

GENERAL AND PRODUCTS LIABILITY INSURANCE POLICY

TAILORED UNDERWRITING
POLICY WORDING

TAILORED UNDERWRITING IS A TRADING NAME OF CERBEROS BROKERS PTY LTD
ACN: 106 769 886 | ABN: 61 106 769 886 | AFSL: 260668



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THE INSURERS

The insurers of this Policy:

- Certain Underwriters at Lloyd's

THE AGENT(S)

Tailored Underwriting (AFSL 260668 , ABN 61 106 769 886)

Tailored Underwriting is a division of Cerberos Brokers Pty Ltd ABN 61 106 769 886, AFSL 260668 (hereinafter Tailored Underwriting) are the appointed insurer intermediary. In arranging this insurance Tailored Underwriting are acting as agent for the Insurer and not as **Your** agent. Tailored Underwriting are not the Insurer for this contract and they are not liable for any loss or claim. The Insurers are clearly shown on the Schedule.

Phone: 1300 880306

Fax: (07) 3088 2079

Post: PO Box 1305, Spring Hill, Qld 4004

CLAIMS

For all claims queries contact:

Proclaim Management Solutions

Phone: 02 9287 1300

Fax: 1300 858 329

Post: Level 6, 249 Pitt Street, Sydney 2000

1. IMPORTANT NOTICES

1.1. This Policy

This Policy is an important document and should be kept in a safe place. Please read it carefully so that You understand the insurance provided.

1.2. Your Duty Of Disclosure

Before you enter into a contract of general insurance with an insurer, You have a duty, under the Insurance Contracts 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, on 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 the insurer.

1.3. Penalty For Non-Disclosure

If You fail to comply with your duty of disclosure, the insurer may be entitled to reduce his 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.

1.4. Notify Us Of Any Change Of Risk

Also, You must notify Us, as soon as practicable, of any alteration to risk which may affect Your Policy during the period of insurance.

1.5. Money Back Guarantee

If for any reason You are not completely satisfied with this insurance contract, the Schedule may be returned to Us within fourteen (14) days of its receipt and subject to no claim having been made, We will cancel the Schedule and refund in full any premium paid.

1.6. General Insurance Code Of Practice

The Insurance Industry has developed the General Insurance Code of Practice. The Code aims to raise the standards of practice and service in the Insurance Industry and it includes the following:

- When You lodge a Claim, We will tell You in plain language, what information We need and how You should go about making the claim.
- We will respond promptly to any request made for assistance with the claim and each will be considered and assessed promptly.
- A copy of the Code can be obtained from www.codeofpractice.com.au or from us upon request.

1.7. Complaints Procedure/Dispute Resolution

Any inquiry or complaint relating to this insurance should be referred to Tailored Underwriting in the first place. We undertake to provide You with a response to any complaint made within fifteen (15) business days. If Our response to Your complaint or to any dispute does not resolve the matter for You, the next step is for You to contact:

Lloyd's Underwriters' General Representative in Australia
Suite 2,
Level 21
123 Pitt Street
Sydney NSW 2000
Telephone: [02] 9223 1433
Fax: [02] 9223 1466

Email: idlaustralia@lloyds.com

Lloyd's Underwriters' General Representative has the authority to review Your unresolved complaint and will provide You with a response within fifteen (15) business days of receiving notification of the dispute.

If You are still dissatisfied, the dispute may be referred, at no cost, to the Financial Ombudsman Service operated under the terms of the General Insurance Code of Practice.

1.8. **Service of Suit**

The Underwriters hereon agree that:

In the event of a dispute arising under this Insurance, the Underwriters at the request of the Assured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

Any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia
Suite 2,
Level 21
123 Pitt Street
Sydney NSW 2000

who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at the request of the Assured to give a written undertaking to the Assured that he will enter an appearance on the Underwriters' behalf.

If a suit is instituted against any one of the Underwriters, all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

The amount of Premium specified herein is the amount due to the Underwriters and any commission allowed by them is to be regarded as remuneration of the Coverholder placing this Insurance.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to: Tailored Underwriting.

1.9. **Privacy**

We handle your personal information with care and in accordance with the Privacy Act 1988 and the Australian Privacy Principles. We collect personal information about you to provide you with insurance and insurance related services. We may disclose your personal information to third parties for the purposes described in our Privacy Policy, including related entities, insurers, reinsurers, agents and service providers, some of whom may be located in the United Kingdom. By asking us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure (including overseas disclosure) of your personal information for the purposes described in our Privacy Policy. Where you provide personal information about others, you represent to us that you have made them aware of that disclosure and of our Privacy Policy and that you have obtained their consent. If you do not consent to provide us with the personal information that we request, or withdraw your consent to the use and disclosure of your personal information at any stage, we may not be able to offer you the products or provide the services that you seek. For information about how to access and or correct the personal information we hold about you or if you have any concerns or complaints, ask us for a copy of our Privacy Policy.

1.10. **Australian Terrorism Insurance Act**

The Underwriters have treated this insurance (or part of it) as an insurance to which the Australian Terrorism Insurance Act 2003 as amended [ATIA] applies. ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism Exclusion to which this Policy is subject shall not apply to any "eligible terrorism loss" as defined in ATIA. Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist

incident” as defined in ATIA. The Terrorism Exclusion to which this Policy is subject applies in full force and effect to any other loss and any act or event that is not a “declared terrorist incident”. All other terms, conditions, insurance coverage and Exclusions of this Policy including applicable limits and excesses remain unchanged. If any or all of the Underwriters have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a “reduction percentage” as defined in ATIA which results in a cap on the Underwriter’s liability for payment for “eligible terrorism losses”.

1.11. Interpretation

In this Policy:

- (i) Reference to a person includes any other entity recognised by law and vice versa.
- (ii) Words importing the singular number include the plural and vice versa
- (iii) Any reference to any of the parties to the Policy by their defined terms includes that party’s executors, administrators or permitted assigns, or being a company, its successors or permitted assigns.
- (iv) Words importing one gender include every gender; and
- (v) Clause headings are for reference purposes only.

2. DEFINITIONS - words with special meaning:

For the purpose of determining the cover provided this Policy:

2.1. “Act of Terrorism” means:

an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

2.2. “Advertising Injury” means:

Injury arising out of:

- 2.2.1. defamation, or
- 2.2.2. any unintentional breach of the misleading or deceptive conduct provisions of the Trade Practices Act 1974 (Commonwealth) or any Fair Trading or similar legislation of any country, state or territory; or
- 2.2.3. any infringement of copyright or passing off of title or slogan; or
- 2.2.4. unfair competition, piracy, misappropriation of advertising ideas or style of doing business; or
- 2.2.5. invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of Your advertising activities.

2.3. “Aircraft” means:

any craft or object designed to travel through air or space, other than model aircraft or unmanned inflatable balloons used for advertising or promotional purposes.

2.4. “Business” means:

the business as described in the Schedule and/or as further described in any more specific underwriting information provided to Us, at the time when this insurance was proposed to Us or at the time of any renewal of this Policy, and shall also include:

- 2.4.1. any prior operations or activities which have ceased or have been disposed of but for which You may retain a legal liability.
- 2.4.2. the ownership of premises and/or the tenancy thereof by You.
- 2.4.3. participation in any exhibition by You or on Your behalf.
- 2.4.4. the hire or loan of plant and/or equipment to other parties.

2.4.5. conducted tours of Your premises.

2.4.6. the provision of any sponsorships, charities, galas, first aid, medical, ambulance or fire fighting services by You or on Your behalf.

2.4.7. private work undertaken by Your employees for any of Your directors, partners, proprietors, officers or executives.

2.4.8. the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and/or child care facilities by You or on Your behalf, which are primarily for the benefit of Your employees.

2.5. **"Compensation"** means:

monies paid or agreed to be paid by judgment, award or settlement in respect of Personal Injury and/or Property Damage and/or Advertising Injury.

Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies.

2.6. **"Electronic Data"** means:

facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.

2.7. **"Employment Practices"** means:

any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of Your employees.

2.8. **"Excess"** means:

the first amount of each claim or series of claims arising out of any one Occurrence for which You are responsible.

The Excess applicable to this insurance appears in the Schedule.

The Excess applies to all amounts for which We will be liable, including the indemnity provided by Insuring Clause 3.2 (Defence Costs and Supplementary Payments).

2.9. **"General Liability"** means:

Your legal liability in respect of Personal Injury and/or Property Damage and/or Advertising Injury caused by or arising out of an Occurrence happening in connection with the Business other than Products Liability.

2.10. **"Geographical Limits"** means:

2.10.1. anywhere in the World except North America.

2.10.2. North America, but only with respect to:

2.10.2.1. overseas business visits by any of Your directors, partners, officers, executives or employees, who are non-resident in North America, but not where they perform manual work in North America.

2.10.2.2. Products exported to North America without Your knowledge.

2.11. **"Hovercraft"** means:

any vessel, craft or thing made or intended to transport persons or property over land or water supported on a cushion of air.

2.12. **"Incidental Contracts"** means:

- 2.12.1. any written rental and/or lease and/or hiring agreement of real and/or personal property, other than with respect to any term or condition contained in such rental, lease and/or hiring agreement that requires You to insure such property.
- 2.12.2. any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities.
- 2.12.3. any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings.
- 2.12.4. those contracts designated in the Schedule.

2.13. **"Medical Persons"** includes but is not limited to:

medical practitioners, medical nurses, dentists and first aid attendants.

2.14. **"Named Insured"** means:

- 2.14.1. the person(s), corporations and/or other organisations specified in the Schedule,
- 2.14.2. all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured incorporated in the Commonwealth of Australia and/or any other organisations under the control of the Named Insured;
- 2.14.3. all subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Named Insured during the Period of Insurance.
- 2.14.4. every subsidiary and/or controlled corporation and/or other organisation of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to the date of divestment.

2.15. **"North America"** means:

- 2.15.1. the United States of America and the Dominion of Canada,
- 2.15.2. any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and
- 2.15.3. any country or territory subject to the laws of the United States of America or the Dominion of Canada.

2.16. **"Occurrence"** means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended (except for the matters set out in clause 2.18.6) from Your standpoint.

With respect to Personal Injury and/or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

All Advertising Injury arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

2.17. **"Period of Insurance"** means:

the Period of Insurance specified in the Schedule and any extension thereof which may be agreed in writing between You and Us.

2.18. "Personal Injury" means:

- 2.18.1. bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom;
- 2.18.2. false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- 2.18.3. wrongful entry or wrongful eviction;
- 2.18.4. defamation or invasion of privacy, unless arising out of Advertising Injury;
- 2.18.5. discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by You or at Your direction, but only with respect to liability other than fines and penalties imposed by law;
- 2.18.6. assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability: such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

2.19. "Pollutants" means:

any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material. 'Waste material' includes materials that are intended to be recycled, reconditioned or reclaimed.

2.20. "Products" means:

anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by You or on Your behalf (including Your predecessors in the Business), including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which, by law or otherwise, You are deemed to have manufactured in the course of the Business including discontinued products.

Provided always that for the purpose of this insurance the term "Products" shall not be deemed to include:

- 2.20.1. food and beverages supplied by You or on Your behalf primarily to Your employees as a staff benefit;
 - 2.20.2. any vending machine or any other property rented to or located for use of others but not sold by You;
- and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection therewith shall be regarded as General Liability claims hereunder.

2.21. "Products Liability" means:

Your legal liability in respect of Personal Injury and/or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such products; but only where such Personal Injury and/or Property Damage occurs away from premises owned or leased by or rented to You and after physical possession of such products has been relinquished to others.

2.22. "Property Damage" means:

- 2.22.1. physical loss, destruction of or damage to tangible property, including the loss of use thereof at any time resulting therefrom; and/or
- 2.22.2. loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence.

2.23. "Schedule" means:

the most current schedule issued by Us in connection with this Policy.

2.24. **“Tool of Trade”** means:

a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by You at Your premises or on any Worksite. Tool of Trade does not include any Vehicle whilst travelling to or from a Worksite or Vehicles that are used to carry goods to or from any premises.

2.25. **“Vehicle”** means:

any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

2.26. **“Watercraft”** means:

any vessel, craft or thing made or intended to float on or in or travel on or through water, other than model boats.

2.27. **“We, Us, Our, Ourselves”** means:

the Insurer named in the Schedule.

2.28. **“Worksite”** means:

any premises or site where any work is performed for and/or in connection with the Business together with all areas surrounding such premises or site and/or all areas in between such premises or site that You shall use in connection with such work.

2.29. **“You, Your, Insured”**

Each of the following is an Insured to the extent specified below:-

2.29.1. the Named Insured.

2.29.2. every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the Named Insured (including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the Business) while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities.

2.29.3. any employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any such employee superannuation fund or pension scheme which is not administered by corporate fund managers.

2.29.4. every principal in respect of the principal's liability arising out of:

2.29.4.1. the performance by or on behalf of the Named Insured of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this Policy.

2.29.4.2. any Products sold or supplied by the Named Insured, but only in respect of the Named Insured's own acts or omissions in connection with such products and in any event only for such coverage and Limits of Liability as are provided by this Policy.

2.29.5. every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of any law, agreement or permit (whether written or implied) to provide insurance such as is afforded by this Policy, but only to the extent required by such law, agreement or permit and in any event only for such coverage and Limits of Liability as are provided by this Policy.

2.29.6. every officer, member, employee or voluntary helper of the Named Insured's canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, educational, welfare and/or child care facilities, while acting in their respective capacities as such.

2.29.7. any director, partner, proprietor, officer or executive of the Named Insured in respect of private work undertaken by the Named Insured's employees for such person and any employee whilst actually undertaking such work.

2.29.8. the estates, legal representatives, heirs or assigns of:

2.29.8.1. any deceased or insolvent persons, or

- 2.29.8.2. persons who are unable to manage their own affairs by reason of mental disorder or incapacity, who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such persons as described in clauses 2.29.8.1 and 2.29.8.2 above.
- 2.29.9. every party including joint venture companies and partnerships to whom the Named Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this Policy.

3. INSURING CLAUSES

3.1. What We Cover

We agree (subject to the terms, Claims Conditions, General Conditions, Exclusions, Definitions and Limits of Liability incorporated herein) to pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation in respect of:

- 3.1.1. Personal Injury, and/or
- 3.1.2. Property Damage; and/or
- 3.1.3. Advertising Injury;

happening during the Period of Insurance within the Geographical Limits, in connection with the Business or Your Products and/or work performed by You or on Your behalf and caused by or arising out of an Occurrence.

3.2. Defence Costs and Supplementary Payments

With respect to the indemnity provided by this Policy, We will:

- 3.2.1. defend, in Your name and on Your behalf, any claim or suit against You alleging such Personal Injury and/or Property Damage and/or Advertising Injury and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent.
- 3.2.2. pay all charges, expenses and legal costs incurred by Us and/or by You at Our written request or with Our written consent (which consent shall not be unreasonably withheld):
 - 3.2.2.1. in the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of Your attendance at hearings or trials at Our request, or
 - 3.2.2.2. in bringing or defending appeals in connection with such claim or suit.
- 3.2.3. pay:
 - 3.2.3.1. all charges, expenses and legal costs recoverable from or awarded against You in any such claim or suit, and
 - 3.2.3.2. pre-judgment interest awarded against You on that part of the judgment payable by Us; and
 - 3.2.3.3. all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability thereon.
- 3.2.4. pay premiums on:
 - 3.2.4.1. bonds to release attachments for amounts not exceeding the applicable Limit of Liability of this Policy but We shall have no obligation to apply for or furnish any such bond.
 - 3.2.4.2. appeal bonds and/or security for costs required in any suit but We shall have no obligation to apply for or furnish any such bonds and/or security for costs.
- 3.2.5. pay expenses incurred by You for:
 - 3.2.5.1. rendering first aid and/or surgical and/or medical and/or therapeutic relief to others at the time of any Personal Injury (other than any medical expenses, which we are prevented from paying by any law).
 - 3.2.5.2. temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or unpinning thereof.
 - 3.2.5.3. purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in

compliance with the requirements of any Government, Local Government or other Statutory Authority.

3.2.6. pay all legal costs incurred by You with Our consent for representation of You at:

- 3.2.6.1. any Coronal Inquest or Inquiry
- 3.2.6.2. any proceedings in any court or tribunal in connection with liability insured against by this Policy.
- 3.2.6.3. any Royal Commission or Government Enquiry arising out of any alleged breach of statutory duty, or other similar judicial enquiry into circumstances relating to any Occurrence, claim or potential claim which would be the subject of indemnity under this insurance.
- 3.2.6.4. any enquiry, prosecution or hearing of a disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like.

Provided that Our liability under clauses 3.2.6.3 and 3.2.6.4 shall not exceed **\$250,000** in respect of any one claim or series of claims arising out of any one Occurrence.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by Us in addition to the applicable Limit of Liability of this Policy.

However, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all Defence Costs and Supplementary Payments.

Where We are prevented by law or otherwise from making payments on Your behalf, We will indemnify You for legal liability incurred to the extent that such liability is covered by this Policy.

In jurisdictions where We may not legally be permitted to, or cannot for any other reason, defend any claim or suit against You, We will reimburse You for the expense of such defence incurred with Our written consent.

3.3. Limits of Liability and Excess

Subject to clause 3.2 above and clauses 3.4 and 4.16.5 below:

- 3.3.1. The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims for General Liability arising out of any one Occurrence.
- 3.3.2. The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one Period of Insurance, for Products Liability.

The applicable Limit of Liability will not be reduced by the amount of any Excess payable by You.

3.4. Additional Benefit - Claims Preparation Costs

In addition to the amount of cover provided by this Policy, We will pay up to **\$25,000** in respect of each claim or series of claims arising out of any one Occurrence for reasonable professional fees and such other expenses incurred by You for the preparation of a claim under this Policy.

The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under clause 3.2 of this Policy.

3.5. Optional Additional Benefit - Products Exported to North America with Your Knowledge (Applicable only where this Additional Benefit is confirmed in the Schedule)

The cover provided by this Policy is extended to include any judgment, award or settlement made within North America or any order made anywhere in the World to enforce such judgment, award or settlement either in whole or in part, subject to the following additional terms and exclusions in respect of any such judgment, award or settlement:-

3.5.1.cover only applies to Your legal liability in respect of Personal Injury and/or Property Damage that arises out of any Products exported to North America with Your knowledge.

3.5.2.cover is not provided for:

- 3.5.2.1. Personal injury and/or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, emission, release or escape of Pollutants.
- 3.5.2.2. the cost of removing, nullifying or clean up of Pollutants.
- 3.5.2.3. the cost of preventing the escape of Pollutants.
- 3.5.2.4. any claim for Compensation if in North America You have:
 - (i) any assets other than Products,
 - (ii) a related or subsidiary company;
 - (iii) any person or entity with power of attorney; and/or
 - (iv) any franchisor.

4. WHAT WE EXCLUDE

We do not cover any liability:

4.1. Advertising Injury

for Advertising Injury:

- 4.1.1.resulting from statements made at Your direction with knowledge that such statements are false.
- 4.1.2.resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.
- 4.1.3.resulting from any incorrect description of Products or services.
- 4.1.4.resulting from any mistake in advertised price of Products or services.
- 4.1.5.failure of Your Products or services to conform with advertised performance, quality, fitness or durability.
- 4.1.6.incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

4.2. Aircraft, Hovercraft or Watercraft

for Personal Injury and/or Property Damage arising from:

- 4.2.1.the ownership, maintenance, operation or use by You of any Aircraft.
- 4.2.2.the ownership, operation or use by You of any Watercraft or Hovercraft exceeding ten (10) metres in length, whilst such Watercraft or Hovercraft is on, in or under water.

Provided that Exclusion 4.2.2 shall not apply with regard to claims arising out of:

- 4.2.2.1. Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable.
- 4.2.2.2. Hovercraft owned and operated by others and used by You for business entertainment.
- 4.2.2.3. Watercraft owned by others and used by You for business entertainment.
- 4.2.2.4. hand propelled or sailing craft exceeding ten (10) metres in length, whilst such craft is in territorial waters.

4.3. Aircraft Products

arising out of Your Products that are Aircraft or Aircraft component parts used for maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery which to Your knowledge are incorporated in an Aircraft.

4.4. Asbestos

directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

4.5. Breach of Professional Duty

arising out of any breach of duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable, but this exclusion shall not apply to claims:

- 4.5.1.in respect of Personal Injury and/or Property Damage arising from such breach of duty.
- 4.5.2.arising out of the rendering of or failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises.
- 4.5.3.arising out of advice or service which is not given for a fee.
- 4.5.4.arising out of advice given in respect of the use or storage of Your Products.

4.6. Contractual Liability

which has been assumed by You under any contract or agreement that requires You to:

- 4.6.1.effect insurance over property, either real or personal.
- 4.6.2.assume liability for, Personal Injury and/or Property Damage regardless of fault; provided that this exclusion shall not apply with regard to:
 - 4.6.2.1. liabilities which would have been implied by law in the absence of such contract or agreement; or
 - 4.6.2.2. liabilities assumed under Incidental Contracts; or
 - 4.6.2.3. terms regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute; or
 - 4.6.2.4. liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.

4.7. Damage to Products

for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to damage to that part and only that part of such product to which the damage is directly attributable.

4.8. Defamation

for defamation:

- 4.8.1.resulting from statements made prior to the commencement of the Period of Insurance.
- 4.8.2.resulting from statements made at Your direction with knowledge that such statements are false.
- 4.8.3.incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

4.9. Electronic Data

arising out of:

- 4.9.1.the communication, display, distribution or publication of Electronic Data; provided that this Exclusion 4.9.1 does not apply to Personal Injury and/or Advertising Injury arising therefrom;
- 4.9.2.the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of Electronic Data;
- 4.9.3.error in creating, amending, entering, deleting or using Electronic Data;
- 4.9.4.the total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

4.10. Employers Liability

- 4.10.1. for Bodily Injury to any Worker in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Workers' Compensation of Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected.

Provided that this Policy will respond to the extent that Your liability would not be covered under any such policy, fund, scheme or self insurance arrangement had You complied with Your obligations pursuant to such law.

4.10.2. imposed by:

- 4.10.2.1. 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 or contract of employment or workplace agreement.
- 4.10.2.2. any law relating to Employment Practices.

Notwithstanding Exclusion clause 4.6 - Contractual Liability, Exclusions 4.10.1 and 4.10.2 shall not apply with respect to liability of others assumed by the Named Insured under a written contract or agreement.

For the purpose of Exclusions 4.10.1 and 4.10.2:

- (i) the term 'Worker' means any person deemed to be employed by You pursuant to any Workers' Compensation Law. Voluntary workers, secondees and work experience students (if any) shall not be deemed to be Your Workers.
- (ii) the term 'Bodily Injury' means bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom.

4.11. Faulty Workmanship

for the cost of performing, completing, correcting or improving any work undertaken by You.

4.12. Fines, Penalties, Punitive, Exemplary or Aggravated Damages

for any fines, penalties, punitive, exemplary or aggravated damages.

4.13. Liquidated Damages

arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

4.14. Loss of Use

for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:

- 4.14.1. a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- 4.14.2. failure of any Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You; but this Exclusion 4.14.2 shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after such products or work have been put to use by any person or organisation other than You.

4.15. Pollution

- 4.15.1. for Personal Injury and/or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere or any water course or body of water.
- 4.15.2. for any costs and expenses incurred in preventing the discharge, dispersal, release, seepage, migration or escape of, or, testing and monitoring for, containing, removing, nullifying, or cleaning up of, Pollutants.

Provided that, with respect to any such liability which may be incurred anywhere other than North America, Exclusions 4.15.1 and 4.15.2 shall not apply where such discharge, dispersal, release,

seepage, migration or escape is caused by a sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

4.16. Property in Your care, custody or control

for Property Damage to property in Your physical or legal care, custody or control; but this exclusion shall not apply with regard to:

- 4.16.1. the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of Your visitors.
- 4.16.2. premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of the Business, but no cover is provided by this Policy if You have assumed the responsibility to insure such premises.
- 4.16.3. premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Business, or
 - 4.16.3.1. any other property temporarily in Your possession for the purpose of being worked upon;

but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work.

- 4.16.4. any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or used by You, whilst any such Vehicle is in a car park owned or operated by You; provided that You do not operate the car park for reward, as a principal part of Your business.
- 4.16.5. notwithstanding Exclusion clause 4.6 "Contractual Liability", any property (except property that You own) not mentioned in clauses 4.16.1 to 4.16.4 above whilst in Your physical or legal care, custody or control whether or not You have accepted or assumed legal liability for such property. Provided that Our liability under this clause 4.16.5 shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one Occurrence.

4.17. Property owned by You

for Property Damage to property owned by You.

4.18. Product Guarantee

for any Products warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

4.19. Product Recall

for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by the Named Insured because of any known, alleged or suspected defect or deficiency in such Products.

4.20. Radioactivity

directly or indirectly caused by, contributing to by or arising from radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

Provided that Exclusion 4.20 shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

4.21. Terrorism

for loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

Provided that, Exclusion 4.21 also excludes loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

4.22. Vehicles

for Personal Injury and/or Property Damage arising out of the ownership, possession or use by You of any Vehicle:

- 4.22.1. which is registered or which is required under any legislation to be registered, or
- 4.22.2. in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected);

but Exclusions 4.22.1 and 4.22.2 shall not apply to:

4.22.3. Personal Injury where:

- 4.22.3.1. that compulsory liability insurance or statutory indemnity does not provide indemnity, and
- 4.22.3.2. the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles.

4.22.4. any Vehicle (including any tool, implement, machinery or plant forming part of or attached to or used in connection with such vehicle) whilst being operated or used by You or on Your behalf as a Tool of Trade at Your premises or on any Worksite.

4.22.5. the delivery or collection of goods to or from any Vehicle.

4.22.6. the loading or unloading of any Vehicle.

4.22.7. any Vehicle temporarily in Your custody or control for the purpose of parking.

4.22.8. Property Damage caused by or arising out of the movement of any Vehicle (which is required to be Conditionally Registered in accordance with the law of any State or Territory in Australia) in the event of Your inadvertent and unintentional failure to effect Conditional Registration.

4.23. War

in respect of war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

5. CONDITIONS

5.1. Claims Control

It is a condition precedent to liability under this policy that notice in writing shall be given as soon as possible to the Underwriters of every Occurrence, claim, writ, summons, impending proceedings, impending prosecution and/or inquest in respect of which there may arise a liability under this Policy.

No admission offer promise payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Underwriters, and if the Underwriters so desire they shall be entitled to take over and conduct in the Insured's name the defence or settlement of any claim and the Underwriters may make such investigation, negotiation and settlement of any claim or suit as they deem expedient.

The Insured shall use best endeavours to preserve any property, products, appliances, plant or other things which might prove necessary or useful by way of evidence in connection with any claim and so far as may be reasonably practicable no alteration or repair shall be effected without the Underwriters' consent until the Underwriters shall have had the opportunity of inspection.

The Underwriters shall be entitled to prosecute in the Insured's name at the Underwriters own expense and for the Underwriters own benefit any claim for indemnity for damages or otherwise.

The Underwriters shall have full discretion in the conduct of any proceedings in connection with any claim and the Insured shall give all information and assistance as the Underwriters may require in the prosecution, defence or settlement of any claim.

In the event of an Occurrence, the Insured shall promptly take at the Insured's expense all reasonable steps to prevent other Personal Injury or Property Damage arising out of the same or similar conditions, but such expense shall not be recoverable under this policy.

The Underwriters shall be entitled to attend any inquest in respect of which there may arise liability under this policy.

5.2. Discharge of Liabilities

The Underwriters may at any time pay to the Insured in respect of all claims against the Insured arising directly or indirectly from the one source or original cause the amount of the liability or such other amount specified in respect thereof (after deduction of any sum or sums already paid by the Underwriters which sum or sums would reduce the amount of the Underwriters' unfulfilled liability in respect thereof) or any lesser sum for which the claim or claims can be settled and upon such payment the Underwriters shall relinquish conduct or control of and be under no further liability under the policy in connection with such claim or claims except for costs charges or expenses in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently) or incurred by the Underwriters or by the Insured with the Underwriters written consent prior to the date of such payments.

5.3. Reasonable Care

The Insured shall:

- a) Take all reasonable precautions to:
 - (i) prevent Personal Injury and Property Damage;
 - (ii) prevent the manufacture, sale or supply of defective products; and
 - (iii) comply and ensure that the Insured's workers, servants and agents comply with all statutory obligations, by-laws or regulations by any public authority in respect thereof for the safety of persons and property;
- b) at the Insured's 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.

5.4. Cross Liabilities

Where more than one party comprises the Insured each of the parties shall be considered as a separate and distinct unit and the word Insured shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties provided that nothing in this clause shall result in the increase of the Underwriters Limit of Liability in respect of any Occurrence or Period of Insurance.

5.5. Alteration of Risk

Any alteration in any material fact or otherwise regarding construction methods or procedures or any other information contained in or omitted from any underwriting information supplied to the Underwriters shall not prejudice this policy which shall be held covered subject to immediate notification to the Underwriters as soon as the alteration or omission becomes known to the Insured, and then subject to any variation in the terms and conditions which may be agreed between the Insured and the Underwriters.

5.6. Subrogation

In the event of payment under this policy to or on behalf of the Insured, the Underwriters shall be subrogated to all the Insured's rights of recovery against all persons and organisations and the Insured shall execute and deliver instruments and papers and do all that is necessary to assist in the exercise of such rights.

5.7. Other Insurance

If the Insured makes a claim under this policy in respect of an Occurrence recoverable under this policy which Occurrence is or may be covered in whole or in part by any other insurance, then the Insured must advise the Underwriters of the full details of such other insurance when making a claim under this policy.

Subject to the Insurance Contracts Act, 1984, the Underwriters reserve the right to seek contribution from the other underwriter(s).

5.8. Insurance Arranged by Principal

If the Insured enters into an agreement with any other party (who for the purpose of this clause is called the "Principal") pursuant to which the Principal has agreed to provide a policy of insurance which is intended to indemnify the Insured for any loss or liability arising out of the performance of the said agreement then the Underwriters will (subject to the terms and conditions of this policy) only indemnify the Insured for loss or liability not covered by the policy of insurance provided by the Principal.

5.9. Several Liability Notice

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

5.10. Cancellation

The Named Insured may cancel this policy by giving notice in writing to the Underwriters.

After cancellation by the Insured the premium for the period to cancellation shall be adjusted on a pro rata basis plus twenty five per cent (25%), but always subject to a minimum retained premium of twenty five per cent (25%) of the annual premium.

The Underwriters may cancel this policy in any of the circumstances set out in the Insurance Contracts Act, 1984.

When the premium is subject to adjustment, cancellation will not affect the Insured's obligation to supply such information as the Underwriters may require for the adjustment of the premium. Cancellation will not affect the Insured's obligations to pay the amount of adjustment applicable up to the date of cancellation.

5.11. Australian Currency Clause

All limits of liability, premiums and other amounts as expressed in this policy are in Australian currency.

5.12. Sanctions

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

5.13. Australian Law

This Policy is governed by the laws of the Commonwealth of Australia and its States and Territories.

Any dispute or action in connection with this Policy shall be conducted and determined in Australia

5.14. **Goods And Services Tax (GST)**

This policy has a GST provision in relation to premium and our payment to You for claims. It may have an impact on how you determine the amount of insurance you need.

Please read the following information carefully. Seek professional advice if You have any queries about GST and this insurance.

Where You are liable to pay an amount for GST in respect of an acquisition relevant to any claim and We agree to pay the claim, We will pay the GST amount.

If the Limit of Indemnity is not sufficient to cover a loss, We will only pay the GST amount that relates to Our settlement of the claim. We will reduce the GST amount We pay by any input tax credits to which can You are or would be entitled on a relevant acquisition.

We will reduce the GST amount We pay by the amount of any input tax credits to which You are or would be entitled.

If You register or are registered for GST, You are required to tell Us Your entitlement to an input tax credit on Your premium.

If You fail to disclose all understate Your entitlement, You may be liable for GST on a claim We may pay and this Policy does not cover that GST liability or for any fine, penalty or charge for which You may become liable because of Your failure to disclose or to misstate Your entitlement to an input tax credit for the premium.

"GST", "input tax credit", "acquisition", "supply", "tax invoice" and "adjustment note" has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999.



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