



KEYSTONE

Professional Indemnity Excess Layer Insurance Policy Wording

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Wording

The **Insured** and **Keystone** agree that **Keystone** will provide insurance in accordance with the terms of this **Policy** upon payment of the **Premium** as shown in the **Schedule**, and upon submission by the **Insured** of the **Proposal**, the contents on which **Keystone** will rely.

1. Definitions

- 1.1 **Circumstance** means any facts, matters or circumstances which give rise to a **Claim** or have the potential to give rise to a **Claim**.
- 1.2 **Claim** has the same meaning under this **Policy** as the **Primary Policy** and for the avoidance of doubt includes an **Inquiry**.
- 1.3 **Costs and Expenses** means all reasonable legal fees, legal costs and other expenses incurred by or on the **Insured's** behalf, with **Keystone's** prior consent, in the investigation, defence or settlement of any **Claim**.
- 1.4 **Endorsement** means any document which is described as an endorsement to this **Policy** and intends to vary it.
- 1.5 **Exhausted or Exhaustion** means a situation where:
 - 1.5.1 payment by any **Underlying Insurer** of a covered loss; or
 - 1.5.2 the retention by the **Insured** 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 depletion of the **Underlying Limit**.
- 1.6 **Inquiry** has the same meaning under this **Policy** as the **Primary Policy**.
- 1.7 **Insured** means any person or organisation designated as an insured by the **Primary Policy**.
- 1.8 **Keystone** means Keystone Underwriting Pty Ltd ABN 78 601 944 763 as Corporate Authorised Representative (No. 000468712) of Keystone Underwriting Australia Pty Ltd ABN 59 634 715 674 AFSL 518224 which is acting on behalf of **Underwriters**.
- 1.9 **Limit of Liability** means the amount specified in the **Schedule**.
- 1.10 **Maximum Aggregate Limit of Liability** means the amount specified in the **Schedule**.
- 1.11 **Period of Insurance** means the period specified in the **Schedule**, unless terminated earlier.
- 1.12 **Premium** means the amount specified in the **Schedule**.
- 1.13 **Primary Policy** means the Primary Policy specified in the **Schedule**.
- 1.14 **Proposal** means the written proposal or declaration made by the **Insured** to **Keystone** containing particulars and statements together with other information provided by the **Insured**.
- 1.15 **Retroactive Date** means the date specified in the **Schedule**.
- 1.16 **Schedule** means the current schedule issued by **Keystone** to the **Insured**.
- 1.17 **Underlying Insurer** means the Underlying Insurer(s) specified in the **Schedule**.
- 1.18 **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**.
- 1.19 **Underlying Policy** means the Underlying Policy or Policies specified in the **Schedule** and includes the **Primary Policy**.
- 1.20 **Underwriters** means certain Underwriters at Lloyd's participating in this contract of insurance.

2. Insuring Clause

- 2.1** Keystone will indemnify the **Insured** for any **Claim** first made against the **Insured** and reported to **Keystone** during the **Period of Insurance** up to the **Limit of Liability** in excess of the **Underlying Limit**.
- 2.2** **Keystone** will not be liable to pay under this **Policy** unless and until the insurer of each **Underlying Policy** have paid or have been held liable to pay, the full amount of the **Underlying Limit**.
- 2.3** **Costs and Expenses** are either inclusive or exclusive of the **Limit of Liability** as specified in the **Schedule**.
- 2.4** This **Policy** will attach:
- 2.4.1** for each **Claim**, as excess layer cover, but only after **Exhaustion** of the **Underlying Limit**, or
 - 2.4.2** as primary cover for a **Claim**, but only when there has been **Exhaustion** of the **Underlying Limit** in the aggregate by covered **Claims**, 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** in clause **2.4.1** and will be subject to any excess or deductible specified in the **Primary Policy**.
- 2.5** 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** except as otherwise provided by this **Policy**. In no event will this **Policy** grant broader coverage than would be provided by the **Primary Policy** or any **Underlying Policy**.

3. Underlying Insurance

- 3.1** 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:
- 3.1.1** payment by any **Underlying Insurer** of a covered loss; or
 - 3.1.2** where applicable, the retention by **Insured** of any amount of an otherwise covered loss on account of non-payment of such amount by an insurer of any **Underlying Policy**.
- 3.2** 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 the **Insured** and will not be covered by this **Policy**. **Keystone** will nevertheless recognise retention by the **Insured** of covered but unpaid loss as contributing to the **Exhaustion** of the **Underlying Limit**.
- 3.3** The **Insured** must give **Keystone**, 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 Condition **7.9 Notification** of this **Policy**.
- 3.4** The **Insured** must immediately notify **Keystone** in writing of the full particulars of any changes in accordance with Condition **7.9 Notification** of this **Policy** if during the **Period of Insurance** the terms, conditions, or limitations of any **Underlying Policy** are changed in any manner. This **Policy** will be subject to such changes only after written consent by **Keystone** and the **Insured** must pay any additional premium reasonably required by **Keystone** as a result of such changes.
- 3.5** The **Insured** must give **Keystone** written notice during the **Period of Insurance** of the full particulars of any additional or return premiums charged or allowed in connection with any **Underlying Policy** as soon as practicable in accordance with Condition **7.9 Notification** of this **Policy**.

4. Underlying Sub-Limits

- 4.1 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**.
- 4.2 **Keystone** 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**.

5. Exclusions

Prior Reported or Known Circumstances

- 5.1 **Keystone** will not be liable under this **Policy** to make any payment for loss directly or indirectly caused by, arising out of or in any way connected with any:
- 5.1.1 **Claim** first made prior to the **Period of Insurance**;
 - 5.1.2 **Claim** or **Circumstances** notified, in whole or part, to any **Underlying Insurer** or any other insurer prior to the **Period of Insurance**; or
 - 5.1.3 **Claim** or **Circumstances** of which the **Insured** was aware or ought reasonably to have been aware, prior to the **Period of Insurance**; or
 - 5.1.4 act, error or omission of the **Insured** prior to the **Retroactive Date**.

Sanctions

- 5.2 **Keystone** will not indemnify the **Insured** for any **Claim** that would be in contravention of any sanction, prohibition or restriction under United Nations resolutions or trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

6. Claims Conditions

Co-operation and Mitigation

- 6.1 The **Insured** must give **Keystone** such information and assistance as **Keystone** consider necessary to:
- 6.1.1 determine an appropriate course of action in relation to any **Claim**; and
 - 6.1.2 identify any parties that the **Insured** may have rights against in connection with any **Claim**.
- 6.2 The **Insured** must take all reasonable steps to avoid, minimise or mitigate any liability, loss or damage that is or may be the subject of a **Claim**.
- 6.3 Compliance with this Claims Condition will be at the **Insured's** own expense.

Conduct of Claims

- 6.4 **Keystone** will have the right, but not the duty, and must be given the opportunity, effectively to associate with the **Insured** in the investigation, settlement or defence of any **Claim** even if the **Underlying Limit** has not been **Exhausted**.
- 6.5 The **Insured** 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 **Keystone's** prior written consent, which will not be unreasonably withheld.
- 6.6 **Keystone** will not be liable for any settlement, costs, expenses, assumed obligation or admission of liability to which **Keystone** have not consented in writing.

Foreign Currency

- 6.7 Any payments made or **Costs and Expenses** incurred in a currency other than Australian dollars shall be converted to and paid in Australian dollars based upon the rate of exchange published by the Reserve Bank of Australia on the date that the payments were made or **Costs and Expenses** were incurred, or the preceding date should they be incurred on a weekend or public holiday.

Notification

- 6.8 The **Insured** must give immediate written notice or written notice as soon as practically possible to **Keystone** in the event of a **Claim** arising under this **Policy**, via the **Insured's** intermediary, but in any event within the **Period of Insurance**.

Recoveries

- 6.9 Recoveries (whether effected by **Keystone** or by an **Insured**), less the cost of recovery, shall be distributed as follows:
- 6.9.1 first, to the **Insured** for the amount of the **Claim** otherwise covered but in excess of the **Limit of Liability**; and
 - 6.9.2 second, to **Keystone** for the amount paid to the **Insured** for the covered **Claim**.

7. Conditions

Assignment

- 7.1 This **Policy** cannot be assigned by the **Insured**.

Construction and Interpretation

- 7.2 Paragraph titles used in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purposes of its construction or interpretation.
- 7.3 Words denoting the singular include the plural and vice versa except where the context otherwise requires.

Governing Law

- 7.4 This **Policy** will be governed in accordance with the law of the State or Territory of Australia in which this **Policy** was issued. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

Endorsements

- 7.5 An **Endorsement** does not affect or increase the **Limit of Liability**, the **Maximum Aggregate Limit of Liability** or any other term, except to the extent specifically provided in the **Endorsement**. For the avoidance of doubt, each **Endorsement** is otherwise subject to all the terms of this **Policy**.

Enforceability

- 7.6 This **Policy** must have a **Schedule** attached to it which has been signed by an authorised officer of **Keystone** to be enforceable.

Limit of Liability and Maximum Aggregate Limit of Liability

- 7.7 **Keystone's** maximum aggregate liability under this **Policy** for all **Claims** during the **Period of Insurance** will not exceed the **Maximum Aggregate Limit of Liability**.
- 7.8 **Keystone** are not obliged to defend, or continue to defend any **Claim** or to pay or continue to pay **Costs and Expenses** after the **Limit of Liability** or the **Maximum Aggregate Limit of Liability** has been eroded.

Notification

- 7.9 **Keystone** must be given notice in writing as soon as is practicable:
- 7.9.1 if any **Underlying Policy** is cancelled or avoided; or
 - 7.9.2 of any notice given by the **Insured** to any **Underlying Insurer**; or
 - 7.9.3 if any **Underlying Insurer** denies liability for a **Claim** or reduces the amount payable on a **Claim** under an **Underlying Policy**; or
 - 7.9.4 if any changes or modifications are agreed to by any **Underlying Insurer**.

Termination of Policy

- 7.10 This **Policy** will be cancelled immediately upon the cancellation of the **Primary Policy**, whether by the **Insured** or the **Underlying Insurer** of the **Primary Policy** notwithstanding that this **Policy** will follow the terms, conditions, exclusions and limitations of the **Primary Policy**.
- 7.11 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 **Keystone**.



Variation of this Policy

7.12 No variation of this **Policy** will be effective, unless made by **Endorsement**.

Important Information

This Policy is issued by:

Keystone Underwriting Pty Ltd ABN 78 601 944 764 (Keystone)

Keystone Underwriting Pty Ltd is a Corporate Authorised Representative (No. 000468712) of:

Keystone Underwriting Australia Pty Ltd ABN 59 634 715 674 AFS License No: 518244

Who is the Insurer?

Certain Underwriters at Lloyd's ("Underwriters") will be providing the financial service. Keystone is authorised to quote, bind and issue Certificates of Insurance under a Binding Authority Agreement (Binder) granted to Keystone by those Underwriters. Keystone will provide details of the syndicate numbers and the proportions underwritten by them on request.

General Insurance Code of Practice

Lloyd's supports the General Insurance Code of Practice and its purpose of raising the standards of practice and service in the general insurance industry.

What makes up the Insurance Contract?

This contract of insurance is made up of the Schedule, this Policy and any Endorsements that Keystone issues when an application is accepted or an existing Policy is renewed or amended.

Significant Features, Benefits and Exclusions

This Policy provides many significant features and benefits, subject to Conditions and Exclusions. Exclusions apply to this Policy and all of them are important. It is important that this Policy is read carefully to be aware of and understand the extent of cover that it offers. It will give full details of the Exclusions.

Significant Risks

The Insured should make sure that the sum insured and the limits to be purchased will be sufficient. All the terms and conditions contained in this Policy need to be understood.

Claims Made Policy

This Policy is issued by Keystone on a claims made and notified basis. This means that it only covers claims first made against an Insured during the Period of Insurance and notified to Keystone in writing during the Period of Insurance. The Policy does not provide cover for any claims made against an Insured during the Period of Insurance if at any time prior to the Period of Insurance starting, an Insured was aware of facts which might give rise to those claims being made against them.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where an Insured gives notice in writing to an insurer during the Period of Insurance 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 Period of Insurance has expired.

Retroactive Liability

This Policy is limited by a Retroactive Date. The Policy does not cover any liability arising from an Insured's conduct prior to the Retroactive Date.

Alteration to Risk and Deregistration

This Policy requires an Insured to notify Keystone within thirty (30) days of any material change to the business, or in the event of insolvency or bankruptcy. This Policy requires an Insured to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of an Insured's statutory registration. Claims arising from conduct which occurs subsequent to the cancellation, suspension or termination of the Insured's statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing the Insured's profession are excluded from indemnity under this Policy. However, this condition does not apply if the suspension relates purely to the late payment of registration fees.

Doctrine of Utmost Good Faith

Every insurance contract is subject to this doctrine which requires the parties to the contract to act toward each other with the utmost good faith. Failure to do so may prejudice any claims and/or the continuation of the insurance contract.

Duty of Disclosure

The Insured has a duty to tell Keystone anything they know, or could reasonably be expected to know, may affect Keystone's decision to provide cover and on what terms, before entering into an insurance contract. This duty continues until Keystone agree to provide insurance. The same duty applies before renewal, extension, variance or reinstatement of an insurance contract.

Limits of Disclosure

The Insured does not have to disclose to Keystone any matter:

- (a) that diminishes the risk to be undertaken by Keystone; or
- (b) that is of common knowledge; or
- (c) that Keystone knows or, in the ordinary course of Keystone's business, ought to know; or
- (d) for which Keystone has given a waiver.

Non-Disclosure

Keystone may cancel the Policy or reduce the amount paid to the Insured if a claim is made, or both if the Insured does not tell Keystone anything they are required to. Keystone may refuse to pay a claim and treat the contract as if it never existed if the Insured's failure to tell Keystone is fraudulent.

Change of Circumstances

The terms and conditions of this Policy will be based on information the Insured provided to Keystone. It is essential Keystone are advised of any material change that occurs to this information prior to the inception of this Policy. Failure to do so by the Insured may prejudice any subsequent claims under the Policy and/or jeopardise the continuation of the insurance contract.

Buying Insurance

Set out below are important matters that apply to the initial enquiry, buying of insurance, and renewal of cover. Defined terms are the same as in the Policy.

Information that Keystone ask

Keystone will only ask for and consider relevant information when assessing the Insured's application for cover.

Assessing Applications

The Insured will have access to information that Keystone has relied on in assessing their application and an opportunity to correct any mistakes or inaccuracies. Keystone may decline to release information in special circumstances, but will not do so unreasonably. Keystone will give reasons in these circumstances, and the Insured will have the right to request Keystone to review the decision through Keystone's complaints handling procedures. Keystone will provide reasons in writing upon request.

Mistakes

Keystone will immediately initiate action to correct an error or mistake in assessing the Insured's application for cover where it is identified.

Misrepresentation

Keystone's sales process will be conducted in a fair, honest and transparent manner.

Declining Cover

If Keystone cannot provide insurance cover, Keystone will:

- (a) give reasons; and
- (b) refer the entity/person seeking insurance to another insurer, AFCA or NIBA, for information about alternative insurance options (unless they already have someone acting on their behalf).

Keystone will make available information about Keystone's complaints handling procedures if the entity/person is unhappy with Keystone's decision.

Policy Information

Information about Keystone's policy wordings will be available when the Insured buy insurance from Keystone as well as on request. They will also be available on Keystone's website at www.keystoneunderwriting.com.au.

Subrogation

The Insured may prejudice their rights regarding a claim if, without prior approval from Keystone, the Insured makes an agreement with a third party that would prevent Keystone from recovering any applicable loss (in whole or in part) from that, or another party.

This Policy contains provisions that have the effect of excluding or limiting Keystone's liability for a claim under this Policy if you have entered into any agreement that excludes, limits or delays the Insured's right to recover damages from another party in respect of such claim.

Cost of Policy

The cost of this Policy is made up of premium plus any applicable policy fees, government taxes and charges. Keystone may cancel this Policy if the Insured fails to pay the total premium due.

Deductibles

The Insured may be required to pay a deductible or excess if a claim is made under this Policy. Details of applicable deductibles or excess are provided in the Schedule. This Policy sets out the terms relating to the payment of deductibles or excesses.

Taxation

All taxes and charges are shown as separate items (e.g. fire and emergency services levy, stamp duty depending upon location and GST).

Cooling-off Period

The Insured has the right to cancel this Policy with Keystone within 14 days of the date that the Policy inceptioned, unless a claim is made. Keystone will refund the full amount of the premium less any duties or taxes payable if this cancellation occurs during the cooling-off period. This Policy will be terminated from the date Keystone receive the request to cancel.

Making a Claim

Benefits are payable if the Insured suffers a loss that is covered under this Policy during the Period of Insurance, except if an Exclusion or Condition applies. The Insured must immediately notify Keystone or their insurance adviser if there is a loss under this Policy.

Cancelling the Policy Before the Due Date

The Insured may cancel this Policy at any time by notifying us in writing, detailing the date that the cancellation will take effect. Keystone will refund any unearned premium to the Insured or their insurance adviser within 15 working days after the date of cancellation. Unearned premium will be computed pro rata for the unexpired term of this Policy, unless agreed in advance through the insurance adviser and set out in this Policy.

Privacy

Keystone are committed to safeguarding and protecting the Insured's privacy. Keystone is bound by the provisions of the *Privacy Act 1988* which sets out the standards to meet in the collection, use and disclosure of personal information.

The Act defines "personal information" as "information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion".

Purpose of Collection

Keystone will only use personal information the Insured provides to quote on and insure risks and matters incidental thereto, including investigating and managing claims.

It may be necessary for Keystone to provide the Insured's personal information to others, such as other insurers or reinsurers, claims investigators, lawyers and other professionals, and government bodies. Keystone will not under any circumstances trade, rent or sell the information.

Keystone cannot properly quote insurance and cannot insure the Insured if they do not provide Keystone with complete, accurate and up-to-date information. If the Insured provide Keystone with personal information about anyone else, Keystone will rely on the Insured to have told them that their information will be provided to Keystone, to whom Keystone may provide it, the purposes for which Keystone will use it and that they can access it. Keystone relies on the Insured to have obtained their consent on these matters if the information is sensitive.

Access to Information

The Insured can check the personal information Keystone holds about them at any time. Requests for access can be made in writing to:

The Privacy Officer
Keystone Underwriting Australia Pty Ltd
18/296 Bay Road
Cheltenham, VIC 3192

Keystone will keep the Insured informed of any delays in responding to the Insured's request throughout the process.

Complaints

Keystone take all complaints seriously and have established internal dispute resolution procedures to ensure complaints are handled fairly, honestly and in a timely manner in accordance with the General Insurance Code of Practice.

The Code sets out a two-stage process:

<p>Stage One</p> <p>Keystone will respond to the Insured's Complaint within 15 business days of the date of receipt of the Complaint, provided Keystone has all the necessary information and have completed any investigation required.</p> <p>If Keystone cannot respond within 15 business days because Keystone does not have all necessary information or has not completed the investigation:</p> <ul style="list-style-type: none"> (a) Keystone will let the Insured know as soon as reasonably practicable within the 15-business-day timeframe, and agree a reasonable alternative timetable with the Insured. Keystone will advise the Insured of the right to take the Complaint to Stage Two of the Complaints process if Keystone cannot reach an agreement with the Insured on an alternative timetable; and (b) Keystone will keep the Insured informed about the progress of the Complaint at least every ten business days, unless agreed otherwise. <p>Keystone will respond to the Complaint in writing and advise the Insured of:</p> <ul style="list-style-type: none"> (a) Keystone's decision in relation to the Insured's Complaint; (b) the reasons for Keystone's decision; (c) the Insured's right to take the Complaint to Stage Two if Keystone's decision at Stage One does not resolve the Complaint to the Insured's satisfaction. <p>If the Insured wishes to make a Complaint, please contact:</p> <p>The Complaints Officer Keystone Underwriting Australia Pty Ltd 18/296 Bay Road Cheltenham, VIC 3192</p> <p>Phone: 1300 946 530 Email: complaints@ksua.com.au</p>	<p>Stage Two – Review by Lloyd's Australia</p> <p>The Insured may take the Complaint to Stage Two if Keystone's Stage One decision does not resolve it to the Insured's satisfaction or if the Insured is unhappy with the way Keystone are handling it. The Insured can do this at any time during Stage One.</p> <p>Taking the Complaint to Stage Two, the Insured should contact:</p> <p>Lloyd's Australia Limited Level 9 1 O'Connell Street Sydney NSW 2000</p> <p>Phone: (02) 8298 0753 Email: ldraustralia@lloyds.com</p> <p>Where the complaint is eligible for referral to the Australian Financial Complaints Authority (AFCA) the complaint will generally be reviewed by Lloyd's Australia. Otherwise, the matter will be referred to the Complaints Team at Lloyd's based in the UK.</p>
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The Insured may be referred to the Australian Financial Complaints Authority (AFCA) under the terms of the General Insurance Code of Practice if the Complaint remains unresolved. AFCA can be contacted by post at GPO Box 3, Melbourne, Victoria 3001, phone 1800 931 678 or email info@afca.org.au. More information can be found on their website www.afca.org.au. The Insured will be referred to other proceedings for resolution of other disputes. Details are available from Lloyd's Australia Limited at the address above.