



Buyer protect

Policy document

United States

PREAMBLE

IMPORTANT: It is important for **you** to review this Policy in its entirety carefully, including **CONDITION 1**. This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide. This Policy consists of and must be read together with the Declarations page, any Endorsements, and any annexures that are attached.

Where **loss** resulting from a **breach** that arises out of a **cyber event** or **technology error** is otherwise covered under this Policy, then the **loss** will be payable, subject to all other terms, conditions and exclusions of this Policy.

The Sections of this Policy are identified by the blue lines across the page with white upper-case print, these are for information purposes only and do not form part of the cover given by this Policy. Terms in bold upper-case print are references to specific Insuring Clauses, Sections, or Conditions. Other terms in bold lower-case print are defined terms and have a special meaning as set forth in the Definitions section and elsewhere. Words stated in the singular will include the plural and vice versa.

In consideration of the **premium** and in reliance upon the information that **you** provided to **us** prior to the commencement of this insurance, **we** agree to provide the cover as set out below.

INSURING CLAUSE

We agree to pay all **loss** sustained by **you** arising out of a **breach** committed or alleged to have been committed by the **seller**, first discovered by **you** during the **period of the policy**, provided there is evidence that the **seller** had actual personal knowledge or awareness of a particular fact, matter, circumstance, event, condition or omission causing the **breach**.

For the purposes of this Insuring Clause, the evidence must consist of any paper or electronic records, correspondence, communications, reports, statements or other recorded materials, including:

- a. an admission by the **seller** that they intentionally misrepresented a fact, matter, circumstance, event, condition or omission relevant to the **insured obligation** which is the subject matter of the claim; or
- b. evidence which, based on the balance of probability, indicates that the **seller** had knowledge of the particular fact, matter, circumstance, event, condition or omission causing the **breach** prior to or at the time the relevant **insured obligation** was given.

HOW MUCH WE WILL PAY

The maximum amount payable by **us** will not exceed the **aggregate limit of liability**.

The amount of **loss we** pay will be reduced by the net amount of any offsetting recovery in respect of the **loss** actually received by **you**, from any other insurance policy, indemnity or tax benefit (other than any tax benefit actually received or realized by any director, officer or employee of **yours**, but only in the event the director, officer or employee did not receive payment for **loss** under this Policy).

DEFINITIONS

1. "**Acquisition agreement**" means

the acquisition agreement stated in the Declarations page, including all its respective appendices, exhibits, annexes and other attachments.

2. "**Actual knowledge**" means

actual personal knowledge of a particular fact, matter, circumstance, event or condition, including any particular fact, matter, circumstance, event or condition disclosed, defined, referenced or referred to in documentation and information included in the **marketplace sales process** in connection with the transaction that the **acquisition agreement** relates to.

Where any **named insured** or **additional insured** is a corporate entity, corporation, trust or partnership, "**actual knowledge**", will refer to the actual personal knowledge of a particular fact, matter, circumstance, event or condition of the directors, partners, members or trustee of the relevant **named insured** or **additional insured** (as the case may be).

"**Actual knowledge**" does not include any constructive, implied or imputed knowledge.

3. "**Additional insured**" means

any entity or individual that is named in the **acquisition agreement** as a buyer, to the extent of their interest directly relating to the purchase or acquisition of the **target** in accordance with the **acquisition agreement**, other than the **named insured**.

4. "**Aggregate limit of liability**" means

the maximum amount payable by **us** as stated in the Declarations page, in respect of all claims under this Policy.

5. "**Breach**" means

any breach of or inaccuracy in the **insured obligations**.

6. "**Business days**" means

any day other than a Saturday, Sunday or public holiday in the state of the address of the **named insured** as stated in the Declarations page.

7. "**Claims managers**" means

the claims managers stated in the Declarations page.

8. "**Closing**" means

the closing of the transaction in accordance with the terms and conditions of the **acquisition agreement**.

9. "**Computer systems**" means

all electronic computers including operating systems, software, hardware, microcontrollers and all communication and open system networks and any data or websites wheresoever hosted, off-line media libraries and data back-ups and mobile devices including but not limited to smartphones, iPhones, tablets or personal digital assistants.

10. "**Cyber event**" means

any actual or suspected unauthorized access to or electronic attack designed to damage, destroy, corrupt, overload, circumvent or otherwise impair the functionality of any **computer systems**, including denial of service attack, cyber terrorism, hacking attack, Trojan horse, phishing attack, man-in-the-middle attack, application-layer attack, compromised key attack, malware infection (including spyware or ransomware) or computer virus.

"**Cyber event**" does not mean **technology error**.

11. "**Expiry date**" means

the expiry date stated in the Declarations page.

12. "**Inception date**" means

the inception date stated in the Declarations page.

13. "**Insured obligations**" means

- a. the representations and warranties; and
- b. any pre-closing tax indemnity;

provided by or on behalf of the **seller** to **you** and contained in the **acquisition agreement**.

14. "**Loss**" means

that part of any financial loss sustained by **you** that is directly attributable to a partial or total reduction of **your** initial investment of the **target**, which is represented by the total purchase price paid by **you** to the **seller** as consideration for the acquisition of the **target** in the transaction contemplated in the **acquisition agreement**.

15. "**Marketplace administrator**" means
the entity or platform stated as the marketplace administrator in the Declarations page.
16. "**Marketplace sales process**" means
the exchange of information, materials and documentation between **you** and the **seller** via the digital platform of the **marketplace administrator** relating to the sale of the **target**.
17. "**Named insured**" means
the entity or individual named as the named insured in the Declarations page.
18. "**Period of the policy**" means
the period between the **inception date** and the **expiry date**.
19. "**Premium**" means
the amount stated as the premium in the Declarations page.
20. "**Seller**" means
any party named as the seller stated in the **acquisition agreement** who:
- a. provides the **insured obligations**; or
 - b. on behalf of whom the **insured obligations** are provided.
21. "**Target**" means
- a. the purchased assets that are the subject of the **acquisition agreement**; and
 - b. any entity that is controlled by a. above and which will be transferred to **you** as a result of the transaction contemplated in the **acquisition agreement**.
22. "**Technology error**" means
any:
- a. unintentional human error in entering, processing or amending electronic data within any **computer systems** or in the upgrading, maintenance or configuration of any **computer systems**; or
 - b. application bug, internal network failure, external network failure or hardware failure directly impacting any **computer systems** which renders them incapable of supporting their normal business function;
- that does not arise directly or indirectly out of any **cyber event**.
23. "**We/our/us**" means
the underwriters stated in the Declarations page.
24. "**You/your**" means
the **named insured** and any **additional insured**.

EXCLUSIONS

We will not make any payment under this Policy:

1. Actual knowledge

arising out of:

- a. a particular fact, matter, circumstance, event or condition of which **you** had **actual knowledge** before the **inception date**; or
- b. any fact, matter or circumstance that has been disclosed pursuant to or in connection with the **acquisition agreement** or the **marketplace sales process**.

2. Asbestos, PCBs and PFAS

arising directly or indirectly out of any form of asbestos, polychlorinated biphenyls (PCBs) or perfluoroalkyl and polyfluoroalkyl substances (PFAS) by whatever chemical name designated, including materials or products containing these substances, or any actual or alleged existence of or exposure to these substances.

3. Forward looking statements

arising directly or indirectly out of any statement, representation, warranty, indemnity or guarantee relating to the:

- a. future performance of the **target**; or
- b. outcome of a future event, fact, matter or circumstance;

including any estimate, projection or earn-out relating to a. or b. above

4. Legal and professional costs and expenses

for any legal or professional expenses (including disbursements) or other costs incurred in the defense, pursuit, appeal or settlement of any legal action, including any written demand for compensation or threat or initiation of a lawsuit.

5. Nuclear

arising directly or indirectly from or contributed to by:

- a. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component.

6. Other insurance

for which **you** are entitled to indemnification under any other insurance except for:

- a. any additional sum which is payable over and above the other insurance; or
- b. any contribution that **we** are obliged to make by law and that contribution will be in proportion to the indemnity available under the other insurance policies.

7. Specific indemnities

for any **breach** which was disclosed and specifically indemnified under the **acquisition agreement**.

8. Uninsurable fines

for fines, penalties, civil or criminal sanctions or multiple, punitive or exemplary damages, unless insurable by law.

9. War and terrorism

arising directly or indirectly out of:

- a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b. any act or threat of force or violence by an individual or group, whether acting alone or on behalf of or in connection with any organization or government, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear; and
- c. any action taken in controlling, preventing, suppressing or in any way relating to a. or b. above.

CONDITIONS

1. What you must do in the event of a claim

If **you** become aware of any claim, **you** must:

- a. notify the **claims managers** as soon as is reasonably practicable and follow their directions. This notification must be made no later than the end of any applicable extended reporting period;
- b. provide **us** with a reasonably detailed description of the **breach** and **your** estimation of the actual or expected **loss**, how **you** calculated the **loss** and what assumptions have been made; and
- c. provide **us** in a timely manner with any other information and assistance that **we** may request, including permission for **us**, in relation to the **breach**, to review and make copies of **your** records, at **our** own cost and expense, and correspond with **your** representatives.

2. Allocation

In the event a claim includes both **loss** that is covered under this Policy and loss that is not covered under this Policy, then **you** and **we** will determine and agree a fair and reasonable allocation of the amounts payable under the claim.

If **you** and **we** cannot agree a fair and reasonable allocation an independent expert will be appointed to determine the allocation. The cost of the independent expert will be paid for by **us**. The allocation determined by the independent expert will be based upon written submissions only and will be final and binding. The independent expert will be mutually agreed between **you** and **us** but if **you** and **we** cannot agree on the independent expert then the matter will be referred to mediation or arbitration in accordance with the American Arbitration Association under its Commercial Mediation Procedures or any subsequent amendments to these procedures. The cost of the mediation or arbitration proceeding will be allocated between **you** and **us** by the appointed mediator or arbitrator.

3. Assignment

The assignment of this Policy, including the assignment of the right to receive any proceeds payable under this Policy, will not be valid except with **our** prior written agreement (which will not be unreasonably withheld).

4. Cancellation

This Policy may be canceled by **you** by giving **us** 30 days written notice. If **you** give **us** notice of cancellation, the return **premium** will be in proportion to the number of days that the Policy is in effect. However, if **you** have made a claim under this Policy there will be no return **premium**.

We reserve the right to cancel and void this Policy with effect from the **inception date** in the event:

- a. **closing** does not occur; or
- b. the **premium** due to **us** by **you** remains unpaid more than 30 days beyond **closing**.

For the avoidance of doubt, the **premium** is separate and in addition to the closing fee, or other similar service fee, payable by **you** to the **marketplace administrator** in accordance with the terms of use applicable to the transaction of the **target** on the **marketplace administrator** platform.

5. Dispute resolution

All disputes or differences between **you** and **us** will be referred to mediation or arbitration and will take place in the country of registration of the company named as the insured in the Declarations page.

In respect of any arbitration proceeding **we** will follow the applicable rules of the arbitration association in the country where the company stated as the insured in the Declarations page is registered, the rules of which are deemed incorporated into this Policy by reference to this Condition. Unless the applicable arbitration association rules state otherwise, a single arbitrator will be appointed who will be mutually agreed between **you** and **us**. If **you** and **we** cannot agree on a suitable appointment then **we** will refer the appointment to the applicable arbitration association.

Each party will bear its own fees and costs in connection with any mediation or arbitration proceeding but the fees and expenses of the arbitrator will be shared equally between **you** and **us** unless the arbitration award provides otherwise.

Nothing in this Condition is intended to remove **your** rights under **CONDITION 9**. However, if a determination is made in any mediation or arbitration proceeding, **CONDITION 9** is intended only as an aid to enforce this determination.

6. Maintenance of records

You must maintain all records relating to this Policy, the transaction stated in the **acquisition agreement** and the **acquisition agreement** itself including related documents uploaded as part of the **marketplace sales process**, for a period of 90 **business days** following the settlement of all claims under this Policy or the resolution of all disputes.

7. Our rights of recovery

If **we** make any payment under this Policy and **you** have any right of recovery against a third party in respect of this payment, then **we** will maintain this right of recovery. **You** will do whatever is reasonably necessary to secure this right and will not do anything after the event which gave rise to the claim to prejudice this right.

We will not exercise any rights of recovery against any employee of **yours** or the **target**, unless this is in respect of any fraudulent or dishonest acts or omissions as proven by final adjudication, arbitral tribunal or written admission by the employee.

Any recoveries will be applied as follows:

- a. towards any recovery expenses incurred by **us**;
- b. then to **us** up to the amount of **our** payment under this Policy;
- c. then to **you**.

8. Sanctions suspension

It is a condition under this Policy that the provision of cover, the payment of any claim and the provision of any benefit will be suspended, to the extent that the provision of the cover, payment of the claim or provision of the benefit would expose **us** to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, Canada, the European Union, United Kingdom or United States of

America. The suspension will continue until such time **we** would no longer be exposed to the sanction, prohibition or restriction.

9. Choice of law, jurisdiction and service of suit

In the event of a dispute between **you** and **us** regarding this Policy, the dispute will be governed by the laws of the State of the United States of America shown as the choice of law stated in the Declarations page. **We** agree, at **your** request, to submit to the jurisdiction of a court of competent jurisdiction within the United States of America.

Nothing in this Condition constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any court of competent jurisdiction in the United States of America, to move an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States of America or the laws of any State of the United States of America.

It is further agreed that service of process in such suit may be made upon the representative stated in the Declarations page and that in any suit instituted against **us**, **we** will abide by the final decision of such court or of any appellate court in the event of an appeal. The representative stated in the Declarations page is authorized and directed to accept service of process on **our** behalf in any such suit and, at **your** request, to give a written undertaking to **you** that they will enter a general appearance on **our** behalf in the event such suit is instituted.

Additionally, in accordance with the statute of any state, territory or district of the United States which makes such a provision, **we** hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as **our** true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by **you** arising out of this Policy. The representative stated in the Declarations page is hereby designated as the person to whom the above-mentioned officer is authorized to mail such process or a copy thereof.