

# Quanta Professional Indemnity Insurance

Policy Wording V3.1\_0618

Quanta Insurance Group Pty Ltd  
AFSL 302520  
ACN 118 886 927  
ABN 29 118 886 927

# Contents

Important Information	3
General Definitions	5
Insuring Clauses and Additional Benefits	7
General Exclusions	13
Claim Notification Conditions	16
General Conditions	17



# Important Information

This document contains the extent of coverage provided by this Policy. It is recommended the Insured should read all the terms and conditions and retain in a safe place all the documents in connection with this insurance including copies of Proposals, this Policy wording, endorsements, Schedules and any other written advices.

## ABOUT QUANTA INSURANCE GROUP PTY LIMITED (“QUANTA”)

Quanta arranges this policy as an agent of Certain Underwriters at Lloyd’s (the Insurers) pursuant to a written binding authority provided by those Underwriters to it. It is important for the Insured to understand that Quanta is not itself an Insurer for the purpose of this Policy or at all. It is an agent acting for its Underwriting Principals, the Insurers.

The Insured should further be aware that the Insurers may change from Policy Period to Policy Period and this emphasises the importance for the Insured especially in relation to their continuous duty of disclosure of all relevant matters to the Insurers immediately as they come to the Insured’s attention. A failure to notify a relevant matter may render the Insured without insurance cover especially where the Insurers change from one Policy Period to another.

## CLAIMS MADE POLICY

This insurance is provided on a ‘claims made’ basis which means the policy will only respond to Claims first made against the Insured during the Policy Period or within the reporting period specified in the Insurance Contracts Act. In reading this Policy please read carefully the definition of Claims.

Claims made policies require the Insured to notify the Insurers of any Claim during the Policy Period, as the Insurers will not pay for any Claim that is notified after the Policy Period has expired. Quanta emphasises the necessity for the Insured to immediately notify a Claim for, as described above, Quanta is an agent and Insurers may change from one Policy Period to another.

The Insurers will not pay if the Insured had knowledge, or a reasonable person in the circumstances of the Insured ought to have had knowledge of a Claim, or any Circumstance that might give rise to a Claim, prior to the commencement of the Policy Period. In reading this Policy please read carefully the definitions of both Claim and Circumstance.

Given the above, the Insurers are obliged to point out to the Insured that Section 40(3) of the Insurance Contracts Act provides that where an Insured gave notice in writing of facts that might give rise to a Claim against the Insured as soon as was reasonably practicable after the Insured became aware of those facts but before the insurance cover provided by this Policy expired, the Insurers are not relieved of liability under this Policy in respect of the Claim, when made, by reason only that it was made after expiration of the period of insurance cover provided by the Policy. This statement is not a term of this Policy it is merely a notice of the effect of a statutory provision that an Insurer is obliged to give to an Insured.

## NON-RENEWABLE POLICY

For the purpose of Section 58 of the Insurance Contracts Act, this Policy is non renewable and will expire at the conclusion of the Policy Period. Should the Insured require coverage beyond the expiry of the Policy Period, the Insured must complete a new Proposal and the Insurers may provide a new contract, the terms and conditions of which will be negotiated at the time.

## BASIS OF INSURANCE

The Insurers agree to insure the Insured on the basis of information provided in the Proposal form and other information or documents, herein referred to as the Proposal, supplied at the time of entering into the Policy. It is also subject to payment of the required premium by the required date.

## DUTY OF DISCLOSURE

Before the Insured enters into a contract of general insurance with an Insurer, the Insured has a duty under the Insurance Contracts Act to disclose to the Insurers every matter that the Insured knows or a reasonable person in the position of the Insured could be expected to know, is relevant to the Insurers' decision whether to accept the risk and if so, on what terms.

In particular the Insurers refer the Insured to the Proposal form for full details of the duty.

Failure to comply with the duty of disclosure may entitle the Insurers to cancel the Policy or reduce the amount the Insurers pay in the event of a Claim. If fraud is involved, the Insurers may treat the Policy as if it never existed and pay nothing.

## PRIVACY

We are committed to protecting your privacy. We use the information you provide to advise about and assist with your insurance needs. We provide your information to insurance companies and agents that provide insurance quotes and offer insurance terms to you or the companies that deal with your insurance claim (such as loss assessors and claims administrators). Your information may be given to an overseas insurer (like Lloyd's of London) if we are seeking insurance terms from an overseas insurer, or to reinsurers who are located overseas. We will try to tell you where those companies are located at the time of advising you. We do not trade, rent or sell your information.

If you don't provide us with full information, we can't properly advise you, seek insurance terms for you, or assist with claims and you could breach your duty of disclosure.

For more information about how to access the personal information we hold about you and how to have the information corrected and how to complain if you think we have breached the privacy laws, you can access a copy of our Privacy Policy on our website [www.quanta.com.au](http://www.quanta.com.au) or alternatively contact our Privacy Officer on 02 9225 4111.

## COMPLAINTS RESOLUTION

Quanta as agents of the Insurers subscribe to a complaints resolution process designed to help the Insured solve any problems.

In the event of a complaint:

Regardless of whether the complaint involves agent's staff or others involved in dealing with the Policy, call the Complaints Manager of Quanta.

If you are not satisfied with our response, you may lodge a complaint with the Australian Financial Complaints Authority if lodged on or after 1 November 2018:

Online: [www.afca.org.au](http://www.afca.org.au)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Phone: 1800 931 678

Mail: Australian Financial Complaints Authority GPO Box 3 Melbourne VIC 3001

## SUBROGATION

This Policy contains a provision which has the effect of excluding or limiting the Insurers' liability in respect of a Claim where the Insured has foregone, excluded or limited a right of recovery or contribution.

# General Definitions

Whenever the following words are used in this Policy they have a special meaning as expressed below.

- 1.1 **"Australia"** shall mean the Commonwealth of Australia and its territories, possessions and dependencies.
- 1.2 **"Bodily Injury"** shall mean death, sickness, any injury to body, and includes physical injury, anguish, emotional distress or any other psychological, psychiatric or related physical or mental condition contracted or suffered by a party to whom the Insured has a civil liability.
- 1.3 **"Circumstance"** shall mean any fact, circumstance, event or occurrence which is known to the Insured, or ought to have been known to a reasonable person in the position of the Insured, that might give rise to a Claim.
- 1.4 **"Claim"** shall mean:
  - i. the receipt by the Insured of any written demand made by a third party against the Insured alleging an existing right to compensation in respect of a breach of professional duty arising out of any act, error or omission; or
  - ii. any formal claim by a third party contained in a writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim or counterclaim served upon the Insured seeking compensation in respect of a breach of professional duty arising out of any act, error or omission; or
  - iii. the discovery of reasonable cause for suspicion of fraud or dishonesty on the part of any of the Insured's Employees, partners or co-directors whether giving rise to a claim or not.

All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy. Where a single act, error, or omission gives rise to more than one Claim, all such Claim(s) shall jointly constitute one Claim under this Policy, and only one Excess shall be applicable in respect of such Claim.
- 1.5 **"Defence Costs"** means all fees, expenses, costs and disbursements incurred in investigating and/or defending a Claim but does not include:
  - i. lost earnings, wages, salaries, or other remuneration of the Insured in the investigation, defence, settlement or appeal of any Claim; or
  - ii. any fees, expenses, costs and disbursements incurred by the Insurer in any investigation by that Insurer relating to the Insurer's decision to extend indemnity under the Policy.
- 1.6 **"Documents"** are deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents or forms of any nature whatsoever and including magnetic tape or other like means of recording information for use with any computer. It does not include bearer bonds or coupons, bank or currency notes or other negotiable paper.
- 1.7 **"Employee"** means any person employed under a contract of service or apprenticeship during or prior to the commencement of the policy period, and includes any agent/contractor/consultant working on behalf of the Insured during the Policy Period.
- 1.8 **"Excess"** is the Excess specified in the Schedule. It represents the first amount which is payable by the Insured in respect of any Claim, inclusive of claimant's cost and expenses but exclusive of inquiry costs, investigation costs, or Insured's costs and expenses in respect of each Claim.
- 1.9 **"Family"** means the spouse (or other person who lives with the Insured as a domestic partner), parent, parent of the spouse, any sibling or any of the children of the Insured or spouse.
- 1.10 **"Financial interest"** means any financial interest other than a financial interest of less than 10% of the issued capital in a company or less than 10% of the value of any other enterprise.
- 1.11 **"Insured"** is the person, firm or practice declared in the Proposal for which insurance has been requested and agreed by Insurers and is named in the Schedule as Insured and includes:
  - i. any person who is during the Policy Period, a partner or director of the Insured but only in respect of work performed as a partner or director of the Insured;

- ii. any person who is during the Policy period, an Employee of the Insured but only in respect of work performed as an Employee of the Insured;
  - iii. any former partner, director or Employee of the Insured but only in respect of work performed as a partner, director or Employee of the Insured;
  - iv. the estate, spouse, heirs, legal representatives or assigns of any Insured when arising through death or incapacity, but only in respect of work performed as a partner, director or Employee of the Insured.
- 1.12 **"Insurer"** or **"Insurers"** are Certain Underwriters at Lloyd's.
- 1.13 **"Policy"** means:
- i. the Policy document including the Insuring Clauses, Exclusions, Conditions, Definitions, Schedule, and other terms contained herein;
  - ii. any endorsement to this Policy whether issued at the inception of the Policy or during the Policy Period;
  - iii. the information provided by the Insured in the Proposal or provided in any other way.
- 1.14 **"Policy Period"** is the period specified in the Schedule.
- 1.15 **"Professional Business"** is the business or profession specified in the Schedule.
- 1.16 **"Proposal"** means the written Proposal by the Insured containing information and statements which together with any other information or documents provided are the basis of this Policy.

# Insuring Clauses and Additional Benefits

## Insuring Clause

- 2.1 The Insurers will indemnify the Insured against civil liability for any Claim first made against the Insured during the Policy Period for breach of professional duty by the Insured arising from the conduct of the Professional Business.

## Automatic Extensions to Insuring Clause

Insurers agree to provide indemnity as set out in the following Automatic Extensions provided that:

- i. the inclusion of any Automatic Extension shall not increase the Indemnity Limit; and
- ii. the indemnity provided by each Automatic Extension is subject to the Schedule, Insuring Clause, Conditions, Definitions, Exclusions, Excess and other terms of this Policy (unless otherwise expressly stated herein).

## Defence Costs

- 2.2 The Insurers will, in addition to the Indemnity Limit, pay Defence Costs for Claims covered under this Policy, provided that if the total amount of compensation and claimant's costs and expenses required to dispose of the Claim or Claims exceeds the Indemnity Limit, the liability of the Insurer for such Defence Costs shall be only that proportion which the Indemnity Limit bears to the total amount of compensation and claimant's costs and expenses required to dispose of the Claim or Claims.

## Fraud and Dishonesty

- 2.3 Any fraudulent or dishonest act or omission of any former or present principal, director, partner or Employee of the Insured, including that which would otherwise be excluded by reason of Exclusion 3.19 (Fraud and Dishonesty). Provided that:
- i. such indemnity shall not be provided to any Insured who committed or condoned any act, error or omission excluded by reason of Exclusion 3.19 (Fraud and Dishonesty)
  - ii. this Extension does not derogate from or limit Exclusion 3.17 (Money)

## Defamation

- 2.4 Any unintentional libel, unintentional slander and/or slander of title to goods or unintentional injurious falsehood by the Insured.

## Consumer Protection Legislation

- 2.5 Any unintentional breach of the misleading and deceptive conduct provisions of Part V of the Trade Practices Act 1974 (Cth); Schedule 2 of the Competition and Consumer Act 2010 (Cth); Division 2 Part 2 of the Australian Securities and Investment Commission Act 2001 (Cth); Part 7 of the Corporations Act 2001 (Cth) or any similar or related legislation of a State or Territory of Australia or New Zealand (but not for criminal liability in respect of any of these). Nothing in this clause will effect the operation of Exclusion 3.12 of this Policy.

## Intellectual Property

- 2.6 Any unintentional infringement of copyright, trademarks, registered designs, patents, plagiarism or breaches of confidentiality.

## Loss of Documents

- 2.7 For replacing or restoring Documents in the Insured's physical custody or control (including but not limited to Documents which are the property of the Insured) which have been destroyed or damaged, lost or mislaid and cannot be found after diligent search.

The maximum amount payable under this Automatic Extension shall be \$500,000 and forms part of and is not additional to the Indemnity Limit shown in the Schedule.

This Automatic Extension is not subject to Insuring Clause 2.1.

## Infringement of Insured's Copyright

- 2.8 For reasonable and necessary costs and expenses incurred by the Insured with the Insurer's prior written consent in prosecuting a claim for infringement of copyright vested in the Insured either alone or with other parties but in this case only for the Insured's interest.

The maximum amount payable under this Automatic Extension shall be \$25,000 and forms part of and is not additional to the Indemnity Limit shown in the Schedule.

This Automatic Extension is not subject to Insuring Clause 2.1.

## Official Inquiries and Disciplinary Proceedings

- 2.9 Insurers will pay the reasonable legal costs and expenses incurred with the Insurer's prior written consent for the Insured's representation at any inquiry including a coronial inquiry or any inquiry under the disciplinary rules of a professional association, which has a direct relevance to any matter which is likely to be the subject of a Claim for indemnity under this Policy.

This extension does not indemnify the Insured in respect of regular or overtime wages or fees.

This Automatic Extension is not subject to Insuring Clause 2.1.

## Continuous Cover

- 2.10 In respect of any claim where the Insured:

- i. First became aware, prior to the Policy Period, that a Claim might or could arise from facts or circumstances known to it; and
- ii. Had not notified Insurers of such facts or circumstances prior to the Policy Period;

Exclusion 3.1 will not apply to any Claim notified to Insurers during the Policy Period provided that:

- a. The Insured was insured for professional liability under a policy issued by Quanta Insurance Group Pty Limited (or any predecessor or successor of Quanta Insurance Group Pty Limited) as agent for the Insurers, other Lloyd's Underwriters, Vero Insurance, or CGU Insurance when the Insured first became aware of such facts and circumstances; and
- b. The Insured continued, without interruption, to be insured for professional liability under a policy issued by Quanta Insurance Group Pty Limited (or any predecessor or successor of Quanta Insurance Group Pty Limited) as agent for the Insurers, other Lloyd's Underwriters, Vero Insurance, or CGU Insurance up until the commencement of the Policy Period; and
- c. There has not been any fraudulent non-disclosure or fraudulent misrepresentation by the Insured in respect of such facts or circumstances; and
- d. Insurers have the discretion to apply either the terms and conditions of the policy on foot when the Insured first became aware of the facts and circumstances, including but not limited to the indemnity limit and Excess, or the terms and conditions of this Policy.

## **Joint Venture**

- 2.11 In the event of an Insured engaging in a co-venture or joint venture with others, indemnity is afforded subject to Policy terms and Conditions in respect of any Claim resulting from the Insured's participation in any joint venture in connection with the Professional Business provided that:
- i. the indemnity given shall only relate to the Insured's proportion of any liability incurred by such joint venture; and
  - ii. the Insured's income derived from such co-venture or joint venture must be included in the calculation of income declared to the Insurers for premium calculation prior to inception of this Policy.
- This Automatic Extension is not subject to Insuring Clause 2.1.

## **Severability and Non-Imputation**

- 2.12 Where this Policy insures more than one party, the Insurers will not prejudice the remaining parties' right to indemnity when a party:
- i. failed to comply with their duty of disclosure; or
  - ii. made a misrepresentation to the Insurers; or
  - iii. fails to comply with any terms or conditions of this Policy.
- As a precondition to cover, the remaining parties must:
- i. show they had no knowledge of such conduct;
  - ii. advise the Insurers immediately on becoming aware of such conduct and provide all information to the Insurers.
- This Automatic Extension is not subject to Insuring Clause 2.1.

## **Run-Off Cover – Insured Entity**

- 2.13 Insurers agree that in the event that an Insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this Policy with respect to such Insured entity shall continue until the expiry date of the Policy Period.
- Provided always that such coverage shall only apply in respect of Claim(s) arising from an act, error, or omission occurring prior to the effective date that such Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.
- This Automatic Extension is not subject to Insuring Clause 2.1.

## **Reinstatement of the Indemnity Limit**

- 2.14 Insurers agree to reinstate the Indemnity Limit to the extent it has been eroded by a Claim under this Policy.
- The Insurer's total liability under this Policy shall not exceed in respect of any one Claim, Defence Costs and costs and expenses covered by this Policy, the Indemnity Limit as specified in the Schedule and by virtue of this reinstatement, in respect of all Claims, Defence Costs and costs and expenses covered by this Policy an amount equal to twice the Indemnity Limit (reflected in the aggregate limit specified in the Schedule).

## **Fidelity**

2.15 The Policy is extended to indemnify the Insured against any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable, which the Insured, during the Policy Period, discovers they have sustained in consequence of any dishonest or fraudulent act or omission by any Employee committed in the course of the Professional Business provided that:

the loss results in a financial benefit for the Employee or any firm, company or partnership in which the Employee has a financial, executive or management interest, or a director, manager or partner of such firm, company or partnership, or any Family member of the Employee; and

any monies which but for the person's fraud or dishonesty would have been payable to the person by the Insured (including salary, fees, bonuses, commissions, promotions, profit sharing, pensions or similar Employee benefits or any remuneration), will be deducted from the loss payable under this optional extension.

The maximum amount payable under this Automatic Extension shall not exceed \$100,000 and forms part of and is not additional to the Indemnity Limit shown in the Schedule.

An excess of \$5,000 shall apply to any one event. Events or series of events caused by acts or omissions of the same person or persons (whether identifiable or not) and events in which such person or persons is/are involved or implicated shall be treated as one event.

To the extent that this Automatic Extension provides indemnity in respect of loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured, it is not subject to Insuring Clause 2.1.

## **Previous Business**

2.16 Insurers agree that for the Insured who is a sole trader or the Insured as defined in definition 1.11 i), the Insured will be indemnified against any legal liability for any Claim for compensation first made against the Insured during the Policy Period and which is notified by the Insured to the Insurers during the Policy Period for breach of the professional duty of care owed by the Insured for conduct in substantially the same kind of business as the Professional Business specified in the Schedule in a professional capacity before they joined the Professional Business specified in the Schedule.

## **Statutory Liability**

2.17 Notwithstanding Policy Exclusion 3.11 (Fines, Penalties and Exemplary Damages), Insurers agree to indemnify the Insured against Statutory Liability for any Claim first made against the Insured during the Policy Period.

Insurers aggregate liability for all Claims under this Automatic Extension shall not exceed \$250,000.

For the purposes of this Automatic Extension, Statutory Liability shall be defined as any pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

- a. an Insured for any civil offence;
- b. an Insured for a strict liability offence in connection with the discharge, disbursal, release or escape of pollutants; or
- c. an Insured for a strict liability offence in connection with a breach of occupational health and safety law or regulation.

but solely resulting from the conduct by the Insured of its Professional Business and only if Insurers are not legally prohibited from paying the pecuniary penalties.

## Cyber, Data Protection, Privacy and Breach of Confidentiality

- 2.18 Insurers will indemnify the Insured against civil liability for any Claim first made against the Insured, and notified to Insurers during the Policy Period for:
- a. the Insured's failure to prevent a person, other than an Insured, from unauthorised access to, use of or tampering with Computer Systems including:
    - i. Electronic Data Theft;
    - ii. Computer virus attacks;
    - iii. Hacking attacks; and
    - iv. Any inadvertent transmission;
  - b. the Insured's breach of privacy, confidence or misuse of confidential information; and
  - c. the Insured's breach of any law or regulation that regulates the collection, management, confidentiality or disclosure of personal or confidential information of any client of the Insured, which arises from the conduct of the Professional Business of the Insured.

For the purposes of this Automatic Extension, Electronic Data Theft is defined as the unauthorised taking or misuse of information by a person (other than an Insured), of which the information is:

- a. in electronic form;
- b. intended to interact with a Computer System; and
- c. Stored in a Computer System maintained by the Insured to reasonable security standards and back up procedures.

For the purposes of this Automatic Extension, Computer System is defined as an electronic, wireless, web or similar system (including all hardware, firmware and software) used to process data or information, including computer programs, electronic data, operating systems, networking equipment, servers, websites, and all input, output, processing, storage and online or offline media.

## Employment Practices Liability

- 2.19 Insurers agree to indemnify the Insured against civil liability for any Claim first made against the Insured during the Policy Period arising from an Employment Wrongful Act.

Insurers are not liable for any Claim under this Extension based on, arising out of, related or attributable to:

- a. any damages, costs, or expenses incurred by the Insured for the cost of improving the Insured's employment practices or the working conditions at the premises where the Insured's business is conducted;
- b. Employment Wrongful Act committed or alleged to have been committed after:
  - i. the Insured is placed in bankruptcy; or
  - ii. a receiver, receiver and manager, official manager, provisional liquidator, liquidator, administrator or trustee; or other person administering a compromise or scheme or arrangement between the Insured and any other person is appointed to the Insured; or
  - iii. another entity that acquires or assumes management control of or acquires an interest in the Insured which is greater than fifty percent;
- c. an express obligation under a statute, award, certified agreement, workplace agreement or any other agreement which is required by, or filed with any industrial tribunal, including but not limited to obligations in relation to payment of wages, leave entitlement, notice of termination, severance payments and allowances;
- d. a breach of a term whether express or implied in a contract of employment where that implied term requires the Insured to treat Employees fairly and in good faith, except to the extent that the Insured would have been liable for the breach in absence of the implied term;

- e. industrial action including but not limited to lockouts, strikes, picket lines, stand downs, bans or limitations resulting from industrial disputes or negotiations;
- f. actual or alleged failure to comply with any law relating to:
  - i. procedural or notification requirements in a case of termination of employment because of redundancy;
  - ii. workers' compensation;
  - iii. occupational workplace health and safety;
  - iv. contracts alleged to be harsh, unfair, unconscionable or contrary to public interest

The maximum amount payable under this Automatic Extension shall be \$500,000 and forms part of and is not additional to the Indemnity Limit shown in the Schedule.

For the purposes of this Automatic Extension, Employment Wrongful Act means any actual or alleged violation of employment law or regulation or any other legal provision relating to the past, present or future employment of an individual with the Insured.

### **Reputation Protection Expenses**

- 2.20 Insurers agree to indemnify the Insured for the reasonable fees, costs and expenses, incurred with Insurers prior written consent (which shall not be unreasonably withheld) in retaining a public relations consultant for the sole purpose of protecting the Insured's professional reputation in connection with any Claim indemnified by this Policy.

The maximum amount payable under this Automatic Extension shall be \$100,000 and forms part of and is not additional to the Indemnity Limit shown in the Schedule.

### **Court Attendance Costs**

- 2.21 Insurers agree to provide cover in respect of any court attendance costs of any partner, principal, director or Employee of the Insured who is legally required to attend Court as a witness in a Claim covered by the Policy, to an amount not exceeding \$250 per day for Employees and \$500 per day for those other persons.

No Excess applies to this Automatic Extension.

# General Exclusions

The Insurers will not indemnify the Insured for any legal liability or loss arising out of, in respect of or in connection with:

## **Prior Claims and Prior Circumstances**

- 3.1 any Claim made against the Insured or Circumstance known to the Insured or which ought to have been known by a reasonable person in the position of the Insured, which might give rise to a Claim, prior to inception of this Policy.

## **Circumstance or Event Disclosed Under Prior Policy**

- 3.2 any Circumstance which has been disclosed by the Insured to any insurer prior to the commencement of the Policy Period.

## **Goods and Products, Warranties**

- 3.3 any goods or products manufactured, constructed, altered, repaired, serviced, treated, sold, supplied or distributed by the Insured or from any other business or occupation, even though the same may be carried on by the Insured in conjunction with their Professional Business as stated in the Schedule.

## **Builders Warranties**

- 3.4 any building or product performance warranties, penalty clauses or liquidated damages clauses unless the liability of the Insured to the claimant would have existed in the absence of such warranties or clauses.

## **Trading Losses, Fee Refunds, Insolvency**

- 3.5 the insolvency of, or any trading loss, trading liability, trading debts incurred by, any business managed by, or carried out by, or on behalf of the Insured.
- 3.6 a dispute as to fees and disbursements.

## **Workers Compensation**

- 3.7 injury, disease, illness or death of the Insured or any person working under a contract of employment apprenticeship or service on any basis or terms with the Insured whether or not otherwise covered under a compulsory statutory policy.

## **Ownership of Craft, Vehicles, Buildings, Premises**

- 3.8 the ownership, possession or use by or on behalf of the Insured of any aircraft, watercraft or motor vehicle or trailer, or any buildings, premises or land or that part of any building leased, occupied or rented by the Insured, or any property of the Insured.

## **Radioactivity and Nuclear Hazards**

- 3.9
- i. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - ii. the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## **War and Terrorism**

- 3.10 any loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
- i. 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
  - ii. any act of terrorism.  
Act of terrorism means an act, including but not limited to the use of force or violence and/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.

This Policy also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to i) and/or ii) above.

In the event any portion of the foregoing is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## **Fines, Punitive and Exemplary Damages**

- 3.11 any fines, civil penalties, punitive, exemplary or aggravated damages whenever identifiable as such.

## **Related Parties**

- 3.12 any Claim made against the Insured by:
- i. any firm, company or partnership in which the Insured or any director, partner or Family member of any Insured has a Financial Interest or executive or management interest;
  - ii. any Insured;
  - iii. any person who at the time of the breach of professional duty giving rise to the Claim, is a Family member of any Insured;

## **Pollution**

- 3.13
- i. Bodily Injury or loss of, damage to or loss of use of property directly or indirectly caused by seepage, pollution or contamination;
  - ii. the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances.

## **Assumed Obligations or Duties, Foregone Contribution**

- 3.14 any civil liability arising out of any obligation assumed by the Insured by way of warranty, guarantee or indemnity (other than under a contract between the Insured and a Landlord for the provision of services on normal commercial terms) to the extent that such liability exceeds the liability which the Insured would have incurred in the absence of such obligation.

## **Directors and Officers Liability**

- 3.15 any act, error or omission of a director or officer of the Insured (where the Insured is an incorporated body) while acting in that capacity.

## **Asbestos, Toxic Mould**

3.16

- i. asbestos or any material containing asbestos in whatever form or quantity;
- ii. the actual, potential or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores, or mycotoxins of any kind;
- iii. any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, mould, spores or mycotoxins;
- iv. any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release, or dispersal of fungi, moulds, spores, or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, remediating or removing such fungi, moulds, spores or mycotoxins.

## **Money**

3.17 money, bank notes, negotiable instruments or precious metals except for the coverage afforded under the Fidelity extension in the Policy.

## **Excluded Territories**

3.18 any legal liability of whatsoever nature directly or indirectly and partly or wholly arising out of any act, error, or omission committed within the territorial limits of the United States of America and/or Canada, their territories or Protectorates, or pursuant to the laws of the United States of America or Canada.

## **Fraud And Dishonesty**

3.19

- i. any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of an Insured, or their consultants, contractors, or agents; or
- ii. any act or omission of an Insured, or their consultants, contractors, or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
- iii. any wilful breach of any statute, contract, or duty by an Insured, or their consultants, contractors, or agents.

# Claim Notification Conditions

## Reporting of Claims

- 4.1 It is a condition precedent to this Policy the Insured shall immediately notify the Insurer in writing of any Claim.
- 4.2 Notice to Insurers required to be given under this Policy shall be deemed to be properly made if given in writing to Quanta, Locked Bag 5273, Sydney NSW 2001.

## Admission of Liability

- 4.3 The Insured shall not admit liability nor make any admission, agreement, offer, promise or payment or assume any contractual obligation in relation to a Claim without the Insurer's prior written consent. The Insurers are not liable for any settlement, defence costs, offer or payment to which they have not consented in writing.

## Co-operation and Assistance

- 4.4 The Insured shall use all due diligence and concur in doing all things reasonably practicable to avoid or diminish any liability in respect of which the Insurer may be liable under this Policy.
- 4.5 The Insured shall openly and honestly disclose to the Insurer all relevant information and shall provide such assistance, information and cooperation as the Insurer may require to enable the Insurer to investigate and/or defend any Claim under this Policy or to enable the Insurer to determine its liability under this Policy.
- 4.6 The Insured's duty to co-operate extends to the Insurer's investigation of Circumstances notified by the Insured pursuant to section 40(3) of the Insurance Contracts Act.
- 4.7 Compliance with condition 4.4 to 4.6 shall be at the Insured's own expense.

## Conduct and Settlement

- 4.8 Insurers may at their sole option take over and conduct in the name of the Insured the investigation, defence and settlement of any Circumstance or Claim made against the Insured. The Insured waives privilege in any communications with the Insured's lawyer.
- 4.9 The Insurers may at any time in connection with any Claim made, pay to the Insured the available Indemnity Limit (after deduction of any sums already paid) or any lesser amount for which the Claim can be settled and upon such payment being made, the Insurers shall relinquish the conduct and control of and be under no further liability in connection with the Claim

## Disputes About Contesting A Claim

- 4.10 In the event that Insurers seek to settle a Claim and the Insured does not agree with that course of action, then the Insured may elect to contest that Claim. The Insurers liability in connection with such Claim shall not exceed the amount for which the Claim could have been settled inclusive of Defence Costs incurred up to that time with the Insurers consent.
- 4.11 The Insured or the Insurers shall not be required to contest any Claim, unless an appropriate Barrister (to be mutually agreed upon by the Insured and the Insurers or failing agreement to be appointed by the President of the local Bar Council/Association) shall advise that such proceedings should be contested.
- 4.12 In formulating such advice, the Barrister shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff the likely Defence Costs involved and the prospects of the Insured successfully defending the Claim.
- 4.13 The cost of the Barrister's opinion shall be regarded as part of the Defence Costs cover under Clause 2.1.

# General Conditions

## Applicable Law

- 5.1 This contract is governed by the laws of Australia.  
In the event of any dispute arising under this Policy, including but not limited to its construction and/or validity and/or performance and/or interpretation, the Insured will submit to the exclusive jurisdiction of any competent court in Australia.
- 5.2 The Insurers shall only provide indemnity for Claims where the initial action and all subsequent actions and/or litigation are brought in the courts of and subject to the law of Australia or such other jurisdiction when shown in the Schedule.

## Territorial Limit

- 5.3 The indemnity provided by the Insurers is restricted to the Professional Business being (work or commissions) carried out within the Geographical Limits shown in the Schedule.

## Retroactive Date

- 5.4 This Policy shall not indemnify the Insured for any Claim made against the Insured by reason of any act, error or omission committed or alleged to have been committed, or physical damage to Documents occurring prior to the Retroactive Date shown in the Schedule.

## Subrogation

- 5.5 When the Insurers have paid a Claim under this Policy, the Insurers become entitled to any rights the Insured may have against any party in relation to that Claim. It is a condition precedent to indemnity however, the Insured shall not waive any rights of recovery or subrogation in respect of any matter notified under this Policy without Insurers prior consent.
- 5.6 In the event of a Claim under Automatic extension 2.3 Fraud and Dishonesty or 2.15 Fidelity, the Insured must give all necessary information and assistance to enable the Insurers to sue for and obtain reimbursement from any former or present Employee, apprentice, director or partner concerned in such loss or from the estate or legal representatives of such person. Where permissible at law any monies which, but for such fraud and dishonesty would be due to such person from the Insured, or any monies of such person held by the Insured, shall be deducted from any amount payable under this Policy.

## Interpretation

- 5.7 Words in the singular include the plural and words in the plural include the singular. Paragraph titles and Notes are included for information purposes only and do not form part of this Policy for the purpose of its construction and interpretation.

## Reasonable Precautions To Be Taken

- 5.8 The Insured shall take all reasonable steps to prevent any Claim or loss which may be covered by this Policy.
- 5.9 Immediately on becoming aware of any actual or possible Claim against any Insured, each Insured must take all reasonable steps and precautions, at the Insured's own expense, to avoid or minimise any liability or Defence Costs or costs and expenses arising from that actual or possible Claim.

## Alteration To Risk

- 5.10 The Insured shall give written notice to the Insurers as soon as is reasonably practicable but no later than 30 days of any material alteration to the risk during the Policy Period.

## Assignment Of Interest

- 5.11 No change in, modification of, or assignment of interest under this Policy shall have effect until the Insurers have given approval in writing.

### **Cancellation**

- 5.12 The Insurers may cancel this Policy in accordance with the provisions of the Insurance Contracts Act.
- 5.13 The Insured also may cancel this Policy at any time and the Insurers will allow a pro-rata refund of premium for the un-expired Policy Period.

### **Goods and Services Tax (Gst)**

- 5.14 Where a payment is made under this Policy by way of compensation in relation to a Claim, the Insurers will reduce the amount of the payment by the amount the recipient is entitled to an input tax credit.
- 5.15 Where a payment is made under this Policy for a taxable supply, the Insurers will reduce the amount of the payment by the amount of any input tax credit that the Insured is or will be entitled to in relation to that acquisition, service or supply.
- 5.16 Any Excess payable by the Insured shall be exclusive of any GST.

### **Other Insurance**

- 5.17 The Insurers shall not provide indemnity under this Policy in respect of any liability to the extent that indemnity is available to the Insured (or other person entitled to make a claim on this Policy) for such liability under some other contract of insurance PROVIDED THAT this exclusion shall not operate in respect of a claim by an Insured which is a contracting party to this Policy where that Insured is also a contracting party to the other contract of insurance.

### **Currency**

- 5.18 All monetary amounts referred to in this Policy are in Australian dollar currency.