

Commercial Legal Expenses Management Liability

Policy wording





This **policy** is a contract between **you** (named in the **policy schedule**) and the **underwriters** and is managed by Delta Insurance Australia Pty Ltd (hereafter referred to as **us, our, we**).

Provided the premium specified in the **policy schedule** has been paid in the required manner, the **underwriters** shall provide the insurance specified in this **policy** (which includes any attached **endorsements**) and **policy schedule** during the **period of insurance**.

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IMPORTANT INFORMATION

This document, the **policy schedule** and any **endorsements** attached form **your policy**. This document sets out the conditions of the insurance between **you** and the **underwriters**. Please read this **policy** carefully and if the coverage or benefits provided do not meet **your** requirements or **you** do not comply with the conditions set out in this section, please return these documents as soon as practicable to the insurance intermediary who arranged this **policy** on your behalf.

it is important that:

- **you** check that the sections of cover that **you** have requested are included in the **policy schedule**;
- **you** check that the information **you** have given **us** is accurate – please see the “information that **you** provide to **us**” further below;
- **you** notify **your** insurance intermediary as soon as practicable of any inaccuracies in the information that **you** have provided to **us**;
- **you** comply with **your** duties under each section of cover for which **you** are insured, and under the terms and conditions of this **policy** as a whole.

INFORMATION THAT YOU PROVIDE TO US

Your duty of disclosure

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

You have this duty until **we** agree to insure **you**.

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

You do not need to tell **us** anything that:

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

If you do not tell us something

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

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

CLAIMS MADE AND NOTIFIED COVER

The cover under this **policy** is provided on a ‘claims made and notified’ basis. This means the **policy** will only cover **claims** where the dispute or legal proceedings are first made against or brought by **you** during the **period of insurance** and notified to us as soon as practicable during the **period of insurance**.

Where **you** give notice in writing to **us** of facts that might give rise to a dispute or legal proceedings made against or brought by **you** as soon as reasonably practicable after **you** become aware of those facts but before the insurance cover provided by this **policy** expires, the effect of section 40(3) of the insurance contracts act 1984 (cth) is that **we** are not relieved of liability under the **policy** in respect of any **claim** by reason only that the dispute or legal proceedings, when made, is made after the expiration of the **policy**.

This **policy** may not provide cover for any **claims** that relate to or arise from any cause, event or circumstances, or to any dispute or legal proceedings, occurring before the **policy** was entered into.

HOW TO MAKE A CLAIM

If **you** need to notify a **claim** or possible **claim**, **you** should contact **our** claims department as soon as practicable after **you** become aware of a cause, event or circumstance which has given or may give rise to a **claim**, dispute or legal proceedings involving **you**.

Email: claims@deltainsurance.com.au
Telephone: (07) 3017 4720
Post: Delta Insurance Australia Pty Ltd
GPO 1832, Brisbane, QLD, 4001, Australia

You should provide **your** policy number (which is listed on the **policy schedule**) and brief details of the circumstances. **We** will promptly send **you** a claim form for completion once contact is made and this must be returned to **us** as soon as practicable.

If **you** encounter any issues with this process, **you** should contact **your** insurance intermediary who sold **you** this **policy** (whose contact details will appear on their correspondence sent to **you**). **Your** insurance intermediary will be able to assist **you** with making the claim and any further issues that may arise.

If **you** or any other person acting on **your** behalf make any request for payment under this **policy** knowing it to be fraudulent or false through concealment, misstatement or deliberative provision of false information, in any respect or if **you** ought reasonably in the circumstances to know it to be fraudulent or false, or where there is collusion between any parties to any dispute or legal proceedings for which **legal expenses** cover under this **policy** is being requested, then **we** will refuse the claim, cancel this **policy** from the time of the fraudulent act and not refund any premium to **you**. **We** shall be entitled to recover any **legal expenses** previously paid that were fraudulent or false.

CANCELLATION

You may cancel this **policy** at any time by providing **us** with written notice, either directly or through **your** insurance intermediary who arranged this **policy** for **you**. If **you** have not made a **claim**, **we** will refund the premium **you** have paid to **us** less the amount of premium which relates to the time period under which **you** have been covered under this **policy** to **your** insurance intermediary. Please contact **your** insurance intermediary to obtain this refund. Their address and telephone number will appear on their correspondence to **you**.

We may cancel this **policy** in accordance with the Insurance Contracts Act 1984 (Cth).

If this **policy** is cancelled for any reason, then, **we** will refund the premium **you** have paid to **your** insurance intermediary less the amount of premium which relates to the time period under which **you** have been covered under this **policy**, provided that **you** have not made a **claim**.

GENERAL INSURANCE CODE OF PRACTICE

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

COMPLAINTS AND DISPUTES

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please contact **us** in the first instance and **we** will attempt to resolve your concerns in accordance with **our** Internal Dispute Resolution procedure. Please contact Delta Insurance:

Complaints Officer
Delta Insurance Australia Pty Ltd
Email: complaints@deltainsurance.com.au
Telephone: (07) 3017 4720
Post: GPO 1832, Brisbane, QLD, 4001, Australia

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate Your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team.

Lloyd's contact details are:

Lloyd's Australia Limited
Email: idaustralia@lloyds.com
Telephone: (02) 8298 0783
Post: Suite 1603 Level 16, 1 Macquarie Place,
Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time.

AFCA can be contacted as follows:

Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the United Kingdom Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

If a dispute arises under this policy, this policy will be subject to Australian law and practice and we will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

Any summons, notice or process to be served upon Us may be served upon:

Lloyd's Underwriters' General Representative
in Australia
Suite 1603, Level 16, 1 Macquarie Place,
Sydney NSW 2000

who has authority to accept service on our behalf. If a suit is instituted against us, we will abide by the final decision of such Court or any competent Appellate Court.

TELEPHONE LEGAL ADVICE

You have access to commercial legal advice by calling the Delta Legal Helpline telephone number specified in the policy schedule and quoting your policy number shown in the policy schedule. You can also email any queries to legal.advice@sparke.com.au.

Call recording

In the interest of monitoring the quality of advice and service, and where appropriate to ensure compliance with the terms and conditions under this policy, conversations may be recorded. You agree that in all circumstances we have your express permission to listen to any of these recordings and expressly authorise the telephone adviser to provide these recordings to our claims and underwriting departments.

DEFINITIONS

Words with specific meanings and Interpretation of this policy

Wherever words or phrases appear in bold type in this policy, they will have the specific meanings described in this Definitions Section, unless otherwise shown in any Sections of Cover that apply as specified in the policy schedule. Any words used in this policy that are in the singular shall include the plural and vice versa.

All Acts of Parliament, legislation, and regulations referred to in this policy shall be deemed to include reference to any subsequent amendments, re-enactments, and successors to such Acts, legislation or regulations which are enforceable within the territorial limits.

any one claim

all claims or possible claims arising from the same original cause, event or circumstance.

ATO

the Australian Taxation Office or appropriate government authority or state authority or agency authorised to conduct the relevant activity.

ATO investigation

an investigation into your taxation affairs by the ATO under income tax legislation.

appointed representative

a lawyer, accountant or other appropriately qualified person appointed to act for **you** in accordance with the terms of this **policy**.

business description

as specified in the **policy schedule**.

claim

a claim under this **policy** for **legal expenses**.

co-insurance

the amount specified in the **policy schedule** that **you** must pay expressed as a percentage of **legal expenses** in respect of **any one claim** above any **retention** specified in the **policy schedule** before the **underwriters** shall be liable to make any payment under this **policy**.

computer system

any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by **you** or any other party.

construction contract

a contract to provide construction work as defined by the building and construction industry security of payment act. (for the avoidance of doubt supply of a construction contract to a residential occupier will be deemed a **construction contract** for the purposes of this **policy**).

contracting party

a person, firm or company domiciled within the **territorial limits** with whom **you** have a direct contractual relationship.

cyber act

an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **computer system**.

cyber incident

1.1 any error or omission or series of related errors or omissions involving access to, processing of,

use of or operation of any **computer system**; or

1.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **computer system**.

debt recovery professional

Proclaim Management Solutions Pty Ltd.

endorsement

any changes to the terms and conditions of this **policy** or **policy schedule** which form part of this insurance contract.

employee

any person under a contract of service with **you**.

fringe benefits dispute

a dispute with the **ATO** regarding the amount of tax payable by **you** or an **employee** under **income tax legislation** in respect of fringe benefits.

GST dispute

a dispute with the **ATO** regarding the amount of GST payable by **You**.

income tax legislation

the Income Tax Assessment Act 1936; the Income Tax Assessment Act 1997; the Fringe Benefits Tax Assessment Act 1986 and Fringe Benefits Act 1986; Sales Tax Assessment Act 1992; Taxation Administration Act 1953; Superannuation Charge Act 1992; a new tax system (Goods and Services Tax) Act 1999; any other Commonwealth, State or Territory legislation dealing with income tax or any other legislation replacing the above legislation.

policy schedule

the document showing details of the cover **you** have purchased.

legal expenses

any professional fees, expenses and other disbursements reasonably incurred:

- by the **appointed representative** with the **underwriters** prior written consent; and
- any costs incurred by other parties for which **you** are held liable in court or tribunal proceedings to pay or become liable to pay under a settlement made with another party with the **underwriters** prior written consent but excluding any costs which

you may be ordered to pay by a court of criminal jurisdiction.

limits of our liability

our maximum liability under this **policy** is limited to the amounts specified in the **policy schedule** for:

- **any one claim**; or
- all **claims** notified during the **period of insurance**.

management control

means:

- a controls the composition of the board of directors;
- b controls more than half of the shareholder voting power; or
- c holds more than half of the issued share capital.

minimum sum in dispute

the sum in dispute between **you** and the **contracting party** as specified in the **policy schedule** below which **we** shall not be liable to provide cover under this **policy**.

period of insurance

as specified in the **policy schedule**.

policy

the contractual terms and conditions of insurance coverage and benefits payable to **you** set out in this document, **policy schedule**, and any **endorsements**.

policyholder

means the entity named in the **policy schedule** and any **subsidiary**.

property

land and/or buildings owned or occupied by **you** for which **you** are legally responsible.

retention

the amount specified in the **policy schedule** **you** must pay in respect of **legal expenses** in respect of **any one claim** before the **underwriters** shall be liable to make any payment.

statutory licence

a licence or certificate of registration issued under statute, statutory instrument or by a government or local authority to **you** provided that this licence or certificate is necessary to engage in **your business description**.

subsidiary

means any entity in which the **policyholder** either directly or indirectly through one or more entities has or had **management control** on or before the inception date of this **policy**.

subsidiary will include:

- a any new entity which the **policyholder** incorporates during the policy period and which, at the time of incorporation, the **policyholder** has **management control** provided that such entity is not incorporated, domiciled, has equity securities, trades in or employs in the United States of America.
- b any entity that the **policyholder** acquires **management control** of during the policy period provided that at the time of obtaining that **management control**, the acquired entity is not incorporated, domiciled, has employees in or has equity securities issued or traded, in the United States of America.

subsidiary does not include any fund, investment vehicle, managed investment scheme or trust.

territorial limits

as specified in the **policy schedule**.

underwriters

Certain underwriters at Lloyd's from whom **we** have delegated underwriting and claims authority.

we / us / our

Delta Insurance Australia Pty Ltd, who manage this **policy** on behalf of **underwriters**.

you / your

the **policyholder** as specified in the **policy schedule** and if requested by **you** and agreed in writing by **us**, also to include any **employee** including director or partner, conditional on the same **appointed representative** acting for all parties insured under this **policy**.

CONDITIONS PRECEDENT

You must comply with the following conditions precedent, unless **we** agree in writing to the contrary, before any contractual duty that the **underwriters** might have to **you** under this **policy** arises.

1. Notification of claims

It is a condition precedent to the **underwriters'** liability that **we** be notified by **you** in writing

during the **period of insurance** and as soon as practicable after **you** are aware of any cause, event or circumstance which has given or may give rise to a **claim**, dispute or legal proceedings involving **you**.

Where this notification has been given, **we** agree to treat any subsequent **claim** in respect of the same cause, event or circumstance as notified as though the subsequent **claim** had been notified during the **period of insurance**.

2. Our consent

It is a condition precedent to the **underwriters'** liability that the **underwriters'** consent to incur **legal expenses** must be obtained in writing prior to **you** incurring any **legal expenses**. This consent will be given by **us** if **you** can satisfy **us** that:

- a it is reasonable to incur **legal expenses** having regard to the proportionality between the remedy claimed and the **legal expenses** to be incurred; and
- b where **you** are pursuing a claim, there are reasonable prospects of proving the other party's legal liability and of recovering the damages claimed or other legal remedy sought; or
- c where **you** are defending a claim, the other party does not have reasonable prospects of proving **your** legal liability; or
- d in respect of a criminal prosecution and where **you** plead guilty there is a reasonable prospect of a significant mitigation of **your** sentence or fine.

If during the course of a **claim you** cease to satisfy **us** in respect of the applicable points a-d above, all future payments will cease in respect of **legal expenses** related to that **claim**.

The decision to grant or withhold **our** consent will be made on receipt of the following information:

- a fully completed insurance claim form; and
- the information and documentation **we** reasonably request; and
- a legal opinion from the **appointed representative** as to the applicable points a-d above; and
- any advice **we** may deem necessary to take.

With **your** agreement, **we** may provide assistance in settling disputes or legal proceedings, the

costs of which will be covered under this **policy** subject to the payment of the **retention** and **co-insurance** within the **limits of our liability**.

The **underwriters** may require **you** to obtain an opinion from senior counsel at **your** expense assessing the merits of the subject matter of the **claim** and any legal action. If based upon this opinion the **underwriters** are satisfied in respect of the applicable points a-d above the **legal expenses** in obtaining that opinion will be paid by the **underwriters** within the **limits of our liability**.

In granting **our** consent the **underwriters** undertake to pay **you** subject to the terms and conditions of this **policy** but this consent does not imply that all **legal expenses** will be paid. In particular **legal expenses** for matters that go beyond the immediate scope of the **claim** shall be deemed by the **underwriters** to fall outside the insurance coverage provided by this **policy**. The **underwriters** reserve the right to limit **our** consent by time and/or financial amount of **legal expenses** and/or stage of proceedings to allow for a review of the **underwriters** continued consent.

If after the **underwriters** prior written consent has been granted it is shown the **claim** has not been brought within the terms and conditions of this **policy**, **our** consent will be withdrawn and no insurance coverage under this **policy** shall be provided for this **claim**. The **underwriters** shall be entitled to recover any **legal expenses** previously paid.

If **you** elect to proceed with the pursuit or defence of a dispute or legal proceedings to which the **underwriters** consent has not been granted because **you** have not satisfied applicable points a-d above, and if **you** are successful in this pursuit or defence, the **underwriters** will pay the **legal expenses** incurred after the **underwriters** consent had not been granted subject to the terms and conditions of this **policy**.

3. Disclosure

It is a condition precedent to the **underwriters** liability that:

- a **you** must give the **appointed representative** and **us** all necessary cooperation, assistance and information including a complete and truthful account of the facts of the **claim** and all relevant documentation or other evidence in **your** possession; and

- b **you** must provide, obtain or execute all documents as necessary and attend meetings or conferences as requested; and
- c **you** must instruct the **appointed representative** to provide **us** with any information, documents or advice in connection with any **claim** and the subject matter of any **claim** even if privileged; and
- d **you** must instruct the **appointed representative** to provide **us** with regular updates on the progress of the subject matter of any **claim** and inform **us** as soon as practicable if and when any circumstance adversely impacts the factors on which **we** granted **our** consent.

The insurance coverage under this **policy** may be withdrawn if **you** fail to co-operate with **our** or the **appointed representative's** requests or if **you** or the **appointed representative** fails to provide **us** with any information in connection with any **claim** or the subject matter of any **claim**.

4. Offer of settlement

It is a condition precedent to the **underwriters** liability that **you** must inform **us** in writing as soon as an offer to settle the subject matter of the **claim** is received and/or **you** propose to make an offer of settlement. In deciding whether to accept or reject any settlement offer, **you** must consider the **legal expenses** incurred or likely to be incurred and recovered.

No insurance coverage under this **policy** shall be provided if **you** enter into any agreement to settle without **our** prior written consent (this consent not to be unreasonably withheld) and the **underwriters** shall be entitled to recover any **legal expenses** previously paid.

If **you** reject an offer of settlement which the **underwriters** recommend that **you** accept, or **you** make an offer with which the **underwriters** do not agree, no further insurance coverage under this **policy** shall be provided for the subject matter **claim**.

The **underwriters** may at **our** discretion decide to pay **you** the amount of damages that **you** are claiming or that are being claimed against **you** instead of paying **you** for **legal expenses** to pursue or defend the dispute or legal proceedings. Where the **underwriters** exercise this discretion the **underwriters** will cease to

be liable for any further **legal expenses** for the subject matter **claim**.

SECTIONS OF COVER

The sections of cover applicable to **you** are specified in the **policy schedule**.

The **underwriters** will only pay **you** for **claims** where the dispute or legal proceedings are or would be within the **territorial limits** and the **claim** is notified during the **period of insurance** and the dispute or legal proceedings are in connection with activities within the scope and extent of **your business description**.

SECTION A – COMMERCIAL CONTRACT DISPUTES

WHAT IS COVERED

The **underwriters** agree to pay **you** for **legal expenses** incurred in the pursuit or defence of any dispute or legal proceedings made by or brought against **you** in a contractual dispute or legal proceedings with a **contracting party** over a contract for the sale of goods or a contract for the hire of goods or a contract for the supply of a service within the meaning set out in the sale of goods act provided that:

- **Legal expenses** incurred in the pursuit of any dispute or legal proceedings shall be limited to seventy-five percent (75%) of the amount in dispute; and
- the amount in dispute exceeds the **minimum sum in dispute**; and
- where the contract is a **construction contract** the construction operations are carried out or are to be carried out by the **contracting party** on **your property** and the **construction contract** is for the repair or renovation of the **property** and the repair and renovation of the **property** is not part of **your business description**; and
- where the dispute or legal proceedings arise from an undisputed debt, **you** have exhausted all reasonable methods of recovery and the **appointed representative** recommends legal action.

EXCLUSIONS TO SECTION A

WHAT WE DO NOT COVER

The **underwriters** shall not be liable to pay **you** in respect of **claims** arising out of or in connection with:

- contracts that provide or arrange credit, insurance,

- securities, guarantees or other financial products and financial services; or
- contracts where the liability or right of recovery is incurred by assignment; or
- franchise contracts; or
- contracts of employment; or
- any tenancy or licence to use any real property.

SECTION B – PROPERTY DISPUTES

WHAT IS COVERED

The **underwriters** agree to pay **you** for **legal expenses** incurred in any dispute or legal proceedings made by or brought against **you** provided **you** will suffer financial loss if **you** fail to pursue or defend the dispute or legal proceedings:

- over the physical possession of the **property** provided that all statutory and contractual notices have been correctly served by **you**; or
- over the terms of a tenancy agreement between **you** and a **contracting party** relating to the use or maintenance of the **property**; or
- in respect of actual or alleged negligence, damage (including trespass) or nuisance to the **property** other than with a tenant including any resulting damage to goods owned by **you**, at the **property** that are not otherwise insured.

EXCLUSIONS TO SECTION B

WHAT WE DO NOT COVER

The **underwriters** shall not be liable to pay **you** in respect of any **claim** arising out of or in connection with:

- the payment or non-payment or review of any tax, rent, mesne profit or service charge; or
- a dispute or legal proceedings relating to planning or building regulations or decisions or compulsory purchase orders or any actual, planned or proposed works by or under the order of any government or public or local authority; or
- any dispute or legal proceedings arising from the negotiation, review or renewal of a tenancy agreement or the subsequent purchase of the **property** whether or not this purchase is completed; or
- any dispute or legal proceedings where **you** have failed to maintain in full force and effect

buildings insurance covering the standard range of perils during the tenancy agreement if **you** were contractually obligated to have this insurance in force; or

- a dispute or legal proceedings over subsidence or heave regardless of how caused; or
- a contract dispute or legal proceedings other than where the contract is a tenancy agreement with a **contracting party**.

SECTION C – DATA PROTECTION

WHAT IS COVERED

The **underwriters** agree to pay **you** for **legal expenses** incurred in defending any dispute or legal proceedings brought against **you** under the privacy act 1988.

EXCLUSIONS TO SECTION C

WHAT WE DO NOT COVER

The **underwriters** shall not be liable to pay **you** in respect of any fines, penalties, costs of notifying data subjects of any security or similar breach, crisis consultancy costs, credit monitoring expenses, forensic and other investigation expenses, IT expert expenses, public relations expenses, or any other amount which is covered under another insurance policy including but not limited to a cyber insurance policy.

SECTION D – STATUTORY LICENCE

WHAT IS COVERED

The **underwriters** agree to pay **you** for **legal expenses** incurred in an appeal by **you** against the suspension, revocation, imposed alteration of or refusal to renew a **statutory licence**.

EXCLUSIONS TO SECTION D

WHAT WE DO NOT COVER

The **underwriters** shall not be liable to pay **you** for **legal expenses** incurred in respect of any **claim** arising out of or in connection with:

- a suspension, revocation, alteration or refusal to renew a **statutory licence** which is imposed by an Act of Parliament or national or local government regulation or order; or
- any costs incurred to comply with a notice or order; or
- arising licences.

SECTION E – EMPLOYEE’S BREACH OF RESTRICTIVE COVENANTS

WHAT IS COVERED

The **underwriters** agree to pay **you** for **legal expenses** incurred in pursuing legal proceedings against an **employee** or ex-**employee** to obtain the remedy of an injunction against that **employee** or ex-**employee** for their breach of an express restrictive covenant in their employment contract where the breach by the **employee** or ex-**employee** relates to or arises from:

- Soliciting **your employees**, or
- Soliciting **your** customers.

EXCLUSIONS TO SECTION E

WHAT WE DO NOT COVER

The **underwriters** shall not be liable to pay **you** for **legal expenses** incurred in respect of any **claims** arising out of or in connection with individuals who before the inception of this **policy** either ceased to be **employees** or were working out their notice period (including where the **employee** was on a period of gardening leave).

SECTION F – TAX AUDIT PROTECTION

WHAT IS COVERED

The **underwriters** agree to pay **you** for **legal expenses** incurred in respect of **your** representation arising directly from:

- an **ATO investigation** in respect of a notification from the **ATO** that it is taking action, carrying out an investigation or making an inquiry under the provisions of **income tax legislation**;
- a **GST dispute** with the **ATO** in respect of a claim by the **ATO** for additional amounts of GST. For the purpose of this clause, the claim is first made against **you** on the earliest of the following:
 - the date on which the **ATO** requests a meeting with **you** or enters **your** premises or expresses dissatisfaction with any of **your** gst returns in writing; or
 - the date on which **you** or **your** tax adviser first became aware, or could reasonably have become aware, that a **GST dispute** was likely to arise with the **ATO**; or
 - the date on which **you** are served with a notice of assessment or amended notice of assessment relating to the additional amounts of GST;

- a **fringe benefits dispute** in respect of a claim by the **ATO** for additional amounts of tax within the meaning of **income tax legislation**. For the purpose of this clause, the claim is first made against **you** on the earliest of:
 - the date on which the **ATO** expresses dissatisfaction with the amounts of payg or fbt (as defined in **income tax legislation**) paid by **you** or **your** returns relating to PAYG or FBT; or
 - the date on which the **ATO** starts an investigation into the accuracy of PAYG or FBT returns or information or into **your** liability or that of an **employee** to pay additional tax because of alleged inaccuracies in such returns or information.

Provided that:

- there is a reasonable prospect of reducing the liabilities alleged by **ATO**;
- **you** have maintained and continue to maintain accurate, truthful and up to date records and make returns in due time in accordance with statute and accounting conventions acceptable to the **ATO** where applicable and have made all returns and payments except those which are disputed and provided information to relevant authorities in due time;
- **you** and the **appointed representative** must provide information to the **ATO** in due time and must comply with any statutory notice requesting information which is not the subject of an appeal;
- **you** or the **appointed representative** immediately notify **us** in writing of any invitation by the **ATO** to make an offer in settlement; and
- in respect of an **ATO investigation** the **appointed representative** provide **us** with copies of relevant correspondence between the **ATO**, the **appointed representative** and **you** (including the notice of investigation) together with copies of the accounts, tax computations and returns giving rise to the investigation.

EXCLUSIONS TO SECTION F

WHAT WE DO NOT COVER

The **underwriters** shall not be liable to pay **you** for **legal expenses** incurred in respect of any **claim** arising out of or in connection with:

- Costs incurred in dealing with routine matters which do not fall within a **claim** by the **ATO** in respect of a **GST dispute**, **fringe benefits dispute** or **ATO**

Investigation (including but not limited to a BAS audit / Superannuation Fund audit / payroll tax audit visit).

- in respect of an **ATO investigation** only:
 - costs arising after the issue of a notice under **income tax legislation** notifying **you** that the investigation has been completed; and/or
 - costs arising directly from an amendment under **income tax legislation**; and/or
 - costs incurred otherwise than wholly in connection with an **ATO investigation** into **your** business income or profits.
- any **claim** where:
- deliberate mis-statements have been made in respect of accounts, returns or any other submissions made to the relevant authorities with intent to deceive;
 - **you** have failed to notify **your** business status to the relevant authorities within a statutory period;
 - there has been a failure to maintain or submit accurate, truthful and up-to-date records and returns or a failure to observe statutory time limits or requirements;
 - a false representation has been made either knowingly or without belief in its truth and this has resulted in a mis-statement of amounts payable, expenses claimed, income or profits chargeable or losses allowable for tax or contributions purposes or of expenses payments made.
- any **claim** arising from or relating to:
- an investigation or inquiry by the Prosecutions Division of the **ATO** or following the transfer of an inquiry to that Division;
 - avoidance schemes relating to tax or superannuation contributions under the Superannuation Industry (Supervision) Act 1993 (Commonwealth of Australia); and/or
 - GST refunds in countries outside Australia or Import GST.

SECTION G – DEBT RECOVERY

WHAT IS COVERED

The **underwriters** agree to pay you for **legal expenses** incurred by you where you are owed payment under an invoice which has not been settled despite the payment terms having expired.

Any **claim** under this section shall be subject to the following process:

Stage 1

You must download the template letter from www.deltainsurance.com.au and complete the template letter with the applicable details and send this letter to the debtor.

If on expiry of the additional fourteen (14) calendar days allowed to pay as specified in the template letter **you** have not received payment, **you** can move to stage 2.

Stage 2

You must provide full details of the amount due to the **debt recovery professional** via the following email address:

legalexperiences@proclaim.com.au

The **debt recovery professional** will then communicate a letter on **your** behalf advising the debtor that if they do not pay in seven (7) calendar days court proceedings will be issued.

If payment is still not forthcoming, the recovery will become a claim under Section A Commercial Contract Disputes and the **debt recovery professional** will issue court proceedings on **your** behalf to seek recovery of the amount due.

EXCLUSIONS TO SECTION G

WHAT WE DO NOT COVER

The **underwriters** shall not be liable to pay you for **legal expenses** incurred in respect of any claim arising out of or in connection with a debt sum of less than \$2,500 (two thousand five hundred Australian dollars) for the initial pre-court proceedings (Stage 1 above) and such amount shall rise to the minimum sum in dispute for the court proceedings issued in Stage 2.

GENERAL EXCLUSIONS

WHAT WE DO NOT COVER

The **underwriters** shall not be liable to pay **you** for **legal expenses** incurred in respect of:

1. **Your** defence in civil legal proceedings arising from:
 - a Injury or disease including psychiatric injury and stress; or
 - b Loss, destruction or damage of or to property; or
 - c Alleged breach of any professional duty; or
 - d Any non-contractual wrongful act or infringement of a right (other than as specified in **Section**

- D Property Disputes** if **You** are covered under that section of cover as specified in the **policy schedule**); or
2. Any dispute or legal proceedings brought, made or commenced outside the **territorial limits**; or
 3. **Legal expenses** incurred without **our** prior written consent or for a sum in excess of **our** consent; or
 4. Any **claim** or possible **claim** relating to or arising from:
 - a any cause, event or circumstance occurring prior to or existing at inception of this **policy** and which has or which **you** knew or ought reasonably to have known may give rise to a dispute or legal proceedings by or against **you**;
 - b any dispute or legal proceeding first made by or against **you** prior to inception of this **policy**; or
 5. Fines or other penalties imposed by a Court or tribunal; or
 6. Any dispute or legal proceedings in respect of which **you** are, or but for the existence of this **policy** would be, entitled to any payment under any insurance policy whether a legal expenses insurance or not or under a legal aid certificate or representation order; or
 7. Any **claim** arising from **your** intentional wrongdoing or an act or omission with negligent disregard as to its consequences; or
 8. Any dispute or legal proceedings with government or local authority departments concerning the imposition of statutory charges; or
 9. Any dispute or legal proceedings between **you** and any parent company or subsidiary company or associated company or partner; or
 10. Any dispute or legal proceedings between **you** and **us**, or **you** and the **appointed representative**, or **you** and **your** insurance intermediary; or
 11. Any dispute or legal proceedings arising out of breach or alleged breach of confidentiality or passing off whether related to intellectual property or not; or
 12. Any dispute or legal proceedings arising out of the ownership or existence of any intellectual property rights; or
 13. Any dispute or legal proceedings arising out of or in connection with actual or alleged defamation or malicious falsehood; or
 14. Any **legal expenses** incurred in respect of or in connection with a judicial review other than an appeal of a decision of legal proceedings to which **our** prior written consent has been granted; or
 15. Appeals arising out of legal proceedings to which **our** prior written consent has not been granted or withdrawn; or
 16. Any claim, legal liability or any loss or damage to property or **property** directly or indirectly caused by or contributed to by seepage, pollution or contamination of any kind; or
 17. Any **legal expenses** which **you** should or would have had to incur irrespective of any dispute or legal proceedings; or
 18. Any expense, legal liability or any loss or damage to property or **property** directly or indirectly caused by or contributed to by:
 - a Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 - b The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or
 19. Any loss, damage, cost or expense directly or indirectly caused by, resulting from or in connection with (including any action taken in controlling, preventing, suppressing) or in any way relating to any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
 - a War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
 - b Any act including but not limited to the use or threat of force or violence 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), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.
 20. Any legal costs and expenses for, incurred as a result of, or arising out of a **Cyber Act** or **Cyber Incident**.

21. Any actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

- a For the purposes of this exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.

As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- a 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
- b 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

the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

GENERAL CONDITIONS

These are the conditions of the insurance coverage under this **policy** that **you** need to meet as **your** part of this contract. If **you** do not meet these conditions, the **underwriters** may need to reject **your claim** or a **claim** payment could be reduced. In some circumstances, **your policy** may not be valid.

1. Instruction and choice of appointed representative and counsel

The **underwriters** will choose an **appointed representative** to act on **your** behalf in any **claim**.

In all cases the **appointed representative** shall be appointed in the name of and on behalf of **you**. If in the course of any **claim** the **appointed**

representative wishes to instruct counsel or an expert, counsel's or the expert's name and an explanation of the necessity for this instruction must be submitted to **us** for the **underwriters** prior written consent to the proposed instruction which will not be unreasonably withheld.

2. Payment of legal expenses

All invoices and requests for payment for **legal expenses** which **you** receive from the **appointed representative** should be forwarded to **us** as soon as practicable upon receipt. If **we** so require **you** must ask the **appointed representative** to submit to **us** the bill of costs for assessment or certification by the appropriate law society, court or tribunal. **You** are responsible for payment of all **legal expenses**. **We** may settle these requests for payment of **legal expenses** directly at **our** discretion if requested by **you** to do so. The payment of some **legal expenses** by **us** is not an indication that all **legal expenses** will be paid.

3. Recovery of costs

Whenever **you** are awarded costs or under the terms of any settlement where costs are included, those costs are to be repaid to **us**.

You and **your appointed representative** must make every effort to make a full recovery of costs. Where a settlement purports to be a global or a without costs settlement or where costs are awarded but not recovered, **You** agree that a fair and reasonable proportion of that settlement will be deemed costs and due to **us**. Where this settlement is paid in instalments all costs to **us** shall be paid first.

4. Appeal Procedure

If, following legal proceedings to which **we** have given **our** prior written consent, **you** wish to appeal against the judgment or decision of a Court or tribunal, the grounds for this appeal must be submitted to **us** through the **appointed representative** as soon as practicable so that **we** may consider whether to consent to this further action.

If an appeal is lodged against a judgment or decision of a court or tribunal made in **your** favour following legal proceedings to which **we** have given **our** prior written consent, **you** must notify **us** as soon as practicable in order that cover may continue. **We** will inform the **appointed representative** of **our** decision. If **we** so require it

you must co-operate in an appeal against the judgment or decision of a court or tribunal.

5. Duty to mitigate

You must take all reasonable precautions to avoid, prevent and mitigate **claims**, disputes or legal proceedings. **You** must use every endeavour and take all reasonable measures to minimise the cost and effect of any **claim**.

6. Alteration of risk

You must notify **us** as soon as practicable in writing of any change in circumstances that might affect **our** decision to provide **you** with this **policy** or the premium charged. Examples include changes to **your business description** or **your** acquisition by another company.

7. Exercise of reasonable care

You must exercise reasonable care to prevent loss or damage to **you** or others and comply with all the terms and conditions of this **policy**.

8. Arbitration

Any dispute between **you** and **us** which has not been or cannot be resolved by way of one of the other external dispute resolution schemes or methods referred to in the complaints section shall be referred to a single arbitrator who shall be a lawyer agreed upon by both **you** and **us** or upon failing agreement, a lawyer who is nominated by the president of the law society of the state in which **you** are registered. The apportionment of the costs of the arbitration between **you** and **us** shall be determined by the arbitrator.

9. Proper Law

We and **you** are free to choose the law applicable to this **policy**. Unless **we** and **you** specifically agree to the contrary, this **policy** shall be subject to the laws and jurisdiction of the Commonwealth of Australia.

10. Privacy Act 1988

You agree that any information provided to **us** regarding **you** will be processed by **us** in compliance with the provisions of the privacy act 1988.

We are committed to safeguarding **your** privacy and the confidentiality of **your** personal information. **We** collect only that personal

information from or about **you** for the purpose of assessing **your** application for insurance and administering **your policy**, including any **claim** made by **you**. **We** will only use and disclose **your** personal information for a purpose **you** would reasonably expect. **We** will request **your** consent for any other purpose. without this personal information **we** may not be able to issue insurance cover, administer **your** insurance or process **your claim**.

Our aim is to always have accurate and up-to-date information. When **you** receive **your policy** documents from **us**, **you** should contact **us** if the information is not correct.

We or **our** authorised agent may collect or disclose **your** personal information from or to:

- any person authorised by **you**;
- a records management company or technology services provider (for printing and/or delivery of mail and email, including secure storage and management of **our** records). These companies may be located overseas;
- an organisation that provides **you** with financing or banking facilities (for the purpose of arranging **claim** settlement or other payment transactions or confirming payments made by **you** to **us**);
- an intermediary who is arranging **your** insurance (for the purpose of confirming **your** personal and insurance details);
- another person or organisation named as a co-insured on **your policy** (for the purpose of confirming if full disclosure has been made to **us**);
- **our underwriters** or their reinsurers that may be located overseas (for the purpose of seeking recovery from them);
- a dispute resolution organisation such as the financial ombudsman service (for the purpose of resolving disputes between **us** and **you**);
- to a lawyer or other suitably qualified professional (for the purpose of pursuing or defending **your claim** or recovering **our** costs or seeking a legal opinion regarding the acceptance of a **claim**);

We will give **you** 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 and provide **our** dispute resolution procedures to **you**, should **you** wish to complain about how **we** handle **your** personal information.

To obtain further information about **our** privacy policy, to request access to or correct **your** personal information, or to make a complaint please email: contactus@deltainsurance.com.au

11. Your insolvency or liquidation

If **you** become insolvent or are placed in liquidation, receivership, administration or bankruptcy or enter into a voluntary arrangement or deed of arrangement or if any application is made to the court or meeting convened for any these purposes **we** have the right to cease to provide insurance coverage under this **policy** for **legal expenses** despite any previous consent the **underwriters** may have granted.

12. Goods and Services Tax

If **you** are registered for GST, **we** will not pay the GST element of any **legal expenses**.

13. Rights of Third Parties

Unless specifically agreed by **us** in writing otherwise, nothing in this **policy** is intended to give any third party any right to enforce any term of this **policy**.

14. Sanctions, Export and Exchange Control

We shall not be deemed to provide insurance cover and the **underwriters** shall not be liable to pay any **claim** or provide any benefit under this **policy** to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose **us** and/or the **underwriters** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, United States of America, European Union or United Kingdom.

15. Several Liability

We are liable only for the proportion of liability **we** have underwritten. **We** are not jointly liable for the proportion of liability underwritten by any other insurer. nor are **we** responsible for any liability of any other insurer that may underwrite this **policy**.



**Embrace
Change.**

Delta Insurance Australia

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