 a delay in or lack of performance by or on behalf of any insured in respect of any contract or agreement; or
5.11.2 the failure of the project to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by an insured.

5.12 Motor liability
any liability arising out of the use of a motor vehicle owned by, or in the physical or legal control of the insured:

5.12.1 which is required by law to be registered; or
5.12.2 in respect of which insurance is required by virtue of any legislation.

However this Exclusion does not apply to:

(i) a motor vehicle (other than a motor vehicle owned or used by or on behalf of the insured) whilst that motor vehicle is in a car park owned or operated by the insured other than for income or reward as a car park operator;

(ii) personal injury or property damage occurring during the loading or unloading of a motor vehicle caused by or arising from the collection or delivery of any goods from or to the motor vehicle where such personal injury or property damage occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability;

(iii) accidental or erroneous failure to maintain such statutory insurance; or

(iv) personal injury or property damage where insurance is provided by an Underlying Policy, but then only to the extent of the cover provided by such policy.

5.13 Pollution

5.13.1 personal injury or property damage directly or indirectly arising out of the discharge, seepage, migration, dispersal, release or escape of pollutants into or upon any property, land the atmosphere or any watercourse or body of water (including ground water);

5.13.2 personal injury or property damage directly or indirectly arising out of the discharge, seepage, migration, dispersal, release or escape of pollutants caused by any product that has been discarded, dumped, abandoned or thrown away by others;

5.13.3 the cost of removing, nullifying or cleaning up any pollutants; or

5.13.4 the cost of preventing the escape of any pollutant.

Exclusions 5.13.1 and 5.13.3 above shall not apply where the claim arises from a sudden identifiable, unintended and unexpected event from the insured’s standpoint which takes place in its entirety at a specific time and place during the period of insurance and occurs outside of North America, however the total aggregate Limit of Liability during any one period of insurance shall not exceed the Limit of Liability.
5.14 Professional liability

any liability arising out of the rendering or failure to render professional advice or service by the insured, or any error or omission in connection therewith.

However this Exclusion does not apply to:

(i) the insured’s liability in respect of personal injury or property damage resulting from the provision of professional advice or services; or

(ii) the rendering or failure to render professional advice by any employee to provide first aid or other medical services at the insured’s premises.

Medical services exclude advice or services provided by a qualified medical practitioner, nurse or first aid attendant.

5.15 Radioactive contamination

any liability arising out of:

5.15.1 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

5.15.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

However this Exclusion shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical, scientific or research pursuits.

5.16 Repair and replacement

any liability to perform, complete or rectify any work undertaken by the insured or on behalf of the insured, or to pay the cost of performing, completing or rectifying such work.

5.17 Terrorism

any injury, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion also excludes injury, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

5.18 War

any liability arising out of any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

6. General Conditions

6.1 Action against Zurich

Zurich shall not be liable unless the insured has complied fully with all provisions of this policy nor until the amount of compensation has been finally determined, either by judgment against the insured or by written agreement with the insured, the claimant and Zurich.

The insured shall make a definite claim for any personal injury or property damage for which Zurich may be liable within a reasonable time after such final determination.
6.2 Assignment
No assignment of interest under this policy shall bind Zurich until our consent is endorsed herein. However, should any insured die or be adjudged bankrupt or insolvent, Zurich will consent to the assignment of this policy to such insured’s legal representative provided that written notice is given to us within 30 days after the date of such death, bankruptcy or insolvency.

6.3 Cancellation
6.3.1 The insured may cancel this policy at any time by giving notice in writing to us.
6.3.2 Zurich may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (as amended), such cancellation to take effect within 30 days from the time of notification received by the insured.
6.3.3 Upon cancellation by the insured a refund of premium will be allowed pro rata of 80% of the premium for the unexpired period of insurance.
6.3.4 Upon cancellation by Zurich, a refund of premium will be allowed pro rata for the unexpired period of insurance.

6.4 Change in risk
Every change materially affecting the facts or circumstances existing at the commencement of or during the course of this policy or at any subsequent renewal date shall be notified to us as soon as such change comes to the insured’s notice.

We reserve the right to accept or deny coverage at the time of such notification and to establish a separate rate and premium for any such coverage.

6.5 Claims assistance and cooperation
The insured must assist and cooperate with us fully and promptly in relation to a claim, including:
6.5.1 supplying us with all information and assistance we may reasonably require;
6.5.2 allowing us to negotiate, defend or settle the claim:
   (a) the insured’s name and on the insured’s behalf; or
   (b) in the name of and on behalf of any other party covered by the insured’s policy;
6.5.3 sending to us any claim, writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest the insured receives or becomes aware of; and
6.5.4 as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until we have had an opportunity of inspection.

6.6 Control of claims
6.6.1 The insured shall not, without our written consent, admit or repudiate liability, negotiate or make any offer, promise or payment in connection with any claim.
6.6.2 Zurich shall be entitled, but not obliged, to take over and conduct in the insured’s name, the defence or settlement of any claim, or to prosecute in the name of the insured at its own expense and for its own benefit any claim, for indemnity or damages or otherwise against any persons, and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.
6.6.3 The insured shall give all such information and assistance to us, as we may require.
6.7 Discharge of any liability

Zurich may at any time pay the Limit of Liability (after deduction of sum or sums already paid), or any lesser sums for which any claim or claims can be settled and shall then be under no further liability in respect thereof except for the payment of 4.1 ‘Additional payments’ incurred prior to such payment.

In the event of a claim or series of claims arising from an occurrence resulting in liability of the insured to pay a sum in excess of the Limit of Liability, our liability under 4.1 ‘Additional payments’ shall not exceed an amount being in the same proportion as Zurich’s payment bears to the total payment made by or on behalf of or to be made by the insured in satisfaction of the claim or claims.

6.8 Fraud

If any claim upon this policy be in any respect fraudulent, or if any fraudulent means or devices be used by the insured, or if any damage be occasioned by a wilful act of the insured or with their connivance, all benefit under this policy shall be forfeited and the policy void.

6.9 Headings

Headings have been included for ease of reference, but do not form part of the policy.

6.10 Inspection and audit

We shall be permitted but not obligated to inspect the insured’s property and operations at any reasonable time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an insured or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation.

We may examine and audit the insured’s books and records at any time during the period of insurance and within three years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

6.11 Multiple Insured

If the insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this Condition 6.11), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of Zurich to all of the insured parties collectively shall not exceed the Limit of Liability.

The insured parties will, to the extent allowed under contract, at all times preserve the various contractual rights and agreements entered into by the insured parties and contractual remedies of such parties in the event of loss or damage.

We shall be entitled to avoid liability to or (as may be appropriate) claim damages from an insured party in circumstances of such insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or Condition of this policy (referred to in this Condition 6.11 as a ‘vitiating act’).

However a ‘vitiating act’ or any other act or neglect committed by one insured party, either at the time of entering this contract or during the period of insurance, shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a ‘vitiating act’.

We agree to waive all rights of subrogation that they may have or acquire against:

6.11.1 any insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of, any insured;

6.11.2 or, at the option of the insured, any other parties or persons, subject to the insured waiving rights of subrogation prior to the loss, but only when required to do so under contract,

except where the rights of subrogation or recourse are acquired in consequence or otherwise following a ‘vitiating act’, in which circumstances we may enforce such rights against the party committing the ‘vitiating act’.
6.12 No cover under this policy
Where the insured is not entitled to be indemnified under this policy, Zurich owes no duty of any kind and has no liability of any kind to the insured.

6.13 Payments in respect to Goods and Services Tax
When Zurich makes a payment under this policy for the acquisition of goods, services or other supply, we will reduce the amount of the payment by the amount of any input tax credit that the insured is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

When Zurich makes a payment under this policy as compensation instead of payment for the acquisition of goods, services or other supply, we will reduce the amount of the payment by the amount of any input tax credit that the insured is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

6.14 Premium adjustment
The premium for this policy has been calculated on the estimated final project value provided by the insured. The insured shall keep accurate records containing all particulars relevant to the project value. The insured shall, within 90 days after the completion of the project, provide us with such particulars and information it may require to calculate any applicable premium adjustment.

Any difference in premium shall be paid by or allowed to the insured, provided that the adjusted premium will not be less than any minimum premium specified in the schedule. The insured shall at all times allow us to inspect such records.

6.15 Proper law and jurisdiction
6.15.1 The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with Australian law.

6.15.2 In the event of any dispute arising under this policy including, but not limited, to its construction and/or validity and/or performance and/or interpretation, the insured will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

6.16 Reasonable precautions
It is a condition precedent to Zurich’s liability under this policy that the insured shall, at its own expense:

6.16.1 take, and cause to be taken, reasonable precautions to prevent personal injury, property damage and/or advertising liability;

6.16.2 comply with all statutory or local authority law, obligations and requirements or equivalent;

6.16.3 withdraw, inspect, repair, replace, trace, recall or modify any of the materials used in connection with the project containing any defect or deficiency of which the insured has knowledge or has reason to suspect.

6.17 Sanctions regulation
Notwithstanding any other terms or conditions under this policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any insured or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the insured would violate any applicable trade or economic sanctions, law or regulation.

6.18 Valuation and foreign currency
All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in Australian currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of loss under this policy is stated in a currency other than Australian dollars, payment under this policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars as reported in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.