



*Policy Wording*

**Contractors Pollution Liability  
(Claims Made)**

# **Contractors Pollution Liability Insurance Policy**

## **ENVIRONMENTAL INSURANCE**

This Policy is issued / insured by Chartis Australia Insurance Limited (herein referred to as 'the Company) ,  
ABN 93 004 727 753 AFSL 381686, Level 12, 717 Bourke Street, Docklands VIC 3008

**Issuing Office:** Level 19  
2 Park Street  
Sydney  
NSW, 2000

**This document contains your Insurance Policy terms, Provisos, Exclusions and Conditions. It is important that you read and understand it and retain it in a safe place.**



## CONTENTS

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SECTION I. INSURING AGREEMENT .....	6
COVERAGES	
A. COVERAGE .....	6
B. DEFENSE .....	6
C. SETTLEMENT .....	6
SECTION II. EXCLUSIONS.....	7
SECTION III. DEFINITIONS .....	10
SECTION IV. CLAIMS PROVISIONS .....	13
SECTION V. LIMITS OF LIABILITY AND DEDUCTIBLE.....	15
SECTION VI. EXTENDED REPORTING PERIOD.....	16
SECTION VII. TERRITORY .....	16
SECTION VIII. CONDITIONS .....	17

**NOTICE: AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE DEDUCTIBLE AMOUNT AND SHALL ALSO REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY OTHER COSTS COVERED BY THIS INSURANCE.**

**Schedule**

	<b>Policy Number:</b>	EL0000178037	
<b>Item 1.</b>	<b>Named Insured</b>	John Lovegrove and Co Pty Ltd T/as Lovegrove Electrical	
	<b>Address</b>	11 Burgay Crt., Osborne Park, WA 6017	
<b>Item 2.</b>	<b>Policy Period</b>	From 12 <sup>th</sup> July 2011 To 8 <sup>th</sup> August 2012 (4:00pm at address in Item 1)	
<b>Item 3.</b>	<b>Limit Of Liability</b>	\$ 2,000,000	each Loss
		\$ 2,000,000	aggregate
<b>Item 4.</b>	<b>Deductible</b>	\$ 10,000	each Loss
<b>Item 5.</b>	<b>Retroactive Date</b>	None	
<b>Item 6.</b>	<b>Covered Operations</b>	Service station fuel tank removals and installations including project management and ongoing maintenance.	
<b>Item 7</b>	<b>Policy Premium</b>	\$ 11,647.19	
	<b>GST</b>	\$ 1,164.72	
	<b>Stamp Duty</b>	\$ 1,281.19	

**Endorsements:**

1. Minimum Earned Premium, 100% on inception
2. Minimum and Deposit Premium
3. \$100K Contractor Injury

Manuscript Endorsements: None

**Signed for and on behalf of the Company**



**AUTHORISED SIGNATORY**

## Important Notices

### Claims-Made Insurance

This policy is issued by Chartis Australia Insurance Limited on a **claims-made** and notified basis. This means that this policy only covers Claims (as defined) first made against you (the Insured) during the Policy Period (as defined) and notified to the insurer in writing during the Policy Period. This policy does not provide cover for any Claims made against you (the Insured) during the Policy Period if at any time prior to the commencement of the Policy Period you (the Insured) became aware of facts which might give rise to those Claims being made against you (the Insured), or if the Pollution Conditions which gave rise to the Claim against you existed before the Retroactive Date specified in the Schedule.

Section 40(3) of the Insurance Contracts Act 1984 provides that where you (the Insured) gave notice in writing to the insurer of facts that might give rise to a Claim against you (the Insured) as soon as was reasonably practicable after you (the Insured) became aware of those facts but during the Policy Period, the insurer cannot refuse to pay a Claim which arises out of those facts, when made, because it was made after the Policy Period had expired. Please note that the Insured may do nothing after a Claim to waive or prejudice its rights to which the insurer expects to be subrogated.

### Insured's Duty of Disclosure

Section 21 of the Insurance Contracts Act 1984 (Cth) provides that before you enter into a contract of General Insurance with an insurer, you have a duty to disclose to the insurer every matter that is known to you and which you know, or a reasonable person in the circumstances could be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

**Terms appearing in bold-face type, other than section headings, are defined in Section VI.**

However, your duty of disclosure does not require you to disclose matters:

- that diminish the risk to be undertaken by the insurer;
- that are of common knowledge;
- that your insurer knows or, in the ordinary course of its business, ought to know;
- as to which compliance with your duty is waived by the insurer.

This duty of disclosure continues after the proposal form has been completed up until the Policy Period commences.

### Consequences of Non-Disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a Claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

### Duty of Utmost Good Faith

The duty of utmost good faith applies to this contract. This means that there is implied into this contract a provision requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith.

Please read the entire policy carefully to determine the Insured's rights and duties, and what is and is not covered. Various provisions throughout this policy restrict or exclude coverage. Please note that the amounts incurred for legal defence reduce the limit of liability available to pay loss and shall be applied against the deductible amount.

## COVER

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In consideration of payment of the premium by the **Named Insured** and in reliance upon the statements in the **Named Insured's** Application made a part hereof, the Company agrees with the **Insured**, subject to all the terms, exclusions and conditions of this Policy, as follows:

### I. INSURING AGREEMENTS

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#### A. COVERAGE

The Company will pay on behalf of the **Insured** all sums that the **Insured** shall become legally obligated to pay as **Loss** as a result of **Claims** for **Bodily Injury, Property Damage or Clean-up Costs** caused by **Pollution Conditions** resulting from **Covered Operations**. The **Pollution Conditions** must be unexpected and unintended from the standpoint of the **Insured**. **Claims** for **Bodily Injury, Property Damage or Clean-up Costs** must be first made against the **Insured** and reported to the Company during the **Policy Period**.

For this Policy to apply, all of the following conditions must be satisfied:

1. The **Covered Operations** which result in a **Claim** must commence on or after the Retroactive Date stated in Item 5 of the Schedule.
2. The **Insured** must report the **Claim** to the Company, in writing, as provided in Section **IV. CLAIMS PROVISIONS, A. INSURED'S DUTIES WHEN THERE IS A CLAIM**, subparagraph 1., of this Policy within the **Policy Period** or within thirty days thereafter.

#### B. DEFENSE

When a **Claim** is made against the **Insured** to which Section **I. INSURING AGREEMENT. A. COVERAGE** applies, the Company has the right to appoint counsel and the duty to defend such **Claim**, even if groundless, false, or fraudulent.

Upon the **Insured's** satisfaction of any applicable deductible amounts, **Claim Expenses** shall be paid by the Company and such payments shall be included as **Loss** and reduce the available Limit of Liability. The Company shall not be obligated to defend or continue to defend any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Claim Expenses** or **Loss** or both.

#### C. SETTLEMENT

If the **Insured** refuses to consent to a settlement or compromise recommended by the Company and elects to contest such **Claim** or continue legal proceedings in connection with such **Claim**, then the Company's Limit of Liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus **Claim Expenses** incurred up to the date of such refusal, subject to the applicable Limits of Liability of this Policy.

## II. EXCLUSIONS

This Policy does not provide coverage and the Company will not pay **Claim Expenses** or **Loss** for:

- A.** Any **Claim** based upon or arising out of **Pollution Conditions** existing prior to the inception date of this Policy, if any employee of the **Named Insured** responsible for environmental affairs, control or compliance or any manager, supervisor, officer, director, or partner of the **Named Insured** knew or reasonably could have foreseen that such **Pollution Conditions** could give rise to a **Claim**.

This exclusion shall not apply to **Claims** based upon or arising out of such **Pollution Conditions** which commenced during the term of a prior Contractors Pollution Liability Policy issued by the Company or Chartis, provided that:

1. The **Insured** has maintained Contractors Pollution Liability Insurance with the Company or its affiliate on a successive and uninterrupted basis for the period succeeding the **Pollution Condition**; and
2. The **Insured** made full and complete disclosure of such **Pollution Condition** on each renewal application for Contractors Pollution Liability insurance with the Company or its affiliate.

However, none of the preceding provisions shall restrict or prevent the Company or its affiliate where appropriate, from exercising its right to cancel or non-renew this Policy.

- B.** Any **Claim** based upon or arising out of any **Insured's** knowing, wilful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.
- C.** Any **Claim** based upon, arising out of or as a consequence of the deficiency or malfunction of any product or piece of equipment sold, manufactured or furnished by the **Named Insured**, any subsidiary of the **Named Insured** or any entity which wholly or partly owns, operates or manages the **Named Insured** or any subsidiary of such entity, or by others under license from the **Named Insured**.
- D.** Any **Claim** based upon or arising out of liability of others assumed by the **Named Insured** under any contract or agreement. This exclusion does not apply to liability:
1. Arising from **Covered Operations** performed by subcontractors of the **Named Insured**, provided such liability is assumed by the **Named Insured** in a written contract with its client for such operations and the **Claim** occurs subsequent to the execution of the contract;
  2. Assumed in a contract or agreement that is an **Insured Contract**, provided that the **Claim** occurs subsequent to the execution of the contract or agreement; or
  3. That the **Named Insured** would have in the absence of the contract or agreement.
- E.** Any **Claim** for **Bodily Injury** sustained by any employee of the **Named Insured** while engaged in employment by the **Named Insured** or by any person whose right to assert a **Claim** against the **Named Insured** arises by reason of any employment, blood, marital, or any other relationship with the employee. This exclusion applies:
1. Whether the **Named Insured** may be liable as an employer or in any other capacity; or
  2. To any obligation to share damages with or to repay, reimburse or indemnify someone else who must pay damages because of **Bodily Injury**.

This exclusion does not apply to liability assumed by the **Named Insured** under an **Insured Contract**.

- F.** Any **Claim** based upon or arising out of any obligation for which an **Insured** or any party may be held liable under any unemployment, Workers' Compensation, disability benefits, or other similar laws.

- G. Any **Claim** based upon or arising out of the ownership, entrustment, maintenance, operation or use of any watercraft, aircraft, **Motor Vehicle**, or rolling stock of any kind, which is owned, operated or rented by or loaned to the **Named Insured**. This exclusion does not apply to the **Loading or Unloading** of any watercraft, aircraft, **Motor Vehicle**, or rolling stock of any kind, whether owned, operated or rented by or loaned to the **Named Insured** or not.
- H. Any **Claim** based upon or arising out of any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, hostilities, whether war be declared or not, civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot or civil commotion.
- I. Any **Claim** based upon or arising out of any waste or any products or materials transported, shipped, or delivered via **Mobile Equipment, Motor Vehicle**, aircraft, watercraft or rolling stock to a location beyond the boundaries of a site at which the **Covered Operations** are performed.
- J. Any **Claim** based upon or arising out of the **Named Insured's** participation in any joint venture.
- K. Any **Claim** based upon or arising out of professional services rendered or failed to be rendered by the **Named Insured** or others for whom the **Named Insured** is legally liable, including but not limited to, recommendations, opinions and strategies rendered for architectural, consulting, design and engineering work, such as drawings, designs, maps, reports, surveys, change orders, plan specifications, assessment work, remedy selections, site maintenance, equipment selection, and related construction management, supervisory, inspection or engineering service. This exclusion does not apply to any **Claims** alleging liability against the **Named Insured** on the basis of improper supervision or lack of supervision of any sub-contractors performing **Covered Operations**.
- L. Any **Claim** for **Loss** directly or indirectly caused by or contributed to, by or arising from the radioactive, toxic or explosive properties of radioactive material, nuclear fuel or waste and/or nuclear reactors and nuclear power stations or plants, and any other premises or facilities whatsoever related to or concerned with the production of nuclear energy or the production or storage or handling of nuclear fuel or waste.
- M. Any **Claim** based upon or arising out of:
  1. **Property Damage** to the work performed by, or on behalf of the **Named Insured** or its parent, subsidiary or affiliate arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith; or
  2. **Property Damage** to the **Named Insured's Products**.
- N. Any **Claim** arising from **Microbial Matter**.
- O. Any **Claim** arising directly or indirectly as a result of or in connection with **Terrorism**, including but not limited to, any contemporaneous or ensuing Loss caused by fire, looting or theft.
- P. Any **Claim** for any civil, administrative or criminal fines or penalties imposed directly against an **Insured**.
- Q. Any **Claim** resulting in **Loss** arising in whole or in part out of the design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair, including remodelling, service, correction, or replacement of an **Exterior Insulation and Finish System (EIFS)**, synthetic stucco, or any similar product or any part thereof, including the application or use of paints, conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a product.
- R. Any **Claim** arising out of **Covered Operations** performed within the USA or Canada, or any legal action or litigation brought in a court within the USA or Canada or out of any legal action or litigation brought in a court outside of the USA or Canada to enforce a judgement handed down in a court within the USA or Canada whether by way of reciprocal agreement or otherwise. For the purpose of this exclusion, USA or Canada shall mean the United States of America or the Dominion of Canada and their territories and protectorates.

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- S.** Any **Loss** or **Claim** arising in, or where the Insured or any beneficiary under the Policy is a citizen or instrumentality of the government or, any country(ies) against which any laws and/or regulations governing this Policy and/or the Company, its parent company or its ultimate controlling entity have established any embargo or other form of economic sanction which have the effect of prohibiting the Company to provide insurance coverage, transacting business with or otherwise offering economic benefits to the Insured or any other beneficiary under the Policy.

It is further understood and agreed that no benefits or payments will be made to any beneficiary(ies) who is/are declared unable to receive economic benefits under the laws and/or regulations governing this Policy and/or the Company, its parent company or its ultimate controlling entity.

### III. DEFINITIONS

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- A. Bodily Injury** means physical injury, or sickness, disease, mental anguish or emotional distress when accompanied by physical injury, sustained by any person, including death resulting therefrom.
- B. Claim** means a written demand received by an **Insured** seeking a remedy and alleging liability or responsibility on the part of the **Named Insured** for **Loss**.
- C. Claim Expenses** means:
1. Fees charged by any lawyer designated by the Company; and
  2. All other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, if authorized by the Company.
- Claim Expenses** shall not include:
1. The salaries of any employee of the Company; and
  2. Costs, charges or other expenses incurred by the **Insured** for goods supplied or services performed by or on behalf of the staff or salaried employees of the **Insured**, or its parent, subsidiary or affiliate, unless such costs, charges or other expenses are incurred with the prior written approval of the Company at its sole discretion.
- D. Clean-Up Costs** means expenses incurred in the investigation, removal, or remediation of **Pollution Conditions** including the associated monitoring, or disposal of soil, surfacewater, groundwater or other contamination:
1. To the extent required by **Environmental Laws**; or
  2. Which have been actually incurred by the Environmental Protection Authority or any other relevant governmental instrumentality or agency or third parties and which are recovered by it from the **Insured**.
- E. Covered Operations** means those activities performed by the **Named Insured** at a job site, as specifically defined in Item 6 on the Schedule for this Policy. **Covered Operations** also includes those activities of others performed at a job site, as defined in Item 6 on the Schedule for this Policy, for which the **Named Insured** is legally obligated.
- F. Environmental Laws** means any applicable federal, state, provincial or local law pursuant to which an **Insured** has or may have a legal obligation to incur **Clean-Up Costs**.
- G. Insured** means:
1. The **Named Insured**;
  2. Any person who is or was a director, officer, partner, or employee of the **Named Insured** while acting within the scope of his or her duties as such;
  3. The client for whom the **Named Insured** performs or performed **Covered Operations**, provided that a written contract or agreement is in effect between the **Named Insured** and the client. However, such clients are covered under this Policy solely with respect to **Loss** arising from **Covered Operations** and are not covered for any **Loss** arising from the client's own liability. Clients of the **Named Insured** are covered under this Policy only for Limits of Liability up to and not exceeding the amount required by the written contract with the **Named Insured** and subject to the Limits of Liability of this Policy.
- H. Insured Contract** means:
1. An obligation, as required by statute, regulation or ordinance, to indemnify a municipality, except in connection with work for a municipality;

2. That part of any other contract or agreement pertaining to the **Named Insured's Covered Operations** (including an indemnification of a municipality in connection with work performed for a municipality) whereby the **Named Insured** assumes the tort liability of another party to pay for **Bodily Injury, Property Damage or Clean-Up Costs** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

**I. Loading or Unloading** means the handling of property at the job site where **Covered Operations** are being performed:

1. After the property is moved from the place where it is accepted for movement into or onto a watercraft, aircraft, **Motor Vehicle**, or rolling stock of any kind;
2. While the property is in or on a watercraft, aircraft, **Motor Vehicle**, or rolling stock of any kind; or
3. While the property is being moved from a watercraft, aircraft, **Motor Vehicle**, or rolling stock of any kind to the place where it is finally delivered;

but **Loading or Unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the watercraft, aircraft, **Motor Vehicle**, or rolling stock of any kind.

**J. Loss** means:

1. Monetary awards or settlements of compensatory damages for **Bodily Injury or Property Damage**;
2. **Clean-Up Costs**; and
3. **Claim expenses**.

**K. Mobile Equipment** means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on premises owned or rented by the **Named Insured**;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (a) Power cranes, shovels, loaders, diggers or drills; or
  - (b) Road construction or resurfacing equipment such as graders, scrapers or rollers.
5. Vehicles not described in 1, 2, 3, or 4 above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (a) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment, or
  - (b) Cherry pickers and similar devices used to raise or lower workers.
6. Vehicles not described in 1, 2, 3, 4, or 5 above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not **Mobile Equipment** but will be considered **Motor Vehicles**:

(a) Equipment designed primarily for:

- (i) Snow removal;
- (ii) Road maintenance, but not construction or resurfacing; or
- (iii) Street cleaning.

(b) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers, and

(c) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**L. Motor Vehicle** means an automobile, van, truck, trailer or semi-trailer designed to travel on public roads, but does not include **Mobile Equipment**.

**M. Named Insured** means the person or entity designated as such in Item 1 of the Schedule.

**N. Named Insured's Product** means goods, products, or pieces of equipment, including component parts thereof and including other products in which such goods, products or pieces of equipment are incorporated, which are manufactured, sold, furnished, or supplied by the **Named Insured**, any subsidiary of the **Named Insured**, any entity which wholly or partly owns, operates or manages the **Named Insured** or any subsidiary of such entity, or any person under license from the **Named Insured**.

**O. Policy Period** means the period set forth in Item 2 of the Schedule, or any shorter period arising as a result of cancellation of this Policy.

**P. Pollution Conditions** means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered. **Pollution Conditions** shall not include **Microbial Matter**.

**Q. Property Damage** means:

1. Physical injury to or destruction of tangible property of parties other than the **Insured** including the resulting loss of use thereof;
2. Loss of use of tangible property of parties other than the **Insured** that has not been physically injured or destroyed; or

**Property Damage** does not include **Clean-Up Costs**.

**R. Microbial Matter** means fungi, bacterial or viral matter which reproduces through the release of spores or the splitting of cells or other means, including but not limited to, mould, mildew and viruses, whether or not such **Microbial Matter** is living.

**S. Terrorism** means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts and electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organization, government, power, authority or military force, when the effect is to intimidate, coerce or harm a government, the civilian population or any segment thereof, or to disrupt any segment of the economy. **Terrorism** shall also include any act which is verified or recognized by the United Nations as an act of terrorism.

**T. Exterior Insulation and Finish System (EIFS)** means synthetic stucco or any other exterior insulation and finish system used on any part of any building or structure and consisting of:

- 1) A rigid or semi-rigid insulation board made of expanded polystyrene or other materials;
- 2) The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
- 3) A reinforced base coat; and
- 4) A finish coat providing surface texture and colour.

## IV. CLAIMS PROVISIONS

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### A. INSURED'S DUTIES WHEN THERE IS A CLAIM

As a condition precedent to the right of coverage provided by this Policy, the **Insured** must do the following:

1. In the event of a **Claim**, the **Insured** shall give the Company's representative(s) as identified in this paragraph immediate notice of receipt of the **Claim** by the **Insured**.

All **Claims** shall be reported to:

The Claims Manager  
Chartis Australia Insurance Limited  
Chartis Building  
Level 12, 717 Bourke Street  
Docklands, VIC 3008  
Fax: 03.9522.4645

or other address(es) as substituted by the Company in writing.

2. The **Insured** shall furnish information at the request of the Company. When a **Claim** has been made, the **Insured** shall forward the following to the Company as soon as practicable after receipt, or receipt by the **Insured's** representative or agent:
  - (a) All correspondence between the **Insured** and any third party claimant;
  - (b) All demands, summons, notices or other processes or papers filed with a court of law, administrative agency or an investigative body;
  - (c) All technical reports, laboratory data, field notes or any other documents generated by persons hired by the **Insured** to investigate the **Claim**;
  - (d) All expert reports, investigations and data collected by experts retained by the **Insured** whether or not the **Insured** intends to use the material for any purpose; and
  - (e) Any other information developed or discovered by the **Insured** concerning the **Claim** whether or not deemed by the **Insured** to be relevant to the **Claim**.
3. All **Insureds** shall cooperate with the Company to the fullest extent possible by providing the assistance necessary to adjust, investigate, and defend the **Claim**, and shall participate in discussions regarding cleanup or performance of a cleanup should the Company exercise its rights under Paragraph B. of this Section.
  - (a) The **Insured** agrees to provide the Company free access to interview any employee, agent, representative, or independent contractor of the **Insured** and review any documents of the **Insured** concerning the **Claim**.
  - (b) Upon the Company's request, the **Insured** shall attend hearings, depositions, and trials, assist in effecting settlements, securing and giving evidence, and obtaining the attendance of witnesses, and offer all reasonable assistance in the investigation and defense of **Claims** made under this Policy.
  - (c) No **Insured** shall admit liability, waive, or extend any statute or period of limitation, or, except at such **Insured's** own cost, voluntarily make any payment, assume any obligation, or incur any expense without the Company's prior written consent.

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- (d) An **Insured**, as often as the Company may reasonably require, shall separately submit to examination(s) under oath.
  - (e) The **Insured** shall refrain from discussing the facts and circumstances of any **Claim** with anyone other than legal counsel or representatives of the Company.
4. An **Insured** who has made a **Claim** under the policy may at any time by notice in writing given to the Company, require the Company to inform the **Insured** in writing whether the Company admits that the contract applies to the Claim and, if the Company so admits, whether the Company proposes to conduct on behalf of the **Insured**, the negotiations and any legal proceedings in respect of the **Claim** made against the **Insured**.

## **B. CLEANUP**

The Company shall have the right but not the duty to participate in decisions regarding **Clean-Up Costs** and to assume direct control over all aspects of the cleanup and the adjustment of any **Claim** up to the Limit of Liability. In case of the exercise of this right, the **Insured**, on demand of the Company, shall promptly reimburse the Company for any element of **Loss** falling within the **Insured's** deductible.

## V. LIMITS OF LIABILITY AND DEDUCTIBLE

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The Limits of Liability shown in the Schedule and the rules below fix the most the Company will pay regardless of the number of:

- i. **Insureds;**
- ii. **Claims;**
- iii. Persons or organizations making **Claims**.

### A. LIMITS OF LIABILITY - AGGREGATE

The Company's total liability for all **Loss** shall not exceed the "Aggregate" stated in Item 3 of the Schedule.

Once the "Aggregate" Limit of Liability has been exhausted, the Company shall not defend any **Claim**, or pay **Loss** or **Claim Expenses** for any **Claim**.

### B. LIMITS OF LIABILITY - EACH CLAIM

Subject to Paragraph **A. LIMITS OF LIABILITY – AGGREGATE** above, the "Each Claim" Limit stated in Item 3 of the Schedule is the most the Company will pay for all **Loss** arising out of any one **Pollution Condition** or the same, related or continuous **Pollution Conditions**.

Once the "Each Claim" Limit of Liability has been exhausted, the Company shall not defend any **Claim**, or pay **Loss** or **Claim Expenses** for any **Claim**.

### C. MULTIPLE CLAIMS

Regardless of the number of **Claims**, **Pollution Conditions**, claimants, or **Insureds**, the total Limit of Liability of the Company for **Claims** during one or more policy periods arising out of the same, interrelated, associated, repeated, or continuous **Pollution Conditions** shall be considered a single **Claim** subject to the Deductible stated in Item 4 and the "Each Claim" Limit of Liability stated in Item 3 of the Schedule of the Policy in effect when the first **Claim** was made and reported to the Company, and shall be deemed first reported to the Company during the policy period in which the first **Claim** was first reported to the Company.

### D. DEDUCTIBLE - EACH CLAIM

The "Each Claim" deductible stated in Item 4 of the Schedule applies to all **Loss** arising out of any one **Pollution Condition** or out of the same, related or continuous **Pollution Conditions**. The deductible shall be paid by the **Named Insured** and remain uninsured. The Limits of Liability shall apply in excess of the deductible.

The Company may advance payment of part or all of the deductible amount and, upon notification of such payment made, the **Named Insured** shall promptly reimburse the Company for the deductible amounts advanced by the Company.



## VI. EXTENDED REPORTING PERIOD

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If the Company cancels (for any reason other than non-payment of premium) or refuses to renew this Policy, or if the **Named Insured** cancels or declines to renew this policy, the **Named Insured** shall have the right to purchase, for an additional premium of 100% of the total annual premium of this Policy, a twelve (12) month Extended Reporting Period. Any **Claim** made against the **Insured** during the Extended Reporting Period must arise from **Covered Operations** performed prior to the cancellation or expiration date and on or after the Retroactive Date stated in Item 5 of the Schedule.

To exercise this right, the **Named Insured** must send a request for the Extended Reporting Period in writing to the Company not later than thirty (30) days after the cancellation or expiration date. Failure by the **Named Insured** to give such notice within thirty (30) days waives the right to the Extended Reporting Period. The entire additional premium due must be paid at the time such request is made. Mailing by the **Named Insured** by registered mail of such notice to the Company at its address stated in the Schedule shall be sufficient proof of notice.

The quotation of a different premium or limit of liability for renewal does not constitute a cancellation or refusal to renew for the purpose of this provision.

As a condition precedent to the **Named Insured's** right to purchase the Extended Reporting Period, the **Named Insured** must have satisfied all conditions of the Policy.

At the commencement of any Extended Reporting Period, the entire premium therefore shall be considered earned, and in the event the **Named Insured** terminates the Extended Reporting Period before its term, for any reason, the Company shall not be liable to return to the **Named Insured** any portion of the premium paid for such Extended Reporting Period.

The purchase of the Extended Reporting Period provision shall not serve to reinstate the Aggregate Limit or otherwise increase the Limits of Liability set forth in the Schedule.

## VII. TERRITORY

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This Policy only applies to **Claims**, which are made or brought in the Commonwealth of Australia, its States, Territories or Protectorates.

## VIII. CONDITIONS

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### A. HOW OTHER INSURANCE APPLIES

Before the Inception Date, the **Named Insured** shall inform the Company of all policies of insurance, under which any **Insured** may be entitled to claim and which may provide primary coverage of a similar nature to that provided by this Policy. All such policies will be noted on the attached Schedule of Other Insurance Policies. Where other insurance may be available for **Loss** covered under this Policy, the **Insured** shall promptly upon request of the Company provide the Company with copies of all such policies. If other valid and collectible insurance is available to the **Insured** for **Loss** covered by this Policy, the Company's obligations are limited as follows:

1. This insurance is primary, and the Company's obligations are not affected unless any of the other insurance is also primary. In that case, the Company will share with all such other insurance by the method described in Paragraph 2. below.
2. If all of the other insurance permits contribution by equal shares, the Company will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Company will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.
3. This insurance is excess where the **Named Insured** is an insured on a pollution liability policy for **Covered Operations** performed by or on behalf of the **Named Insured** at a specific job site and the pollution liability policy applies to a specific job site.

### B. BANKRUPTCY

Bankruptcy or insolvency of the **Insured's** estate shall not relieve the Company of any of its obligations under this Policy.

### C. APPLICATION

The statements in the Application are the **Named Insured's** representations and are deemed material. This Policy is issued based upon the truth and accuracy of such representations. Upon the binding of coverage, the Application shall be attached to and become part of this Policy. This Policy embodies all agreements existing between the **Named Insured** and the Company or any of its agents relating to this Policy.

### D. AUDIT

The Company may examine and audit the **Insured's** books and records at any time during the **Policy Period** and within three (3) years after the final termination of this Policy, as far as they relate to this Policy.

### E. FALSE OR FRAUDULENT CLAIMS

Subject to Sections 31 and 56 of the Insurance Contracts Act 1984 (Cth), if the **Insured** reports any **Claim**, knowing such **Claim** to be false or fraudulent, this policy shall be cancelled and all insurance coverage associated with that claim shall be forfeited.

## F. SERVICE OF SUIT

It is agreed that in the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the Commonwealth of Australia. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the Commonwealth of Australia, to remove an action to such a Court, or to seek a transfer of a case to another court as permitted by the laws of the Commonwealth or of any State. It is further agreed that service of process in such suit may be made upon the Claims Manager, Chartis Australia Insurance Limited, Level 12, 717 Bourke Street, Melbourne, VIC 3008, or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal. The parties will submit to the Courts of Australia.

## G. INSPECTION

The Company shall be permitted but not obligated to inspect, sample, and monitor on a continuing basis the **Insured's** property or operations, at any time. Neither the Company's right to make inspections, sample, and monitor, nor the actual undertaking thereof nor any report thereon, shall constitute an undertaking, on behalf of the **Insured** or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule, or regulation.

## H. SOLE AGENT

The **Named Insured** first listed in Item 1 of the Schedule shall act on behalf of all other **Insureds**, if any, for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or non-renewal, and the exercise of the rights provided in the Extended Reporting Period section.

## I. ASSIGNMENT

This Policy shall not be assigned without the prior written consent of the Company. Assignment of interest under this Policy shall not bind the Company until its consent is endorsed onto this Policy.

## J. SUBROGATION

In the event of any payment under this Policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefor against any person or organization and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including without limitation, assignment of the **Insured's** rights against any person or organization who caused **Pollution Conditions** on account of which the Company made any payment under this Policy. The **Insured** shall do nothing after a **Claim** to prejudice the Company's rights under this paragraph. Any recovery as a result of subrogation proceedings arising out of the payment of **Loss** covered under this Policy shall accrue first to the **Insured** to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payment under the Policy; and then to the **Insured** to the extent of its Deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

## K. CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or stop the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

## L. CANCELLATION

This Policy can be cancelled by the **Named Insured** by returning the Policy to the Company or its authorized representatives. The **Named Insured** can also cancel the Policy by written notice to the Company stating at what future date cancellation is to be effective. If the **Named Insured** cancels, unearned premium shall be computed using the customary short rate table, or pro-rata of the Minimum Annual Policy Premium, whichever is greater.

This Policy can be cancelled by the Company, in the circumstances permitted by the Insurance Contracts Act 1984 (Cth) by written notice to the **Named Insured**, at the address last known to the Company. The Company shall provide written notice fourteen (14) before cancellation is to be effective. The mailing of any notice of cancellation shall be sufficient proof of notice.

## M. SEPARATION OF INSUREDS

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first **Named Insured**, this insurance applies: 1. As if each **Named Insured** were the only **Named Insured**; and 2. Separately to each **Insured** against whom a **Claim** is made or suit is brought.

## N. INDEPENDENT COUNSEL

In the event the **Insured** is entitled by law to select independent counsel to defend the **Insured** at the Company's expense, the attorney fees and all other litigation expenses the Company must pay to that counsel are limited to the rates the Company actually pays to counsel the Company retains in the ordinary course of business in the defense of similar **Claims** or suits in the community where the **Claim** arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency including experience in defending **Claims** or suits similar to the one pending against the **Insured** and to require such counsel to have errors and omissions insurance coverage. As respects any such counsel, the **Insured** agrees that counsel will timely respond to the Company's requests for information regarding the **Claim** or suit.

Furthermore, the **Insured** may at anytime, by its signed consent, freely and fully waive its right to select independent counsel.

IN WITNESS WHEREOF, the Company has caused this Policy and the Schedule to be signed by a duly authorised signatory of the Company.

**Signed for and on behalf of the Company**



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**Authorised Signatory**

MINIMUM EARNED PREMIUM, 100% ON INCEPTION

## Endorsement

### Contractors Pollution Liability

### 100% MINIMUM EARNED PREMIUM

#### Additional Endorsement No: 1

**This endorsement, effective 4:00 P.M.,** 12<sup>th</sup> July 2011  
**Forms a part of Policy No.:** EL0000178037  
**Issued to:** John Lovegrove and Co Pty Ltd T/as Lovegrove Electrical

Notwithstanding anything to the contrary stipulated in the Policy or endorsed thereon, it is hereby declared and agreed that:

The following minimum earned premium will apply:

Policy Inception: Minimum Premium Earned 100%

**All other terms, conditions and exclusions of the policy remain the same.**



**Authorised Signatory**

**Date Issued: 05/09/2011**

## Contractors Pollution Liability

### MINIMUM AND DEPOSIT PREMIUM

**Additional Endorsement No: 2**

**This endorsement, effective 4:00 P.M.,**                      12<sup>th</sup> July 2011

**Forms a part of Policy No.:**                                      EL0000178037

**Issued to:**    John Lovegrove and Co Pty Lty T/as Lovegrove Electrical

Notwithstanding anything to the contrary stipulated in the Policy or endorsed thereon, it is hereby declared and agreed that:

1. Section VII. CONDITIONS, Condition L. CANCELLATION is deleted and replaced with:

**“L. CANCELLATION**

This Policy can be cancelled by the **Company** in the circumstances permitted by the Insurance Contracts Act 1984 (Cth). This Policy can be cancelled by the **Named Insured** by the **Named Insured** giving written notice to the **Company** of the cancellation stating at what future date the cancellation is to be effective. Cancellation by either the **Company** or the **Named Insured** is subject always to it being understood and agreed that the premium for this policy is deemed to be fully earned upon the commencement of the **Policy Period** and is non-refundable in the event of cancellation.”

2. Section VII. CONDITIONS, includes the following additional clause:

**“O. PREMIUM**

The minimum and deposit premium advised at the inception of each period of insurance is calculated by multiplying the estimated turnover figure for the forthcoming period of insurance by the adjustment rate.

For the purpose of ascertaining any adjustment to this premium the **Named Insured** must provide, within 7 days from the expiry of each **Policy Period**, the actual turnover figure for the period of insurance.

The difference between the premium calculated using the actual turnover figure and the deposit premium will be paid by the **Named Insured**, it being understood and agreed that the minimum premium as advised by the **Company** at the inception of each period of insurance is deemed to be fully earned upon the commencement of the **Policy Period**, is non-refundable and will be retained by the **Company**.

The **Named Insured** is required to and hereby agrees to keep accurate records of all such turnover figures and, on request, to provide the **Company** with an audited copy of these records.

**Adjustment Rate: 0.034 if turnover exceeds \$2,000,000.**



**All other terms, conditions and exclusions of the policy remain the same.**

**Authorised Signatory**

**Date Issued:05/09/2011**

\$100K INJURY TO CONTRACTOR

## Endorsement

### Contractors Pollution Liability

### \$100K INJURY TO CONTRACTOR ENDORSEMENT

**Additional Endorsement No: 3**

**This endorsement, effective 4:00 P.M.,** 12<sup>th</sup> July 2011  
**Forms a part of Policy No.:** EL0000178037  
**Issued to:** John Lovegrove and Co Pty Lty T/as Lovegrove Electrical

Notwithstanding anything to the contrary stipulated in the Policy or endorsed thereon, it is hereby declared and agreed that:

A Deductible of \$100,000 each and every occurrence will apply to **Bodily Injury Claims** in respect of liability assumed by the **Named Insured** under an **Insured Contract**.

This Endorsement is intended to apply only to **Claims** for **Bodily Injury** arising by reason of employment in the **Covered Operations** by the **Named Insured**, an independent contractor or some other person or entity.

**All other terms, conditions and exclusions of the policy remain the same.**



**Authorised Signatory**

**Date Issued:05/09/2011**



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