

One Off Construction/ Liability

Engineering Insurance Policy



POLICY

QM200

This Policy is underwritten by QBE Insurance (Australia) Limited
ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney



ONE OFF CONSTRUCTION/LIABILITY POLICY

About this booklet

In this Policy booklet you'll find all the information you need to know about the type of cover(s) available, our terms and conditions, and making a claim.

Please read this booklet and make sure that you are satisfied with what we offer.

Unless we have already agreed to issue a cover note, insurance protection only begins when we receive and accept your completed application form and the premium.

This booklet and the insurance schedule we send you form your legal contract with us, so please keep them together in a safe place.

Please do not hesitate to contact your broker or agent if you have any questions about this policy booklet or your insurance cover.

About QBE Australia

QBE Insurance (Australia) Limited is a member of the QBE Insurance Group (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the top 25 insurers and reinsurers worldwide. The company has been operating in Australia since 1886 and continues to provide industry-leading insurance solutions that are focused on the needs of intermediaries and their clients.

QBE is a household name in Australian insurance, backed by sizeable assets, and well known as a strong and financially secure organisation.

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ONE OFF CONSTRUCTION/LIABILITY POLICY

Important information

Insurer

The Policy is underwritten by QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney.

Your Duty of Disclosure

Before you enter into a contract of general insurance with us, you have a duty, under the Insurance Contracts Act 1984, to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of insurance and, if so, on what terms. You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of a matter:

- that reduces the risk to be undertaken by us;
- that is of common knowledge;
- that we know or, in the ordinary course of our business, ought to know; or
- as to which compliance with your duty is waived by us.

Non Disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the contract in respect of a claim or may cancel the contract. If your non disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

Preventing our Right of Recovery

Our liability to you for a loss under this Policy may be excluded or limited if you enter into an agreement that excludes or limits your or our rights to recover monies from any other person in respect of that loss. This applies to an agreement before or after you enter into this Policy and before or after the loss.

Other Party's Interests

You must tell us about all parties (e.g. financiers, lessors) to be covered by this insurance. We will protect their interests only if you have told us about them and we have noted them on the Schedule.

Average/Underinsurance

The Additional Insured Items for existing structures and for items of plant, equipment, tools, cranes, hoists and mobile construction machinery are subject to average/underinsurance. As such;

- for existing structures, you must insure for their full replacement value; and

- for items of plant, equipment, tools, cranes, hoists and mobile construction machinery, you must insure for the current market value,

because if you do not, we will only pay the proportion of the claim that the Sum Insured bears to that value.

Excesses

You shall pay an excess for every claim under Sections 1 and 2 of this Policy.

In respect of claims under Section 1, there are various types of excesses that may apply as follows:

- (a) Major hazards excess;
- (b) Minor hazards excess;
- (c) Testing and commissioning excess;
- (d) Existing structures excess.

The major hazard excess is payable where insured damage is caused by a major hazard.

The minor hazard excess is payable where insured damage is caused by a minor hazard.

The testing and commissioning excess is payable where insured damage is caused by the testing and commissioning of the contract works covered under 2.3(j) of section 1.

The existing structures excess is payable where insured damage is caused to any existing structure covered under 2.3(e) of Section 1 irrespective of the cause of the insured damage, an existing structure includes any structure on the contract site or other sites covered under this Policy which existed prior to the period of insurance.

In respect of claims under Section 2, there are excesses for personal injury and/or property damage.

There may be more than one excess payable in respect of each claim under this Policy.

In addition to the above other types of excess may apply as stated in the Schedule.

How Goods and Services Tax affects any payments we make

The amount of premium payable by you for this policy includes an amount on account of the GST on the premium.

When we pay a claim, your GST status will determine the amount we pay.

When you are:

- a) not registered for GST, the amount we pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST.
- b) registered for GST, we will pay the sum insured/limit of indemnity or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a Damaged item insured under the Policy) we will pay for the GST amount.

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number & Taxable Percentage.

Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of your claim is less than the sum insured/limit of indemnity or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

Privacy

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. We are bound by the Privacy Act 1988 (Cth.), when collecting and handling your personal information. QBE has developed a privacy policy which explains what sort of personal information we hold about you and what we do with it.

We will only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including any claims you make. We will only use and disclose your personal information for a purpose you would reasonably expect.

We may need to disclose personal information to our reinsurers, (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, our advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting us and them in providing relevant services and products, or for the purposes of litigation. We may disclose personal information to people listed as co-insured on your policy and to family members or agents authorised by you. We may also disclose information to organisations which conduct customer service surveys on our behalf. We will request your consent to any other purpose.

By providing your personal information to us, you consent to us making these disclosures. Without your personal information we may not be able to issue insurance cover to you or process your claim.

You also have the opportunity to find out what personal information we hold about you and, when necessary, correct any errors in this information. Generally we will do this without restriction or charge. For further information about our Privacy Policy or to access or correct your personal information, please contact The Compliance Manager, QBE Insurance (Australia) Limited, GPO Box 82 Sydney NSW 2001. Telephone: (02) 9375-4656, Fax: (02) 8275-9022 or Email: compliance.manager@qbe.com

Dispute resolution

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to your complaint within 15 working days.

If you would like to make a complaint or access our internal dispute resolution service please contact your nearest QBE office and ask to speak to a dispute resolution specialist.

The General Insurance Code of Practice

QBE Insurance (Australia) Limited is a signatory to the General Insurance Code of Practice. The Code aims to:

- promote more informed relations between insurers and their customers;
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers;
- commit insurers and the professionals they rely upon to higher standards of customer service.

Words with special meanings

Words with special meanings

For the purpose of this Policy the following definitions apply:

Word or term	Meaning
Act of terrorism	an act including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.
Conditions report	a written report with photographs detailing the condition and structural integrity of any building, framework, structure or land surrounding or that could be affected by any excavation or underpinning work on the contract site. The conditions report must be completed by consulting engineers who specialise in conditions reports.
Construction period	the period commencing on the date specified in the Schedule, and expiring: <ul style="list-style-type: none"> at the time of practical completion of the contract works, and including up to fourteen (14) days in excess of the practical completion; or on the date those completed portions of the contract works are taken over, occupied or put into use; or on the date specified in the Schedule; whichever occurs first.
Contract site	the location(s) where any work is performed by you for or on or in connection with the contract works specified in the Schedule.
Contract works	the whole of the works whether permanent or temporary including all materials incorporated or to be incorporated therein including all formwork, falsework, site buildings, scaffolding, security fencing and hoardings belonging to you or in your care, custody or control for the performance of the construction contract described in the Schedule.
Excess	the amount(s) shown in the Schedule that you shall first contribute towards each claim or series of claims resulting from the one original source or cause.
Existing structure	any building, framework or structure including all permanent attachments, but does not include pathways, driveways, outside paving or fencing.

Word or term	Meaning
Flood	the inundation of normally dry land by water escaping from or released from the confines of any watercourse or lake, whether modified or not, or from any reservoir, dam or canal.
Maintenance period	the period commencing at the end of the Construction Period or the Testing Period if specified in the Schedule and expiring on the date of expiration of the period specified in the Schedule.
Occurrence	an event which results in personal injury or property damage, neither expected nor intended from your standpoint. All personal injury or property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one occurrence.
Period of insurance	The construction period and, where nominated in the schedule, the total of the construction period, testing period and maintenance period.
Practical completion	the earlier of ; <ul style="list-style-type: none"> when the contract works has been completed except for minor omissions and minor defects which do not prevent the contract works from being capable of being occupied or used for their intended purpose; or when the certificate of practical completion is issued.
Products	anything (after it has ceased to be in your physical custody or under your control) manufactured, produced, supplied, distributed, sold, imported, repaired, serviced, installed, assembled, erected or constructed by you, including packaging and containers.
Property damage	(a) physical damage to, loss or destruction of tangible property including any resulting loss of use of that property, or (b) loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an occurrence.
Schedule	the Schedule of Insurance or any future Renewal Schedule or endorsement.
Storm	violent wind (including cyclones and tornadoes), thunderstorms or hailstorms which may be accompanied by snow or rain.
Territorial limits	anywhere within Australia or its Territories.
Testing period	the period commencing at the end of the construction period and expiring on the date of expiration of the period specified in the Schedule.
We/our/us	QBE Insurance (Australia) Limited, ABN 78 003 191 035

Section 1: Material damage

Definitions

Word or term	Meaning
Electronic data	any facts, concepts and/or information converted to a form usable for communications and/or displays and/or distribution and/or processing by electronic and/or electromechanical data processing and/or electronically controlled equipment which includes but is not limited to programs and/or software and/or other coded instructions for such equipment.
Insured damage	the sudden and unforeseen physical loss of or damage to the contract works not otherwise excluded, occurring during the period of insurance.
Major hazard	earthquake, storm, flood, water, landslip, erosion, subsidence, or collapse.
Minor hazard	from any cause other than a major hazard.
Sum insured	the sum specified in the Schedule for each insured item specified in the Schedule.
Total sum insured	the total of the sums insured for each of the insured items specified in the Schedule.
You/your	the person(s) named in the Schedule as the Insured.

Scope of cover

Construction period

We will cover you for insured damage unless excluded by this policy occurring and detected at the contract site during the construction period.

Maintenance period

We will cover you for insured damage to the contract works which manifests itself during the maintenance period provided such insured damage originates from:

- (a) a cause (unless excluded) occurring and arising out of the contract works carried out by you during the construction period at the contract site; or
- (b) a cause (unless excluded) occurring and arising out of the course of operations carried out by you in complying with the requirements of the maintenance clause(s) of the contract.

Additional insured items

If you have nominated a separate sum insured for any of these additional items in (a) through to (j) below and which are specified in the Schedule, we will also cover you:

- (a) for insured damage to materials or items supplied by the principal.

- (b) for expediting expenses, being the costs of express delivery within australia, overtime rates of wages, the hire of additional labour, equipment and the costs of purchasing resources necessary to reinstate, repair or replace insured damage to any item of the contract works under the terms of the policy. Express delivery shall include carriage by air freight within australia by use only of licensed airline(s) operating a regular scheduled service, but not aircraft chartered specifically for such carriage. Expediting expenses will not include reimbursement solely to compensate for delay in completion of the contract works.
- (c) for the demolition and disposal of damaged or undamaged contract works and the removal of debris as a result of insured damage to the contract works, where necessary to enable the contract works to be restored or replaced.
- (d) for architects', engineers', surveyors' and consultants' fees necessarily incurred by you for the replacement or repair of any item of the contract works due to insured damage, but excluding any fees incurred for the preparation of a claim or estimation of a loss.
- (e) for insured damage to existing structures located on or about the contract site and belonging to or held in your care, custody and control provided that the structure shall be made waterproof and secured at the close of each day's work. We shall not be liable under this extension for insured damage to wall and floor finishes or coverings or any contents therein.
- (f) for insured damage to plant, equipment and tools owned by you whilst on or about the contract site, provided that such plant, equipment and tools are secured in a locked receptacle when not in use, but not for cranes, hoists, vehicles, or mobile phones.
- (g) for insured damage to hoists, cranes and mobile construction machinery whilst on or about the contract site but excluding insured damage to hoists, cranes and mobile construction machinery which is not owned by you.
- (h) for insured damage to materials in storage away from the contract site but within australia and to be used in the contract works whilst awaiting transit to the contract site, for a period in all not exceeding ninety (90) days duration.
- (i) for insured damage to materials to be used in the contract works whilst in transit arising from fire, flood, collision and overturning of the conveyance or by theft or malicious damage; all of which must occur while the item is being transported to the contract site and within Australia:
 - (i) beginning with loading in an undamaged condition; and
 - (ii) continuing during transit by road, rail, internal waterway or by a licensed airline operating a regular scheduled service (including transshipment incidental thereto); and
 - (iii) ending with the unloading at the contract site.

Section 1

- (j) for insured damage during testing and commissioning of the contract works by their own electrical or mechanical breakdown, failure or derangement and the insured damage arises out of testing or commissioning at the contract site and occurs during the testing period. Simple functional checks of components of individual machines which do not involve any loading will not be classed as testing for the purpose of this cover.
- (k) for mitigation expenses, being the costs and expenses reasonably incurred by you in containing, reducing, suppressing or preventing further insured damage, provided such further loss or damage is not excluded under this policy. The amount payable under (k) shall not exceed 10% of the amount payable under this policy for the original loss or damage, excluding any amounts payable under (b) and (c).

Our liability under this policy shall not exceed the sum insured for the insured item(s) specified in the schedule and our maximum liability shall not exceed in all the total sum insured.

Additional Benefits/Special Provisions

(a) Contract value Increase

If during the construction period there is an increase in the contract value then the sum insured for the contract value as specified in the Schedule shall be increased by the same proportion, provided the amount of such increase shall not exceed 15% of the sum insured for the contract value specified, unless expressly agreed upon and specified in the Schedule.

(b) Dewatering

For the cost of dewatering necessary to provide initial access to and allow repairs to be effected to completed sections of the contract works whether damaged or undamaged solely as the result of insured damage.

(c) Excavation and underpinning of existing structures

Cover for insured damage to existing structures specified in the Schedule caused by any excavation and underpinning work carried out is subject to the following condition:

- (i) The excavation and underpinning work is carried out in strict accordance with the plans and specifications for such work and carried out under the directions of the design engineer.

(d) Plot ratio indemnity

In the event the contract works insured under Section 1 suffers insured damage and as a result of the exercise of statutory powers and/or authority by any government department, local government or other statutory authority the replacement of the contract works as before is prohibited or is only permissible subject to a reduced floor space ratio index and/or to the payment of certain fees and contributions as a prerequisite to replacement, then we agree to pay you in addition to any amount otherwise payable:

- (i) the difference between the actual cost of replacement incurred in accordance with a reduced floor space ratio index and the cost of replacement which would have been incurred had a reduced floor space ratio index not been applicable;

- (ii) the amount of any fees, contributions or other impost payable to any government department, local government or other statutory authority where such fee, contribution or impost is a condition precedent to consent being given to the replacement of such property;
- (iii) the amount of any additional costs and expenses incurred by or on behalf of you as a result of alterations to the specifications of such property brought about by the reduced floor space ratio index as aforesaid;
- (iv) but always subject to the sums insured specified in the Schedule.

(e) Undamaged foundations

Where the contract works insured under Section 1 is destroyed but the foundations are not destroyed and due to the exercising of statutory powers and/or delegated legislation and/or authority by government department, local government or any other statutory authority reinstatement of the contract works insured has to be carried out upon another site then abandoned foundations will be considered as being destroyed.

Basis of Settlement

In the event of insured damage settlement will be:

- (a) to the contract works and existing structures if covered under 'Additional insured item' (e)
 - (i) in the case of insured damage which can be repaired, the cost of repairs necessary (including a reasonable margin for overhead costs and profit) to restore the damaged section to the condition immediately before the occurrence of the insured damage, less any salvage; or
 - (ii) in the case of a total loss, the replacement value of the damaged section of the contract works and existing structure.
- (b) to plant equipment, tools, cranes, hoists and construction machinery if covered under 'Additional insured item' (f) and (g).
 - (i) in the case of repairable damage we will pay the reasonable cost to repair the damaged items to its former state of serviceability. In addition, when incurred for the purpose of effecting repairs, we will pay the cost(s) of dismantling, re-erection, ordinary freight to and from a repair workshop, custom duties or other imposts levied to the extent that the Sum Insured is not otherwise exhausted. If repairs are carried out in a workshop owned by you, we will pay the cost of material and wages incurred for the purpose of the repairs, plus a reasonable amount to cover overhead charges.

No deduction will be made for depreciation of parts replaced, but the value of any salvage will be taken into account.

If the estimated cost of repairs equals or exceeds the actual value of the insured item immediately before the loss or damage occurred, then we will regard the item as destroyed, and settlement will be made on the basis provided for in (ii) below.

- (ii) In the case where an item is destroyed or lost we will pay the value of the item at the time of loss or damage, including the reasonable costs of ordinary freight and erection if they have been included in the sum Insured. The value of the item will be calculated by reference to the market value of the item having regard to its state of repair and condition, less the value of any salvage.

However, only to the extent to which the costs claimed had to be borne by you and to the extent to which they are included in the sums insured.

All insured damage which can be repaired must be repaired, but if the cost of repairing any damage equals or exceeds the value of the damaged section or item immediately before the occurrence of the insured damage, settlement will be made on the basis provided for under (a)(i) and (ii) above.

We will not be liable to make any payment under this policy unless you have produced to our reasonable satisfaction, all accounts, invoices, receipts and other documentation, indicating that repairs have been effected or replacement has taken place, as the case may be.

The amount of each claim otherwise payable shall be reduced by the amount of the excess.

Conditions which apply to this Section

The following conditions apply to this Section of the Policy. There are also general conditions which apply to all Sections of this Policy.

Adequacy of sums insured

It is a condition of this policy that the sums insured nominated in the Schedule, for the following Insured Items, are not less than:

- (a) for the existing structures located on or about the contract site the replacement value;
- (b) for items of plant, equipment, tools, cranes, hoists and mobile construction machinery used on or about the construction site, the actual current market value at commencement of the construction period.

If in the event of insured damage it is found that the sum insured is less than ninety (90) percent of the amounts required to be insured as per clause above, The amount recoverable by you under this policy in respect of these items will be reduced by such proportion as the sums insured bears to ninety (90) percent of the amounts required to be insured.

Provided further that the above clause shall not apply if the amount of insured damage does not exceed five (5) per cent of the value of the item insured.

Reinstatement of sum insured

Following any insured damage, the sum insured shall be automatically reinstated, after payment by you of an additional premium calculated on the amount of insured damage applied to a rate not less than pro-rata of the rate agreed for the period of insurance calculated from the date of such insured damage to the expiry of the period of insurance.

Loss accumulation

For the purpose of the application of the excess, any insured damage arising during any one period of seventy two (72) consecutive hours caused by flood, storm, earthquake or bushfire, shall be deemed to be a single event and therefore to constitute one loss. You may select the time from which any such period shall commence but no two such selected periods shall overlap.

Internal finishes

Prior to the installation of any internal finishes being floor coverings, wall and ceiling panels, ceiling tiles and lining boards, the building must be made weather proofed to the extent that all windows, glazing, external walls, roof and floor openings have been sealed against the ingress of water.

Partial occupation of works

If the whole or any part of the contract works insured by this policy is taken over, occupied, or put into use by you or others prior to completion, we shall not be liable for any loss, damage or liability in respect of:

- (a) the occupants or their property;
- (b) the contract works; or
- (c) third parties or their property;

arising from the taking over, occupancy or use of any part of the contract works, unless expressly agreed upon and specified in the Schedule defining terms of cover in respect of items (a), (b) and (c) above and you have paid any additional premium and bear any excess which may be required by us.

Exclusions which apply to this Section

The following exclusions apply to this Section of the Policy. There are also general exclusions which apply to all Sections of this Policy.

We shall not be liable for insured damage:

- (a) due to any fault, defect, error or omission in design, plan or specification.
- (b) caused by wear and tear, corrosion, oxidation or deterioration, due to lack of use or atmospheric conditions.
- (c) caused to machinery, plant or equipment during testing or commissioning:
 - (i) by intentional overloading or experiments;
 - (ii) for which the supplier or manufacturer is responsible with by law or under contract; or
 - (iii) which is secondhand.
- (d) caused by electrical or mechanical breakdown to the contract works unless covered under 'Additional insured item' (j).

- (e) to plant equipment, tools, cranes, hoists and construction machinery unless such items are covered under 'Additional insured item' (f) and (g).
- (f) to vehicles registered for general road use, unless such vehicles are in use on or about the contract site in direct connection with the contract works and are covered under 'Additional insured item' (g).
- (g) to materials to be used in the contract works whilst in transit unless transit is covered under 'Additional insured item' (i).
- (h) to waterborne vessels, aircraft or aerial devices.
- (i) to cash, bank-notes, treasury-notes, cheques, postal-orders, money-orders, stamps, deeds, bonds, bills of exchange, promissory notes or securities.
- (j) caused by the action of vermin, termites, moths or other insects.
- (k) to electronic data provided this exclusion does not apply to insured damage arising out of fire, lightning, thunderbolt, explosion, implosion, earthquake, subterranean fire, volcanic eruption, impact, aircraft and/or other aerial device and/or articles dropped therefrom, sonic boom, theft which is a consequence of theft of any computer and/or computer hardware and/or firmware and/or microchip and/or integrated circuit and/or similar device containing such electronic data, breakage of glass, the acts of persons taking part in riots or civil commotions or of strikers or of locked out workers or of persons taking part in labor disturbances which do not assume the proportions of or amount to an uprising, storm and/or tempest and/or rainwater and/or wind and/or hail, water and/or other liquids and/or substances discharged and/or overflowing and/or leaking from any apparatus and/or appliance and/or pipes.

We shall not be liable for the cost of:

- (l) replacement, repair or rectification of any insured damage caused by any fault, defect, error or omission in material or workmanship, but this exclusion will be limited to the machine, structure or works immediately affected and will not exclude loss of or damage to work properly carried out resulting from such fault, defect, error or omission.
- (m) loss discovered only at the time an inventory is taken unless such loss can be attributed to burglary.
- (n) normal upkeep of the contract works.
- (o) any temporary repairs, unless such repairs are necessary to prevent further damage or loss to the Contract Works.
- (p) repairing or replacing parts requiring periodic or frequent replacement, repair or maintenance such as (but not limited to) fuses, shear-pins, rupture plates, or other expendable load limiting devices, bits, drills, knives, saw blades or other cutting devices, dies, moulds, patterns, pulverising and crushing surfaces, screens, sieves, filters, ropes, belts, chains, elevator and conveyor belts, batteries, flexible pipes, seals, glands, jointing, packing material, tyres and tracks.
- (q) additional dewatering expenses incurred because the quantities of water exceed those allowed for in the contract.
- (r) expenses incurred for additional installations and facilities for the discharge of run-off or underground water.
- (s) expenses incurred for grouting or any other measures to remedy leakage of water into excavations, foundations or basements.
- (t) loss or damage due to failure of the dewatering system if such failure could have been avoided by the provision of sufficient stand-by facilities.
- (u) consequential loss, loss of use, penalties, fines, liquidated damages or aggravated, punitive or exemplary damages.
- (v) legal liability resulting from any event.

Section 2: Legal liability

Definitions

When used in this Section 2 (including endorsements) the following definitions shall apply:

Word or term	Meaning
Aircraft	any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
Employment practices	any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment of any person or persons by you.
Hovercraft	any vessel, craft or thing made or intended to float on or in or travel on or through the atmosphere or water.
Internet operations	<p>(a) transfer of computer data or programs by use of electronic mail systems by you or your employees, including part-time and temporary staff, contractors and others within your organisation whether or not such data or programs contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or trojan horse</p> <p>(b) access through your network to the world wide web or a public internet site by your employees, including part-time and temporary staff, contractors and others within your organisation</p> <p>(c) access to your intranet (meaning internal company information and computing resources) which is made available through the world wide web for your customers or others outside your organisation, and</p> <p>(d) the operation and maintenance of your web site.</p>
Limit of liability	the applicable Limit of liability specified in the Schedule.

Word or term	Meaning
Personal injury	(a) bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish, mental injury (b) the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution (c) the effects of wrongful entry or eviction (d) the effects of a publication or utterance of a libel or slander or other defamatory or disparaging material (e) the effects of assault and battery not committed by you or at your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.
Pollutant	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.
Property damage	(a) physical damage to, loss or destruction of tangible property including any resulting loss of use of that property, or (b) loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an occurrence.
Vehicle	any type of machine on wheels or self laid track made to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.
Watercraft	any vessel, craft or thing made or intended to float on or in or travel on or through or under water.
Your product	any goods, products and property (after they have ceased to be in your possession or under your control), which are or is deemed to have been manufactured, grown, extracted, produced, processed, constructed, assembled, erected, installed, repaired, serviced, treated, sold, supplied or distributed by you (including any container thereof other than a vehicle).
You/your	The person(s), companies or firms named on the current Policy Schedule as the Insured including, as if they were you: (a) all the subsidiary companies (now or subsequently constituted) of the named insured specified in the Policy Schedule provided their places of incorporation are within Australia or any Territory of Australia

Word or term	Meaning
You/your (continued)	(b) every director, executive officer, employee, partner or shareholder of you or of the parties shown in paragraph (a) above, but only while acting within the scope of their duties in such capacity (c) every principal, in respect of that principal's vicarious liability for the acts or omissions of you or of the parties shown in paragraph (a) in the performance by them of work for that principal, but subject always to the extent of coverage and the limit of liability provided by this Policy (d) each partner, joint venturer, co-venturer or joint lessee of the insured named in the Policy Schedule but only if we agree to insure them and the insured named in the Policy Schedule agrees to pay the premium we require (e) any subcontractors and/or sub-subcontractors named in the Schedule but only arising out of their performance of any contract for you (f) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with your consent (other than one of the parties shown in paragraphs (c) or (d) above) in respect of claims arising from their duties connected with the activities of any such club, organisation or service. This insurance will not apply to personal injury to or property damage of any participants of any game, match, race, practice or trial (g) any director or senior executive of you or one of the parties shown in paragraph (a) above in respect of private work undertaken by your employees for such director or senior executive. However, you/your does not include the interest of any other person other than as described in this definition.

What you are insured against

Liability

We will cover you for your legal liability to pay:

- all sums by way of compensation, and
- all costs awarded against you

in respect of:

- personal injury
- property damage

happening during the period of insurance and caused by an occurrence within the territorial limits in connection with the carrying out of the contract works specified in the schedule.

Defence of claims

If we agree to cover you we will:

- (a) defend in your name and on your behalf any claim or legal action against you seeking damages for personal injury or property damage even if the action is groundless, false or fraudulent, and we will investigate, negotiate and settle any claim or legal action as we see fit.
- (b) pay all legal costs and expenses incurred by us and all interest accruing after entry of judgement until we have paid, tendered or deposited in court such part of the judgement as does not exceed the limit of liability.
- (c) reimburse you for all reasonable expenses, other than loss of earnings, incurred by you with our consent in connection with the defence of a claim or legal action.
- (d) pay reasonable expenses incurred by you for first aid to others at the time of personal injury caused by an occurrence (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973).

We will do this, provided that:

- (e) we will not be obliged to pay any claim or judgment or to defend any claim or legal action after the limit of liability has been exhausted by payment of judgments or settlements.
- (f) if a payment exceeding the limit of liability has to be made to dispose of a claim, our liability to pay any costs, expenses and interest under (a) to (d) in 'Defence of claims' above will be limited to that proportion of those costs, expenses and interest as the limit of liability bears to the amount paid to dispose of the claim.

Any amount we pay, other than payments in settlement of claims, suits and all costs awarded against you, are payable by us over and above the limit of liability set out in the Policy Schedule.

Limit of liability

Our maximum liability in respect of any claim or any series of claims for personal injury or property damage caused by or arising out of one occurrence shall not exceed the limit of liability

Exclusions which apply to this Section

The following exclusions apply to this Section of the Policy. There are also general exclusions which apply to all Sections of this Policy.

This Section does not cover liability in respect of:

Employment liability

Personal injury imposed:

- (a) by any workers' compensation law
- (b) by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination or contract of employment or workplace agreement, or

provided that if you are:

- (c) required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such personal injury, or
- (d) 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 for the purposes of the relevant worker's compensation law or the personal injury is not an injury which is subject to such law

then this Policy will respond to the extent that your liability would not be covered under such fund, scheme, policy of insurance or self insurance arrangement had you complied with your obligations pursuant to such law.

There is no cover under this Policy for and in respect of employment practices.

Property in custody or control

Property damage to:

- (a) property owned by or leased or rented to you, or
- (b) property in your physical or legal control.

But this exclusion does not apply to liability for property damage to:

- (c) premises (or their contents) not owned, leased or rented by you but temporarily occupied by you for work therein.

Product liability

Personal Injury or property damage resulting from your Products.

Demolition

Personal injury or property damage resulting out of, or caused by or in connection with, the demolition of buildings or structures exceeding 10 metres in height, unless expressly agreed upon and specified in the Schedule.

Loss of use

Loss of use of tangible property which has not been physically injured, or lost or destroyed resulting from:

- (a) a delay in or lack of performance by you or on your behalf of any agreement;
- (b) the failure of your products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by you, but this exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to, loss or destruction of your Products after they have been put to use by any person or organisation other than one of you designated in 'Definitions' 'you/your' paragraphs (a) or (b).

Aircraft and watercraft

Claims arising out of:

- (a) the ownership, maintenance, operation or use by you of:
 - (i) any aircraft; or,

- (ii) any watercraft exceeding 10 metres in length, or
- (iii) hovercraft.

Vehicles

Personal injury or property damage arising out of the ownership, possession, operation, maintenance or use by you of any vehicle:

- (a) which is registered or which is required under any legislation to be registered, or
- (b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).

Exclusions (a) and (b) above do not apply to Vehicles whilst being on or about the Contract Site in direct connection with the Contract Works and

Exclusions (a) and (b) above do not apply to:

- (c) Personal Injury where:
 - (i) that compulsory liability insurance or statutory does not provide indemnity, and
 - (ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by you of legislation relating to vehicles.

Contractual liability

Any obligation assumed by you under any agreement or contract except to the extent that:

- (a) the liability would have been implied by law;
- (b) the liability arises from a provision in a contract for lease of real or personal property other than a provision which obliges you to effect insurance or provide indemnity in respect of the subject matter of that contract;
- (c) the liability is assumed by you under a warranty of fitness or quality as regards to your products.

Professional liability

The rendering of or failure to render professional advice or service by you or any related error or omission, but this exclusion does not apply to:

- (a) the rendering of or the failure to render professional medical advice or service by medical persons employed by you to provide first aid and other medical services on your premises; or
- (b) personal injury or property damage arising from such rendering of or failure to render professional advice or service, providing such professional advice or service is not given for a fee.

Libel and slander

The publication or utterance of a libel or slander:

- (a) made prior to the commencement of the period of insurance, or
- (b) made by you or at your direction with knowledge of its falsity, or
- (c) related to advertising, broadcasting or telecasting activities conducted by you or on your behalf.

Pollution

- (a) Personal injury or property damage caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of pollutants into or upon land, the atmosphere, or any water course or body of water, but this exclusion does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.
- (b) Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this exclusion does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in personal injury and/or property damage.
- (c) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants caused by any product that has been discarded, dumped, abandoned or thrown away by others.
- (d) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants in the United States of America (USA) or Canada or in any country to which the laws of the USA or Canada apply.

Our liability under clauses (a) and (b) above in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of pollutants during any one period of insurance will not exceed the limit of liability.

Territorial limits

- (a) Claims made or actions instituted within any country, state or territory (outside Australia) that require insurance to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance.
- (b) Claims made and actions instituted within the USA or Canada or any other territory coming within the jurisdiction of the courts of the USA or Canada.
- (c) Claims and actions to which the laws of the USA or Canada apply.

Provided that:

- (d) exclusions (b) and (c) above do not apply to claims and actions arising from the presence outside Australia of any of your employees and/or directors, partners or proprietors who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in the USA or Canada.

The limit of liability in respect of coverage provided under 'Employment liability' paragraph (d) is inclusive of all costs, expenses and interest as set out in 'Defence of claims' of this Policy.

Asbestos

Liability resulting from the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.

Faulty workmanship

Property Damage to that part of any property upon which you are or have been working where the property damage arises from your work or the cost of performing, correcting or improving any work undertaken by you.

Fines, penalties

Fines, penalties or liquidated damages.

Punitive Damages

Punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

Assault and Battery

Personal injury or property damage caused by or arising from assault and battery committed by you or at your direction unless reasonably necessary for the protection of persons or property.

Persons Residing with you

- (a) Personal Injury to you or any person who normally lives with you.
- (b) Property belonging to you or any person who normally lives with you or to your or their employees.

Sexual molestation

Claims arising from, contributed to by or in connection with sexual and/or child assault, abuse, molestation or attempt thereof

Tobacco

Personal injury arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- (a) tobacco or tobacco smoke,
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

Information technology hazards, computer data, program and storage media exclusion

- (a) Personal injury or property damage arising, directly or indirectly, out of, or in any way involving your internet operations, or
- (b) 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:
 - (i) the use of any computer hardware or software,
 - (ii) the provision of computer or telecommunication services by you or on your behalf,
 - (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

But this exclusion does not apply to:

- (c) personal injury or property damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site, or

- (d) liability which arises irrespective of the involvement of your internet operations, and

nothing in this exclusion will be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

Conditions which apply to this Section

The following conditions apply to this Section of the Policy. There are also general conditions which apply to all Sections of this Policy.

Joint Insureds

Where more than one party comprises the Insured each of the parties will be considered as a separate and distinct unit and the word Insured shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of them provided that nothing in this clause will result in an increase of our Limit of Liability in respect of any Occurrence or Period of Insurance.

Discharge of Liabilities

We may at any time pay to you in respect of all claims arising from an Occurrence the balance of the Limit of Liability or any smaller sum for which the claim or claims can be settled and upon that payment we will relinquish conduct or control of and be under no further liability under this Section in connection with those claims except for costs, charges and expenses:

- (a) recoverable from you for all or part of the period to the date of such payment;
- (b) incurred by us;
- (c) incurred by you with our written consent prior to the date of such payment.

Cutting, Heating or Welding

We will not be liable for claims for Personal Injury or Property Damage arising directly or indirectly out of cutting, heating or welding operations unless you have complied with the Australian Standards Fire Precautions 'Safety in welding and allied processes' or any subsequent amendments.

General conditions

These General conditions apply to all Sections of this Policy.

Our right of inspection

We shall be permitted but not obliged to inspect your property and operations at any time. Neither our right to make inspections nor the making of such inspection or any report shall constitute an undertaking to determine or warrant that such property or operations are safe or healthful or are in compliance with any law, rule or regulation.

You will allow us to take possession of any damaged property and deal with it in a reasonable manner. If we do not take possession of the damaged property, you cannot abandon your responsibilities for the property.

Subrogation

In the event that we have a right to recover any monies payable under this Policy from any other person, you must co-operate with us fully in any proceedings, available to us at law, which we may take. We may take action before we pay your claim and whether or not you have been fully compensated for your actual loss.

Interests of other parties

We will not be required to recognise the interests of any third party under this Policy unless written notice of such interest has been given to and accepted by us.

Other insurance

In the event of any claim being made under this Policy, you must notify us of any other insurance covering the same loss or damage.

Premium adjustment

You shall within one month from the expiration of the construction period, furnish to us a declaration and details of the actual total sum(s) insured and if such amounts shall differ from the sums insured under the appropriate items referred to in the Schedule on which premium has been paid, the difference in premium shall be made good by a further proportionate payment to us or a refund by us as the case may be, subject to the application of any minimum premium which might have been mutually agreed upon.

Alteration of risk

You must notify us immediately in writing of any material change in the risk and the nature of the risk by providing full details. In such event, you must at your own expense, take such additional precautions to minimise the risk or any hazard to the risk as are reasonable in all the circumstances and must comply with any reasonable directions or requirements of us. The scope of cover and/or premium will, if necessary, be adjusted by us accordingly. Provided that no material alteration will be made or allowed by you whereby the risk is increased unless agreed in writing by us.

Excavation and underpinning

We will only indemnify you for personal injury or property damage as the result of an occurrence happening in conjunction with any excavation or underpinning work carried out subject to the following conditions:

- (a) The excavation or underpinning work is carried out in accordance with the plans, specifications and geotechnical report for such work and as approved by the design, structural or consulting engineer.
- (b) Any surrounding structures that could be affected by such excavation or underpinning work have, prior to the commencement of such work, a conditions report produced on the existing condition of such structures.
- (c) The provision of any conditions report is provided to Us prior to the commencement of such works.

Reasonable care and precautions

You shall take all reasonable care and precautions:

- (a) to prevent personal injury and property damage;
- (b) to comply with all laws and statutory obligations and by-laws or regulations imposed by any public authority for the safety of persons or property;
- (c) to employ competent employees;
- (d) to maintain all premises, fittings and plant and everything used in the contract works in sound condition; and
- (e) to ensure that the operations at the contract site are at all times carried out, so as to minimise the risk of any claim being made under this policy.

Policy cancellation

This policy may be cancelled:

- (a) by you giving written notice to us at any time. Notice shall be effective when received by us. We may retain or be entitled to the premium for the period during which the policy was in force plus 10% of the premium for the unexpired Period of insurance.
- (b) in the event that the contract works is completed prior to the construction period expiry date specified in the schedule, no return premium shall be allowed for the unexpired portion of the construction period.
- (c) by us in accordance with the provisions of the Insurance Contracts Act 1984. You shall be entitled to a refund in respect of the unexpired period of insurance.

In either event you shall provide all information requested by us to enable the calculation and adjustment of the premium.

Contract works completion

In the event that the contract works is completed prior to the construction period expiry date specified in the schedule, no return premium shall be allowed for the unexpired portion of the construction period.

Licensed tradesmen and builder

You must have all work carried out by fully licensed tradesmen in respect of those trades required to be licensed by law.

Notice of proof of claim

Upon the discovery of any personal injury, property damage or circumstance giving rise or likely to give rise to a claim under this Policy,

You shall:

- (a) give us notice in writing as soon as is reasonably practicable after you become aware of such happening;
- (b) no later than 30 days after that notice prepare at your own expense and furnish to us a statement in writing containing as particular an account as may be reasonably practicable of the cause and description and the amount of loss;
- (c) take reasonable steps to prevent further loss;
- (d) furnish all such proof, information and declarations with respect to the claim as we may reasonably require;

- (e) at all reasonable times permit us or our agents to enquire into, investigate and examine the circumstances of any loss;
- (f) in the event of loss or malicious damage caused by theft or burglary, inform the police;
- (g) if required, carry out repairs or make good any minor damage, but in all other cases you must give us, our employees or agents an opportunity to inspect the loss or damage before any repairs or alterations are effected. If no inspection is carried out by, or on behalf of us within a period of time, which is reasonable having regard to the location of the risk, weather conditions and any other relevant factors, you may proceed with such repairs or replacement.

Jurisdiction

All disputes arising out of or under this policy will be subject to determination by any Court of competent jurisdiction within Australia.

Insurance Contracts Act 1984

Nothing contained in this policy is to be construed to reduce or waive either your or our privileges, rights or remedies available under the Insurance Contracts Act 1984.

Due observance

If you fail to comply with any term, condition or provision of the policy, we may refuse to pay claim, but in any event our rights will be subject to the provisions of Section 54 of the Insurance Contracts Act 1984.

General exclusions

These General exclusions apply to all Sections of this Policy.

We shall not be liable for:

- (a) Insured damage or liability as a 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, confiscation, nationalisation, requisition or destruction or damage by or under the order of any government or public or local authority.
- (b) any insured damage or liability of whatsoever nature directly or caused by or contributed to by or arising from:
 - (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion (b) only combustion shall include any self-sustaining process of nuclear fission; or
 - (ii) nuclear weapons material.
- (c) Any act(s) of terrorism
For the purpose of this exclusion, an act of terrorism includes 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:
 - involves violence against one or more persons, or
 - involves damage to property, or
 - endangers life other than that of the person committing the action, or
 - creates a risk to health or safety of the public or a section of the public, or
 - is designed to interfere with or to disrupt an electronic system.
- (d) Any wilful act, omission, recklessness of you, your agents or your employees.
- (e) Insured damage or liability if in the event that there has been abandonment of the contract works or cessation of the work (other than delay due to insured damage) exceeding thirty (30) days.
- (f) Physical loss of or damage to existing underground cables or pipes of any kind unless such loss or damage occurs during the construction period and you, prior to the commencement of the work, have requested and obtained from any relevant public authority or the owner of such underground system the exact position of all cables and pipes and have traced their existence and indicated their location in situ.
- (g) Any liability assumed by you under any contract, warranty or agreement by reason of a waiver or limitation of your rights of recovery against any other party.
- (h) insured damage or liability as a consequence of a failure to carry out excavation or underpinning work in accordance with the plans, specifications, geotechnical reports for such work and as approved by the design, structural or consulting engineer directions.
- (i) insured damage or liability as a consequence of a failure to obtain a conditions report prior to such excavation or underpinning works.
- (j) insured damage or liability as a consequence of a failure to provide us with a conditions report prior to the commencement of the works.

