

Fines and Penalties Endorsement attaching to and forming part of the WWSI Martial Arts Programme

Fines and Penalties

1. Operative Clause

In consideration of the payment of the premium by the Insured, We will indemnify the Insured for any Loss arising from any Claim first received by the Insured and notified to Us, during the Period of Insurance, up to, but not exceeding, the Limit of Liability within this Endorsement, arising out of Martial Arts activities.

2. Definitions – in addition to the General Definitions in the Policy, the following words have special meaning within this Endorsement

“Act” means:

- (i) any Act of the Parliament of the Commonwealth of Australia and any Act of the Parliaments of the States or Territories of the Commonwealth of Australia, including any subordinate or delegated legislation made under those Acts, and
- (ii) any amendment, consolidation or re-enactment of any of the above Acts or legislation.

“Appointed Representative” means the solicitors, barristers, assessors, consultants or investigators appointed in accordance with this Endorsement in respect of a Claim.

“Claim” means any originating legal process served on the Insured pursuant to which the Insured may be liable to a Penalty.

“Consumer Protection Act” means any of the following:

Fair Trading Act 1985 (Vic) Fair Trading Act 1987 (NSW)

Fair Trading Act 1987 (SA) Fair Trading Act 1987 (WA)

Fair Trading Act 1989 (Qld) Fair Trading Act 1990 (Tas)

Fair Trading Act 1992 (ACT)

Consumer Affairs and Fair Trading Act 1996 (NT)

Trade Practices Act 1974 (Cth)

and any amendment, consolidation or re-enactment of any of those Acts.

“Defence Costs” mean any reasonable legal costs and associated expenses incurred with Our written consent in connection with the investigation, defence (including appeal or resisting appeal) and settlement of any Claim but shall not include wages, salaries or other remuneration of the Insured.

Provided that where proceedings are commenced to impose a Penalty and those proceedings are also in respect of other matters, then We will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.

“Excess” means the amount the Insured is liable to pay in respect of each Claim and in respect of this Endorsement that amount is \$2,500.

“Insured” means:

- (i) the Insured named in the Policy Schedule;
- (ii) any Officer whilst acting in the performance of their duties to the Insured;
- (iii) any Employee whilst acting in the performance of their employment by the Insured.

“Loss” means any Penalty and Defence Costs.

“Officer” means any past, present or future director, executive officer (as defined by the Corporations Law) or company secretary of the Insured.

“Outside Directorship” means an executive position held by and Officer or Senior Officer of the Insured in connection with the Business at the specific request of the Insured in any corporation, joint venture, partnership, trust or other enterprise which is not included in the definition of the Insured.

“Penalty” means any monetary sum payable by the Insured to any Regulatory Authority pursuant to any Act for a Wrongful Breach by the Insured but excluding:

- (a) any amounts payable as compensation;
- (b) any compliance, remedial, reparation or restitution costs;
- (c) any damages, including any exemplary or punitive damages;
- (d) any consequential economic loss;
- (e) any legal costs and associated expenses.

Notwithstanding Penalty (e) We will pay any reasonable legal costs and associated expenses payable by the Insured to any Regulatory Authority upon the imposition of a Penalty covered by this Endorsement. Provided that where the proceedings that lead to the imposition of the Penalty also include proceedings in respect of any of the matters set out in Penalty (a) to (e), We will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in Penalty (a) to (e).

“Reasonable Grounds for Defence” means:

- (a) the Insured has reasonable prospects of success in avoiding or reducing any Penalty alleged in the Claim; or
- (b) the Insured has reasonable prospects of success in reducing the quantum of any Penalty alleged in the Claim,

and that having regard to the likely legal costs incurred in defending the Claim it is reasonable for the Claim to be defended. Provided that in either scenario (a) or (b) above the Claim is not capable of being avoided or mitigated by a settlement into which a reasonable person in the position of the Insured, properly advised would enter.

“Regulatory Authority” means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

“Retroactive Date” means the Policy inception date or 1st September 2008 whichever is the latter.

"Senior Officer" means any director, chief executive officer, or company secretary of the Insured.

"Territorial Limits" means anywhere in Australia.

"Wrongful Breach" means any act, error or omission which occurs:

- (a) in connection with The Business;
- (b) within the Territorial Limits; and
- (c) after the Retroactive Date,

whereby:

- (d) the Insured contravenes an Act or is involved in the contravention of an Act; or
- (e) the Insured commits an offence pursuant to an Act; or
- (f) such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.

3. Limit Of Liability

The maximum We will pay in respect of any Loss under this Endorsement during the Period of Insurance shall not exceed \$100,000. The Insured shall be personally liable for any amounts in excess of \$100,000.

For the purposes of this Endorsement, all Losses arising out of any one Wrongful Breach or interrelated Wrongful Breaches are deemed to be one Loss.

The continuation of indemnity to the Insured from one Period of Insurance to another shall not increase the Limit of Liability available from Us.

4. Exclusions

In addition to the general exclusions noted under "What You are not covered for" We will not indemnify the Insured in respect of:

- (a) any Claim based upon, attributable to or in consequence of:
 - (i) any wilful, intentional or deliberate Wrongful Breach;
 - (ii) a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act;
 - (iii) any Wrongful Breach caused by gross negligence or recklessness by the Insured;
 - (iv) the Insured gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled;
 - (v) any Wrongful Breach in connection with any strike, lockout, picket line, stand down or industrial dispute. This exclusion does not apply to Officers and Employees for Claims arising in the performance of their duties as Officers and Employees;

- (vi) a Wrongful Breach of any Consumer Protection Act. This exclusion does not apply to Officers and Employees for Claims arising in the performance of their duties as Officers and Employees;
- (vii) any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Australian Corporations Law; and any amendment, consolidation or re-enactment of any of those Sections.
- (viii) a Wrongful Breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
- (ix) a Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
- (b) any Claim made, threatened or in any way intimated against the Insured prior to the Period of Insurance;
- (c) any Claim arising from any matter disclosed to any insurer (including Us) prior to the Period of Insurance as either a Claim or circumstance which may give rise to a Claim against the Insured;
- (d) any Claim arising from any circumstances of which the Insured had become aware prior to the Period of Insurance and which the Insured knew (or ought reasonably to have known) to be circumstances which may give rise to a Claim;
- (e) any Claim arising from any Wrongful Breach where the Insured knew (or ought reasonably to have known) prior to the Period of Insurance that there had been such a Wrongful Breach;
- (f) any Claim arising from an Outside Directorship;
- (g) for any Loss or part of any Loss which is attributable to the period after the Insured knew (or ought reasonably to have known) that the Insured's conduct was a Wrongful Breach;
- (h) any Claim deliberately or intentionally solicited by the Insured. This exclusion does not apply to Officers and Employees where such Claims arise in the discharge of their duties as Officers and Employees;
- (i) any Defence Costs incurred or paid before Our consent has been given in accordance with the provisions of this Endorsement;
- (j) for any Loss or part of any Loss arising from or which is attributable to the Insured's participation in any Joint Venture;
- (k) for any Penalty
 - (i) imposed pursuant to any law of any country, state or territory outside of Australia;
 - (ii) imposed within Australia but arising out of any act or omission occurring outside Australia, and any Defence Costs associated with such Penalty.
- (l) We shall not be liable to pay the amount of the Excess in respect of each Loss.

5. Special Conditions

We shall not be liable to indemnify the Insured for Defence Costs under this Endorsement unless the Insured obtains Our written consent.

We shall not be obliged to provide such consent unless We are satisfied that that the Insured has Reasonable Grounds for Defence.

If We refuse to provide the consent We shall give the Insured reasons for Our refusal.

If after receipt of those reasons the Insured contests Our refusal to provide such consent the Insured may obtain the written opinion of a Senior Counsel. The Senior Counsel shall be mutually agreed upon by both parties or failing agreement shall be appointed by the then President of the Law Society or the Law Institute in the relevant state or territory.

If the Senior Counsel is of the opinion that the Insured has Reasonable Grounds of Defence then We will:

- i. give Our consent;
- ii. be responsible for the Senior Counsel's reasonable fees for providing such opinion.

If the Insured continues to defend a Claim where We have refused to provide consent and the Insured is successful in respect of that Claim, then the original consent shall be deemed to have been given at the time it was first requested by the Insured. For the purpose of this clause "successful" means that the outcome of the Claim establishes that at the time at which We refused consent, the Insured had Reasonable Grounds for Defence.

6. General Conditions

Notices under an Act

The Insured shall comply with any lawful notice or direction received from, or any enforcement action taken by, any appropriate Regulatory Authority under any Act within the time specified or if no time is specified, within a reasonable time.

Confidentiality

It shall be a condition of this Endorsement that (except to the extent that the Insured is compelled by law to do so) the Insured not release to any third party, or otherwise publish, details of the nature of the liabilities insured by this Endorsement, the extent of cover provided by this Endorsement, or the amount of the Premium specified in the Policy Schedule, without Our written consent.

7. Claims Conditions

(a) Notification of Claims/Circumstances

The Insured shall, as a condition precedent to their right to be indemnified under this Endorsement, give Us immediate notice in writing;

1. of any Claim made against them; and
2. of any circumstances which The Insured shall become aware which may give rise to a Claim under this Endorsement,

irrespective of whether the Penalty is likely to be within or above the amount of the Excess.

If a Claim is made against the Insured during the Period of Insurance and the Insured notifies Us of such Claim within 14 days after expiry of the Period of Insurance, such Claim shall be deemed to have been notified to Us during the Period of Insurance.

If during the Period of Insurance the Insured becomes aware of any circumstances which may subsequently give rise to a Claim against them and the Insured gives written notice of such circumstances to Us during the Period of Insurance (or within 14 days after the expiry of the Period of Insurance), then any Claim which may subsequently be made against the Insured shall be deemed to be a Claim made against the Insured and notified to Us during the Period of Insurance.

(b) Settlement/Defence/Co-Operation

The Insured shall use all reasonable care and do and concur to do all things reasonably practicable to avoid a Wrongful Breach or diminish a Loss.

The Insured shall not make any offer, payment, admission, settlement or effect any resolution in respect of any Claim or agree to pay any Penalty or consent to any order directing the Insured to pay any Penalty without Our consent. We shall not be liable for any such Penalty incurred without Our consent. We shall, however, not unreasonably withhold such consent.

We shall have the right, but not the obligation, to conduct in the name of the Insured, the investigation, defence (including appeal and resisting appeal) and settlement of any Claim. Any amount incurred by Us shall be deemed to be part of the Defence Costs.

Where We recommend to the Insured to agree to pay any Penalty, consent to any order directing the Insured to pay any Penalty or otherwise settle or resolve any Claim, and the Insured does not agree to do so, then We are entitled to reduce Our liability to the Insured to the extent of any prejudice suffered by Us by reason of the Insured's failure to so agree.

The Insured may request Us to nominate the Appointed Representative to act on their behalf. Alternatively, if the Insured wishes to nominate the Appointed Representative the Insured must obtain Our consent to the appointment of the Appointed Representative, which consent shall not be unreasonably withheld. If the parties cannot agree on the appointment of the Appointed Representative then the parties may agree to refer this issue to the then President of the Law Society or Law Institute within the relevant State or Territory to appoint the Appointed Representative.

The Insured shall not enter into any agreement to appoint the Appointed Representative without first obtaining Our consent as to the terms of the appointment of the Appointed Representative, including remuneration terms.

Further, the Insured shall not represent to the Appointed Representative that all costs and associated expenses are covered by this Endorsement.

The Insured shall do all things reasonably necessary to allow Us to obtain from the Appointed Representative any information, report, documents or advice relating to the Claim.

The Insured shall, upon Our request or the Appointed Representative, and at its own expense:

1. provide all information and assistance as may be required;
2. give a complete and truthful account of the facts relevant to any Claim;
3. supply all documents and other evidence relevant to the Claim; and
4. obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested,

AND in respect of a Claim made against:

5. the Insured, the Insured shall, upon Our request or the Appointed Representative and at its own expense, ensure that a Senior Officer attends and if necessary gives evidence, on behalf of the Insured, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against the Insured;
6. any Officer or Employee, the Officer or Employee shall, upon Our request or the Appointed Representative and at their own expense attend, and if necessary given evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against such Officer or Employee.

For the purpose of (b) Settlement/Defence/Co-operation any reference to a Claim includes circumstances notified under clause (a) Notifications of Claims/Circumstances.