

# SURA CONSTRUCTION

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## IMPORTANT INFORMATION

This Product Disclosure Statement (PDS) contains important information required under the Corporations Act 2001 (Cth).

This PDS includes the Owner Builder Construction and Third Party Liability Insurance policy wording commencing on page 12.

To assist You to locate specific items, a table of contents is provided on page 2.

### INTRODUCTION

The purpose of this PDS:

This PDS has been prepared by Us to assist You in understanding the insurance policy and making an informed choice about Your insurance requirements. This PDS sets out the significant features of the insurance policy including its benefits, risks and information about how the insurance premium is calculated.

The policy wording, which commences on page 12, contains a full description of the terms, conditions and limitations of the insurance policy.

### ABOUT SURA CONSTRUCTION

SURA Construction Pty Ltd ABN 35 147 580 756 (SURA Construction) has developed this Annual Construction Insurance Policy which is underwritten by the Insurer referred to below.

SURA Construction has an authority from the Insurer to arrange, enter into/bind and administer this insurance (including handling and settling claims) for the Insurer.

In providing any financial services SURA Construction acts as an Authorised Representative of SURA Pty Ltd ABN 36 115 672 350 AFSL 294 313.

#### Our contact details are:

Level 14/141 Walker Street  
North Sydney NSW  
PO Box 1813 North Sydney 2059  
Phone: 02 9930 9500

### ABOUT THE INSURER

This insurance is underwritten by Certain Underwriters at Lloyd's.

Lloyd's has been insuring Australian risks for over 150 years

and is licensed to write non-life insurance business under the Australian Insurance Act 1973. You or Your representatives can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Underwriters at Lloyd's is liable by requesting them from Us. In the event of loss, each Underwriter (and their Executors and Administrators) is only liable for their own share of the loss.

Lloyd's Underwriters have strong financial security characteristics. However, please note that ratings can vary from time to time. You can check the Insurer's current ratings at the following website Standard & Poors: [www.standardandpoors.com](http://www.standardandpoors.com)

You should contact SURA Construction in the first instance in relation to this insurance.

#### Lloyd's contact details are:

Lloyd's Australia Limited  
Level 9, 1 O'Connell Street  
Sydney, NSW 2000  
Phone: (02) 8298 0783  
Facsimile: (02) 8298 0788

### GENERAL INSURANCE CODE OF PRACTICE

We proudly support the General Insurance Code of Practice (the 'Code'). The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

The objectives of this Code are:

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

For further information on the Code, please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au) or alternatively You can request a brochure on the Code from SURA Construction.

# IMPORTANT INFORMATION

## YOUR COOLING OFF PERIOD

We will refund all Premium paid for cover under the insurance policy if You request cancellation of the insurance policy within 21 days of its commencement. To do this, You must advise Us in writing and return the Policy Schedule to SURA Construction. We will refund You the paid Premium less taxes and duties. We cannot recover. You will not receive a refund if You have made a claim under this Policy.

## DISPUTE RESOLUTION PROCESS

We view seriously any complaint made about Our products or services and will deal with it promptly and fairly.

If You have a complaint please first try to resolve it by contacting the relevant member of Our staff.

If the matter is still not resolved, please then contact Our Internal Disputes Resolution Officer on (02) 9930 9500, or by email at [IDR@SURA.com.au](mailto:IDR@SURA.com.au) or by writing to Us at the address for SURA Construction given above. They will seek to resolve the matter in accordance with the General Insurance Code of Practice and Our Dispute Resolution procedures.

If the matter is still not resolved, or You are not satisfied with the way a complaint has been dealt with, you should write to:

**Lloyd's Australia Limited**  
Level 9, 1 O'Connell Street  
Sydney, NSW 2000  
T: (02) 8298 0783  
F: (02) 8298 0788  
E: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)

If You are a natural person or a small business, and You are not satisfied with the final decision, You may wish to contact the Financial Ombudsman Service Australia ("FOS"). The FOS is a free independent external disputes resolution service provided to customers to review and resolve complaints where We have been unable to satisfy Your concerns.

For further details You can visit their website at [www.fos.org.au](http://www.fos.org.au) or contact them:

**The Financial Ombudsman Service Australia**  
GPO Box 3,  
Melbourne VIC 3001  
T: 1800 367 287  
E: [info@fos.org.au](mailto:info@fos.org.au)

## PRIVACY STATEMENT

In this Privacy Statement the use of "We", "Our" or "Us" means SURA Construction and the Insurers unless specified otherwise.

In this Privacy Statement the use of "personal information" includes sensitive information.

We are committed to protecting the privacy of the personal information You provide to Us.

The Privacy Act 1988 contains the Australian Privacy Principles which require Us to tell You that We collect, handle, store and disclose Your personal and sensitive information for the specific purpose of:

- deciding whether to issue a policy,
- determining the terms and conditions of Your Policy,
- compiling data to help develop and identify other products and services that may interest clients, and
- handling claims.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not;
- b) whether the information or opinion is recorded in a material form or not.

Sensitive information includes, amongst other things, information about an individual's racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

You have given Us Your consent to collect, use and disclose Your personal and sensitive information in order to provide You with the relevant services and/or products.

When You give us personal information about other individuals, We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant personal information to Us.

## IMPORTANT INFORMATION

We disclose personal information to other parties and service providers whom We believe are necessary to assist Us and them in providing the relevant services and/or products. For example, in handling Claims, We may have to disclose Your personal and other information to other parties and service providers such as Our claim management partner, other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents, facilitators, assessors or other parties as required by law. We limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it.

We may disclose Your personal information to Our insurers, reinsurers, related entities and service providers overseas, including but not limited to New Zealand, Singapore, India, United Kingdom, the Philippines, the European Union and the United States of America.

If You do not provide the personal information requested and/or do not provide Us with Your consent to the use and disclosure of Your personal information as set out in this Privacy Statement, Your insurance application may not be accepted, or We may not be able to administer Your Policy, or You may be in breach of Your duty of disclosure, the consequences of which are set out under the heading Duty of Disclosure in this document.

If You would like a copy of Our Privacy Policies, would like to seek access to or correct Your personal information, opt out of receiving materials We send, complain about a breach of Our privacy or You have any query on how Your personal information is collected or used, or any other query relating to Our Privacy Policies, please contact Us.

### SERVICE OF SUIT

The Insurers accepting this insurance agree that:

- if a dispute arises under this insurance, this insurance will be subject to Australian law and practice and the Insurers will submit to the jurisdiction of any competent court in the Commonwealth of Australia;
- any summons, notice or process to be served upon the Insurers may be served upon:
 

**Lloyd's Australia Limited**  
Level 9, 1 O'Connell Street  
Sydney, NSW 2000
- if a suit is instituted against any of the Insurers, all Insurers participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

### SEVERAL LIABILITY

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in the Policy Schedule.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with any other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various parts in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural. The insurers named hereon bind themselves each and for their own part and not one for another.

Each insurer's liability under this contract shall not exceed that percentage or amount of the risk shown against that insurer's name.

### SANCTIONS

We shall not be deemed to provide cover and We 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, Our parent company or Our ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the Commonwealth of Australia, United Kingdom or the United States of America.

# IMPORTANT NOTICES

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## YOUR DUTY OF DISCLOSURE

This Policy is subject to the Insurance Contracts Act 1984 (Act). Under that Act You have a Duty of Disclosure.

Before You take out insurance with Us, You have a duty to tell Us of everything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms. If You are not sure whether something is relevant You should inform Us anyway.

You have the same duty to inform Us of those matters before You renew, extend, vary, or reinstate Your contract of insurance. The duty applies until the Policy is entered into, or where relevant, renewed, extended, varied or reinstated (Relevant Time). If anything changes between when the answers are provided to Us or disclosures are made and the Relevant Time, You need to tell Us.

Your duty however does not require disclosure of matters that:

- reduces the risk;
- are common knowledge;
- We know or, in the ordinary course of Our business, ought to know; or
- We have indicated We do not want to know.

If You do not comply with Your duty of disclosure, We may be entitled to:

- reduce Our liability for any claim;
- cancel the contract;
- refuse to pay the claim; or
- avoid the contract from its beginning, if Your non-disclosure was fraudulent.

After the Policy is entered into, ongoing disclosure obligation can apply. See the Policy for details.

## HOW TO APPLY FOR INSURANCE

Complete the Owner Builder Construction and Third Party Liability Application form as provided to You by SURA Construction or Your insurance broker. If We accept Your Application for insurance, You will receive a Policy Schedule that sets out details of the insurance You have taken out.

## HOW TO MAKE A CLAIM

To make a claim, contact SURA Construction by email [claims@sura.com.au](mailto:claims@sura.com.au) or by phone (02) 9930 9500.

Details about making a claim are shown in the policy wording under: 'GENERAL CONDITIONS: GC4' on pages 15 and 16.

## TAXATION INFORMATION

We show all taxes and charges as separate items on all Tax Invoices (e.g. stamp duty and the Goods and Services Tax (GST)).

When We pay a claim, Your GST status will determine the amount of GST we pay on claims. Details are provided in the policy wording.

## THE FINANCIAL CLAIMS SCHEME

In the event of the insolvency of the Insurer, You may be entitled to payment under the Financial Claims Scheme. Access to the scheme is subject to eligibility criteria.

Information about the scheme can be obtained from the APRA website at [www.apra.gov.au](http://www.apra.gov.au) and the APRA hotline on 1300 558 849.

# IMPORTANT NOTICES

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## SIGNIFICANT FEATURES AND BENEFITS

This Policy contains two types of cover.

COVER	PROPERTY/LIABILITY INSURED	DESCRIPTION OF COVER PROVIDED
<b>SECTION ONE</b>		
Material Damage Cover	Construction materials and labour Pre-Existing Property	Covers insured damage to construction works and Pre-Existing Property subject to the terms, conditions and exclusions of this Policy.  Details of the cover provided under this Section are stated in the policy wording under the heading 'INSURING CLAUSES' on page 19.
<b>SECTION TWO</b>	Public Liability	
Third Party Liability		Indemnifies You against public liability subject to the terms, conditions and exclusions of this Policy.  Details of the cover provided under this Section are stated in the policy wording under the heading 'INSURING CLAUSE' on page 23.

With each type of cover, a range of additional benefits may be included.

These additional benefits are shown in the policy wording under:

- ADDITIONAL BENEFITS – SECTION 1 on page 19.
- ADDITIONAL BENEFITS – SECTION 2 on page 23.

You will need to read the policy wording, which commences on page 10, the Policy Schedule, and any Endorsement applicable Policy Schedule to Your Policy for a full description of the features and benefits of this insurance policy.

# SIGNIFICANT RISKS

## EXCLUSIONS/CONDITIONS

Our insurance is designed to provide protection for You in the event of something happening which has been insured against.

Under some circumstances, this Policy will not provide any insurance cover to You. For example, We do not provide cover for loss, damage or liability arising out of war. In the policy wording, We state when cover is not provided under:

- EXCLUSIONS (applying to Section 1) on pages 20 to 22;
- EXCLUSIONS (applying to Section 2) on pages 24 to 27; and
- GENERAL EXCLUSIONS on page 14

There are things that You must do in order for Your insurance cover to apply. For example, You must take all reasonable precautions to prevent damage. In the policy wording We state what You need to do under:

- GENERAL CONDITIONS on pages 15 to 18; and
- GC4 CLAIMS on pages 15 to 16.

## AVERAGE/UNDERINSURANCE

In the event of loss or damage covered by this Policy, if it is found that the Declared Value for the Construction Cost or the Declared Value for Pre-Existing Property, is less than 90% of the actual sum required to reinstate in accordance with the terms of this Policy, then average will apply and the indemnity that We will be required to pay will be reduced in the same proportion that 90% of the actual sum required represents to the Declared Value.

## EXCESSES

If You make a claim under the Policy, You may be required to pay one or more Excesses. The descriptions of these Excesses and the circumstances in which they are applied are shown in the policy wording under 'GENERAL CONDITIONS' on pages 15 to 18, 'ADDITIONAL BENEFITS TO SECTION 1' on page 19, and on Your Policy Schedule.

We take into consideration a number of factors in setting the amount of Your Excess. These include factors relating to:

- the type of construction insured;
- where the project is to be undertaken;
- the type of loss covered; and
- Your previous insurance and claims history.

At the time of Your enquiry or application for insurance, the amount of all Excesses applicable to Your Policy will be advised to You.

## COSTS OF THIS INSURANCE

The Premium payable by You will be shown on Your Tax Invoice.

The key factors that influence the Premium calculation are reflected in the questions asked, and information sought at the time of Your enquiry or application for this insurance. These include factors relating to:

- the type of construction insured;
- where the project is being undertaken;
- the type of loss covered; and
- Your previous insurance and claims history.

Premiums are subject to Commonwealth and state taxes and/or charges. These include GST and stamp duty. The amount of these taxes and/or charges will be shown on Your Tax Invoice.

## ABOUT YOUR POLICY

You should read this document carefully, together with the Policy Schedule and any documents which make up Your Policy, so You understand the extent of cover provided and to satisfy yourself that it meets Your requirements. If You wish to vary Your cover or make further inquiries, please contact Your broker.

The SURA Construction Owner Builder Construction Insurance Policy consists of:

- this Product Disclosure Statement (PDS);
- each Policy Schedule issued by SURA Construction in connection with this PDS; and
- any other documents which We tell You form part of Your Policy such as each Endorsement and Supplementary PDS.

This Policy, Policy Schedule and Endorsements (if any), are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear that specific meaning wherever it may appear.

# SIGNIFICANT RISKS

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## TERMS OF POLICY

In consideration of the payment to Us of the amounts payable for this insurance, We will indemnify You in accordance with this Policy.

## LIMITING INSURER'S RIGHTS TO SUBROGATION

If You have entered into an agreement with another party which prevents Us from taking a recovery action for compensation from that party it may affect Your rights to cover under this Policy.

Should You now be a party to such agreement or be requested to enter such an agreement in the future please advise SURA Construction immediately in writing.

## GST

The amount payable by You for this Policy includes an amount for GST.

The Limit of Liability and all other limits applicable to this Policy are GST inclusive.

When We pay a claim, Your GST status will determine the amount We pay.

If You are:

- not registered for GST, the amount We pay is the Limit of Liability or the other limits applicable to this Policy being inclusive of GST,
- registered for GST, We will pay the Limit of Liability or the other limits applicable to this Policy inclusive of GST less Your Input Tax Credit (ITC) to which You are entitled or would be entitled if You made a relevant Acquisition. This ITC may be claimable within your Business Activity Statement (BAS).

You must advise Us of Your correct Australian Business Number and Taxable Percentage. Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of a claim is less than the Limit of Liability or the other limits applicable to this Policy We will only pay the GST (less Your ITC credit) applicable to the settlement. This means that if these amounts are not sufficient to cover the claim, We will only pay the GST relating to Our settlement of the claim. We will pay the claim by reference to the GST exclusive amount of any supply made by any business of Yours which is relevant to the claim.

GST, ITC, BAS and Acquisition all have the same meaning as given to those words or expressions in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related legislation as amended from time to time.

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

## GENERAL DEFINITIONS

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Whenever the words listed below are used in this Policy, they mean what is set out below:

### **D1 "Abandonment" means**

That point in the Project when all work activities on the Project Site have come to a complete stop and no further activity by the Named Insured can be reasonably envisaged in the near future on that Project Site.

### **D2 "Additional Insureds" means**

Any of the following, unless stated otherwise in the Policy Schedule:

- a) project manager; or
- b) contractor

with whom the Named Insured has entered into a contract for the performance of the works and only to the extent of their interest and involvement in the Insured Project

"Additional Insureds" does not include:

1. an architect, engineer or other consultant unless they are specifically named in the Policy Schedule and then only in respect of their activities whilst on the Project Site;
2. manufacturer or supplier except if they carry out work on the Project Site and then in respect of such work only;
3. any person or entity, not licensed in accordance with applicable legal requirements, to perform the activities in which they were engaged in giving rise to the loss or damage; or
4. Any other person or entity (and their interests) other than as described in a) and b) above.

### **D3 "Aircraft" means**

Anything made or intended to fly or move in or through the air or space other than model aircraft.

### **D4 "Application" means**

The completed application provided to Us, that contains information and statements which, together with any other information or documents provided, form the basis of this Policy.

### **D5 "Canada" means**

Canada and its respective territories, protectorates or dependencies.

### **D6 "Compensation" means**

The amount payable by You by reason of any judgment ordered by a court of competent jurisdiction within the Commonwealth of Australia or by reason of any settlement of any claim negotiated with Our consent.

### **D7 "Data" means**

Representations of information or concepts, in any form whatsoever.

### **D8 "Data Problem" means**

- a) erasure, destruction, corruption, misappropriation, or misinterpretation of Data;
- b) any error in creating, amending, entering, deleting or using Data; and/or
- c) the inability to receive, transmit or use Data.

### **D9 "Employee" means**

Any person employed under a contract of service or apprenticeship but does not include a consultant, contractor, sub-contractor or agent.

### **D10 "Employee Tools" means**

Construction tools and effects owned or in the care, custody and control of the Named Insured or their Employees up to a maximum new replacement value of \$5,000 per item. Employee Tools do not include unmanned aerial vehicles, laptop computers, mobile telephones, two-way radios or other voice transmitters or receivers, or personal organisers or cameras, unless stated in the Policy Schedule.

### **D11 "Endorsed" / "Endorsement" means**

Documentary evidence of an alteration to the Policy which forms part of the Policy.

### **D12 "Excess" means**

The amount, stated in the Policy Schedule, that is the uninsured first portion of an otherwise covered loss. As such, it will be deducted from the amount otherwise payable for each Indemnifiable Event in relation to Section 1 of this Policy or Occurrence in relation to Section 2 of this Policy.

### **D13 "Geographic Limitations" means**

- a) anywhere in the Commonwealth of Australia, and
- b) elsewhere in the world but only in respect of the Named Insured's Business visits by directors and Employees of the Named Insured normally resident in the Commonwealth of Australia, other than directors or Employees who are engaged in Manual Labour during such visits.

## GENERAL DEFINITIONS

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### D14 "GST" means

Goods and Services Tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

### D15 "Hovercraft" means

Any vessel, craft or thing made to travel over land or water, supported by a cushion of air.

### D16 "Indemnifiable Event" means

A sudden, unforeseen and unintended physical loss of or damage to the Insured Project resulting from any cause not excluded by this Policy, occurring at and discovered at the Project Site during the Period of Insurance.

Any such loss of or damage to the Insured Project during any one period of seventy-two (72) consecutive hours caused by water, subsidence, landslip, cyclone, storm, tempest, earthquake or bushfire will be deemed to be one single indemnifiable event. The Named Insured may select the time from which any such period will commence but no two such selected periods will overlap.

### D17 "Input Tax Credits" means

The amount You are entitled to claim as a credit against GST paid by You.

### D18 "Insured Project" means

The whole of the works as described in the Policy Schedule, whether permanent or temporary, and including consumables and all other materials (inclusive of overheads and profit margins). It includes any material after it is unloaded on the Project Site that is incorporated or to be incorporated therein for the performance of the Insured Project.

Insured Project does not include Pre-existing Property, Mobile Machinery and Equipment, or Employee Tools unless otherwise agreed by Endorsement.

### D19 "Insured Property" means

Construction materials meant to be incorporated into the Insured Project, Pre-existing Property, Mobile Machinery and Equipment and Employee Tools provided that a corresponding amount is shown in the Policy Schedule.

### D20 "Insurer" means

Certain Underwriters at Lloyd's.

### D21 "Internet Operations" means

- a) use of electronic mail systems by You or Your Employees, including part time and temporary staff, for the purpose of communicating with either other insured parties or third parties;
- b) access through Your network to the world wide web or a public internet site by You or Your Employees, including part time and temporary staff, and others within the insured parties;
- c) access to Your intranet (internal company information and computing resources) which is made available through the world wide web for Your customers or others outside the insured parties; and
- d) the operation and maintenance of Your website.

### D22 "Limit of Liability" means

The amount or amounts specified in the Policy Schedule, in respect of cover under Section 2, Third Party Legal Liability.

### D23 "Manual Labour" means

Work primarily involving physical exertion, but does not include activities associated with design, marketing, promotion, demonstration or selling.

### D24 "Mobile Machinery and Equipment" means

Hoardings, temporary buildings, scaffolding, false work and re-usable formwork, Vehicles, hoists, cranes, earth moving equipment, air compressors, welding equipment and other similar plant whether self-propelled or non self-propelled, used or to be used in the process of executing the Contract Works.

### D25 "Named Insured" means

The person(s) stated as such in the Policy Schedule.

### D26 "Named Insured's Business" means

The carrying out of the Insured Project as shown in the Policy Schedule.

### D27 "Occurrence" means

- a) an event, including continuous or repeated exposure to substantially the same general conditions, or
- b) a series of events consequent upon or attributable to one source or original cause,

which results in either Personal Injury or Property Damage that You neither expected nor intended to happen.

## GENERAL DEFINITIONS

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### D28 "Period of Insurance" means

The period of time starting with the date stated in the Policy Schedule and continuing to the earlier of:

- a) with respect to any portion of the Insured Project, the time that portion is taken over or put into use (whichever is the earlier) by the Named Insured; or
- b) the expiry date as stated in the Policy Schedule, unless varied by Endorsement.

Where any part of the Insured Project is required to undergo either testing or commissioning then for the purposes of this Policy such testing or commissioning will be deemed to occur during the Period of Insurance.

### D29 "Personal Injury" means

- a) bodily injury (which expression includes death, disease or illness), disability, shock, fright, mental anguish, mental injury or loss of consortium;
- b) false arrest, wrongful detention, false imprisonment or malicious prosecution;
- c) wrongful entry or eviction or other invasion of privacy;
- d) a publication or utterance of a libel or, slander, or other defamatory or disparaging material; or
- e) assault and battery not committed by or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

### D30 "Policy" means

The contract of insurance between the Insurer and the Named Insured, consisting of:

- a) this PDS;
- b) each Schedule issued by SURA Construction in connection with this PDS; and
- c) each certificate or Endorsement issued by SURA Construction in connection with this PDS.

### D31 "Policy Schedule" means

The document entitled as such, setting out the particular variable terms including Premiums, Excesses, Declared Values, Contract Values and limits of this Policy. For this Policy to be valid, the Policy Schedule must be signed by Our authorised officer.

### D32 "Pollutant" means

Any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste materials. Waste includes material to be recycled, reconditioned or reclaimed.

### D33 "Pre-existing Property" means

Property, including all installations, services and facilities, described in the Policy Schedule and already existing at the Project Site before the commencement of the Insured Project.

Pre-existing Property does not include any moveable personal property kept on the Project Site, the Project Site itself, or driveways, pathways, outside paving, swimming pools, landscaping, vegetation or fencing, unless specifically stated in the Policy Schedule.

### D34 "Premium" means

The amount of money that is charged for the insurance cover provided under this Policy including all statutory charges, levies and taxes.

### D35 "Products" means

Anything (including any component, packaging or container of or for such thing) after it has ceased to be in the Insured's possession or control which has been manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, altered, serviced, treated, sold, supplied, re-supplied or distributed by You in the course of the Named Insured's Business (as described in the Policy Schedule). The term includes anything (including any component, packaging or container of or for such thing) which by operation of a law of the Commonwealth of Australia You are deemed to have manufactured.

### D36 "Property Damage" means

- a) physical damage to or loss or destruction of tangible property including any resulting loss of use of that tangible property; or
- b) loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible property.

All such loss of use will be deemed to happen at the time of the physical damage to or destruction of the tangible property that caused it.

### D37 "Project Site" means

The address stated in the Policy Schedule, where the construction activity of the Insured Project is to be completed.

## GENERAL DEFINITIONS

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### **D38 "Statute" means**

An Act or enactment of the Commonwealth of Australia, an Australian state or territory, or an Australian local authority. The term also includes any statutory instrument made under, or pursuant to, a power conferred by an Act or enactment, including a regulation, order in council, rule, by-law, ordinance, proclamation and notification, standard or guideline of a public nature.

### **D39 "Sum Insured" means**

The dollar amount(s) as set out in the Policy Schedule, as applicable.

### **D40 "Supplementary Payments" means**

The charges, expenses and legal costs referred to in paragraphs a), b), c) and d) in clause S2.2.

### **D41 "Terrorism" means**

An ideologically motivated act or acts or threat of action, or an act in pursuit of political, religious, ideological, or similar purposes to influence or intimidate the public or a section of the public or any government de jure or de facto of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any group(s), organisation(s) or government(s) de jure or de facto, and which:

- a) involves the use of violence or force or threat of violence or force against one or more persons;
- b) involves damage to property;
- c) endangers life other than that of the person(s) committing the action;
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or disrupt an electronic system.

### **D42 "Transit" (which shall also include storage away from the Contract Site) means**

- a) transportation of materials and components, intended for incorporation into the Contract Works, such transportation beginning after the completion of loading in an undamaged condition, continuing during transportation, including transshipment incidental thereto and ending after the completion of unloading at the address of the Contract Site. Transit means inland conveyances and can also extend to include ocean marine shipments from ports or places within mainland Australia and Tasmania directly to ports or places within mainland Australia and Tasmania, and

- b) storage away from the Contract Site of materials and components intended for incorporation into the Contract Works. Provided such storage occurs after the materials and components are no longer in the care, custody or control of the manufacturer or the supplier.

### **D43 "United States" means**

The United States of America and its respective territories, protectorates or dependencies.

### **D44 "Vehicle" means**

Any type of machine on wheels or on caterpillar tracks (including any trailer, caravan or other apparatus attached to the machine) made or intended to be propelled other than by manual or animal power.

### **D45 "Watercraft" means**

Anything made or intended to float or travel on or through water other than model boats.

### **D46 "We" / "Our" / "Us" means**

SURA Construction acting under a binder as an agent of the Insurer.

### **D47 "You", "Your" means**

- a) the Named Insured stated in the Policy Schedule; and
- b) Additional Insureds as defined herein.

# GENERAL EXCLUSIONS APPLICABLE TO SECTIONS ONE AND TWO

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We will not indemnify You against loss, damage or liability:

## GE1 CESSATION OR ABANDONMENT

- a) occurring during a period of cessation of work on the Contract Site, which period does not follow an Indemnifiable Event. This exclusion does not apply to the first 30 consecutive days of such a period; or
- b) occurring or arising after Abandonment of the Contract Site.

## GE2 INTERNET OPERATIONS

Arising directly or indirectly out of or in connection with Your Internet Operations provided that this General Exclusion GE2 does not apply to Personal Injury or Property Damage arising out of any material prepared by the manufacturer in respect of product use, safety instructions or warnings which is reproduced on Your website.

## GE3 NUCLEAR

Directly or indirectly arising from or in any way connected with nuclear reaction, nuclear radioactivity or radioactive contamination or the use handling or transportation of radioactive materials or of any weapon of war or explosive device employing nuclear fission or fusion. However General Exclusion GE3 will not apply to physical loss of or damage arising from the use of commercial radioactive isotopes.

## GE4 TERRORISM

Caused directly or indirectly, in whole or in part, by Terrorism or by any activity or decision of a government agency or other entity to prevent, respond to or terminate Terrorism. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

## GE5 UNDERGROUND SERVICES

To, or in relation to, underground services, underground cables, fibre, or underground pipes of any kind, unless You have complied with clause GC13 d).

## GE6 WAR

Directly or indirectly arising from or in any way connected with war, invasion, act of any foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, mutiny, the use of any military or usurped power, conspiracy, confiscation, commandeering, nationalisation or requisition or destruction of or damage by order of any government whether lawful or de facto or by any public or local authority.

## GE7 DEMOLITION

Caused directly or indirectly by the demolition of any structure over 10 metres in height, provided that this General Exclusion GE7 does not apply to any internal non-structural demolition.

## GE8 EXPLOSIVES

Arising directly or indirectly out of or in connection with the use of any explosive material or device.

## GE9 WELDING, FLAME CUTTING, APPLICATION OF HEAT

Arising directly or indirectly out of or in connection with welding and flame cutting that does not comply with the Australian Standard "AS1674.1 – 1997 and AS1674.2 – 2003. Safety and Welding in Allied Processes" and its amendments.

## GE10 PROHIBITED BY LAW

To the extent that the provision of such indemnity, the making of any payment or the provision of any benefit is prohibited by law or by doing so will expose Us to any sanction, prohibition or restriction under United Nations resolutions or any applicable trade or economic sanctions, laws or regulations.

# GENERAL CONDITIONS APPLICABLE TO SECTIONS ONE AND TWO

The following Conditions apply to both Section 1 and 2 of this Policy (unless otherwise stated).

## GC1 ALTERATION OF RISK

Our decision to provide this insurance is based on information provided to Us by the Named Insured. This Policy, including the amount of Premium, may be affected if any of the facts or circumstances, which existed at the commencement of the Policy, change.

The Named Insured must notify Us in writing as soon as the Named Insured is aware of any changes in the information provided to Us, in respect of any alteration in the risk or the nature of the risk, including but not limited to:

- a) any alteration in design, material, construction programme or the method of construction;
- b) the nature of the construction activity;
- c) any change to the Named Insured's Business activities; or
- d) the Named Insured's Business is wound up, carried on by an insolvency practitioner or permanently discontinued.

Where such notice is given, We will be entitled to negotiate with the Named Insured the terms for the continuation of this Policy. In the meantime, You must at Your own expense take all reasonable precautions to minimise the risk of any loss, damage or liability and must comply with any reasonable directions or requirements of Ours.

We may also be entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984 (Cth).

## GC2 ASSIGNMENT

No assignment of interest under this Policy will bind Us until its consent is given and Endorsed hereon by Us.

## GC3 CANCELLATION

This Policy may be cancelled:

- a) by the Named Insured at any point in time. Such cancellation must be made in writing and will be effective on the date We physically receive the notice. In the event of cancellation by the Named Insured, We are entitled to retain the Premium in full.

- b) by Us in accordance with the law. In such a case the Named Insured will be entitled to a pro rata refund in respect of the Premium for the unused portion of the estimated value of construction works.

In the event of the Policy being cancelled all cover will cease from the date of cancellation or, if due to non-payment of Premium, from the date from which the coverage for which that Premium represented the consideration was due to commence.

## GC4 CLAIMS

Following discovery of any loss, damage, or injury that might give rise to a claim under this Policy:

- a) You must take reasonable steps or precautions to minimise or prevent further loss, damage, injury or illness. You are permitted to take immediate action to avoid injury or loss of life or subsequent loss or damage to property and such action will not prejudice Your position in respect of a claim hereunder;
- b) You must not admit responsibility or liability to anyone without Our written consent;
- c) You must notify Us, without delay and within 30 days, of the details of the loss, damage or injury;
- d) You must do whatever can be done to preserve all property, Products, plant and all other things that may assist Us in investigating or defending a claim, and make them available for inspection by Us, Our employees or agents including assisting in determining if there are rights of recovery against another entity or person;
- e) We may appoint legal or other representatives to assist in the conduct of a claim;
- f) You must not negotiate, pay or settle, or attempt to settle or defend any claim without Our written consent;
- g) You must, if any legal proceedings are brought against You in respect of an Occurrence, immediately send details of those legal proceedings to Us so that We may consider if this Policy will respond;
- h) You will be required to cooperate with Us fully in any investigation, negotiation, defence or settlement of any claim and at all times permit Us, Our employees or agents to enquire into, investigate and examine the circumstances of any loss, damage or injury. This may include attending court to give evidence;

# GENERAL CONDITIONS APPLICABLE TO SECTIONS ONE AND TWO

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- i) We have full discretion on how to conduct the claim including compromising or paying a claim, regardless of whether or not You believe it should be defended, and pursuing in Your name any claims for recovery or contribution in accordance with GC 16 Subrogation;
- j) You must supply all the information and documentation requested by Us, Our employees or agents. If We require a statutory declaration verifying the details of the claim and any other matters connected with it, You must provide such declaration; and
- k) notify the Police of any actual or attempted theft, burglary or malicious damage.

## GC5 MINOR REPAIRS

Upon notification of any loss or damage being given to Us, You may carry out repairs or make good any minor damage, reasonably estimated at less than \$2,500, but in all other cases You must give Us, Our employees or agents an opportunity to inspect the loss or damage before any repairs or alterations are effected. If no inspection is carried out by or on behalf of Us within a period of time which is reasonable having regard to the location of the risk, weather conditions and any other relevant factors, You may proceed with such repairs or replacement.

## GC6 FURTHER DAMAGE

We will not pay for any further damage to any item caused by the failure to repair that item properly and without delay, except for what is specifically covered under clause S1.4.5.

## GC7 OUTSTANDING PREMIUM

If any portion of the Premium, including any final adjustment, is still outstanding and a claim has occurred which is otherwise to be settled, the outstanding Premium must be paid before the claim becomes due and payable. If the actual Premium has still not been received after 90 days from expiry date, Our liability in respect of any claim is limited to the proportion of the indemnity, which would otherwise be payable, which the Premium paid represents of the actual Premium payable.

## GC8 GST

### GC8.1 GST liability

This Policy has a GST provision in relation to Premium and Our payment to You for claims. It may have an impact on how You determine the amount of insurance needed. Please read it carefully and seek professional advice if there are any queries about GST and this insurance.

### GC8.2 Sums Insured/Limit of Liability

All monetary limits in this Policy do not include an amount for GST, but may be increased for GST in some circumstances (see below). You should have regard to the impact of GST when calculating how much to insure for, and obtain tax advice where required.

### GC8.3 Claim Settlement

Where You are liable to pay an amount for GST in respect of an acquisition relevant to a claim (such as services to repair a damaged item insured under this Policy) and We agree to pay the claim, We will pay for the GST amount. However, if the Sum Insured/Limit of Liability is not sufficient to cover the loss, We will only pay the GST amount that relates to the settlement of the claim. We will reduce the GST amount payable by any Input Tax Credits to which You are or would be entitled on a relevant acquisition.

We will pay the GST amount less any Input Tax Credit in addition to the Sum Insured/Limit of Liability or other limits shown in the Policy.

Where We make a payment under this Policy as Compensation instead of payment for a relevant acquisition, the amount of payment will be reduced by the amount of any Input Tax Credit that You would have been entitled to had the payment been applied to a relevant acquisition.

We will (where relevant) pay Your claim by reference to the GST exclusive amount of any supply made by Your business, which is relevant to the claim.

### GC8.4 Disclosure – Input Tax Credit Entitlement

If You register, or are registered for GST, You are required to inform Us of the entitlement to an Input Tax Credit on the Premium. If You fail to disclose or understate the entitlement, You may be liable for GST on a claim paid. This Policy does not cover You for this GST liability, nor for any fine, penalty or charge to which You may be liable due to Your failure to disclose or a misstatement made by You in relation to the entitlement to an Input Tax Credit for the Premium.

# GENERAL CONDITIONS APPLICABLE TO SECTIONS ONE AND TWO

## GC9 OUR RIGHT OF INSPECTION AND EXAMINATION AND AUDIT OF BOOKS

We or any of Our employees or agents will at any reasonable time be entitled but not obliged to inspect and examine, at the Contract Site and any other location, any work, property, procedure, books or records associated directly or indirectly with the Insured Project, the subject of this Policy, and You must provide to Us, all details and information which they reasonably require. Whether or not We or any of Our employees or agents are conducting an inspection or issuing a report following such inspection, such conduct or issuing will not constitute an undertaking to determine or warrant that the execution or the operation of any property associated directly or indirectly with the Insured Project the subject of this Policy is in compliance with any law, rule or regulation.

We or any of Our employees or agents may examine or audit any book or record of Yours at any time after the end of the Policy Period, as far as that examination or audit relates to the subject matter of this Policy.

## GC10 NOTICES

Any notice under this Policy, to be given to Us, may be given to any of Our offices.

Any notice under this Policy given to the Named Insured will be deemed a notice given to You.

## GC11 OTHER INSURANCE

Following any claim being made under this Policy, You must notify Us of any other insurance covering the same loss, damage or injury of which You are aware.

## GC12 POLICY CONSTRUCTION AND INTERPRETATION

- a) The construction, interpretation and meaning of the terms of this Policy is to be in accordance with the laws of the state or territory in which this Policy is issued.
- b) Any dispute relating to this Policy is to be submitted to the exclusive jurisdiction of the courts of that state or territory.
- c) The headings in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- d) In this Policy, words used in the singular can include the plural and vice versa.
- e) In this Policy, words used in the masculine gender also include the feminine or neuter genders and vice versa.

## GC13 PRECAUTIONS

You and Your agents must, at Your own expense, take due care and all reasonable precautions to prevent loss, theft, damage or injury and:

- a) comply with all reasonable recommendations made by Us to prevent loss, damage or injury;
- b) comply with all laws and statutory requirements in respect of loss, damage or injury prevention, recommendations by manufacturers and suppliers, including the responsibility of keeping safety devices, such as load movement and overload devices in place and fully operational at all times;
- c) must take immediate action to trace, recall or modify any of Your Products containing any defect or deficiency of which You have knowledge or have reason to suspect. This includes any compulsory recall or ban imposed by a government or statutory agency; and
- d) in respect of underground services, before any work is undertaken which may affect underground services, underground cables, fibre, or underground pipes of any kind, existing prior to the commencement of the Insured Project, You will:
  - i) make a written request to the relevant public authority or the owner of such services, cables, fibre, or pipes for documents or information as to the location of such services, cables, fibre or pipes;
  - ii) obtain from the public authority or the owner of such services, cables, fibre or pipes a written confirmation, or oral but documented confirmation, of the exact position of such services, cables, fibre or pipes; and
  - iii) subsequently trace the location of the services, cables, fibre or pipes and indicate the location in situ.

After such services, cables, fibre or pipes have been located, excavate with caution in order to reduce the risk of damage.

## GC14 PREMIUM

The Premium is a non-adjustable amount unless We agree otherwise by Endorsement.

# GENERAL CONDITIONS APPLICABLE TO SECTIONS ONE AND TWO

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## GC15 REINSTATEMENT OF SUM(S) INSURED

Following notification of a claim to Us under this Policy, We will reinstate the Sum(s) Insured, but only in relation to an Indemnifiable Event under Section 1 and an Occurrence covered under clause S2.1.1, which has not already occurred. Where the Sum Insured is reinstated, the Named Insured will pay the additional Premium required by Us taking the un-expired Period of Insurance into consideration.

## GC16 SUBROGATION

If You have a right to recover Your loss from any other party, then, on accepting liability under this Policy, We will be entitled to exercise that right in Your name and to Our benefit. You must fully co-operate with Us in exercising that right.

If We recover an amount greater than the amount that We have paid in settlement of Your claim plus related costs, We will pay the remaining balance to You.

## GC17 LIMITING INSURERS RIGHT TO SUBROGATION

If You have entered into an agreement with another party which prevents Allianz from taking a recovery action for compensation from that party it may affect Your rights to cover under this Policy.

Should you now be a party to such agreement or be requested to enter such an agreement in the future please advise SURA Construction immediately in writing.

# SECTION ONE

## MATERIAL DAMAGE

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### S1.1 INSURING CLAUSE

We agree, subject to the terms of this Policy and in consideration of the payment of the Premium, to indemnify You with respect to the Insured Project to the extent and in the manner stated below against Indemnifiable Events occurring during the Period of Insurance.

#### S1.1.1 Transit

We will indemnify You against an Indemnifiable Event affecting any materials or property to be incorporated into the Insured Project, and belonging to or under Your care, custody and control whilst in Transit during the Period of Insurance.

The indemnity will not exceed the Sum Insured stated in the Policy Schedule for Transit, less the applicable Excess.

### S1.2 ADDITIONAL BENEFITS

As a direct consequence of an Indemnifiable Event and provided that an amount is stated in the Policy Schedule, this Policy is extended to cover necessary and reasonable costs and expenses incurred by the Named Insured that are not otherwise recoverable, for the following:

#### S1.2.1 Escalation

Being an allowance for an increase in the cost of the works and the materials or items incorporated therein that occurs during the Period of Insurance due to the effects of inflation, as well as for variations to the Insured Project happening prior to the time of the Indemnifiable Event.

#### S1.2.2 Removal of Debris

Being:

- a) the removal and disposal of debris coming onto the Project Site, as a consequence of an Indemnifiable Event necessary to restore or replace damaged Insured Property;
- b) the demolition, removal and disposal of damaged Insured Property; and
- c) the removal and disposal of undamaged Insured Property from the Project Site necessary to restore or replace damaged Insured Property.

#### S1.2.3 Professional Fees

Being the fees of architects, surveyors, consulting engineers and other professional consultants to restore or replace Insured Property. Professional Fees will not include any fees for the preparation of a claim or estimate of fees.

Professional Fees will not exceed rates authorised under the scales (if any) of the various institutions regulating such charges at the time of the loss or damage.

### S1.3 LIMIT OF INDEMNITY

Our total liability under this Section of the Policy, in respect of any Indemnifiable Event will not exceed the cost of indemnification in respect of loss or damage incurred, or the total Limit of Liability any one Indemnifiable Event stated in the Policy Schedule, whichever is the lesser, less the applicable Excess.

### S1.4 BASIS OF LOSS SETTLEMENT

Following an Indemnifiable Event, the basis of any settlement under this Section of the Policy will be:

#### S1.4.1 Repair or total loss

- a) In the case of damage which can be repaired, the cost of repairs necessary to restore the property to a condition as good as but not better or more efficient or extensive than its condition immediately before the time when the Indemnifiable Event occurred.
- b) In the case of a total loss, the actual value of the property immediately before the time when the Indemnifiable Event occurred. However, only to the extent to which the costs claimed were borne by You and, where relevant, subject to the application of Average, if applicable (see page 6).

#### S1.4.2 Requirement to Repair

Damage that can be repaired must be repaired, but if the cost of repairing any damage equals or exceeds the actual value of the property immediately before the Indemnifiable Event occurred, settlement will be in accordance with clause S1.4.1b).

#### S1.4.3 Overhead Charges

We will pay for an appropriate level of overhead charges and profit in connection with the reinstatement of the loss or damage, in accordance with the Insured Project.

#### S1.4.4 Recovery or Retrieval Costs

Following an Indemnifiable Event We will pay any cost incurred by You in the recovery or retrieval of lost or damaged Insured Property as long as the total cost of such recovery or retrieval (or attempted recovery or retrieval), including the cost of repair or replacement of the lost or damaged property, does not exceed the actual value of the Insured Property immediately before the Indemnifiable Event occurred.

# SECTION ONE

## MATERIAL DAMAGE

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### S1.4.5 Costs of Repeating Tests

Following an Indemnifiable Event We will pay all costs necessarily incurred in order to repeat or carry out subsequent physical tests or trials on the Insured Property, but only where such tests are needed as a direct consequence of the Indemnifiable Event.

### S1.4.6 Accounts

We will not be liable to make any payment under this Policy unless You have paid the Premium and produced to Our reasonable satisfaction accounts, invoices, receipts and other documentation stating that repairs have been carried out or replacement has taken place, as the case may be.

### S1.4.7 Provisional Repairs or Alterations

We will not pay for:

- a) the cost of any provisional repair unless such repair:
  - i) constitutes part of the final repair and does not increase the total repair cost; or
  - ii) can be shown to have been necessary in order to prevent further physical loss of or damage to the Insured Property, which loss or damage is not otherwise excluded by this Policy, and as long as the cost thereof does not exceed the estimated amount otherwise payable by Us for such further physical loss or damage; or
- b) the cost of any alterations, additions or improvements.

### S1.4.8 Application of Excess

We will subtract the amount of the Excess from the amount otherwise payable for each Indemnifiable Event. If more than one Excess is applicable in respect of one and the same Indemnifiable Event, the highest Excess only will be subtracted.

## S1.5 EXCLUSIONS

Under this Section of the Policy, We will not indemnify You against:

### S1.5.1 Aircraft, Hovercraft or Watercraft

loss of or damage to Aircraft, Hovercraft or Watercraft.

### S1.5.2 Breakdown of Second-hand Items or Pre-Existing Property

the cost of repairing, replacing or rectifying loss or damage caused by Breakdown of any second-hand item(s). For the purposes of this Exclusion S1.5.2. Breakdown shall mean mechanical, hydraulic, electrical or electronic failure from any cause whatsoever.

However, this Exclusion S1.5.2 is limited to the item itself and will not extend to include other parts of the Insured Project damaged due to, and as a consequence of, such failure.

### S1.5.3 Building Warranty

the cost of repairing any loss or damage to either Contract Works or Pre-Existing Property where the cost of such loss or damage is covered under a Federal, State or Territory law governing building warranty.

### S1.5.4 Consequential Loss

consequential loss of any kind including but not limited to loss of use, penalties, fines, liquidated damages or aggravated, punitive or exemplary damages.

### S1.5.5 Data

loss of or damage:

- a) to Data; and
- b) caused directly or indirectly by a Data Problem however if loss or damage caused by a Data Problem results in the occurrence of further loss of or damage to Insured Property that is directly caused by fire, lightning, explosion, smoke, leakage from fire protective equipment, impact by Aircraft, spacecraft or land Vehicle, windstorm or hail, earthquake, tsunami, flood, freeze or weight of snow, this Exclusion S1.5.5 b) will not apply to such resulting loss or damage.

### S1.5.6 Faulty material, workmanship or design

#### S1.5.6.1 Works

With respect to the works only loss of or damage to and the cost necessary to replace repair or rectify:

- a) that part of the works which is in a defective conditions due to defect in design plan specification materials or workmanship of such works or any part thereof;
- b) other parts of the works lost or damaged to enable the replacement repair rectification of works excluded by (a) above.

Exclusion (a) above shall not apply to any other part of the works which is free of the defective condition but is damaged in consequence thereof.

# SECTION ONE

## MATERIAL DAMAGE

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### S1.5.6.2 Other Insured Property

With respect to other Insured Property loss of or damage due to defective design plan specification materials or workmanship.

For the purpose of the Policy and not merely this Exclusion Insured Property shall not be regarded as lost or damaged solely by virtue of the existence of any defect in design plan specification material or workmanship in the Insured Property or any part thereof.

### S1.5.7 Gradual Deterioration

the cost of rectifying corrosion, erosion, wasting, wearing away, abrasion, or other gradual deterioration including that caused by atmospheric conditions.

### S1.5.8 Inventory Loss

loss of or damage discovered only at the time an inventory is taken, unless such loss of or damage can be attributed to burglary.

### S1.5.9 Money

loss of or damage to cash, bank notes, treasury notes, cheques, money orders, stamps, deeds, bonds, bills of exchange, promissory notes and securities.

### S1.5.10 Mitigation Expenses

any Mitigation Expenses being the cost and expense of containing, reducing, suppressing or preventing any further physical loss or damage to Insured Property except for those costs covered as per clause S1.4.7.

### S1.5.11 Normal Upkeep

The cost of normal upkeep or routine making good.

### S1.5.12 Mobile Machinery and Equipment and Employee Tools

loss of or damage to Mobile Machinery and Equipment and Employee Tools:

- a) for which the supplier or manufacturer or anyone else is responsible either by law or under contract;
- b) which is attached to or towed by Watercraft or Hovercraft, or is underground;
- c) being Vehicles licensed or registered for general road use, except when being used at the Contract Site as a tool of trade;
- d) directly caused by the imposition of abnormal conditions by testing, intentional overloading or experiments; or
- e) consisting of scratching or discolouration of painted, plated or polished surfaces,

and any cost in respect of repairing or replacing parts, gases, fluids or liquids requiring periodic or frequent replacement, topping up, repair or maintenance including (but not limited to) gases, fluids, liquids, fuses, shear-pins, rupture plates or other expendable load limiting devices, bits, drills, knives, saw blades or other cutting devices, dies, moulds, patterns, pulverising and crushing surfaces, screens, sieves, filters, ropes, belts, chains, elevator and conveyor belts, batteries, flexible pipes, jointing and packing material, tyres or tracks, where such costs are as a result of the inherently replaceable nature of such parts.

### S1.5.13 Mobile Machinery Equipment and Employees Tools

- a) costs in respect of repairing, replacing or rectifying electrical or electronic breakdown, mechanical breakdown, explosion, failure or derangement of any Mobile Machinery and Equipment and Employee Tools.
- b) loss of or damage due to theft of either Mobile Machinery and Equipment or Employee Tools.
- c) loss of or damage to an item while being hired out to others.

### S1.5.14 Records

Loss of or damage to:

- a) books of accounts, drawings, card index systems and other records, other than as described in b) below, other than for the cost of blank books, blank pages or other materials plus the cost of labour for actually transcribing or copying said records; or
- b) media, Data storage devices, and programme devices for electronic and electromechanical Data processing or for electronically controlled equipment, other than the cost of reproducing such media, Data storage devices, and programme devices from duplicates or from originals of the previous generation of the media.

No indemnity is provided for the cost of gathering or assembling information or Data for such reproduction.

### S1.5.15 Transit

loss of or damage whilst Insured Property is in Transit, where such loss of or damage consists of scratching or discolouration of painted, plated or polished surfaces or breakage of glass, china, porcelain or similar brittle materials or is occasioned by lawful seizure or other operation of law or arising from any breach of contract, agreement or obligation.

# SECTION ONE

## MATERIAL DAMAGE

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### **S1.5.16 Dewatering**

any costs associated with the installation and operation of any dewatering equipment or any other costs associated with removing water from on or around the Contract Site.

### **S1.5.17 Stabilising Fluid**

any costs incurred to replace "Bentonite" or any other stabilising medium used for the purposes of preventing collapse of an excavation whilst being used for the purpose it was intended.

### **S1.5.18 Haul Roads**

loss of or damage to haul roads, borrow pits, quarries, culverts or causeways.

## **S1.6 CONDITIONS**

The following Conditions apply to this Section of the Policy.

### **S1.6.1 Abandonment of Property**

All coverage afforded by this Policy shall cease immediately with respect to the Insured Property or any part thereof from the time that it is Abandoned.

### **S1.6.2 Loss Payment**

Any payment under Section 1 of the Policy can be paid to any party to whom the Named Insured may direct.

### **S1.6.3 Sums Insured and Declared Values**

The Sum Insured for the Insured Project and Pre-Existing Property, if applicable, will represent the total cost, labour and materials, of reinstating the Insured Project at the time of completion of the Insured Project to a condition substantially the same as but not better nor more extensive than its condition when new.

## SECTION TWO THIRD PARTY LIABILITY

This Section is operative only if a dollar amount is shown in Your Policy Schedule.

### S2.1 INSURING CLAUSES

We agree, subject to the terms of this Policy and in consideration of the payment of the prescribed Premium, to indemnify You to the extent and in the manner stated below.

#### S2.1.1 Liability

Subject to the Limit of Liability, We will pay to or on behalf of You all sums which You become legally liable to pay by way of Compensation in respect of Personal Injury or Property Damage happening within the Geographic Limitations during the Period of Insurance caused by an Occurrence in connection with an Insured Project.

#### S2.1.2 Cross Liability

Insurance cover will apply to each person or entity comprising You, as if a separate policy has been issued to each of You provided that:

- a) Our aggregate liability in respect of all persons or entities comprising You for Compensation will not exceed the Limit of Liability stated in the Policy Schedule; and
- b) Our aggregate liability in respect of all persons or entities comprising You for Supplementary Payments is not increased.

We will not exercise any right of subrogation against an Additional Insured where such an Additional Insured is indemnified under this Policy.

#### S2.1.3 Application of Excess

We will subtract the amount of the Excess from the amount otherwise payable for each Occurrence. Unless otherwise stated, the Excess does not include charges, expenses and legal costs incurred by either Us or You with Our written consent in the defence or settlement of the claim.

### S2.2 ADDITIONAL BENEFITS

In accordance with the indemnity provided by this Policy and in addition to the Limit of Liability, We will:

- a) pay all charges, expenses and legal costs incurred by either Us or by You, with Our written consent, in the settlement or defence of any claim for Compensation;
- b) pay expenses incurred by You for first aid to others at the time of an Occurrence;

- c) pay expenses incurred for the protection of damaged or undamaged property of any third party including temporary repairs at the time of an Occurrence covered by this Section; and
- d) pay expenses incurred for the shoring up and or underpinning of damaged and undamaged property of any person(s), at the time of an Occurrence covered by this Section.

Provided that:

1. If We pay the Limit of Liability in respect of any claim or series of claims We will not be obliged to defend any legal action against You. We will have no further liability under this Section with respect to the claim or series of claims (including legal costs) except for Supplementary Payments incurred by You with Our consent prior to the date of the payment.
2. If a payment exceeding the Limit of Liability has to be made to dispose of a claim or legal action against You, Our liability to pay any Supplementary Payments will be limited to that proportion of those Supplementary Payments that the Limit of Liability bears to the amount paid to dispose of the claim or legal action.
3. In the event of a claim with respect to any recognition or enforcement action brought or instituted within the Commonwealth of Australia relating to a judgment obtained against You within the United States or Canada arising from business visits (but not Manual Labour) by travelling directors and Employees of the Named Insured the Limit of Liability will apply inclusive of any Supplementary Payments.

### S2.3 LIMIT OF LIABILITY

We will pay up to the Limit of Liability in the aggregate for all claims for Personal Injury or Property Damage caused by or arising out of any one Occurrence.

## SECTION TWO

# THIRD PARTY LIABILITY

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### S2.4 EXCLUSIONS

Under this Section of the Policy, We will not indemnify You against:

#### S2.4.1 Aircraft Landing Areas

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with the use of any land, property or structure as an airport, Aircraft hangar or Aircraft landing area.

#### S2.4.2 Aircraft, Hovercraft and Watercraft

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with any Watercraft exceeding eight (8) metres in length, Aircraft or Hovercraft.

#### S2.4.3 Asbestos

any actual or alleged liability whatsoever for any claim in respect of loss, damage or liability directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

#### S2.4.4 Contracts and Agreements

Any liability assumed under any contract or agreement provided that this Exclusion S2.4.4 does not apply to:

- a) liability which would have been implied or imposed by law in the absence of such contract or agreement;
- b) liability assumed under a construction contract in relation to the Insured Project;
- c) liability assumed under any written lease of, or agreement for the rental of real property, where such lease or agreement does not include an obligation to insure such property; or
- d) liability assumed under a written contract with a public authority for the supply to You of water, gas, electricity or communication services except where such contract is a contract by which You agree to perform work for or on behalf of that public authority.

Provided that:

- i. paragraphs c) and d) do not apply to liability assumed by You under the relevant lease, contract or agreement to indemnify a party in respect of an act or omission for which it is wholly responsible, unless such liability would otherwise have been implied or imposed by law, and

- ii. We will not provide indemnity against any liability caused by, arising out of, or in respect of, or in connection with Personal Injury to any of Your Employees.

#### S2.4.5 Defective Design

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with any defective or deficient design or error in formula or in specification provided by You for a fee.

#### S2.4.6 Employer's Liability

- a) Personal Injury to any of Your Employees arising out of or in the course of their employment in Your business,
- b) Personal Injury to any person who is pursuant to any Statute relating to workers' compensation deemed to be an Employee of You or in respect of which You are entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any Statute relating to workers' compensation whether or not You are a party to such contract of insurance, or
- c) any liability imposed by the provisions of any workers' compensation Statute or any industrial award or agreement or determination.

This Exclusion S2.4.6 will apply irrespective of whether workers' compensation cover has been taken out or not.

#### S2.4.7 Employment Practice

any liability in connection with any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination relating to the employment or prospective employment by You or on Your behalf of any person.

#### S2.4.8 Fines, Penalties and Punitive Damages

finer, penalties, liquidated damages, punitive, exemplary or aggravated damages how ever imposed.

#### S2.4.9 Insured Property under Section 1

any liability for expenditure directly or indirectly incurred including any financial consequences thereof in doing or redoing or making good or replacing any property consisting of or forming part of Insured Property under Section 1 of this Policy.

## SECTION TWO

# THIRD PARTY LIABILITY

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### S2.4.10 Jurisdiction Limits

- a) any action brought or instituted against You or any judgment obtained against You (whether or not such judgment is enforced by the courts of the Commonwealth of Australia) in any country other than the Commonwealth of Australia in which You are represented by a branch or by an Employee domiciled in that country or by a company, firm or individual holding Your power of attorney.

Provided that this Exclusion S2.4.10 a) does not apply to actions and judgments arising from business visits (but not Manual Labour) by travelling directors and Employees of the Named Insured to any country other than the United States or Canada;

- b) or any actions brought or instituted against You or any judgment obtained against You (whether or not such judgment is enforced by the courts of the Commonwealth of Australia) within the United States or Canada.

Provided that this Exclusion S2.4.10 (b) does not apply to any recognition or enforcement action brought or instituted within the Commonwealth of Australia relating to a judgment obtained against You within the United States or Canada arising from business visits (but not Manual Labour) by travelling directors and Employees of the Named Insured.

### S2.4.11 Known Defects

Personal Injury or Property Damage arising directly or indirectly out of or caused by, though, or in connection with any defect or deficiency in Your Products of which You or Your agents have knowledge or have reason to suspect at the time when the Products pass from Your actual physical custody or from the actual physical custody of any person under Your control.

### S2.4.12 Defamation

The publication or utterance of defamatory material:

- made prior to the commencement of the Policy Period;
- made by You or at Your direction with the knowledge that it is false; or
- related to advertising, publishing, printing, broadcasting or telecasting activities conducted by or on behalf of You.

### S2.4.13 Loss of Use

the loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- delay in or lack of performance by You or on Your behalf of any contract or agreement; or

- the failure of the Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented provided that this paragraph S2.4.13 b) does not apply to loss of use of other tangible property resulting from sudden and accidental physical damage to or destruction of the Products after these Products have been put to use by any person or organisation.

### S2.4.14 Mitigation Expenses

any liability directly or indirectly arising out of or in conjunction with any attempt or effort to avoid, reduce or mitigate any potential or real injury or damage, except for those expenses covered under clause S2.2 b), S2.2 c), S2.2 d) of this Policy.

### S2.4.15 Pollution

- Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or water unless such discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended from Your standpoint and takes place in its entirety at a specific time and place (such place not being located in the United States or Canada);
- the cost of preventing, removing, nullifying or cleaning up any contamination or pollution as a consequence of the discharge, dispersal, release or escape of any Pollutants provided that this paragraph S2.4.15 b) does not apply to removal, nullifying or cleaning up costs which are consequent upon a sudden, identifiable, unexpected and unintended happening which takes place in its entirety at a specific time and place;
- Personal Injury or Property Damage arising directly or indirectly out of or caused by, through or in connection with the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any of Your Products that has been discarded, dumped, abandoned or thrown away by others.

### S2.4.16 Preventing Right of Recovery

Any amount You are unable to recover because of a contract or agreement that You have entered into which excludes or limits Your rights to recover that amount.

### S2.4.17 Product Defect

damage to Your Products if such damage is attributable to any defect in them or their harmful nature or unsuitability.

## SECTION TWO

# THIRD PARTY LIABILITY

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### S2.4.18 Product Recall

the withdrawal, recall, inspection, repair, replacement or loss of use of Your Products or of any property of which Your Products form a part if such Products are withdrawn from the market or from use because of any known or suspected defect or deficiency in them.

### S2.4.19 Products

any liability directly or indirectly arising out of or in conjunction with any Products.

### S2.4.20 Professional Duty

a breach of any professional duty owed by You or anyone for whose breaches of such duty You may be legally liable provided that this Exclusion S2.4.20 does not apply to the rendering of or failure to render first aid.

### S2.4.21 Property in Care, Custody, Physical or Legal Control

Property Damage to:

- a) any land or property (including any contents therein) or part thereof, not owned by You, but which is in Your care, custody, physical or legal control and:
  - i. property where such damage arises as a direct consequence of Your failure to take reasonable protective measures; and
  - ii. any Vehicle except where such loss or damage occurs whilst any such Vehicle is in a car park owned or operated by the Named Insured, provided that the operation of such car park is not forming part of the Insured's Business and the Named Insured does not operate such car park for reward.
- b) Employees' property, construction plant, scaffolding, site huts, tools, or any other property leased or on loan to You, which is used, is to be used, or has been used to execute the Insured Project.

### S2.4.22 Subsidence, collapse, Vibration or the Removal or Weakening of Support(s)

Property Damage to third party property, land or building caused by subsidence, vibration or the removal or weakening of support(s) unless a dollar amount is shown against the relevant Sub-limit of Liability in the Policy Schedule.

### S2.4.23 Tobacco

any liability associated with the inhalation or ingestion of or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

### S2.4.24 Vehicles

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with Your ownership, use, legal possession, or legal control of any Vehicle or any attachment to such Vehicle:

- a) which is registered;
- b) in respect of which registration or insurance is required by virtue of any legislation relating to Vehicles; or
- c) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not insurance is effected).

Provided that this Exclusion S2.4.24 does not apply to claims in respect of:

1. Personal Injury arising out of an Occurrence which is partially (to the extent of that part) or totally outside the indemnity afforded under such compulsory liability insurance or other legislation relating to Vehicles and where the reason the Occurrence is outside the indemnity afforded by compulsory liability insurance or statutory indemnity does not involve a breach by You of legislation relating to Vehicles.
2. Property Damage arising out of and during loading and unloading of goods to or from any Vehicle.
3. Property Damage caused by the operation or use of any Vehicle which is designed primarily for lifting, lowering, loading or unloading whilst being operated or used by You or on Your behalf.
4. Property Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any Vehicle other than when travelling to or from any Contract Site or transporting or carting goods.

### S2.4.25 Communicable Diseases

Personal Injury to any person arising directly or indirectly out of the contraction of AIDS or AIDS related diseases or the transmission of any communicable disease by You or any of Your Employees or agents.

### S2.4.26 Transmissible Spongiform Encephalopathy (TSE)

For any liability caused by or arising directly or indirectly out of or in connection with Transmissible Spongiform Encephalopathy (TSE) including but not limited to Bovine Spongiform Encephalopathy (BSE) or new variant Creutzfeldt–Jakob disease (VCJD).

## SECTION TWO

# THIRD PARTY LIABILITY

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### **S2.4.27 Genetically Modified Organisms (GMO)**

For any liability caused by or arising directly or indirectly out of or in connection with Genetically Modified Organisms (GMO).

For the purpose of this exclusion GMO shall mean and include Organisms or micro-organisms or cells, or the organisms or micro-organisms, cells or cell organelles, from which they have been derived, which have been subject to a genetic engineering process, which resulted in their genetic change.

SURA Construction Pty Ltd  
ABN 35 147 580 756 acts as an  
agent for Certain Underwriters at  
Lloyd's and is authorised to arrange,  
enter into/bind and administer this  
insurance on their behalf.

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SURA Pty Ltd ABN 36 115 672 350  
AFSL 294313.

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SURA Construction Pty Ltd  
supports positive initiatives  
for our environment.

# SURA CONSTRUCTION

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