

Freight Forwarders Liability Insurance Policy Wording

Subject to the prior payment of, or *your* agreement to pay, the premium set out in the *schedule*, we agree to provide insurance as set out in this policy.

In issuing this policy, we have relied on the information contained in the proposal form and/or any other information given by *you* or on *your* behalf.

The cover

We insure *you* against risks covered under the sections and optional additional covers stated in the *schedule* as applying to this policy and occurring during the *period of insurance* arising from an *insured service* provided by *you*.

Section 1 – Third party liability insurance

1.1 What you are insured for

Subject to the limit of liability and the terms and conditions of this policy, we will pay all sums which *you* become legally liable to pay resulting from an *occurrence* happening during the *period of insurance* and arising out of the *insured service(s)* for:

1.1.1 Non-contractual liabilities at law:

- (a) *accidental bodily injury* to or disease incurred by any person;
- (b) *accidental loss or damage* to property;
- (c) *consequential loss* resulting from (a) and (b) above.

1.1.2 Legally enforceable contractual liabilities under a contract or contracts, that have been previously advised and approved by us in writing in respect of:

- (a) renting or leasing *equipment*;
- (b) using the services of a sub-contractor or joint service partner;
- (c) any other contract entered into in connection with the *insured service(s)*;
- (d) *consequential loss* resulting from (a), (b) or (c) above.

1.2 What you are not insured for

Excluding *your* liability in consequence of:

1.2.1 the existence, maintenance or use of:

- (a) any licensed truck, licensed automobile or other licensed mechanically propelled vehicle (unless used as a tool of trade);
- (b) any unlicensed truck, unlicensed automobile or other unlicensed mechanically propelled vehicle used outside *your* premises.

Unless the truck, automobile or other unlicensed mechanically propelled vehicle belongs to a *third party* and *your* liability arises as a result of providing an *insured service*.

1.2.2 death, illness or personal injury or any claim arising directly or indirectly under Worker's Compensation or Employer's Liability Acts or any other statutory or common law liability in respect of death personal injury or illness of any worker or other person employed by *you* in any capacity whatsoever when the death or personal injury or illness arises out of or in course of the employment of the worker or other person.

1.2.3 death, injury, loss, damage or liability of any nature which is directly or indirectly connected or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, actual, alleged, threatened or suspected inhalation or absorption of *silica* or *silica related dust*.

- 1.2.4 loss of or damage to:
- (a) property held in trust or in custody by *you* or *your* employees but not employee's property;
 - (b) *your* property or property loaned, hired or rented by *you*.
- 1.2.5 an *occurrence* in the USA or Canada on public roads involving a *container*, trailer or chassis that is owned or leased by *you*.
- 1.2.6 *pollution* if:
- (a) it was not sudden, unexpected and accidental;
 - (b) a full disclosure is not made to us as soon as the *occurrence* is known;
 - (c) the proximate cause of the *pollution* occurred prior to or after the *period of insurance*;
 - (d) the claim is not brought against *you* prior to expiry of 12 months after the known or believed date of the *occurrence* that gave rise to the *pollution*.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

Section 2 – Liability insurance in relation to cargo

2.1 What you are insured for

Subject to the limit of liability and the terms and conditions of this policy, we will pay all sums which *you* become legally *liable* to pay resulting from an *occurrence* happening during the *period of insurance* and arising out of the *insured services* that are payable as a result of *your* liability for loss or damage to *cargo* and *consequential loss* resulting therefrom, under:

- 2.1.1 contracts of carriage or handling, including bills of lading and waybills, air waybills and/or trading conditions, that have been advised to/and or have been seen and approved by us in writing;
- 2.1.2 international conventions and/or national, civil, commercial or common law, that is applicable by compulsion or statute.

2.2 Special conditions

- 2.2.1 in the event of *you* knowingly being involved in the carriage, handling or storage of dangerous *cargo* it is a condition precedent to insurance cover remaining in force that *you* will ensure compliance with all relevant regulations issued by an *authority*;
- 2.2.2 if *you* receive a declaration of *cargo* value under an ad-valorem clause contained in a contract or are requested to increase the limit of liability under a contract, the terms and conditions of the contract having been previously approved by us, it is a condition precedent to cover being extended to include the increase in liability that the extension is specifically accepted by us in writing and subject to an additional premium if required buy us;
- 2.2.3 when negotiating new contracts with *customers* that do not conform with or contain the same terms and conditions as previous terms and conditions accepted by us, *you* must submit the proposed new terms and conditions to us for approval prior to entering into such contracts.

2.3 What you are not insured for

You are not insured, unless we agree to do so in writing, for liability arising from the provision of *insured services* to *excluded cargo*.

However, if *you* were not given notice of the kind of *cargo* that was to be carried or handled, and/or *you* could not reasonably have been aware of the presence of such *cargo*, *you* will be insured for liabilities to *excluded cargo* subject always to any applicable limitations and conditions of *your* trading conditions and/or contracts of carriage or handling as previously accepted by us.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

Section 3 – Errors and omissions and liabilities to authorities

3.1 What you are insured for

Subject to the limit of liability and the terms and conditions of this policy, we will pay all sums which *you* become legally liable to pay resulting from an *occurrence* happening during the *period of insurance* and arising out of the *insured services* for:

3.1.1 *customer's* financial loss resulting from:

- (a) unintentional breach of regulations relating to imports and/or exports and/or the carriage or movement of *cargo*;
- (b) delay in performing contractual obligations;
- (c) unintentional delivery of *cargo* contrary to instruction to withhold delivery without taking in exchange payment or the relevant document of title;
- (d) an unintentionally made incorrect statement in, or omission from, any bill of lading, waybill, air waybill or other document for the transportation, handling or storage of *cargo*;
- (e) any other unintentional negligent act, error or omission giving rise to a breach of duty whether committed, or alleged to have been committed, by or on behalf of any principals, directors or office clerical or other staff employed by *you* or acting on *your* behalf in the provision of *insured services* the first discovery of such act, error or omission being during the *period of insurance* and limited to a maximum liability of \$1,000,000 any one *occurrence*.

3.1.2 Liability imposed on *you* or others acting on *your* behalf by an *authority* relating to an *occurrence* during the *period of insurance* to pay fines, penalties, customs duty, sales or excise tax or similar fiscal charges which would not have been payable except for:

- (a) breach of regulations relating to the import or export, carriage or movement of *cargo*;
- (b) breach of regulations relating to import or export of any conveyance or *equipment*;
- (c) short or over delivery of *cargo*;
- (d) smuggling or breach of any immigration regulations;
- (e) breach of regulations relating to *pollution*;
- (f) breach of regulations relating to working conditions,

limited to a maximum liability of \$1,000,000 any one *occurrence*.

3.1.3 confiscation by an *authority* of any property including any *equipment* belonging to, or leased in by *you*, but only if insured under 'Equipment insurance' and attached to the policy resulting from breach of regulations listed in and insured under clause 3.1.2 above.

3.2 Special conditions

Cover provided under clause 3.1.2 does not apply to *excluded cargo* unless we have agreed in writing to provide such cover.

However, if *you* were not given notice of the kind of *cargo* that was to be carried or handled and *you* could not have reasonably been aware of the presence of such *excluded cargo*, *you* will be insured for liabilities to *excluded cargo* subject always to any applicable limitations and conditions contained in *your* trading conditions and/or contracts of carriage or handling as previously accepted by us for insurance hereunder.

3.3 What you are not insured for

This policy does not cover any fine or penalty imposed by the Federal Maritime Commission of the United States of America for failure to:

- 3.3.1 file a required tariff;
- 3.3.2 post a bond;
- 3.3.3 appoint an agent.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

Section 4 – Costs and expenses

4.1 What you are insured for

Subject to the limit of liability and the terms and conditions of this policy, we will indemnify *you* for costs and expenses arising out of an *occurrence*, that will or may rise to a claim covered by any of the sections stated as applying to this policy arising out of *insured services* which are necessary and incurred for:

- 4.1.1 (a) to mitigate or prevent an insured loss;
- (b) in investigating an *occurrence* by a surveyor or an appropriate specialist in order to protect *your* interest and our interest.
- 4.1.2 extra costs and expenses necessarily incurred in disposing of *cargo* or an item of *equipment* insured following an *occurrence*. Subject to such costs and expenses having been approved by us in writing.
- 4.1.3 legal fees and expenses incurred, with our written approval which relate to any loss or liability insured.
- 4.1.4 extra costs incurred by re-routing misdirected *cargo* to the correct destination subject to our written agreement.
- 4.1.5 extraordinary costs and expenses involved for quarantine, fumigation or disinfection of *cargo*, *equipment* or other property, when costs and expenses have not been incurred in the normal course of business and have been approved by us in writing.
- 4.1.6 *cargo's* proportion of general average and/or salvage and/or salvage charges which *you* are legally liable to pay:
 - (a) because of a breach of the contract of carriage with the *customer*,
 - (b) because *you* are unable to obtain recovery from the *customer* after all reasonable rights of recourse have been exhausted,
- 4.1.7 additional costs incurred with our consent because of:
 - (a) the complete failure of the consignee to take up or remove *cargo* from the contracted place of delivery;
 - (b) *your* sub-contractor or appointed agent failing in duties to promptly pay all debts resulting in such additional costs having to be paid in order to complete contractual obligations.
- 4.1.8 losses, costs and expenses that we may require *you* to incur in mitigation of a loss if we consider that it is in our interest that such losses, costs and expenses should be incurred, even if they would not otherwise have been recoverable under this policy.

4.2 General average and salvage bonds

If required, in order to enable *you* to obtain release of *cargo*, we will at *your* request, issue guarantees or bonds subject to *you* immediately obtaining a completed *cargo* valuation form and, if possible prior to the delivery of the *cargo*, endeavour to obtain counter security from each consignee and/or their insurers. In the event that *you* are unable to obtain counter security or payment from each consignee and/or their insurers, then we will pay the irrecoverable amount.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

Section 5 – Specific cover for insurable services

This cover option is only applicable if Sections 3 and 4 are stated in the *schedule* as applying.

5.1 What you are insured for

Subject to the limit of liability and the terms and conditions of this policy, we will pay all sums which *you* become legally liable to pay resulting from an *occurrence* happening during the *period of insurance* and arising out of the *insured service(s)* for claims made by an *authority* in respect of either:

- 5.1.1 the removal, disposal, storage or marking of any *cargo*, means of transportation or *equipment* that has been abandoned; or
- 5.1.2 payment falling due under standard forms of customs bonds or guarantees.

In addition *you* will be reimbursed for:

- 5.1.3 additional costs and expenses reasonably incurred in complying with or attempted compliance with an order from an *authority* in connection with 5.1.1 or 5.1.2 above.
 - 5.1.4 any salvage money or the value of any *cargo* or means of transport or *equipment* obtained by *you*, arising out of a claim being made under 5.1.1 above, will be credited to us up to the total sum settled or claimed.
 - 5.1.5 *you* will only be entitled to obtain payment from us in respect of claims under 5.1.1 or 5.1.2 above after the practical exhaustion of all reasonable rights of recourse to recover such amounts from *principals* or other responsible parties.
- 5.2 This policy also indemnifies *you* for legal liabilities arising out of any statutory enactment which imposes on *you* the responsibilities of a *principal* on whose behalf *you* act, which results in *you* being obliged to settle any claim or claims. Payment by us being subject to *you* having taken all practical steps to obtain recovery of the amount(s) settled from the *principal*.
- 5.3 *You* will be insured for the consequence of any fraudulent or dishonest act by an employee who is not a director, partner or controlling principal, resulting in a claim or claims being made which *you* are legally liable to settle.
- 5.4 *You* will be insured for payment of costs and/or fees incurred in recovering or attempting to recover monies due:
- 5.4.1 for the provision of *insured service(s)*;
 - 5.4.2 as a result of the operation of the *insured service(s)*;
 - 5.4.3 for disbursements expended on behalf of a *principal* in providing the *insured service(s)*.

However, it is a condition precedent to recovery of any claim or claims that we will:

- 5.4.4 ascertain to our satisfaction that the debt is due to *you*;
- 5.4.5 not reimburse *you* in respect of costs and fees in relation to a debt that has been outstanding in excess of 12 months at the time of the first notification to us;
- 5.4.6 consider that it is probable that a recovery can be obtained after taking into account the known financial status of the debtor and of any offer that may have been made;
- 5.4.7 have the right to withdraw from further litigation at any time and reimburse *you* for monies due, we take over all rights of subrogation against the debtor,

subject to the limitations of costs and expenses stated in 'Special conditions' clause 5.7 below.

- 5.5 *You* will be insured for legal expenses not otherwise insured arising out of a dispute or controversy in respect of the provided *insured service(s)*.

However it is a condition precedent to payment of any claim or claims that we will have the right to:

- 5.5.1 decide if the proposed or possible litigation is likely to be successful, taking into account the probable costs and the feasible amount to be recovered;
- 5.5.2 direct any investigation or the obtaining of any advice;
- 5.5.3 approve all costs and expenses prior to them being incurred;

5.5.4 initiate or decline to initiate any litigation;

5.5.5 terminate further action, taking into account the provisions of 5.5.1 above, subject to the limitation of costs and expenses stated in 'Special conditions' clause 5.7 below.

5.6 You will be insured for any claim or claims that you are held legally liable to pay arising out of alleged:

5.6.1 slander, libel or other defamatory statement made or published by you;

5.6.2 wrongful arrest, constraint or confinement of a person;

5.6.3 malicious wrongful prosecution;

5.6.4 breach of *third party's* right to tenure or privacy.

5.7 Special conditions

In respect to costs and expenses covered by risks insured under clauses 5.4 and 5.5.

5.7.1 Unless and to the extent that we agree otherwise in writing we will pay up to the first A\$50,000 or the equivalent in other currencies of all legal costs or other expenses incurred during the *period of insurance* arising from a claim or claims. Any legal costs or expenses in excess of this amount will be paid 50% by us and 50% by you.

5.7.2 In the event of a successful action where costs are awarded to you, we will be reimbursed up to the amount of our total costs expended. Where costs have been borne partially by us and partially by you costs recovered will be allocated in the same proportions.

5.8 Exclusions

In respect to risks covered in clause 5.6 in no case will this policy cover:

5.8.1 intentional breach of any regulation or statute, perpetrated by any of your principals, directors or executive officers;

5.8.2 any intentional defamatory statement or publication made with the knowledge of any of your principals, directors or executive officers;

5.8.3 any offence sustained by a person or persons arising out of or in the course of their employment by you;

5.8.4 publication by way of advertising or otherwise on your behalf in an independent journal, magazine or newspaper, or broadcast by radio or television;

5.8.5 any action or defamatory statement the origin of which is prior to attachment of the *period of insurance*.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

Section 6 – Equipment insurance

Insured *equipment* values agreed at the inception of the *period of insurance* may not be reduced during that period unless agreed by us in writing.

6.1 What you are insured for

6.1.1 All risks of loss or damage to the *equipment* insured. However, we will only reimburse you when loss or damage to an individual replaceable or separate part is caused by *accidental loss or damage*.

6.1.2 Your liability for contribution to general average, salvage and/or salvage charges that may be incurred to avoid or mitigate a loss to the *equipment* from any cause. The insured *equipment* is deemed to be insured for its full contributory value.

6.1.3 Your liability to pay lease per diem charges (other than in respect of lease purchase) due in respect of *equipment* that has been lost or damaged, when reimbursement for such loss or damage is recoverable from us, and the *equipment* is prevented from being used by you or being redelivered to the lessor by the due or anticipated return date. Our liability is limited to 35 days indemnity each *occurrence*.

6.2 Exclusions

In no case will this insurance cover loss, damage or expense arising from:

- 6.2.1 wear, tear or gradual deterioration;
- 6.2.2 latent defect and/or fault in the manufacture or design of the *equipment*;
- 6.2.3 mechanical, electrical or electronic breakdown or derangement;
- 6.2.4 destruction of, or damage to, the insured *equipment* by or under order of an *authority*;
- 6.2.5 confiscation, seizure, appropriation, expropriation, nationalization, requisition or pre-emption by an *authority*;
- 6.2.6 mysterious disappearance, unexplained loss or loss discovered when taking inventory.

6.3 Basis of indemnity

In the event of a claim for an item of *equipment* our liability will not exceed:

- 6.3.1 for partial loss – the reasonable cost of repairs but not exceeding the insured value of the item of *equipment*. If there is no insured value the market value or, for *equipment* hired or leased by *you*, the reasonable cost of repairs but not exceeding the amount payable in accordance with the hire or lease agreement;
- 6.3.2 for total loss – up to the insured value of the lost item of *equipment*. If there is no sum insured the market value, or in the case of *equipment* hired or leased by *you*, the amount payable in accordance with the hire or lease agreement.

Please refer to the Exclusions and General Conditions applicable to all Sections which also apply to this Section of the policy.

7. Definitions applicable to all Sections

When used in this policy, *schedule* or endorsements the following definitions will apply:

7.1 Accidental bodily injury or disease

accidental bodily injury means bodily injury disease as a result of an *occurrence* that is unforeseen and unintended.

7.2 Accidental loss or damage

accidental loss or damage means loss or damage as a result of an *occurrence* that is unforeseen and unintended.

7.3 Aircraft

aircraft means any vessel, craft or thing manufactured to, or intended to, move through the air or space.

7.4 Authority(ies)

authority(ies) means an administrative body(ies) or person(s) of competent jurisdiction or a legally constituted court or tribunal.

7.5 Bullion

bullion means gold, silver, platinum or other precious metals in bars or similar bulk form.

7.6 Cargo

cargo means goods of any description, including packaging or *containers*, for which *you* are responsible.

7.7 Communicable disease

communicable disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- 7.7.1 the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not; and

- 7.72** the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and
- 7.73** the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property insured hereunder,

and includes, but is not limited to, a disease that is or becomes listed on the National Notifiable Disease List and/or is or becomes a temporary addition to the National Notifiable Disease List and/or has or could give rise to a public health event of national significance and/or is or becomes a listed human disease (where National Notifiable Disease List means the list established and in force from time to time under section 11 of the National Health Security Act 2007 (Cth) and listed human disease has the meaning given by section 42 of the Biosecurity Act 2015 (Cth), or in each case any subsequent amendment, replacement or successor legislation of the Commonwealth of Australia).

7.8 Consequential loss

consequential loss means any financial or economic loss suffered by any person.

7.9 Container

container means a unit load transport device, fitted with corner castings designed for the carriage of *cargo* by more than one mode of transport. For the purpose of this insurance '*container*' includes flat rack, reefer and tank containers.

7.10 Customer

customer means any person or group of persons, corporation, entity or collective entity for whom *you* provide an *insured service*.

7.11 Deductible

deductible means the proportion of the risk *you* retain for each claim (the amount shown in the *schedule*) and *you* will pay the *deductible* before we pay the remainder of the claim.

7.12 Deliberate, reckless or wilful conduct

deliberate, reckless or wilful conduct means any conduct being an act, or omission to act, where such act or omission is with intent to cause loss or recklessly and with knowledge that such loss would probably result.

7.13 Equipment

equipment means *containers*, trailers and handling equipment used by *you* in carrying out the *insured service(s)* and specified in the *schedule*.

7.14 Excluded cargo

excluded cargo means, but is not limited to, *bullion*, banknotes, cash, bonds, negotiable documents, securities, deeds, manuscripts, plans, stamps, livestock and bloodstock, cigarettes and other tobacco based products, spirits, jewellery, precious stones, works of art, antiques or other precious goods.

7.15 Insured service(s)

insured service(s) means the usual service(s) or activity(ies) carried out by *you* as a freight forwarder, road transport operator, multi modal transport operator, non vessel owning carrier by sea, non aircraft owning carrier by air, warehouse keeper or operator, customs broker or marine insurance agent.

7.16 NVOC

NVOC means a non vessel or non aircraft owning carrier.

7.17 Occurrence

occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in loss damage or liability neither expected nor intended by *you*. All claims resulting from any one original source or cause, to the extent that they are made by the same party, will be considered to have been caused by a single *occurrence*.

7.18 Period of insurance

period of insurance means the Period of Insurance stated in the *schedule*.

7.19 Pollution

pollution means the emission, discharge, dispersal, release or escape into or on to land, sea, the atmosphere, any watercourse or body of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

7.20 Principal(s)

principal(s) means any person(s) or group(s) of persons, corporation, entity or collective entity on whose behalf *you* undertake to provide an *insured service*.

7.21 Schedule

schedule means the most recent document we give *you* setting out details of *your* insurance cover. We give *you* a *schedule* when *you*:

- 7211 first enter into the policy with us;
- 7212 change any part of the policy or any personal details relevant to it;
- 7213 renew the policy with us.

7.22 Silica

silica means silicon dioxide, (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

7.23 Silica related dust

silica related dust means a mixture or combination of *silica* and other dust or particles.

7.24 Terrorism

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 connections with any organisation(s) or government(s) de jure or de facto, and which:

- 7241 involves violence against one or more persons;
- 7242 involves damage to property;
- 7243 endangers life other than that of the person committing the action;
- 7244 creates a risk to the health or safety of the public or a section of the public; or
- 7245 is designed to interfere with or to disrupt an electronic system.

7.25 Third party

third party means any person or group of persons, corporation, entity or collective entity who is not *you* or us.

7.26 You, your

you, your means the person, group of persons, corporation or entity named as 'The Insured' in the *schedule*.

8. Exclusions applicable to all Sections

Notwithstanding anything contained anywhere in this policy to the contrary, *you* are not insured for any losses, damages or liabilities in accordance with the exclusion clauses below.

8.1 General exclusions

This policy does not insure *you* for *your* legal liability:

- 8.1.1 arising out of any award against *you* or any other person for whose conduct *you* are liable for punitive, exemplary or multiple damages.
- 8.1.2 resulting from *your* insolvency or financial default.
- 8.1.3 arising out of *your* involvement in the operation or management of a ship or *aircraft*.
- 8.1.4 assumed under any contract (including any time penalty or other penalty clause) unless, and to the extent, that such contract or provision has been specifically agreed by us in writing.
- 8.1.5 arising from *your* involvement in dredging operations or the dumping of spoil therefrom.
- 8.1.6 arising out of the operation or use of a dump site, land-fill operation or from the disposing of waste other than under a contract for the carriage, handling or storage of waste as *cargo* prior to its disposal, and the contract has been agreed by us in writing.
- 8.1.7 resulting from *you* waiving *your* rights of recourse against any other party, to the extent that such liability has been enhanced by the waiver, unless agreed to by us in writing.
- 8.1.8 resulting from any *deliberate, reckless or wilful conduct* by *you* which enhances the likelihood of increasing loss, damage liability or expense beyond that which would otherwise have existed.
- 8.1.9 arising from loss to *third party* property held in *your* care, custody and control as a result of accounting errors or unexplained disappearances and/or shortages revealed only after *you* take inventory or other method of taking stock.
- 8.1.10 arising from asbestos.

8.2 Nuclear

This policy excludes loss, liability, damage or expenses caused by or contributed to by:

- 8.2.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 8.2.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 8.2.3 any weapon or device using atomic or nuclear fission and/or fusion or other similar reaction or radioactive force or matter;
- 8.2.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
- 8.2.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

8.3 Terrorism

This policy excludes any loss any act of *terrorism* or steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived *terrorism*.

8.4 War, strikes and confiscation

This policy excludes loss, liability, damage or expenses caused by:

- 841 war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom or any hostile act by or against a belligerent power;
- 842 derelict mines, torpedoes, bombs or other weapons of war (deleted derelict);
- 843 strikers, locked-out workers, persons taking part in labour disturbances, riots or civil commotions or resulting from strikers, locked-out workers, persons taking part in labour disturbances, riots or civil commotions;
- 844 confiscation, appropriation, expropriation, nationalisation, requisition or destruction of or damage to property by or under the order of any government or public *authority*.

8.5 Communicable disease

This policy excludes any actual or alleged loss, liability, damage, compensation, injury, sickness, disease, medical payment, claim, cost, expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a *communicable disease* or the fear or threat (whether actual or perceived) of a *communicable disease*.

8.6 Cyber risk

This policy excludes any loss, damage, liability or expense directly or indirectly caused by, contributed to by or arising from:

- 861 the failure, error or malfunction of any computer, computer system, computer software programme, code, or process or any other electronic system; or
- 862 the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

9. General Conditions applicable to all Sections

9.1 Assignment

- 911 *You* may not transfer a right under this policy without our written consent.
- 912 Notwithstanding 9.1.1 above, at *your* request an owner and/or mortgagee of *equipment* leased or purchased by *you* and insured under this policy may be named as a beneficiary if agreed by us in writing.

9.2 Cancellation

- 921 *You* may cancel this policy at any time by notifying us in writing.
- 922 When the policy is subject to the Insurance Contracts Act 1984 (Cth), we may cancel the policy subject to the provisions of that Act.
- 923 Within 30 days of the effective date of cancellation, *you* must advise us of the actual *gross charges* figures for the period the policy has been in force to enable us to calculate the premium due for this period. The difference between this premium and the deposit premium will either be paid or allowed to *you* but subject to a retention by us of a minimum premium of 75 per cent of the proportionate part of the estimated annual premium for the period the policy has been in force.

9.3 Claims settlement

In the event of a claim, we have the option of settling *your* loss by either payment, repair, reinstatement or replacement.

If *you* are liable for GST in respect of any goods, services or other supply which are the subject of a claim under this policy, we will pay *you* for that GST liability.

However:

- 931 where we make 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 *you* are, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) in relation to that acquisition whether or not the acquisition is actually made;
- 932 where we make a payment under this policy as compensation 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 *you* would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or supply.

9.4 Cross liability

Subject to clause 9.7 'Joint insureds' where *you* are comprised of more than one legal entity, each of them will be considered as a separate legal entity with the words '*you*' and '*your*' applying to each of them in the same manner as if a separate policy has been issued to each one, provided that nothing in this condition will result in an increase in our limit of liability in respect of any *occurrence* or *period of insurance*.

9.5 Deductibles

- 951 Where this policy is subject to a *deductible(s)* it will be applicable to each *occurrence* unless otherwise stated.
- 952 When two or more *deductibles* are applicable to an *occurrence*, the total to be deducted will not exceed the highest applicable *deductible*.

9.6 Headings

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

9.7 Joint insureds

Where *you* are comprised of more than one legal entity information supplied to us will be deemed to have been furnished by or on behalf of each legal entity. Any information supplied to us or any omission or non-disclosure in relation to any renewal or endorsement of this policy will also be deemed to have been furnished, omitted or withheld on behalf of each legal entity.

9.8 Legal

- 981 When *you* appoint lawyers, surveyors or other professionals in connection with any matter likely to give rise to a claim the costs and expenses incurred will only be recoverable if they are with our prior written consent.
- 982 We may, at any time, appoint lawyers, surveyors and other professionals on *your* behalf even if *you* have previously appointed them. We may also discontinue their appointment as considered necessary.

All appointments made will be on the understanding that they will retire from the case if we, or *you*, request it or it is considered that there may be a conflict of interest between *you* and us and on a basis without prejudice to their right to retire from the case on any other grounds; and that they will at all times report and advise us in connection with the case, including provision of any documents or information in their possession or power relating to such case, as if they had been appointed to act and at all times had been acting on our behalf. Notwithstanding that any such advice, reports, documents or information would otherwise be the subject of legal privilege.

9.9 Limits of liability

This policy is subject to limits of liability as stated in the *schedule*. When different limits are applicable to particular sections of this policy, the lower limits will apply to the specific section but the higher limit will be the overall limit of liability applicable to any one *occurrence* unless otherwise stated in the *schedule*.

9.10 Notice and proof of claim

If an *occurrence* happens that may give rise to a claim under this policy, *you* must:

- 9.10.1 immediately advise us of all known details. Failure to provide the details within 90 days will prejudice *your* ability to make a claim under this policy;
- 9.10.2 avoid or minimise any liability, loss or damage;
- 9.10.3 ensure that a claim is made against any responsible *third party* within any time limitation applicable under contract or law;
- 9.10.4 make no admission of liability, offer, promise to indemnify or payment without our written consent;
- 9.10.5 forward to us every letter, document, summons, writ or process relating to a claim or possible claim on receipt;
- 9.10.6 *you* must supply us with written details of all policies that may apply to the claim.

9.11 Notification of material change

You must notify us in writing as soon as possible of any material change in the risk covered by this policy and pay any additional premium we may require.

9.12 Other insurance

Provided it is permitted by law, where two or more insurance policies have either been entered into by *you* or effected on *your* behalf by another legal entity covering the same risk, this policy will only cover the amount of the claims which exceeds the amount recovered under the other policy or policies, up to the limits provided for under this policy.

9.13 Premium

You must pay us the minimum and deposit premium stated in the *schedule*. This premium is based on *your* estimated gross freight receipts, or other computation agreed by us, provided by *you* for the *period of insurance*.

You must provide a statement (audited if we request it) of *your* actual gross receipts to us within 30 days after the end of the *period of insurance*.

We will adjust the premium based on these actual figures. If the adjusted premium is higher than the minimum and deposit premium stated in the *schedule* *you* must pay us the difference.

9.14 Proper law and jurisdiction

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

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, *you* will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

A reference to any statute, regulation or subordinate legislation includes any amendment, replacement, successor or equivalent to or of that statute, regulation or subordinate legislation.

9.15 Recovery

When a recovery is obtained from a *third party* in respect of any claim, we will be credited with the proceeds up to the full amount received. If the amount recovered exceeds the amount paid or payable by us the surplus will be credited to *you* up to the amount of *your* liability. Any additional surplus will be divided equitably between *you* and us taking into account any interest that could have been earned or any amounts expended.

9.16 Rights of subrogation

We are entitled to exercise any rights *you* may have against anyone else in relation to the insured *cargo* for which we have settled a claim under this policy. *You*, and anyone else entitled to claim under this policy, must cooperate fully with us in exercising those rights and must give us any information or assistance we may require.

9.17 Sanctions regulation

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

9.18 Terms and conditions

Provided *you* have a system in place for incorporating *your* standard terms and conditions into *your* contracts of carriage, as approved by us, if *you* unintentionally fail to incorporate those approved terms and conditions into a contract of carriage this policy will, nevertheless, cover *your* liability.

However, if *you* intentionally agree to carry *cargo*, either as a *principal* or as a subcontractor, under any terms different to *your* standard terms and conditions this policy will only cover *your* liability as if the *cargo* were carried subject to *your* approved standard terms and conditions unless we have agreed to extend this policy to cover *your* liability subject to those different terms.

9.19 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.

9.20 Your responsibilities

You must act responsibly and as though this policy does not exist for example:

- 9.20.1 by taking all reasonable steps to determine the competence, fidelity and reliability of any employees, contractors, subcontractors and/or agents employed by *you*;
- 9.20.2 by taking all reasonable attempts to recover any *container / cargo* or claim the demurrage or detention charges from the responsible *customer*;
- 9.20.3 when *equipment* is insured under this policy by complying with laws, rules and regulations issued by any *authority* relating to licensing, inspection, testing, maintenance and operation of the *equipment*;
- 9.20.4 by not intentionally overloading the *equipment* other than for the purpose of inspection or testing;
- 9.20.5 by maintaining and keeping records of transportation, inspection, maintenance or repair of the *equipment*, made available to us if we request it.

Failure to comply with these responsibilities may prejudice *your* entitlement to indemnity under this policy.