

Professional Indemnity Excess Insurance Policy Costs Exclusive



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IMPORTANT INFORMATION

This Policy

This **Policy** is an important document. The **Policy** wording and **Schedule** together set out the cover provided, the amount insured and the terms and conditions of **Your** insurance. Please read it carefully and keep it in a safe place.

Your Insurance Broker has arranged this **Policy** for **You**. If **You** have any questions about **Your** cover, or **You** wish to contact **ProRisk**, please contact **Your** Insurance Broker for assistance.

ProRisk

ProRisk, Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076 has the authority to bind this **Policy** on behalf of the **Underwriters**.

Claims Made Policy

This **Policy** is issued by **ProRisk** on a **Claims** made and notified basis. This means that the **Policy** only covers **Claims** first made against **You** during the **Insurance Period** and notified to **ProRisk** in writing during the **Insurance Period**. The **Policy** does not provide cover for any **Claims** made against **You** during the **Insurance Period** if at any time prior to the commencement of the **Insurance Period** **You** were aware of facts which might give rise to those **Claims** being made against **You**.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where the insured gives notice in writing to the insurer during the **Insurance Period** of facts that might give rise to a **Claim** against the insured, the insurer cannot refuse to pay a **Claim** which arises out of those facts, by reason only that the **Claim** is made after the **Insurance Period** has expired.

Your Duty of Disclosure

Section 21 of the *Insurance Contracts Act 1984* provides that before **You** enter into a contract of general insurance with an insurer, **You** have a duty to disclose to the insurer every matter that **You** know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. **You** have the same duty to disclose those matters to the insurer before **You** renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of a matter:

- That diminishes the risk to be undertaken by the insurer;
- That is of common knowledge;
- That **Your** insurer knows, or in the ordinary course of its business, ought to know;
- As to which compliance with **Your** duty of disclosure is waived by the insurer.

Non-Disclosure

If **You** fail to comply with **Your** duty of disclosure, **We** may be entitled to reduce **Our** liability under the contract in respect of a **Claim** or **We** may cancel the contract. If **Your** non-disclosure is fraudulent, **We** may also have the option of avoiding the contract from its beginning.

Retroactive Liability

The **Policy** is limited by a **Retroactive Date**. The **Policy** does not cover any civil liability arising from **Your** conduct of the **Professional Business** prior to the **Retroactive Date**.

Alteration to Risk and Deregistration

The **Policy** requires **You** to notify us within thirty days of any material change in the nature of the **Professional Business**, or any act of insolvency or bankruptcy of the **Insured**. The **Policy** requires **You** to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of the **Insured's** statutory registration. **Claims** arising following the cancellation, suspension or termination of the **Insured's** statutory registration are excluded from indemnity under the **Policy**.

Limited Liability

The **Policy** provides that if a payment greater than the **Limit of Indemnity** is required to dispose of a **Claim**, **Our** liability for costs and expenses will be limited to the proportion that the **Limit of Indemnity** bears to the payment required to dispose of the **Claim**.

Policy Cancellation

In the event of **Policy** cancellation by the **Insured**, **ProRisk's** cancellation rates will apply.

Waiver of Rights of Subrogation

The **Policy** provides that **You** must not, without **Our** prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which **You** may have in respect of any **Claim** covered under this **Policy**. Further, **You** must not do anything or fail to do anything which excludes, limits or prejudices **Our** rights of subrogation.

Privacy Statement

ProRisk is bound by the obligations of the *Privacy Act 1988* (as amended) regarding the collection, use, disclosure and handling of personal information. We will protect the privacy of **Your** personal information.

We collect personal information about **You** to enable us to provide **You** with relevant products and services, to assess **Your** application for insurance and, if a contract is entered, to enable us to provide, administer, and manage **Your Policy**, and to investigate and handle any **Claims** under **Your Policy**. **We** may disclose **Your** information to third parties (who may be located overseas), such as **Underwriters**, lawyers, claims adjusters, and others appointed by **ProRisk** or by **Underwriters** to assist **Us** in providing relevant products and services. **We** may also disclose **Your** information to people listed as co-insured on **Your Policy** and to **Your** agents. By providing **Your** personal information to **Us**, **You** consent to **Us** making these disclosures.

If **You** do not provide all or part of the information required, **We** may not be able to provide **You** with **Our** products and services, consider **Your** application for insurance, administer **Your Policy**, assess or handle **Claims** under **Your Policy**, or **You** may breach **Your** duty of disclosure.

When **You** provide **Us** with personal information about other individuals, **We** rely upon **You** to have made them aware of that disclosure, and of the terms of the **ProRisk** Privacy Statement, and to obtain their consent. For a copy of the **ProRisk** Privacy Statement or to request access to or update **Your** personal information, contact the Privacy Officer at **ProRisk** by email: enquiries@prorisk.com.au or by mail at the address shown on this **Policy**.

General Insurance Code of Practice

ProRisk and **Underwriters** proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from www.codeofpractice.com.au.

This **Policy** and the **Schedule** are Insurance Council of Australia's General Insurance Code of Practice

compliant, apart from any **Claims** adjusted outside Australia.

Complaints Handling

Any enquiry or complaint relating to this insurance should be referred to **ProRisk** in the first instance. **We** have a complaints handling and internal dispute resolution process to assist **You**, and information about **Our** complaints handling procedures is available upon request. If this does not resolve the matter or **You** are not satisfied with the way a complaint has been dealt with, **You** should write to the Complaints Department of the **Underwriters**:

The Complaints Manager
Swiss Re International SE Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Telephone: (02) 8295 9500
Email: complaints_anz@swissre.com

Complaints that cannot be resolved by the Complaints Department of the **Underwriters** may be referred to the:

Australian Financial Complaints Authority
 GPO Box 3
Melbourne VIC 3001
Email: info@afca.org.au
Telephone: 1800 931 678

Further details will be provided at the appropriate stage of the complaints process.

Definitions

Apart from in the various headings, words appearing in bold type in the **Policy** have specific meanings attached to them, such as "**You**" and "**Us**". When reading the **Policy** please make sure that **You** refer to the various definitions to ensure that **You** understand what is being said.

PROFESSIONAL INDEMNITY EXCESS LAYER INSURANCE POLICY

In consideration of the payment of the **Premium** and in reliance on the contents of the **Proposal** and any other information submitted by or on **Your** behalf **We** will indemnify **You** in accordance with the terms of this **Policy**.

1. INSURING CLAUSE

1.1 **We** will cover **You** for any **Claim** first made against **You** and reported to **Us** during the **Period of Insurance** up to the **Limit of Liability** in excess of the **Underlying Limit**.

1.2 Liability to pay under this **Policy** shall not attach unless and until the underwriters of each **Underlying Policy** have paid or have admitted liability or have been held liable to pay, the full amount of the **Underlying Limit** exclusive of costs and expenses.

1.3 The insurance as provided by this **Policy** will attach:

- (a) as excess layer cover, but only after **Exhaustion** of the **Underlying Limit**, or
- (b) as primary cover for loss arising from **Claims** which would otherwise be covered under the **Primary Policy** but for **Exhaustion** of the **Underlying Limit**, subject to the **Limit of Liability** hereunder. Such primary cover will only be available for loss arising from **Claims** which have not contributed to the **Exhaustion** of the **Underlying Limit** and will be subject to any deductible specified in the **Primary Policy**.

1.4 Except as otherwise provided by this **Policy**, this **Policy** is subject to the same terms, conditions, and limitations as contained in the **Primary Policy** and, to the extent coverage is further limited or restricted, any **Underlying Policy**. In no event will this **Policy** grant broader coverage than would be provided by the **Primary Policy** or any **Underlying Policy**.

2. UNDERLYING INSURANCE

2.1. Each **Underlying Policy** must be maintained in full effect during the **Period of Insurance**, except for **Exhaustion** of the **Underlying Limit** or to the extent that the **Underlying Limit** is reduced by:

- (a) payment by any **Underlying Insurer** of a covered loss; or
- (b) where applicable, the retention by **You** of any amount of an otherwise covered loss on

account of non-payment of such amount by an insurer of any **Underlying Policy**.

2.2. Any loss covered under any **Underlying Policy** which for any reason remains unpaid (including due to financial impairment or insolvency of any **Underlying Insurer**), in whole or in part, by such **Underlying Insurer** will be retained by **You** and will not be covered by this **Policy**. **We** will nevertheless recognise retention by **You** of covered but unpaid loss as contributing to the **Exhaustion** of the **Underlying Limit**.

2.3. **You** must give **Us**, as soon as practicable but in no event later than 14 days, written notice and the full particulars of any reduction or **Exhaustion** of the **Underlying Limit** in accordance with clause 5.4 of this **Policy**.

2.4. If during the **Period of Insurance** the terms, conditions, or limitations of any **Underlying Policy** are changed in any manner, **You** must immediately notify **Us** in writing of the full particulars of any changes in accordance with clause 5.4 of this **Policy**. This **Policy** will be subject to such changes only after written consent by **Us** and **You** must pay any additional premium reasonably required by **Us** as a result of such changes.

2.5. If during the **Period of Insurance** any additional or return premiums are charged or allowed in connection with any **Underlying Policy**, **You** must give **Us** written notice of the full particulars thereof as soon as practicable in accordance with clause 5.4 of this **Policy**.

3. UNDERLYING SUB-LIMITS

3.1. This **Policy** will not provide excess layer insurance coverage with respect to any coverage for which there is a sub-limit in any **Underlying Policy**.

3.2. **We** will recognise payments by an **Underlying Insurer** in respect of any coverage for which there is a sub-limit in any **Underlying Policy** where such payments have contributed to **Exhaustion** of the **Underlying Limit**.

4. EXCLUSIONS

4.1. **We** will not be liable under the **Policy** to make any payment for loss directly or indirectly caused by, arising out of or in any way connected with any:

- (a) **Claim** first made prior to the **Period of Insurance**;
- (b) **Claim** or **Circumstances** notified, in whole or part, to any **Underlying Insurer** or any other insurer prior to the **Period of Insurance**; or
- (c) **Claim** or **Circumstances** of which the **Insured** was aware or ought reasonably to have been aware, prior to the **Period of Insurance**; or
- (d) act, error or omission of the **Insured** prior to the **Retroactive Date**.

5. CONDITIONS

5.1. Limits of Liability

Our maximum liability under this **Policy** for all **Claims** will be the **Limit of Liability** for the **Period of Insurance**.

5.2. Interpretation

In this policy, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are merely descriptive and not to aid interpretation; and
- (c) bolded words used in this policy have the meanings set out in section 6 of this **Policy**.

5.3. Governing Law and Jurisdiction

This **Policy** is governed by and is to be interpreted in accordance with the laws of the Commonwealth of Australia and of the State or Territory in which the **Policy** was issued. The courts of that State or Territory have exclusive jurisdiction in relation to any disputes regarding the interpretation of this **Policy**.

5.4. Notifications: Underwriting

- (a) **We** must be given notice in writing as soon as is practicable:
 - (i) if any **Underlying Policy** is cancelled or avoided;

- (ii) of any notice given by **You** to any **Underlying Insurer**;
- (iii) if any **Underlying Insurer** denies liability for a **Claim** or reduces the amount payable on a **Claim** under an **Underlying Policy**;
- (iv) if any changes or modifications are agreed to by any **Underlying Insurer**.

- (b) All notifications under this clause must be provided to **Us** in writing and addressed as follows:

Professional Risk Underwriting Pty Ltd

Level 3,
100 Wellington Parade
East Melbourne, VIC, 3002

5.5. Notifications: Claims

- (a) **You** must immediately notify **Us** during the **Period of Insurance** of any **Claim** made against **You**.
- (b) All notifications required under this clause must be provided to **Us** in writing and include the following:
 - (i) a specific description of the demand or assertion made against **You**;
 - (ii) details of all parties involved;
 - (iii) a copy of any:
 - written demand for money or services;
 - document commencing proceedings; and/or
 - written notice of any official investigation, inquiry or examination.
 - (iv) addressed as follows:

Professional Risk Underwriting Pty Ltd

Level 3,
100 Wellington Parade
East Melbourne VIC 3002

5.6. Cooperation of Insured

You must, at **Your** own expense, give **Us** and any investigators or legal representatives appointed by **Us**, all information that is reasonably required, and provide

Your full co-operation and assistance in the conduct of the investigation (including for the purpose of enabling **Us** to determine **Our** liability to provide indemnity under this **Policy**), defence, settlement, avoidance or reduction of any actual or possible **Claim** or any proceedings.

5.7. Conduct of Claims

- (a) **We** will have the right, but not the duty, and must be given the opportunity, effectively to associate with **You** in the investigation, settlement or defence of any **Claim** even if the **Underlying Limit** has not been **Exhausted**.
- (b) **You** must not settle any **Claim**, incur any costs or expenses or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** which could be covered by this **Policy** without **Our** prior written consent, which will not be unreasonably withheld.
- (c) **We** will not be liable for any settlement, costs, expenses, assumed obligation or admission of liability to which **We** have not consented in writing. **You** must give **Us** such information and cooperation as **We** may reasonably require.

5.8. Recoveries

All recoveries or payments recovered or received subsequent to a loss settlement under this **Policy** will be applied as if recovered or received prior to such settlement and all necessary adjustments will then be made between **You** and **Us**, provided always that the foregoing will not affect the time when loss under this **Policy** is payable.

5.9. Non Imputation

Notice to or knowledge possessed by any person will not effect waiver nor any change to any part of this **Policy** or stop **Us** from asserting any right under the terms of this **Policy**. The terms of this **Policy** will not be waived or changed, except by endorsement issued to form a part of this **Policy**, signed by **Us** or **Our** authorised representative.

5.10. Termination of Policy

- (a) Notwithstanding that this **Policy** will follow the terms, conditions, exclusions and limitations of the **Primary Policy**, this **Policy** will be cancelled immediately upon the cancellation of the **Primary Policy**, whether by **You** or the **Underlying Insurer** of the **Primary Policy**.

- (b) Notice of cancellation or non-renewal of the **Primary Policy** duly given by the **Underlying Insurer** of the **Primary Policy** will serve as notice of the cancellation or non-renewal of this **Policy** by **Us**.

5.11. Non-assignment

No change in, modification of, or assignment of interest under this **Policy** shall be effective unless made by written endorsement to this **Policy** duly executed by **Us**.

5.12 Sanctions Limitation

We will not be liable under this **Policy** to provide any cover nor make any claim or pay any other benefit to the extent that the provision of such cover, payment of such **Claim** or provision of such other benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction applicable to **Us**.

6. DEFINITIONS

- 6.1. **Circumstance** means any facts, matters or circumstances which give rise to a **Claim** or have the potential to give rise to a **Claim**.
- 6.2. **Claim** has the same meaning under this **Policy** as the **Primary Policy**.
- 6.3. **Exhausted** or **Exhaustion** means a situation where:
- (a) payment by any **Underlying Insurer** of a covered loss; or
 - (b) the retention by **You** of any amount of an otherwise covered loss on account of non-payment of such amount by the **Underlying Insurer** of any **Underlying Policy**;
- has resulted in total exhaustion of the **Underlying Limit**.
- 6.4. **Limit of Liability** means the amount specified in the **Schedule**.
- 6.5. **Period of Insurance** means the period of time specified in the **Schedule**.
- 6.6. **Premium** means the amount specified in the **Schedule**.
- 6.7. **Primary Policy** means the Primary Policy specified in the **Schedule**.
- 6.8. **Proposal** means the written proposal form together with any supplementary material completed by **You** or on **Your** behalf, that was given to **Us**, and relied on by **Us** to effect this **Policy**.
- 6.9. **ProRisk** means Professional Risk Underwriting Pty Ltd
ABN 80 103 953 073 AFSL 308076
- 6.10. **Retroactive Date** means the date specified in the **Schedule**.
- 6.11. **Schedule** means the **Schedule** attached to this **Policy**
- 6.12. **Underlying Insurer** means the Underlying Insurer(s) specified in the **Schedule**.
- 6.13. **Underlying Limit** means an amount equal to the aggregate of all limits of liability specified in the **Schedule** for all **Underlying Policies**, plus the uninsured retention, if any, applicable to the **Primary Policy**.
- 6.14. **Underlying Policy** means the Underlying Policy or Policies specified in the **Schedule** and includes the **Primary Policy**.
- 6.15. **Underwriters** means Swiss Re International SE Australia Branch (ABN 38 138 873 211).
- 6.16. **We, Our** and **Us** means **ProRisk** on behalf of **Underwriters**.
- 6.17. **You** and **Your** means any person or organisation designated as an insured by the **Primary Policy**.