



LIBERTY INTERNATIONAL UNDERWRITERS
(a member company of Liberty Mutual Insurance Group)

MASTER COMBINED GENERAL & PRODUCTS & PROFESSIONAL
LIABILITY

CLAIMS MADE AND NOTIFIED

PADI ASIA PACIFIC



LIBERTY INTERNATIONAL UNDERWRITERS
(a member company of Liberty Mutual Insurance Group)

Combined General & Products & Professional Liability Schedule

Claims Made and Notified

1. POLICY NUMBER: SY-CAS-08-401140
2. INSURED: PADI Asia Pacific and individual members, dive centers and resorts and others as agreed
3. PERIOD OF INSURANCE: From: 30th September 2009 at 4pm local standard time
To: 30th September 2010 at 4pm local standard time
4. INSURED'S BUSINESS: As defined in the policy wording under "Scuba Diving"
5. LIMIT OF INDEMNITY: SECTION A
Combined General & Products Liability
AUD\$10,000,000 any one Claim and in the aggregate during the Period of Insurance in respect of Products.

Subject however, to the following sub-limits of indemnity:

SECTION B
Professional Indemnity
AUD\$5,000,000 any one Claim and in the aggregate

SECTION C
Legal Expenses
AUD\$500,000 any one Claim

SECTION D
Statutory Liability Cover
AUD\$75,000 any one claim and in the aggregate during the period of Insurance any one member

6. DEDUCTIBLE: Applicable to Sections A, B & C
 1. \$250.00 each and every Claim made for Damage (costs exclusive) or
 2. Nil each and every Claim made for Injury (cost exclusive)
7. RETROACTIVE DATE: 31st December 1998 or the Retroactive date applicable to any prior period of claims made coverage ,subject to that coverage being an uninterrupted period of cover prior to inception of this Policy, whichever is the earliest
8. PREMIUM: As agreed
9. POLICY ENDORSEMENTS
 1) It is hereby declared and agreed that exclusion 7.6 does not apply to employees of the insured working for or conducting insured activities on behalf of the insured.
 2) It is hereby declared and agreed that exclusion 7.2.3 is deleted
10. WORDING: Claims Made CLM03.02 and;
 Statutory Liability as per attached

This Policy (consisting of this Schedule, the attached Policy terms and endorsements) is valid only if it is signed and dated below by a duly authorised representative of Liberty International Underwriters.



10th September 2009

 Authorised Representative of
 Liberty International Underwriters

 Date



LIBERTY INTERNATIONAL UNDERWRITERS
(a member company of Liberty Mutual Insurance Group)

SECTIONS A

Combined General & Products & Professional Liability Policy
Claims Made and Notified

This is a Claims Made and Notified Policy – no Claim can be made against this Policy after the expiry date stated in the Schedule. This Policy is not a renewable contract.

The terms and conditions of this Policy provide that:

- (i) A Claim (as defined) must be made against the Insured during the Period of Insurance for this Policy to apply; and
- (ii) The Insured must immediately notify Liberty International Underwriters (hereinafter called LIU) in writing of any such Claim(s). Such notification must be given to LIU during the Period of Insurance for this Policy to apply.

Claims made against the Insured outside of the Period of Insurance are not covered unless entitled to Indemnity under the Automatic Runoff definition as defined under Section 2 of this policy.

1. Insuring Clause

Subject to the terms of this Policy, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation as a result of a Claim(s) both first made against the Insured and notified to LIU during the Period of Insurance for Injury and/or Damage in connection with the Insured's Business.

2. Definitions

2.1 "Asbestos" means:

- 2.1.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite.
- 2.1.2 That group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres.

And includes Asbestos Products and Products containing Asbestos.

2.2 "Automatic Runoff" means:

An Insured (as defined) who has been Insured under this policy immediately prior to ceasing to operate, shall be entitled to be indemnified by LIU in respect of any Claim or Claims alleged to have been committed in relation to the Business Description in accordance with the Limit of Indemnity, Deductible & General Conditions of the expiring policy as detailed in the Policy Schedule.

Indemnity provided by this Definition is in respect only of Claim or Claims first made during the Period of Insurance against the annual Policy and in the event of that annual policy being cancelled or not renewed, no Indemnity will attach for any Claims made after the date of such cancellation or expiry.

2.3 "Claim" or "Claims" means:

- 2.3.1 Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter-claim or third or similar party notice issued against or served on the Insured; or
- 2.3.2 Any written claim or allegation against the Insured which is the result of Injury and/or Damage and/or Financial loss.

2.4 "Damage" means:

- 2.4.1 Physical damage to or destruction of tangible property, (other than Product) including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it.
- 2.4.2 Loss of use of tangible property, (other than Product) that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which was first reported to LIU during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.

2.5 "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.

2.6 "Financial Loss" means any loss which is economic in nature and not consequent upon Injury of Damage.

- 2.7 "Injury" means;
- a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
 - b) false arrest, false imprisonment, wrongful detention and malicious prosecution;
 - c) libel, slander, defamation
 - d) false acquisitions of sexual assault, sexual harassment, sexual molestation or rape
- 2.8 "Insured" wherever used in this Policy means the Insured named in the Schedule and,
- 2.8.1 Any subsidiary company (including subsidiaries thereof) of the Insured, and
- 2.8.2 Any other entity controlled by it and over which it assumes active management.
- 2.9 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).
- 2.10 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.
- 2.11 "Period of Insurance" is the period shown in the Schedule.
- 2.12 "Scuba Diving" means principally incorporating class and water based learning activities and modules including first aid training and certification, including the determination of standards by the accrediting agency and all activities relating to training, instructing, observing and control of recreational scuba diving. This includes all activities relating to snorkelling, skin diving, swimming, recreational surface supplied air, servicing, hiring and repairing of equipment and sales of related products, tours of reef by glass bottom boats (under 12meters), transportations of people from one Island to another, bird watching, guided tours of Island when not diving, jungle and/or bush walking, fishing, underwater photography and/or video, whale watching, scuba doos, beach games and the collection and reporting of data obtained by volunteer snorklers and divers on the health of coral reefs, coral reef conservation and coral reef management issues to the general community, business' and Government Agencies.
- In respect of dive stores and resorts, in addition to the above activities includes all activities includes all activities in respect to organizing, selling, promoting diving activities, retail sales, property owners and occupiers.
- 2.13 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 2.14 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a motor vehicle).

2.15 "Retroactive Date" means the date shown in the Schedule.

2.16 "Terrorism" means an act or acts

2.16.1 That are violent in nature or are dangerous to human life:

2.16.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia; and that have the apparent intent of:

2.16.1.1.1 Intimidating or coercing any civilian population;

2.16.1.1.2 Influencing the policy of any government by intimidation or coercion; or

2.16.1.1.3 Affecting the conduct of any government by mass destruction, assassination, or kidnapping,

Or

2.16.2 That result in:

2.16.2.1 The denial of access to or services from web sites, computer networks, or telecommunications equipment; or

2.16.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, or mechanical equipment, or that otherwise interrupt the functioning of web sites or such properties

And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

2.17 "Worker" means any person employed by the Insured or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise.

2.18 "Workers' Compensation Law" means any law relating to compensation for Injury to Workers or employees.

3. Indemnity to Others

The indemnity granted by this Policy will extend to:

- 3.1 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity and excluding Instructors, Assistant Instructors, and Dive Masters working for a store unless otherwise agreed.
- 3.2 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such.
- 3.3 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.
- 3.4 Any principal, in respect of that principals vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.7 and arising out of the Insured's business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy (insofar as they can apply) as though they were the Insured.

4. Cross Liabilities

Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of Claims made by any of them against any other of them provided that LIU's total liability shall not exceed the Limit of Indemnity for all Claims under this Policy.

5. Limit of Indemnity

LIU's liability to pay compensation shall not exceed the sum(s) stated in the Schedule in respect of any one Claim.

The total aggregate liability of LIU for any one Period of Insurance for all Claims in respect of or in any way connected with the Insured's Product(s) shall not exceed the sum stated in the Schedule.

6. Defence Costs

In addition to the Limit of Indemnity, LIU will pay all reasonable legal costs and expenses incurred with LIU's prior written consent in connection with any Claim or potential Claim for which the Insured is indemnified by this Policy.

Provided that LIU shall not be liable for costs and / or expenses where indemnity is not otherwise provided by this Policy.

Provided that LIU shall not be liable for legal costs and / or expenses for or in respect of representation at any formal legal inquiry involving an accident resulting in Injury or at any coroner's inquiry or defending any proceedings in a Court of summary jurisdiction.

Provided that LIU shall not pay any legal costs and / or expenses in respect of any Claim after LIU has paid compensation up to the Limit of Indemnity.

Provided further that the legal costs and expenses incurred in connection with Claims made and/or actions instituted within the United States of America, the Dominion of Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity and will not be payable by LIU in addition to the Limit of Indemnity.

7. Exclusions

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

7.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a Policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:

7.1.1 Injury for which no indemnity is or would be available to the Insured under the said Policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law.

7.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer for which no indemnity is or would be available to the Insured under the said Policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law.

7.2 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a Policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:

7.2.1 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer.

7.2.2 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any motor vehicle or trailer or of the load carried thereon.

7.2.3 Damage to any motor vehicle or trailer (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.

7.3 Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:

7.3.1 Premises (or the contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises on which the Insured is or has been working on if the physical damage or destruction arises from such work.

7.3.2 Premises tenanted by the Insured.

7.3.3 Directors', employees' and visitors' clothing and personal effects.

7.3.4 Other property (not owned by the Insured) temporarily in the Insured's possession provided:

7.3.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which the Insured is or has been working on;

7.3.4.2 LIU's limit of liability under this Clause 7.3.4 does not exceed \$1,000,000 each and every Claim and in the aggregate for any one Period of Insurance.

Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.

7.4 Damages claimed for, and the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of Insured's Products or of any property of which the Insured's Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency.

7.5 Any Product warranty or guarantee given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.

7.6 Liabilities assumed under the terms of a contract, agreement or warranty unless the Insured would have been liable in the absence of such contract, agreement or warranty.

7.7 Liabilities assumed where the Insured may have been able to recover from another party(ies) but for an agreement between the Insured and such party(ies) where the Insured has waived, released or abandoned any right of recourse or recovery against such other party(ies).

7.8 Any Product which is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft exceeding 12 meters or hovercraft.

7.9 Injury to any Worker.

Provided that if the Insured:

7.9.1 Is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or

7.9.2 Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or "employee" within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such Law;

then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, Policy of insurance or self insurance arrangement had the Insured complied with its obligations pursuant to such Law.

7.10 7.10.1 Any Workers' Compensation Law;

7.10.2 The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination;

7.10.3 Employment Practices.

7.11 The loss of use of tangible property which has not been physically damaged or destroyed resulting from:

7.11.1 A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or

7.11.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.

7.12 Any change in the nature of the Business which:

7.12.1 Occurred during the currency of this Policy; and

7.12.2 Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury and / or Damage and / or Financial loss indemnity is provided by this Policy.

For the purposes of this exclusion, where the Insured is a corporate body, the knowledge of any officer of the Insured shall be deemed to be the knowledge of the Insured.

- 7.13 7.13.1 The rendering of or failure to render professional advice or service by the Insured or any error or omission connected therewith;
- 7.13.2 Advice, design, formula or specification given for a fee by the Insured or any person covered by Clause 3 of this Policy.
- 7.14 7.14.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants, provided always that this paragraph 7.14.1 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place;
- 7.14.2 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;
- 7.14.3 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;
- 7.14.4 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others.

The total aggregate liability of LIU for all claims covered in any one Period of Insurance in respect of the proviso in Clause 7.14.1 shall not exceed the Limit of Indemnity shown in the Schedule.

- 7.15 Injury sustained due to the inhalation or ingestion of, or exposure to:
 - 7.15.1 Tobacco or tobacco smoke.
 - 7.15.2 Any ingredient or additive present in any articles, items or goods which contain or include tobacco.
- 7.16 7.16.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion;
- 7.16.2 Nuclear weapons material.
- 7.17 And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
 - 7.17.1 War and military action which includes without limitation the following:
 - 7.17.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition,

destruction of or damage to property by or under the order of any government or public or local authority;

7.17.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents;

7.17.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7.17.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:

7.17.2.1 Alone or on behalf of or in connection with any organisation; or

7.17.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.

7.17.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation, or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or radiation or radioactive contamination in place of Exclusion 7.16.

7.18 Ownership, maintenance, operation, possession or use by or on behalf of the Insured of:-

7.18.1 Any aircraft, aerial device or hovercraft.

7.18.2 Any watercraft which exceeds twelve metres in length

7.19 The Deductible and/or self-insured retention shown in the Schedule.

7.20 The erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of \$500,000 or 10% (ten percent) of the Limit of Indemnity whichever is the lesser.

7.21 Asbestos.

7.22 7.22.1 Claims made and actions instituted within the United States of America, the Dominion of Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada;

7.22.2 Claims and actions to which the laws of the United States of America, the Dominion of Canada and their respective territories and protectorates apply.

Provided that this exclusion 7.22 does not apply to an Insured who has advised PADI ASIA Pacific of their intention to temporarily teach or instruct outside the territory and geographical scope of this policy.

- 7.23 Fines, penalties, punitive damages, exemplary damages, liquidated damages and/or aggravated damages.
- 7.24 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Policy.
- 7.25 Any Claim where the Injury and/or Damage and / or financial loss is prior to the Retroactive Date.
- 7.26 Any Claim made prior to or existing at the inception of this Policy.
- 7.27 Any Claim in respect of any fact or circumstance known to the Insured prior to or existing at the inception of this Policy and which the Insured knew or ought reasonably to have known might give rise to a Claim.
- 7.28 Any Claim or circumstance likely to give rise to a Claim stated in the underwriting submission or proposal form, being the basis of this contract.
- 7.29 Any Claim or circumstance notified, or which ought to have been notified under any prior Policy.

8. General Conditions

- 8.1 The Insured shall give written notice to LIU as soon as possible of any Claim under this Policy and shall give all such additional information as LIU may require.
- 8.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of LIU who shall be entitled to take over the conduct in the name of the Insured of the defence or settlement of any Claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as LIU shall require.
- 8.3 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.
- 8.4 The amount shown within the Schedule as an excess is the first amount for each and every Claim which is to be borne by the Insured.
- 8.5 LIU may at any time discharge its total liability to the Insured in respect of any one Claim or series of Claims arising from one occurrence by paying to or on behalf of the Insured:

- 8.5.1 The total amount in respect of the said Claim or Claims to which the Insured is entitled to indemnity under this Policy, or
- 8.5.2 The total amount sought by the claimant(s) in the said Claim or Claims, or
- 8.5.3 The total amount for which the said Claim or Claims can be settled,

and in addition to such payment LIU will pay Defence Costs incurred up to the date of the said payment as provided for by Clause 6 of this Policy.

Upon such payment, LIU shall relinquish conduct or control of such Claim or Claims and be under no further liability under this Policy in connection with such Claim or Claims or Defence Costs.

8.6 This Policy shall be interpreted in accordance with the laws of Australia.

8.7 The Insured must:

8.7.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;

8.7.2 Take all reasonable precautions to:

8.7.2.1 Prevent Injury and Damage;

8.7.2.2 Prevent the manufacture, sale or supply of defective Products;

8.7.2.3 Comply, and ensure that its Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;

8.7.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.

The amount of any benefit under this Policy for any liability arising from Injury and/or Damage caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which LIU's interests have been prejudiced thereby.

8.8 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.

8.9 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

- 8.9.1 It is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments thereto.
- 8.9.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy.
- 8.9.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the third business day after the date on which notice was given to the Insured by LIU (whichever is the earlier).

Where the Insured comprises more than one person or company, it is agreed that the named Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies or others indemnified by Clause 3 for the purposes of receiving any notice of cancellation pursuant to this Clause 8.9, or any other notice, statement, document or information relating to this insurance Policy. Where the Insured has an insurance broker, nothing in this paragraph shall restrict LIU's right to notify the broker as agent of the Insured.

- 8.10 Where this Policy provides any indemnity to the Insured which is prohibited by law, this Policy shall be varied by operation of this Clause 8.10 so that this Policy does not respond to the extent that the indemnity is prohibited by law.
- 8.11 All events of a series consequent on or attributable to one source or original cause shall be deemed one Claim.

SECTION B

PROFESSIONAL LIABILITY

1. Notice to the Insured

This endorsement provides cover on a Claims made and notified basis.

1.1 A Claim must be made against the Insured during the Period of Insurance; and

1.2 The Insured must notify LIU in writing of such Claim during the Period of Insurance.

2. Insuring Clause

Notwithstanding the above exclusion and subject to the terms and conditions of the Policy and this endorsement, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation as a result of a Claim for Injury, Damage or Financial Loss both first made against the Insured and notified to LIU during the Period of Insurance arising out of any negligence, whether by act, error or omission (which expression shall include any non-deliberate breach of Section 52, Section 53, Section 55, Section 55A or Section 71 of the Trade Practices Act 1974 or mirroring provisions of any State Fair Trading Act or similar statute) committed or alleged to have been committed by the Insured in connection with "Scuba Diving".

3. Definitions

3.1 "Claim" means:

3.1.1 Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or served upon the Insured; or

3.1.2 The receipt by the Insured of any written or verbal notice of demand for compensation made by a third party against the Insured.

3.2 "Financial Loss" means any loss which is economic in nature and not consequent upon Injury or Damage.

4. Limit of Indemnity

LIU's liability to pay compensation under this endorsement shall not exceed \$5,000,000 any one Claim and in the aggregate during the Period of Insurance.

Further, all payments made under this endorsement will also contribute towards the exhaustion of the aggregate Limit of Indemnity in respect of Products liability.

All claims of a series consequent on or attributable to one source or original cause shall be deemed one Claim.

The Deductible stated in the Combined General & Products & Professional Liability Schedule shall be borne by the Insured at their own risk and LIU's liability shall only be in excess of this amount.

5. Defence Costs

LIU agrees to pay all legal costs and expenses incurred with LIU's prior written consent in connection with any Claim for which indemnity is available under this endorsement, provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this endorsement.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this endorsement.

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this endorsement, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this endorsement which relate solely to what is covered under this endorsement.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this endorsement as it considers appropriate.

6. Exclusions

For the purposes of this endorsement only:

6.1 Exclusion 7.13 of the Policy wording is deleted.

6.2 The following additional exclusions apply:

6.2.1 Any act, error or omission which occurred or allegedly occurred prior to the Retroactive Date as stated in the Combined General & Products & Professional Liability Schedule.

6.2.2 An occurrence which would otherwise be excluded under the public/products component of this Policy (and any endorsements attached thereto) to which this endorsement is attached.

6.2.3 Any facts or circumstances of which the Insured was aware prior to the commencement of the Period of Insurance or which a reasonable person in the Insured's position would have considered may give rise to a Claim.

6.2.4 Any Claim made prior to or existing at the inception of this Policy.

6.2.5 6.2.5.1 Any Claim; or

6.2.5.2 Facts or circumstances that might give rise to a Claim,

Which have been notified or which could have been notified under any prior policy.

- 6.2.6 Any failure or omission on the part of the Insured to effect or maintain insurance.
 - 6.2.7 Any claim which is more specifically insured against in any other section of this Policy.
 - 6.2.8 Conspiracy, conversion, deceit, inducement, breach of contract or injurious falsehood.
 - 6.2.9
 - 6.2.9.1 Claims made and actions instituted within the United States of America or Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or Canada.
 - 6.2.9.2 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.
- Provided that this exclusion 6.2.9 does not apply to an Insured who has advised PADI ASIA Pacific of their intention to temporarily teach or instruct outside the territory and geographical scope of this policy.
- 6.2.10 Any Claim incurred by or caused by a director or officer of the Insured whilst acting within the scope of their duties in such capacity.
 - 6.2.11 The failure of any Product to meet the level of performance, quality, fitness or durability warranted by the Insured.

7. Conditions

- 7.1 In the event of a Claim, the Insured must give immediate notice in writing to LIU of such Claim and such information as LIU may require to reasonably investigate the Claim and to enable LIU to determine its liability under this Policy.
- 7.2 The Insured must take all reasonable precautions to prevent Injury, Damage or Financial Loss to any third party.

Nothing contained in this endorsement shall in any way serve to increase the Limit of Indemnity stated in the Schedule.

Other than as amended above, the terms of this Policy shall continue to apply.

SECTION C

LEGAL EXPENSES

In consideration of payment of the Premium, Liberty International Underwriters (LIU) will provide Indemnity in accordance with, and subject to, the terms and conditions of this Section C

1.1 Legal Expense Insurance Benefit

Subject to the Limit of Indemnity as stated in the Schedule, LIU will indemnify the Insured for Legal Costs and Expenses incurred by the Insured in the course of scuba diving and related activities at or in:

1.1a Defending a criminal prosecution; or

1.1b Pleas of mitigation for a criminal defence against the Insured; or

1.1c Any Coroner's inquest or inquiry; or

1.1d Any Royal Commission or Government inquiry; or

1.1e Any legal process taken under the workplace, Health & Safety Act, 1995 Queensland or other Australian states' or other countries' corresponding legislation.

1.2 Crisis Management Expenses

Subject to the Limit of Indemnity of \$200,000 each Claim made and in the aggregate during the Period of Insurance, LIU will indemnify the Insured for Crisis / media management expenses incurred by the Insured in the event of a fatality or disability following a scuba diving and/or related activities. LIU in conjunction with the Insured will use discretion on how these expenses will be paid. This limit is in addition to the Limit as stated in the Policy Schedule under Section C.

The Insured shall be personally liable for amounts in excess of the Limit of Indemnity for either Legal Expenses Benefits or Crisis Management Expenses.

2 Definitions

2.1 "Insured" wherever used in this Section C means the Insured named in the Schedule

2.1.1 Any subsidiary company (including subsidiaries thereof) of the Insured, and

2.1.2 Any other entity controlled by it and over which it assumes active management.

2.2 "Our" means the dive centre or resort named in the Certificate of Insurance and any of its principals, partners, directors or employees, however this does not apply to instructors, assistant instructors, dive masters working for a dive store unless otherwise agreed.

- 2.3 "Legal Costs and Expenses" means the legal fees, costs and disbursements reasonably and properly incurred by the Insured's legal adviser. LIU reserves the right to appoint the legal adviser for the Insured. Legal fees and expenses relating to expert witnesses and fees of counsel will be subject to prior written approval.
- 2.4 "Crisis Management Expenses" means reimbursement of costs involved in engaging a media management company, reimbursement of costs associated from counselling required following a serious incident or other expenses as deemed necessary and in agreement with LIU.
- 2.5 "Criminal Prosecution" means legal proceedings or a properly constituted enquiry in respect of an alleged breach of criminal law commenced or advised during the Period of Insurance arising out of "Scuba Diving".
- 2.6 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.

The continuation of a prosecution from one insurance period to another shall not increase the Limit of Indemnity available from LIU.

- 2.7 "Scuba Diving" means principally incorporating class and water based learning activities and modules including first aid training and certification, including the determination of standards by the accrediting agency and all activities relating to training, instructing, observing and control of recreational scuba diving. This includes all activities relating to snorkelling, skin diving, swimming, recreational surface supplied air, servicing, hiring and repairing of equipment and sales of related products, tours of reef by glass bottom boats (under 12meters), transportations of people from one Island to another, bird watching, guided tours of Island when not diving, jungle and/or bush walking, fishing, underwater photography and/or video, whale watching, scuba doos, beach games and the collection and reporting of data obtained by volunteer snorklers and divers on the health of coral reefs, coral reef conservation and coral reef management issues to the general community, business' and Government Agencies.

In respect of dive stores and resorts, in addition to the above activities includes all activities includes all activities in respect to organizing, selling, promoting diving activities, retail sales, property owners and occupiers.

- 2.8 "Legal Adviser" shall mean a qualified Solicitor or Barrister.
- 2.9 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated In Massachusetts, USA (The liability of members is limited).

3. Exclusions

LIU shall not be liable for claims in respect of:

- 3.1 Any legal expenses, fees or charges other than those specified;
- 3.2 Legal problems relating to the individual's profession, trade, business, or any venture for gain other than prosecutions directly arising from "Scuba Diving" or related activities;
- 3.3 Legal services arising from or relating to contracts for ownership, purchase, repair or service of motor vehicles or building disputes;
- 3.4 Legal services arising from or relating to prosecutions arising from the ownership, maintenance, operation, or use of any aircraft, motor vehicle or vehicles of any kind;
- 3.5 Any claim for legal services arising out of any act, omission, dispute or Criminal Prosecution occurring prior to or existing at the commencement of the Period of Insurance;
- 3.6 Legal Costs and Expenses incurred before a claim has been accepted by LIU;
- 3.7 Legal Costs and Expenses which exceed the Limit of Indemnity specified in Sect C No.5 of the Combined General & Products Liability Schedule
- 3.8 Fines, penalties, fees, compensation or punitive damages awarded against the Insured;
- 3.9 Legal services arising out of any dishonest, fraudulent, malicious or deliberate act or omission of the Insured. Provided that this exclusion 3.9 shall only apply where a judgement establishes that the Insured were guilty of any such dishonest, fraudulent, malicious or deliberate act or omission. In which case, any Legal Costs and Expenses, which may have been advanced to or on behalf of the Insured, shall be refundable by the Insured to LIU.
- 3.10 3.10.1 A claim which is brought in a court of law within the territorial limits of the United States of America or Canada or their territories or protectorates; or
 3.10.2 A claim which arises out of any settlement or for the enforcement of any judgment or order obtained within the territorial limits of, or determined pursuant to the laws of, the United States of America or Canada or their territories or protectorates.

1. Conditions

- 4.1 Eligibility for policy benefits is dependent on the Insured giving accurate and reliable information about the legal problem to LIU;
- 4.2 Cover commences and ceases as stipulated in the Combined General & Products Liability Schedule
- 4.3 To make a claim for Legal Costs and Expenses under the policy, the Insured must first contact LIU and provide details of the criminal charge and related matters. A claim form

will be sent to the Insured for completion. LIU shall only be liable for Legal Costs and Expenses reasonably incurred after a claim has been accepted;

- 4.4 The Insured shall not incur any Legal Costs and Expenses without LIU's written consent;
- 4.5 Section C and the relevant part of the Combined General & Products Liability Policy shall be read together as one contract and any word or expression to which a specific meaning has been given shall bear such specific meaning wherever it may appear unless such meaning is clearly inapplicable in the context in which the word or expression appears;
- 4.6 LIU shall have direct access to the Legal Advisor at all times and the Insured shall cooperate fully with LIU in all respects and shall keep LIU fully informed of all material developments in the legal proceedings. At LIU's request, the Insured shall instruct the legal adviser to produce immediately such documents, information or advice in his/her possession and shall give such other instructions in relation to the conduct of the claim as may be required by LIU.

Signed on behalf of Liberty International Underwriters
on the date stated in the Schedule



N. MacCarthy
Senior Vice President, Casualty – Asia Pacific

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