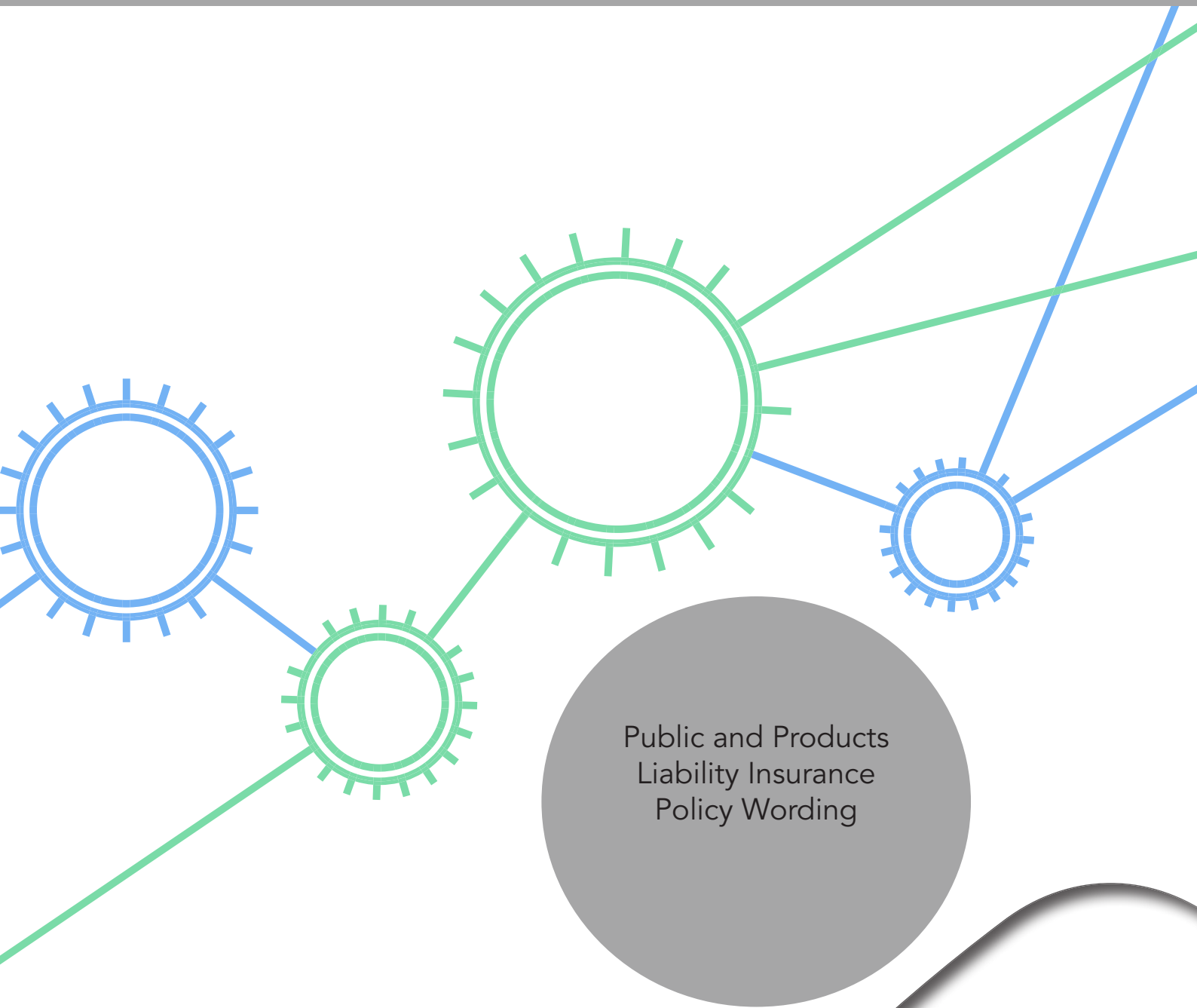




making relationships count

# PUBLIC AND PRODUCTS LIABILITY POLICY WORDING



Public and Products  
Liability Insurance  
Policy Wording

Insured by



**MSIG**



## **DUAL Asia Public and Products Liability Insurance**

### **Policy Wording**

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# DUAL Asia Public and Products Liability Insurance

## Policy Wording

### Section 1: PREAMBLE

- 1.1 We will provide the cover described in the **policy**, subject to its terms and conditions, for the **insurance period**.
- 1.2 The cover under the **policy** commences upon the payment of the premium unless otherwise agreed in writing.

### Section 2: INSURING CLAUSES

- 2.1 We agree to indemnify the **insured** for any amount the **insured** becomes legally liable to pay in respect of **claims** for compensation for **personal injury** or **property damage** arising out of an **occurrence** in the **insurance period** in connection with the **insured's business**.

#### 2.2 Defence Costs and Expenses

We will pay in respect of a **claim** covered under the **policy**, all:

- a) **defence costs** incurred by **us** in respect of a **claim**;
- b) costs awarded against the **insured** and all interest accruing after judgement until **we** have paid, tendered or deposited in Court that part of any judgement which does not exceed the **indemnity limit**;
- c) reasonable costs and expenses, other than loss of earnings, incurred by the **insured** with **our** prior written consent; and
- d) costs and expenses incurred by the **insured** for rendering first aid to others at the time of any **personal injury**;

Provided that:

- i) if to dispose of or settle a **claim** covered under this section of the **policy**, compensation is payable in excess of the **indemnity limit**, **our** liability in respect of **defence costs** and costs and expenses under this clause will be limited to that proportion of such **defence costs** and costs and expenses as the **indemnity limit** bears to the total compensation payable to dispose of or settle the **claim**;
- ii) **we** will not pay for any **defence costs** or costs or expenses that are incurred after **we** have paid or agreed to pay an amount equal to the **indemnity limit**; and
- iii) **our** liability to pay any **defence costs** or costs or expenses detailed above shall be included in the **indemnity limit**, and not in addition to the **indemnity limit**.

#### 2.3 Tenants Liability

We agree to indemnify any lessor with whom the **insured** has entered into an agreement for the rental or lease of premises (not belonging to the **insured**) from which the **insured** conducts its **business**, provided always that no wider cover shall be afforded to the lessor than would have been provided hereunder to the **insured** if the **insured** had been held legally liable for the same **personal injury** or **property damage** and only where that liability arises out of the **insured's** use of such premises in the carrying on of its **business**. Exclusion 3.4 (b) shall not apply to any cover provided under this Extension.

### Section 3: EXCLUSIONS

We will not cover the **insured** including compensation for **defence costs** or other costs, expenses or loss, in respect of:

#### 3.1 Aircraft and Watercraft

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of:

- a) the ownership, maintenance, servicing, operation or use by the **insured** of any **aircraft** or **watercraft**; or
- b) **products** that the **insured** could reasonably be expected to know are installed in or on any **aircraft** or **watercraft**; or
- c) the use by the **insured** as a **landing area** for **aircraft** of any property or structure owned occupied or controlled by the **insured**.

#### 3.2 Asbestos

Any **claim** or liability arising from or directly or indirectly attributable to or in connection with:

- a) asbestos; or
- b) any actual or alleged asbestos related injury or damage involving the use, presence, existence, property detection, removal, elimination or avoidance of asbestos or exposure or potential exposure to asbestos.

#### 3.3 Assault and Battery

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of assault and battery committed by or at the direction of the **insured** unless reasonably necessary for the protection of persons or property.

#### 3.4 Assumed Liability

Any obligation assumed by the **insured** under any agreement, except that this Exclusion does not apply to:

- a) any liability which is, or would have been, implied by law in such agreement or would have arisen separately from it; or
- b) where the liability arises from a provision in a contract for lease of real or personal property, other than a provision which obliges the **insured** to effect insurance or provide indemnity in respect of the subject matter of that contract; or
- c) any liability assumed under an **incidental contract**; or
- d) written contracts, warranties or agreements agreed by **us** and specified in the **schedule**.

#### 3.5 Electronic Data

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the failure or inability of any:

- a) electronic circuit, microchip, integrated circuit, microprocessor, embedded system, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device; or
- b) media or systems used in connection with any of the foregoing

whether the property of the **insured** or not, at any time to achieve any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote a date including without limitation, the failure or inability to recognise capture save retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of

- i) recognising using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of the time; or

- ii) the operation of any command or logic which has been programmed or incorporated into anything referred to in (a) and (b) above.

We will also not cover any **claim** or liability arising from or directly or indirectly attributable to or in consequence of:

- a) the communication, display, distribution or publication of electronic data; or
- b) the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of electronic data.

### 3.6 Electromagnetic Fields

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the exposure to magnetic electric or electromagnetic fields or radiation however caused or generated.

### 3.7 Faulty Workmanship

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the cost of performing, correcting or improving any work undertaken by the **insured**.

### 3.8 Fines and Penalties and Non-Compensatory

- a) taxes, fines or penalties;
- b) punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment.

### 3.9 Fraud and Dishonesty

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the **insured**:

- a) gaining any personal profit or advantage to which the **insured** was not legally entitled;
- b) committing any dishonest, reckless, fraudulent, criminal or malicious act; or
- c) committing any wilful violation or wilful breach of any statute or regulation.

### 3.10 Illegal Structure

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of a breach of duty imposed by law in relation to:

- a) any building within the meaning of the *Buildings Ordinance (Cap. 123)* erected in contravention of that Ordinance; or
- b) any building works or street works, carried out in contravention of the *Building Ordinance (Cap. 123)*.

### 3.11 Internet Operations

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the **insured's internet operations**.

### 3.12 Legal Jurisdiction

Any **claim** or liability:

- c) brought against the **insured** in any country outside Hong Kong Special Administrative Region;
- d) arising as a consequence of the **insured** entering into contractual obligations submitting to the jurisdiction of a Court other than a Court outside Hong Kong Special Administrative Region; or
- e) arising as a consequence of any agreement by the **insured** to indemnify any party in respect of awards, judgements or settlements made under the jurisdiction of a Court other than a Court outside Hong Kong Special Administrative Region.

### 3.13 Liability to Employees

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of:

- a) any **personal injury** to any employee in the course of employment in the **insured's business**; or
- b) based on, any provision of any workers' compensation legislation or any industrial award or agreement or determination; or
- c) any liability for which the **insured** is or would have been entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' or workmens' compensation (whether insurance is effected or not); or
- d) any liability of a contractor to the **insured** or persons engaged in or upon the service of such contractor.

For the purpose of this Exclusion only, "employee" means any person engaged under a contract of service or apprenticeship with the **insured** but does not include any person employed under such a contract who is excluded from the definition of worker under any workers' compensation legislation.

### 3.14 Libel and Slander

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of **advertising injury**:

- a) made prior to the commencement date of this **policy**;
- b) made by the **insured** or at the **insured's** direction knowing it to be false; or
- c) related to advertising, broadcasting or telecasting activities conducted by the **insured** or on the **insured's** behalf.

### 3.15 Loss of Use

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of use of tangible property which has not been physically damaged or destroyed resulting from:

- a) a delay in, or lack of performance by the **insured** or on the behalf of the **insured** of any contract or agreement; or
- b) the failure of the **insured's products** to meet the level of performance, quality, fitness or durability expressly warranted or represented by the **insured**. This Exclusion shall not apply to loss of use of other tangible property resulting from sudden and accidental physical damage to or destruction of the **insured's products** after the **insured's products** have been put to use by any person or organisation other than the **insured**.

### 3.16 Participation

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of **personal injury** to any person caused by or arising out of the participation of such person in any game, match, race, practice, training, trial, warm ups, warm downs, competition and other preliminary activities unless such **personal injury** is as a direct result of the **insured's** negligence in regard to the facility provided.

### 3.17 Pipes and Cables

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of damage to pipes and cables unless the appropriate authorities have been consulted prior to work commencing and written details have been obtained from them as to the position of such underground pipes and cables together with their support and fittings.

### 3.18 Pollution

Any **claim** arising from or directly or indirectly attributable to or in consequence of the actual or alleged release, discharge escape or seepage of **pollutants** into or upon any property, land, the atmosphere, watercourse or body of water.

**We** shall also not be liable to pay any costs and expenses incurred in the prevention, removal or clean-up of such **pollutants**.

### 3.19 Prior Knowledge

- a) any **claim** arising from or in connection with any circumstance occurring prior to or existing at the inception of this **policy** and which the **insured** knew or ought reasonably to have known prior to the **insurance period** might or could give rise to a **claim**;
- b) any **claim** arising from or in connection with any **occurrence**, fact or circumstance of which notice has been or reasonably should have been given under any previous insurance;
- c) any **claim** or circumstance likely to give rise to a **claim** stated in the **proposal** in the form or declaration, being the basis of this **policy**.

### 3.20 Product Defect

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of **property damage** to the **insured's products** if the damage results from any defect contained within the **product** or to their harmful nature or unsuitability.

### 3.21 Product Recall

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the recall, withdrawal, inspection, repair, replacement or loss of use of the **insured's products** or of any property of which the **insured's products** form a part, if these **products** are recalled by the **insured** or another, or withdrawn from the market or from use, because of any known or suspected defect or deficiency therein.

### 3.22 Professional Services

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the rendering of or failure to render professional advice or service by the **insured** or any error or omission connected therewith.

This Exclusion shall not apply to:

- a) the rendering of or failure to render medical advice or service by medical persons employed by the **insured** to provide first aid and other medical services on the **insured's** premises; or
- b) **claims** in respect of **personal injury** or **property damage** where such professional advice or service is given without fee or charge.

### 3.23 Property in Insured's Physical or Legal Control

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of **property damage** to property owned by the **insured** or in the **insured's** physical or legal control, other than:

- a) premises which are leased or rented to the **insured**;
- b) premises which the **insured** temporarily occupies in order for the **insured** to carry out work;
- c) **vehicles** (not belonging to the **insured** or used by the **insured** or on the **insured's** behalf) in the **insured's** physical or legal control whilst within a car park owned or operated by the **insured** unless part of the **insured's business** is the operation of a car park for reward;
- d) the **insured's employees'** property; or
- e) other property in the **insured's** physical or legal control, provided that **our** total liability payable from all **claims** during the **insurance period** shall not exceed the sub-limit specified in Item 5 of the **schedule**.

### 3.24 Physical Work Exclusion

Any **claim** or liability for **personal injury** or **property damage** arising directly or indirectly from or caused by or in connection with any construction management, construction supervision, actual building work and or construction work other than for the **insured's** office risks or on-site inspections.

### 3.25 Radioactive Contamination, Chemical, Biological, Biochemical and Electromagnetic Weapons

Any **claim** or liability arising from or directly or indirectly attributable to or in connection with:

- a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel ; or

- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The Exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- e) any chemical, biological, bio-chemical or electromagnetic weapon.

### 3.26 Sanctions Limitation

Any **claim** or liability or provision of any benefit hereunder to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

### 3.27 Sexual Molestation

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of sexual and/or child abuse, assault, molestation or attempt thereof. Furthermore **we** will not cover the **insured** under Insuring Clause 2.2 (Defence Costs and Expenses).

### 3.28 Territorial Limits

Any **claim** or liability occurring outside of the Hong Kong Special Administrative Region. This Exclusion shall not apply to **claims** arising from:

- a) the **insured's products** (other than those exported to the United States of America or the Dominion of Canada or their territories, protectorates or dependencies); or
- b) the presence outside of Hong Kong Special Administrative Region of the **insured's** partners, directors and employees engaged in non manual work in connection with the **insured's business** and who are normally resident in Hong Kong Special Administrative Region.

### 3.29 Tobacco

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of **personal injury** due to the inhalation or ingestion of, or exposure to:

- a) tobacco or tobacco smoke;
- b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

### 3.30 Vehicles

Any **claim** or liability arising from or directly or indirectly attributable to or in consequence of the use of or ownership or operation by the **insured** of any **vehicle** which is legally required to be registered or legally required to be insured.

This Exclusion shall not apply to:

- a) **claims** or liability caused by or arising from the delivery or collection of goods to or from any **vehicle** where such **personal injury** or **property damage** occurs beyond the limits of any carriage-way or thoroughfare;
- b) **claims** or liability arising during the trade use of any **vehicle** at any site where the **insured** are working or at the **insured's** premises, provided that the **insured** is not indemnified under this **policy** where the **vehicle** is used only for the transportation or haulage of goods; or
- c) **claims** or liability caused by or arising out of the use of an unregistered **vehicle** whilst being driven under its own power between its point of unloading and a worksite and whilst returning from a worksite to the point of reloading for its conveyance from the area; or
- d) **claims** or liability caused by or arising out of damage to any vehicle (not owned, leased or hired by, under hire purchase, on loan or rented to the **insured**) temporarily in the **insured's** custody or control for the purpose of parking and directly arising out of such parking.



### 3.31

#### War and Terrorism

Any **claim** or liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence:

- a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, or civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b) any act of terrorism including but not limited to:
  - i) the use or threat of force, violence and/or
  - ii) harm or damage to life or to property (or the threat of such harm or damage) including, but not limited to, nuclear radiation and/or contamination by chemical and/or biological agents,  
  
by any person(s) or group(s) of persons, committed for political, religious, ideological or similar purposes, express or otherwise, and/or to put the public or any section of the public in fear; or
- c) any action taken in controlling, preventing, suppressing or in any way relating to (a) or (b) above.

If **we** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the **insured**.

## Section 4: DEFINITIONS

In the **policy**:

- 4.1 **Advertising injury** means unintentional libel, slander, defamation, infringement of copyright, title or slogan, piracy, idea misappropriation or invasion of rights of privacy arising out of the **insured's** advertising activities first published or broadcast during the **insurance period**.
- 4.2 **Aircraft** means any object that is intended to fly or move in or through the air, atmosphere or space.
- 4.3 **Business** means all activities involved in the business described in the **schedule** including the provision of canteens, social, sports, welfare and childcare organisations for the benefit of the **insured's employees**, first aid, fire and ambulance services and the maintenance of the **insured's** premises.
- 4.4 **Claim** means:
  - a) any civil proceeding brought by a third party against the **insured** for compensation; or
  - b) a written demand by a third party for monetary damages.
- 4.5 **Deductible** means the amount specified in Item 6 of the **schedule**.
- 4.6 **Defence costs** means any necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a **claim** covered by the **policy**.
- 4.7 **Employee** means any person engaged under a contract of service or apprenticeship with the **insured**.
- 4.8 **Incidental contract** means:
  - a) any written agreement for the lease of property, except those agreements where there is an obligation to insure such property or where there is an agreement to accept liability regardless of fault;
  - b) any written contract made or entered into with any public authority for the supply of water, gas, electricity, fuel, air, steam, waste disposal facilities, telephone or communication services, except a contract made or entered into with such authority for work done or to be done for such authority; or
  - c) any written contract made or entered into with any railway authority for the loading, unloading or transport of the **insured's products** or any contract relating to the operation of railway sidings.
- 4.9 **Indemnity limit** means the amounts specified in Item 5 of the **schedule**.

**4.10 Insurance period** means the period specified in Item 4 of the **schedule**.

**4.11 Insured** means:

- a) the person, partnership, company or other entity, specified as the **insured** in the **schedule**; and
- b) subsidiary companies of the **insured** specified in the **schedule** whose place of incorporation is within Hong Kong Special Administrative Region; and
- c) the directors, **employees**, executive officers or partners of the **insured** specified in the **schedule** or of a company designated in (b) above, but only whilst acting within the scope of their duties in such capacity; and
- d) every principal of the **insured** specified in the **schedule** or of a company designated in (b) above in the respect of the liability of such principal arising out of the performance by the **insured** specified in the **schedule** or by a company designated in (b) above of any contract or agreement for the performance of work for such principal, to the extent required by such contract or agreement, but limited to the coverage provided by this **policy**; and
- e) every office bearer or member of social or sporting clubs or welfare organisations formed with the **insured's** consent (other than an **insured** designated in (d) above) in respect of **claims** arising from the duties of, or connected with the activities of, any such club or organisation.

**4.12 Landing area** means any area on which aircraft taxi, land, take-off, are housed, maintained or operated.

**4.13 Internet operations** means any of the following:

- a) use of electronic mail systems by the **insured**, the **insured's employees** or by any other person with the **insured's** permission; or
- b) access through the **insured's** network to the world wide web or a public internet site by the **insured**, the **insured's employees** or by any person with the **insured's** permission; or
- c) access to the **insured's** intranet (meaning internal company information and computing resources) which is made available through the world wide web; or
- d) the operation and maintenance of the **insured's** website.

**4.14 Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **personal injury** or **property damage**, neither expected nor intended by the **insured**.

**4.15 Personal injury** means:

- a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- c) wrongful entry, wrongful eviction or other invasion of right of privacy; and/or
- d) assault and battery committed by the **insured** for the purpose of preventing or eliminating danger to persons or property, resulting from an **occurrence**.

In the event of **personal injury** arising from latent injury, latent sickness, latent disease or latent disability, that **personal injury** shall be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.

**4.16 Policy** means this **policy** wording, the **schedule**, the **proposal** and any Endorsement attaching to and forming part of the **policy** either at commencement or during the **insurance period**.

**4.17 Pollutants** means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours, soot, acids, alkalis, chemicals, waste and fumes. Waste includes material to be recycled, reconditioned or reclaimed.

**4.18 Product** means anything (after it has ceased to be in the **insured's** possession or in the **insured's** legal control) which has been manufactured, grown, extracted, produced, processed, constructed, erected, installed, assembled, altered, repaired, serviced, treated, sold, supplied or distributed by the **insured** in the course of the **insured's business**, including any packaging or containers (other than a **vehicle**) used to package or contain the **insured's product(s)**.

**4.19 Product liability** means any liability for an **occurrence** that is caused by or arises out of any **product**.

- 4.20** **Property damage** means physical loss, damage or destruction of tangible property including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or destroyed, provided such loss of use is caused by or arises from an **occurrence**. In the event of a **claim** arising from latent damage or from the exposure of tangible property to gradual deterioration and eventual damage, such **property damage** shall be deemed to have occurred on the day such deterioration or damage was first discovered.
- 4.21** **Proposal** means the written proposal made by the **insured** to **us** together with any attachments.
- 4.22** **Schedule** means the **schedule** attached to this **policy** or any **schedule** subsequently substituted for it during the **insurance period** and duly signed, stamped and dated by an authorised representative of **us**.
- 4.23** **Vehicle** means any type of machine including attachments that is designed to travel on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power.
- 4.24** **Watercraft** means anything made or intended to float on or in, or travel on or through or underwater.
- 4.25** **We/Us/Our** means DUAL Underwriting Agency (Hong Kong) Limited as agent of the Insurer MSIG Insurance (Hong Kong) Limited.

## Section 5: CLAIM CONDITIONS

### 5.1 Notification

The **insured** shall notify **us** as soon as practicable in writing of every **occurrence**, **claim**, proceeding, impending prosecution and inquest together with all relevant information which may result in a claim under this **policy**, whether or not the **insured** believes the amount of any such claim might fall below the applicable deductible.

The notice must be delivered to:

Claims Department  
DUAL Underwriting Agency (Hong Kong) Limited  
Suite 2103, 21/F  
Fu Fai Commercial Centre  
27 Hillier Street  
Sheung Wan, Hong Kong

Or by email to [claims@dualasia.com](mailto:claims@dualasia.com)

Any written notice will be considered effective from the date such notice is first received by **us**.

### 5.2 Co-operation

- a) The **insured** must, at the **insured's** own cost, frankly and honestly provide **us** with all information, documentation, evidence and assistance reasonably required by **us** and/or any lawyers, investigators or other professionals, who may be appointed by **us**.
- b) The **insured** must, at their own cost, do all things reasonably practicable to minimise any loss, including but not limited to the **insured's** liability in respect of any **claim**.
- c) Each **insured** must provide **us**, at their own cost, with all information, assistance and co-operation which **we** reasonably require, and in the event of a **claim** or potential **claim**, each **insured** agrees that they will not do anything that could potentially prejudice **our** position or **our** potential or actual rights of recovery.
- d) No **insured** may settle any **claim** or incur any **defence costs** or assume any contractual obligation or admit any liability with respect to any **claim** without **our** written consent.

### 5.3 Legal Representation and Settlement

- a) Unless otherwise agreed, **we** shall have the right to assume, in the name of the **insured**, the legal defence of any **claim** covered under this **policy**. **We** shall have the right to appoint the lawyers that will defend and represent the **insured** in respect of any **claim**.
- b) **We** shall have full discretion in managing any negotiation or proceeding as to the resolution of such **claim**. **We** shall be entitled to settle a **claim** if **we** so choose.

- c) The **insured** agrees not to admit liability for or settle any **claim**, liability or loss, make any admission, offer any payment or assume any obligation in connection with any **claim**, liability or loss, or incur any **defence costs** in connection with any **claim**, without **our** written consent.
- d) **We** shall not be liable for any settlement, **defence costs**, costs and expenses, admission, offer, payment or assumed obligation made, incurred or entered into without **our** written consent.
- e) If **we** are of the opinion that a **claim** will not exceed the **deductible**, **we** may require the **insured** to conduct the defence of the **claim**. If the **defence costs** and/or any other payment exceed the **deductible** then **we** will pay the amount in excess of the **deductible**.

#### 5.4 Insured's Right to Contest

In the event that **we** recommend settlement of a **claim** and the **insured** does not agree to the settlement of the **claim**, and the **insured** decides to contest the **claim**, **our** liability shall not exceed the amount for which the **claim** could have been settled, and **defence costs** and any other costs and expenses covered under this **policy** incurred up to the date upon which the **claim** could have been settled.

#### 5.5 Senior Counsel

**We** shall not require the **insured** to contest a **claim** unless a Senior Counsel (agreed upon by the **insured** and **us**) advises that the **claim** should be contested, taking into account all likely **defence costs**, prospects of successfully defending the **claim** and the damages and costs likely to be recovered by the third party claimant.

The costs of Senior Counsel's advice shall be regarded as part of the **defence costs**.

#### 5.6 Subrogation & Recoveries

Where **we** have paid an amount under the **policy** **we** become entitled to any rights of the **insured** against any party in relation to the **claim**, costs and expenses or loss, to the extent of **our** payment.

The **insured**, at its own cost, must assist **us** and provide information as **we** may reasonably require to exercise **our** rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.

### Section 6: GENERAL CONDITIONS

The following General Conditions apply to all **policies** purchased and shown as having been purchased in the **schedule**.

Each **policy** purchased is to be read and interpreted as a separate contract of insurance with its own separate **indemnity limit**, unless specified otherwise in the **schedule**.

#### 6.1 Interpretation

Words and phrases appearing in bold text and where used in a **policy**, have the meaning defined in that **policy** or **policies** purchased by the **insured** as shown in the **schedule**.

To the extent that there are any inconsistencies between the **policy** and this General Conditions Section, the terms and conditions contained in the **policy** will prevail.

In the **policy**:

- a) the singular includes the plural and the masculine includes the feminine; and
- b) the headings are for descriptive purposes only; and
- c) in the event that any portion of the **policy** is found to be invalid or unenforceable, the remainder will remain in full force and effect.

#### 6.2 Alteration to Risk

The **insured** must notify **us** in writing as soon as practicable giving **us** full particulars of any alteration to the **business** and or holdings in any subsidiary company and the **insured** will pay such reasonable additional premium as **we** may require.

### 6.3 Assignment

The **insured** must not assign the **policy** or any rights under the **policy** without **our** prior written consent by way of Endorsement to the **policy**.

### 6.4 Cancellation

The **insured** has the right to cancel this **policy** at any time by giving **us** written notice to that effect. Upon cancellation, **we** will refund that part of the premium which relates to the unexpired part of the **insurance period**.

If a **claim** and/or circumstance has been notified to **us** under this **policy**, **we** will be entitled to the entire premium and no refund of premium will be made. If the **insured** withdraws such **claim** and/or circumstance then the **policy** may be cancelled and **we** will refund that part of the premium which relates to the unexpired part of the **insurance period**.

**We** have the right to cancel the **policy** if the premium has not been paid within 60 days.

### 6.5 Cross Liability

Where the **insured** is comprised of more than one party, each of the parties shall be considered as a separate entity and the words "the **insured**" shall be considered as applying to each party in the same manner as if a separate **policy** had been issued to each party provided that nothing in this Condition shall result in an increase in **our indemnity limit** in respect of any **occurrence** or **insurance period**.

### 6.6 Currency

Any reference to premium, **indemnity limits**, **deductibles**, **loss**, **defence costs**, **legal representation costs** or any other amounts payable by **us** under this **policy** are expressed and are payable in the currency as referenced in the **schedule** of the **policy**. Where any payment is to be made into an admitted foreign jurisdiction, such payment is to be made and denominated in the currency referenced in the **schedule** of the **policy** at the cash rate for the purchase of the currency referenced in the **schedule** of the **policy** set by the currency conversion website, Oanda.com or if it has ceased to be current, a currency conversion website selected by **us** as at 4.00 pm on the date which the foreign payment becomes due.

### 6.7 Deductible

The **insured** is responsible for the **deductible** in respect of each and every **claim**. Subject to clause (b) below, **we** are only liable to indemnify the **insured** for that part of the **insured's** liability in respect of each **claim**, **defence costs** and other costs and expenses in excess of the **deductible**.

- a) where **we** have paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse **us**;
- b) unless otherwise expressed in the **schedule**, all **deductibles** are inclusive of **defence costs**;
- c) costs and expenses incurred by **us** in determining whether **we** are liable to indemnify the **insured** under the **policy** shall not be subject to the **deductible** and will be met by **us**;
- d) only one **deductible** shall apply where the **claim(s)** or a series of **claims** is/are caused by or arise(s) out of one **occurrence** or is caused by or arises out of one original source, or one original cause, or related original sources or causes.

### 6.8 Discharge of Liabilities

**We** may at any time pay to the **insured** in respect of damages payable as a result of any **occurrence** or number of **occurrences** arising directly or indirectly from one source or original cause the amount of the **indemnity limit** or such limit specified in this **policy** in respect thereof (after deduction of any amount or amounts already paid in respect thereof) or any lesser amount for which the **claim** or **claims** can be settled.

Upon such payment **we** shall relinquish conduct or control of and be under no further liability under this **policy** in connection with such **claim** or **claims** except for costs, charges and expenses incurred by **us** or by the **insured** with **our** prior written consent.

### 6.9 Governing Law

The **policy** is governed by the laws of the Hong Kong Special Administrative Region where the **policy** was issued.

Any dispute or difference arising out of this **policy** shall first be referred to mediation at the Hong Kong International Arbitration Centre (HKIAC) and dealt with in accordance with HKIAC Mediation Rules. If the

mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to arbitration at HKIAC and in accordance with HKIAC Domestic Arbitration Rules. Each party shall bear its own costs regardless of the outcome of the mediation. All other costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the mediator such costs.

Any dispute or difference arising out of this **policy** which is referred to arbitration at the HKIAC will be dealt with in accordance with HKIAC Domestic Arbitration Rules in force when the Notice of Arbitration is submitted. The parties shall jointly designate one arbitrator and the arbitration proceedings shall be conducted in English. All costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the arbitrator such costs.

#### 6.10 Indemnity Limit

- a) **Our** liability for all compensation payable in respect of any **claim** or a series of **claims** caused by or arising out of one **occurrence** shall not exceed the **indemnity limit**;
- b) All **claims** for compensation that result from one original source, or one original cause, shall be considered to have been caused by or arise out of a single **occurrence**; and
- c) **Our** total aggregate liability in any one **insurance period** for **product liability claims** shall not exceed the **indemnity limit**.
- d) **Our** total aggregate liability for all **claims** and other costs and expenses is the **indemnity limit**.

#### 6.11 Joint Insured

Where more than one party comprises the **insured**, each of the parties will be considered as a separate and distinct unit and the word **insured** will be considered as applying to each party in the same manner as if a separate **policy** had been issued to each of them provided always that nothing in this Condition will result in an increase of the **indemnity limit** or **defence costs**.

#### 6.12 Non-Imputation

No state of mind or knowledge possessed by any one **insured** will be imputed to any other **insured** for the purpose of determining whether any provision in this **policy** applies. However, any state of mind or knowledge possessed by any past or present principal, director, partner of the **insured** will be imputed to the **insured** in Definition 4.11 (a) of this **policy**.

#### 6.13 Other Insurance

This **policy** will only cover **claims** to the extent that the amount of such **claim** is in excess of any indemnity or cover available to the **insured** in respect of that **claim** under any other insurance policy/policies. The **insured** must advise **us** of the other insurance policy/policies at the time of making a **claim** under the **policy** and provide **us** with details of other insurance.

#### 6.14 Premium Adjustment

Where premium has been calculated on estimates furnished by the **insured**, the **insured** shall, within 30 days after the expiry of each **insurance period**, furnish to **us** such information as **we** may require to adjust the premium for the **insurance period**. Any difference in premium shall be paid by or allowed to the **insured**.

The **insured** shall allow **us** to inspect the **insured's** records to ascertain or verify such information if required.

#### 6.15 Prevention of Accidents

The **insured** must:

- a) exercise reasonable care that only competent **employees** are employed and take reasonable measures to maintain all premises, fittings and plant in safe and sound condition;
- b) take all reasonable precautions to:
  - i) prevent **personal injury** and **property damage**;
  - ii) prevent the manufacture, sale or supply of defective **products**; and

- iii) comply and ensure the **insured**, the **insured's** employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property; and
- iv) take reasonable action to trace, recall or modify any of the **insured's products** containing any defect or deficiency of which the **insured** has knowledge or has reason to suspect any defect or deficiency.

#### 6.16 **Several Liability**

The subscribing Insurers' obligations under Contracts of Insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

#### 6.17 **Rights of Third Parties**

Any person or entity who is not a party to this policy shall have no rights under the *Contracts (Rights of Third Parties) Ordinance (Cap. 623) (HK)* to enforce any of its terms.

## Appendix: Notice to customers relating to the Personal Data (Privacy) Ordinance ("the Ordinance")

MSIG Insurance (Hong Kong) Limited ("MSIG", "we" or "us") would ask that you take the time to read this privacy policy carefully. In case of discrepancies between the English and Chinese versions of this statement, the English version shall prevail.

### **PRIVACY POLICY**

MSIG takes your privacy very seriously. To ensure your personal information is secure, we communicate and enforce our privacy and security guidelines according to the relevant laws and regulations. MSIG takes precautions to safeguard your personal information against loss, theft, and misuse, as well as against unauthorised access, disclosure, alteration, and destruction. Furthermore, we will not sell your personal information to anyone for any purposes. MSIG imposes very strict sanction control and only authorised staff on a need-to-know basis are given access to or will handle your personal data, and we provide regular training to our staff to keep them abreast of any new developments in privacy laws and regulations.

We will only retain your personal data in our business records for as long as it is necessary for business and tax purposes as permitted by the laws. We will require our agent, contractor or third party who provides administrative or other services on our behalf to protect personal data they may receive in a manner consistent with this policy. We do not allow them to use such information for any other purposes. If you have any questions or inquiries regarding our privacy policy, please feel free to contact us.

We may amend this Privacy Policy at any time and for any reason. The updated version will be available by following the 'Privacy Policy' link on our website homepage at [www.msig.com.hk](http://www.msig.com.hk). You should check the Privacy Policy regularly for changes.

### **Personal Information Collection Statement**

Personal information is data that can be used to uniquely identify or contact a single person. As our customers, it is necessary from time to time for you to supply us with your personal data in relation to the general insurance services and products ("the Product") that we provide to you and in order for us to deliver and improve the customer service. This includes but not limited to the personal data contained in the proposal form or in any documents in relation to the Product or any claim made under the Product.

Your personal data may be used for **obligatory purpose** or **voluntary purpose**. If personal data are to be used for an obligatory purpose, you MUST provide your personal data to MSIG if you want MSIG to provide the Product. Failure to supply such data for obligatory purpose may result in MSIG being unable to provide the Product.

The **obligatory purposes** for which your personal data may be used are as follows:-

- processing and evaluating your insurance application and any future insurance application you may make;
- our daily operation and administration of the services and facilities in relation to the Product provided to you;
- variation, cancellation or renewal of the Product;
- invoicing and collecting premiums and outstanding amounts from you;
- assessing and processing claims in relation to the Product and any subsequent legal proceedings;
- exercising any right of subrogation by us;
- contacting you for any of the above purposes;
- other ancillary purposes which are directly related to the above purposes;
- complying with applicable laws, regulations or any industry codes or guidelines; and
- detecting and preventing fraud (whether or not relating to the policy issued in respect of this application).

The **voluntary purposes** for which your personal data may be used are any sales, marketing, promotion of other general insurance services and products provided by MSIG. The personal data we intend to use for voluntary purposes are your name, your address, your phone number and email address.

**If you do not wish MSIG to use your personal data for the voluntary purposes listed above, you should tick the box on the right and send us a copy of this Notice at the address listed below together with the required information which are necessary for us to process your opt-out request. You may also notify us by sending an email to 'dpo@hk.msig-asia.com'.**

**In your notification, you must supply the same required information as listed below.**

<b>To enable us to process your opt-out request, please provide us below information and send to: The Data Protection Officer at 9/F, Cityplaza One, 1111 King's Road, Taikoo Shing, Hong Kong.</b>	
<b>Full Name:</b>	
<b>Contact Number:</b>	
<b>HKID Number:</b>	<i>(for identification purpose)</i>
<b>Policy / Certificate / Acknowledgement Number (if you have one):</b>	
<b>NOTE: This instruction will override all previous instructions relating to direct marketing that have been given to MSIG.</b>	

In connection with any of the above purposes, the personal data that we have collected might be transferred to:

- third party agents, contractors and advisors who provide administrative, communications, computer, payment, security or other services which assist us to carry out the above purposes (including medical service providers, emergency assistance service providers, telemarketers, mailing houses, IT service providers and data processors);
- in the event of a claim, loss adjudicators, claims investigators and medical advisors;
- reinsurers and reinsurance brokers;



- your insurance broker;
- our legal and professional advisors;
- our related companies as defined in the Companies Ordinance;
- the Hong Kong Federation of Insurers (or any similar association of insurance companies) and its members;
- the Insurance Complaints Bureau and similar industry bodies; and
- government agencies and authorities as required or permitted by law;
- fraud prevention organizations;
- other insurance companies (whether directly or through fraud prevention organization or other persons named in this paragraph);
- the police; and
- databases or registers (and their operators) used by the insurance industry to analyse and check information provided against existing information.

In order to confirm the accuracy of your personal data, you agree to provide us with authorisation to access to and to verify any of your personal data with the information collected by any federation of insurance companies from the insurance industry.

Under the relevant laws and regulations, you have the right to request access to and to request correction of your personal data held by us. If you wish to exercise these rights, please write to our Data Protection Officer at 9/F Cityplaza One, 1111 King's Road, Taikoo Shing, Hong Kong.

If you have any enquiries or require assistance with this **Personal Information Collection Statement**, please call **MSIG at (852) 3122 6922**.