

## Proposal Form

### Directors & Officers Liability Insurance

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#### Important Notice Relating to this Proposal

**PLEASE READ THE FOLLOWING ADVICE BEFORE PROCEEDING TO COMPLETE THIS PROPOSAL FORM.**

Your Directors & Officers Liability and Company Reimbursement Insurance Policy is issued on a CLAIMS MADE basis.

This means that this policy responds to:

- (1) Claims first made against you during the policy period and notified to the Insurer during that policy period, providing that you were not aware at any time prior to the policy inception of circumstances which would have put a reasonable person in your position on notice that a Claim may be made against you; and
- (2) Pursuant to Section 40, sub-section 3 of the INSURANCE CONTRACT ACT 1984 which states:

“Where the Insured gave notice in writing to the Insurer of facts that might give rise to a Claim against the Insured as soon as was reasonably practicable after the Insured became aware of those facts but before the insurance cover provided by the contract expired, the Insurer is not relieved of liability under the contract in respect of the Claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the contract”

When the policy expires, no new notification generally can be made on the expired policy even though the event giving rise to a Claim against you may have occurred during the policy period.

You will not be entitled to indemnity under your new policy in respect of any Claim arising out of circumstances of which you were aware at any time prior to policy inception which would have put a reasonable person in your position on notice that a Claim may be made against you.

When completing your proposal you are obliged to report and provide full details of all circumstances which have become known to you and which would put a reasonable person in your position on notice that a Claim may be made against you.

This is important to ensure that you make proper disclosure (refer to notice pursuant to the INSURANCE CONTRACT ACT 1984) in order that your entitlement to full indemnity under your new policy is not placed in jeopardy.

In accordance with the provisions of the INSURANCE CONTRACT ACT 1984, DUAL Australia Pty Ltd is required to advise you of your responsibilities in relation to the disclosure of relevant information.

#### **Your Duty of Disclosure**

Before you enter into a contract of general insurance with an Insurer, you have a duty, under the INSURANCE CONTRACT ACT 1984 to disclose to the Insurer every matter that you know, or could reasonably 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.

Your duty however does not require disclosure of matter:

- That diminishes the risk to be undertaken by the Insurer;
- That is of common knowledge;
- That your Insurer knows or, in the ordinary course of his business, ought to know;
- As to which compliance with your duty is waived by their Insurer.

(It should be noted that this duty continues after the proposal form has been completed up until the time the policy is entered into.)

## **Non – Disclosure**

If you fail to comply with your duty of disclosure, the Insurer may be entitled to reduce their 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. It is therefore vital that you make sufficient enquiries BEFORE you complete your proposal form and BEFORE you sign any declaration that there has been no change in the information proposed.

Please take notice of the following statements pursuant to the provisions of the INSURANCE CONTRACT ACT 1984.

## **Surrender or Waiver of any Right of Contribution or Indemnity**

Where another person or company would be liable to compensate you or hold you harmless for part or all or any loss or damage otherwise covered by the policy, but you have agreed with that person either before or after the inception of the policy that you would not seek to recover any loss or damage from that person, you are NOT covered under the policy for any such loss or damage.

## **Notice of Occurrences or Events**

If during the period of this policy, the Insured shall become aware of any occurrence which may give rise to a Claim under the policy and shall during the period of this insurance given written notice to the Insurer of such occurrence, any Claim which may be subsequently made arising out of the occurrence of which notification has been given shall be deemed to be a Claim made during the period of this policy whenever such Claim may actually be made.

## **Contract by the Insured Affecting Rights of Subrogation**

If the proposed contract of insurance includes a provision which excludes or limits the Insurer's liability in respect of any loss because you are a party to an agreement which excludes or limits your rights to recover damages from a third party in respect of that loss, you are hereby notified that signing any such agreement may place your indemnity under the proposed contract of insurance at risk.

## **When completing this Proposal Form...**

- Please answer all questions giving full and complete answers

It is the duty of the Proposer to provide all information that is requested in the proposal form as well as to add additional relevant facts.

A relevant fact is such known fact and/or circumstance that may influence in the evaluation of the risk by the insurer. If you have any doubts about what a relevant fact is, please do not hesitate to contact your broker or insurer.

- If the space provided on the Proposal Form is insufficient, please use a separate signed and dated sheet in order to provide a complete answer to any question
- The proposal form must be completed, signed and dated by a person, who must be of legal capacity and authorised for the purpose of requesting directors & officers liability insurance for the firm who acts as a Proposer.

This proposal form does NOT BIND the Proposer to complete the insurance but will form part of any insurance

## Privacy Statement

DUAL Australia Pty Ltd is bound by the obligations of the Privacy Act 1988 as amended by the Privacy Amendments (Private Sector) Act 2000 regarding the collection, use, disclosure and handling of personal information. We will protect the privacy of your personal information.

We will use the information you provide in this Proposal Form (including any supplementary documentation) to consider your application for insurance, to determine policy terms, to assess a claim, etc.

We may disclose your personal information to third parties who we believe are necessary to assist us. These third parties will only use your personal information for the purposes we provided it to them (or if required by law). We may also be required to disclose your personal information to others for the purposes of public safety and/or law enforcement.

If you provide us with personal information about other individuals you must ensure that you obtain consent from those individuals to disclose that information to us.

You are entitled to access your personal information and request any correction if required.

## SECTION 1: DETAILS OF THE PROPOSER

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1. Name of the Company: \_\_\_\_\_
2. Address of Head Office: \_\_\_\_\_
3. Telephone Number: \_\_\_\_\_ 4. Fax Number: \_\_\_\_\_
5. Web Address: \_\_\_\_\_
6. Country Or State of Registration: \_\_\_\_\_ 7. ABN / ACN No: \_\_\_\_\_
8. How long has the company continually carried on business? \_\_\_\_\_
9. Describe the business activities of the Company \_\_\_\_\_  
\_\_\_\_\_

## SECTION 2: HISTORY OF THE COMPANY

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1. During the last three years has:

a. The name of the Parent Company changed?	Yes [ ]	No [ ]
b. Any acquisitions or mergers involving the Company taken place?	Yes [ ]	No [ ]
c. Any subsidiary company been sold or ceased trading?	Yes [ ]	No [ ]
d. The capital structure of the Parent Company changed?	Yes [ ]	No [ ]
e. Any rights issued taken place?	Yes [ ]	No [ ]
f. The Company changed its external auditors/legal advisors?	Yes [ ]	No [ ]

If the answer is YES to any of the above questions, please provide details below (use separate sheet if necessary)

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2. Has the Company any acquisitions, tender offer or merger pending or under consideration, and/or are you aware of any proposal relating to its acquisitions by another company? Yes [ ] No [ ]

If YES, please provide further details:

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## SECTION 3: CAPITAL STRUCTURE OF THE COMPANY

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1. Is the Company:

- |   |         |        |
|---|---------|--------|
| a. Private?                                 | Yes [ ] | No [ ] |
| b. Public?                                  | Yes [ ] | No [ ] |
| c. Listed on the Australian Stock Exchange? | Yes [ ] | No [ ] |
| d. Listed on any Foreign Stock Exchange?    | Yes [ ] | No [ ] |

If YES please specify:

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- |   |         |        |
|---|---------|--------|
| e. Listed on any Unlisted Securities Market or Exempt Stock Exchange? | Yes [ ] | No [ ] |
|---|---------|--------|

2. Is the Company intended a public offering of securities within the next year in Australia or elsewhere?

Yes [ ] No [ ]

If YES please provide further details:

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3. Please state:

- a. Total number of Shareholders: \_\_\_\_\_
- b. Total number of shares held by Directors and Officers: \_\_\_\_\_
- c. All holdings representing 15% or more of the Company's Ordinary Share Capital (Please state the name of the director/officer and their respective percentage of holdings)

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## SECTION 4: OUTSIDE DIRECTORSHIP

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1. Do any of the Directors or Officers of the Company hold (at the specific request of the Company) any Board positions on other entities? Yes [ ] No [ ]

If YES, please provide such entities:

Other Entity	Companies Shareholding in Other Entity	Limit of Other Entity's D&O Policy	Insurer	Expiry Date

## SECTION 5: PREVIOUS/CURRENT INSURANCE

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1. Does the Company on behalf of its Directors or Officers have Directors & Officers Liability insurance currently in force? Yes [ ] No [ ]

If YES, please state:

- a. Insurer: \_\_\_\_\_
- b. Indemnity Limit: \_\_\_\_\_
- c. Expiry Date: \_\_\_\_\_

2. Has the Company ever had any Insurer decline a proposal or cancel or refused a Directors and Officers Liability Insurance? Yes [ ] No [ ]

If YES, please provide further details:

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**SECTION 6: NORTH AMERICA EXPOSURE DETAILS**

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1. In the USA or Canada, has the Company or any subsidiary at any time:
- |  |         |        |
|--|---------|--------|
| a. Conducted any business?                           | Yes [ ] | No [ ] |
| b. Had any shares traded on a listed stock exchange? | Yes [ ] | No [ ] |
| c. Held a beneficial interest in any company?        | Yes [ ] | No [ ] |

2. Please state:

- a. The total assets of the Company and all Subsidiaries in the USA/Canada: AUD\$\_\_\_\_\_
- b. What percentage of total assets of the Company and all Subsidiaries are in the USA/Canada: \_\_\_\_\_%
- c. Total number of Employees in the USA/ Canada: \_\_\_\_\_

3. Please list those subsidiaries in the USA/ Canada that are not wholly owned?

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**SECTION 7: CLAIMS INFORMATION/CIRCUMSTANCES**

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1. After enquiry of the Directors & Officers of the Company, has there been or is there now pending a claim against them in their capacity as Director or Officer of the Company or its Subsidiaries? Yes [ ] No [ ]

If YES, please provide further details:

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2. Is the Proposer aware, after enquiry, of any circumstance or incident, which may give rise to a claim against any Director or Officer of the Company in their capacity as such? Yes [ ] No [ ]

If YES, please provide further details:

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3. Is the Proposer aware, after enquiry, of any prosecution (actual or pending) of the Company or any Director or Officer under any International Commonwealth, State or Local statute, legislation, regulation or By Law (including but not limited to the Corporations Law or the Trade Practices Act)? Yes [ ] No [ ]

If YES, please provide further details:

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4. Has the Company or any Directors or Officers ever been subject to any disciplinary action, been fined or penalised, or been the subject of any inquiry in their capacity as a Director or Officer? Yes [ ] No [ ]

If YES, please provide further details:

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**SECTION 8: INCOME DETAILS**

1. In respect of gross fees/income for the last financial year, please provide a breakdown by State:

NSW	ACT	QLD	VIC	TAS	SA	WA	NT	Overseas
%	%	%	%	%	%	%	%	%

**SECTION 9: INDEMNITY LIMIT**

1. Please select the amount of Indemnity required:

\$ 250,000	[ ]	\$ 500,000	[ ]
\$ 1,000,000	[ ]	\$ 2,000,000	[ ]
\$ 4,000,000	[ ]	\$ 5,000,000	[ ]
\$ 10,000,000	[ ]	Other – Please State: _____	[ ]

**SECTION 10: DECLARATION**

**SIGNING THIS PROPOSAL FORM DOES NOT BIND THE PROPOSER OR THE INSURER TO COMPLETE THIS INSURANCE**

We declare that the statement and particulars in this proposal form are true and that no material facts have been misstated or suppressed after enquiry. We agree that should any of the information given by us alter between the date of this proposal and the inception date of the insurance to which this proposal relates, we will give immediate notice thereof. We agree that the Underwriters may use and disclose our personal information in accordance with the "Privacy Statement" at the beginning of this Proposal. We agree that this proposal, together with any other information supplied by us shall form the basis of any contract of insurance effected thereon.

**TO BE SIGNED BY THE CHAIRMAN OF THE BOARD OR MANAGING DIRECTOR ONLY**

**SIGNATURE** ..... **DATE** .....

**NAME** ..... **POSITION** .....

DUAL Australia recommends that you keep a record of all information supplied for the purpose of entering into an insurance contract (including copies of this Proposal Form and correspondence)

**PLEASE ENCLOSE WITH THIS PROPOSAL FORM:**

- A. The last two audited Annual Reports & Accounts for the Company
- B. The last two interim statements (if applicable)
- C. Any other Prospectus Type Documents published in the last 12 months

**HOW TO CONTACT DUAL AUSTRALIA PTY LTD:**

Address: DUAL Australia Pty Ltd  
GPO Box 7101  
Sydney NSW 2001, Australia

Telephone: 1300 769 772 (If dialing from outside Australia +61 2 9248 6300)

E-mail: enquiries@dualaustralia.com.au