

# Deductible Buy-Down Insurance Wording 2015

## Indemnity

The Insurer agrees to indemnify the Insured named in Item 1 of the Schedule in respect of direct physical loss or damage to the property described in Item 5 of the Schedule, while located as the situation as described in Item 3 of the Schedule, occurring during the period of insurance stated in Item 7 of the Schedule and caused by any of such perils as are set forth in Item 4 of the Schedule, all as covered by and defined in the Overlying Insurance specified in Item 6 of the Schedule (hereinafter referred to as the "Overlying Insurance").

## Limit

The Insurer's liability hereunder shall not exceed the Limit stated in Item 9 of the Schedule, only to pay the excess of the amount to be retained by the Insured (hereinafter referred to as the "Insured's Retention") as stated in Item 10 of the Schedule, and for a loss to contribute to the Limit and Insured's Retention hereon, such loss must be a loss that would be an admitted loss under the Overlying Insurance except for the deductible provisions contained therein.

However, this Policy shall not cover any loss adjustment expenses incurred in preparing or certifying details of a claim resulting from a loss which is payable, or would otherwise be payable but for any deductible provision, under the Overlying Insurance. Nothing contained in the foregoing shall be construed however to deny the Insurer the right to appoint, or agree to share in the appointment of, any Loss Adjuster in the investigation of any loss under this Policy.

## Notification of Claim

On the happening of any loss, destruction or damage, the Insured shall forthwith give notice thereof in writing to the Insurer(s) and shall [within thirty (30) days after such loss, destruction or damage or such further time as the Insurer(s) may in writing allow], at the Insured's own expense, deliver to the Insurer(s) a claim, in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property lost, destroyed or damaged and of the amount of loss, destruction or damage thereto, having regard to their value at the time of the loss, destruction or damage, together with details of any other insurances on any property hereby insured.

The Insured shall use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the Business or to avoid or diminish the loss and shall also deliver to the Insurer(s) a statement in writing of any claim certified by the Insured's auditor, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith.

No claim under this Policy shall be payable unless the Insured has complied with the terms of this condition.

## Allocation of Recoveries

All salvages, recoveries and payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties hereto.

## Overlying Insurance

In respect of the perils hereby insured against this Policy is subject to the same warranties, terms and conditions (except as regards the premium, the amount and limits of liability, any deductible provision, and the renewal agreement, if any and except as otherwise provided elsewhere in this Policy) as are contained in the Overlying Insurance prior to the happening of an occurrence for which a claim is made hereunder.

## Cancellation

- (a) This Policy may be cancelled at any time at the request of the Insured, in which case the Insurer(s) will retain the customary short-period rate for the time this Policy has been in force. The customary short-period rate will be subject to a loading for time exposure to Cyclones.
- (b) The Insurer(s) may also cancel this Policy by giving the Insured written notice to that effect where:
  - (i) the Insured or any person who was at any time the Insured failed to comply with the duty of utmost good faith;
  - (ii) the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
  - (iii) the person who was the Insured at the time when this Policy was entered into made a misrepresentation to the Insurer(s) during the negotiations for this Policy but before it was entered into;
  - (iv) the Insured or any person who was at any time the Insured failed to comply with a provision of this Policy, including a provision with respect to the payment of the Premium;
  - (v) the Insured has made a fraudulent claim under this Policy or any other policy of insurance (whether with the Insurer(s) or some other insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
  - (vi) the Insured failed to notify the Insurer(s) of any specific act or omission where such notification is required under the terms of this Policy; or
  - (vii) the Insured acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers the Insurer(s) to refuse to pay, or reduce its/their liability in respect of, a claim in the event of such contravention or omission.
- (c) The Insurer(s) notice of cancellation takes effect at the earlier of the following times:
  - (i) The time when another policy of insurance between the Insured and the Insurer(s) or some other insurer, being a policy that is intended by the Insured to replace this Policy, is entered into; or
  - (ii) 4:00pm on the thirtieth business day after the day on which notice was given to the Insured.

In the event that the Insurer(s) cancel(s) this Policy, the Insurer(s) will repay to the Insured a rateable proportion of the Premium for the unexpired Period of Insurance from the date of cancellation.

## Valuation

The valuation basis of this Policy is as defined in the Overlying Insurance.

## Time Element Coverages Extensions

It is understood and agreed that this Insurance extends to cover Business Interruption or Consequential Loss coverages (as insured under the Overlying Insurances) consequent upon the loss or damage to the Property insured hereby.

The Limit and the Insured's Retention as stated in Items 9 and 10 of the Schedule are inclusive of damage to Property and Business Interruption or Consequential Loss coverages.

## Demolition / Increased Cost of Construction

This Policy is subject to the same provisions as respects Demolition and Increased Cost of Construction as are contained in the Overlying Insurance.

## Unintentional Errors and Omissions

This Policy is subject to the same provisions as respects Unintentional Errors and Omissions as are contained in the Overlying Insurance.

## Precautions to Prevent Loss

The Insured shall take all reasonable precautions to prevent loss, destruction or damage to the property insured by this Policy.

## Misrepresentation and Non-Disclosure

If the Insured:

- (a) failed to disclose any matter which the Insured was under a duty to disclose to the Insurer(s); or
- (b) made a misrepresentation to the Insurer(s) before this Policy was entered into;

and if the Insurer(s) would not have entered into this Policy for the same premium and on the same terms and Conditions expressed in this Policy but for the failure to disclose or the misrepresentation, then:

- (i) the liability of the Insurer(s) in respect of any claim will be reduced to an amount to place the Insurer(s) in the same position in which the Insurer(s) would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made; or
- (ii) if the non-disclosure or misrepresentation was fraudulent, the Insurer(s) may avoid this Policy.

## Fraud

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy, or if any destruction or damage be occasioned by the wilful act or with the connivance of the Insured, the Insurer(s), without prejudice to any other right(s) the Insurer(s) might have under this Policy, shall be entitled to refuse to pay such claim.

## Law and Jurisdiction

It is hereby agreed that:-

- a. This Insurance shall be governed by the law of Australia whose Courts shall have jurisdiction in any dispute arising hereunder; and
- b. Any summons, notice or process to be served upon the Underwriters for the purpose of institution any legal proceedings against them in connection with this Insurance may be served upon:

Lloyd's Australia Ltd  
Level 21, 121 Pitt Street  
Sydney, NSW 2000  
Australia

who have authority to accept service on their behalf.

## **War and Civil War Exclusion Clause NMA 464**

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

NMA464

## **Radioactive Contamination and Explosive Nuclear Assemblies Exclusion Clause NMA1622**

This Policy does not cover

- a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
- b) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from

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

## **Terrorism exclusion endorsement (AMENDED) NMA2920**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

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

NMA2920  
08/10/2001  
(Amended 17/01/2002)

## Microorganism Exclusion (Absolute) LMA 5018

This Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This Exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This Exclusion replaces and supersedes any provision in the Policy that provides insurance, in whole or in part, for these matters.

14/09/2005  
LMA5018

Form approved by Lloyd's Market Association

## Electronic Data Endorsement - Cyber NMA 2915

It is hereby agreed and declared that the following is added to Property Exclusions:

- (a) This policy does not insure:
- (i) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data, or
  - (ii) error in creating, amending, altering, deleting or using Electronic Data, or
  - (iii) total or partial inability to receive, send, access or use Electronic data for any time or at all,

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

Electronic Data means facts, concepts, and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

- (b) However, in the event that a peril listed below (being a peril insured by this policy but for this exclusion) is caused by any of the matters described in paragraph (a) above, this Policy, subject to all of its provisions will insure:
- (i) physical loss of or damage or destruction to Property Insured caused by such listed peril, and/or
  - (ii) consequential loss insured by this policy.

Further, this exclusion does not apply in the event that a peril listed below (being a perils insured by this policy but for this exclusion) causes any of the matters described in paragraph (a) above:

Fire, lightning, thunderbolt, explosion, implosion, earthquake, subterranean fire, volcanic eruption, impact by aircraft or aerial object dropped therefrom, impact by road vehicle or animal, sonic boom, theft which is a consequence of theft of any computer and/or computer hardware and/or firmware and/or microchip and/or integrated circuit and/or similar device containing such Electronic Data, breakage of glass, the acts or persons taking part in riots or civil commotions or of

strikers or of locked out workers or of persons taking part in labour disturbances, storm and/or tempest and/or rainwater and/or wind and/or hail, water and other liquids and/or substances and/or pipes at the premises.

For the purposes of the basis of Settlement provision in this policy, computer system records includes Electronic Data as defined in paragraph (a) above.

## **Electronic Data Recognition Exclusion (EDRE) NMA 2802**

This Policy does not cover any loss, damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:

- a) the calculation, comparison, differentiation, sequencing or processing of data involving the date change in the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not; or
- b) any change, alteration, or modification involving the date change to the year 2000, or any other date change, including leap year calculations, to any such computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not.

This clause applies regardless of any other cause or event that contributes concurrently or any sequence to the loss, damage, cost, claim or expense.

EDRE

NMA2802

## **Biological or Chemical Materials Exclusion NMA 2982**

It is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use to pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

06/02/03

NMA2962

## **Sanction Limitation and Exclusion Clause LMA 3100**

No insurer shall be deemed to provide cover and no insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Japan, United Kingdom or United States of America.

## **LLOYD'S CERTIFICATE OF INSURANCE (LMA3083 Australia) EFFECTED THROUGH MIRAMAR UNDERWRITING AGENCY PTY LTD**

This is to certify that in accordance with the authorisation granted to Miramar Underwriting Agency Pty Ltd under the Contract number shown in the Schedule by certain Underwriters at Lloyd's, whose definitive numbers and the proportions underwritten by them, which will be supplied on application, can be ascertained by reference to the said Contract, and in consideration of the premium specified in the Schedule, the said Underwriters are hereby bound, severally and not jointly, each for his own part and not one for another, their Executors and Administrators, to insure in accordance with the terms

and conditions contained or endorsed within the Policy wording and the Schedule.

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted from outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this insurance should be referred to Miramar Underwriting Agency Pty Ltd in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to;

**Lloyd's Underwriters' General Representative in Australia**

Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney NSW 2000  
Telephone (02) 9223 1433  
Facsimile (02) 9223 1466

who will refer your dispute to Policyholder & Market Assistance at Lloyds.

In the event of a claim arising under this Insurance immediate notice should be given to Miramar Underwriting Agency Pty Ltd.

Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

The Underwriters hereon agree that;

- 1) In the event of a dispute arising under this Insurance, the Underwriters at the request on the Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- 2) Any Summons notice or process to be served upon the Underwriters may be served upon Lloyd's Underwriters' General Representative in Australia who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on the Underwriters' behalf.
- 3) If a suit is instituted against any one of the Underwriters, all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

The amount of Premium specified in the Schedule is the amount due to the Underwriters and any commission allowed by them is to be regarded as remuneration of Miramar Underwriting Agency Pty Ltd.