



Public and Products Liability

POLICY WORDING



Important Information

About this Policy

If **we** issue **you** with an insurance policy, **you** will be given a **schedule** and policy wording which sets out the specific terms applicable to **your** cover.

The policy wording, **schedule** and endorsements form part of **your** legal contract with **us**. **You** must read these entire documents to understand the terms and conditions of **your** cover. Please keep these documents for future reference.

Complaints Resolution

Any enquiry or complaint relating to this insurance should be referred to us at
Focus Underwriting
Level 21 / 41 Exhibition Street
Melbourne, Victoria 3000
Telephone: 1800 234 338
in the first instance.

If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia
Lloyd's Australia Limited
Level 9
1 O'Connell Street
Sydney NSW 2000
Telephone Number: (02) 8298 0700
Facsimile Number: (02) 8298 0788
Email: idraustralia@lloyds.com

If your dispute remains unresolved you may be referred to the Financial Ombudsman Service Limited Australian Financial Complaints Authority (AFCA). AFCA can be contacted at www.afca.org.au ; 1800 931 678; info@afca.org.au or GPO Box 3 Melbourne Vic 3001
For other disputes you will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

Duty of Disclosure

Before **you** enter into an insurance contract, **you** have a duty to tell **us** anything that **you** know, or could reasonably be expected to know, may affect our decision to insure **you** and on what terms.

You have this duty until **we** agree to insure **you**.

You have the same duty before **you** extend, vary or reinstate an insurance contract.

You do not need to tell **us** anything that:

- reduces the risk **we** insure **you** for; or
 - is common knowledge; or
 - **we** know or should know as an **insurer**;
- or
- **we** waive **your** duty to tell **us** about.

If **you** do not tell **us** anything **you** are required to, **we** may cancel **your** contract or reduce the amount **we** will pay you if you make a **claim**, or both.

If **your** failure to tell **us** is fraudulent, **we** may refuse to pay a **claim** and treat the contract as if it never existed.

General Insurance Code of Practice

This insurance complies with the Insurance Council of Australia's General Insurance Code of Practice, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

Goods and Services Tax

In addition to the premium, **we** will charge **you** an amount for GST.

You must inform **us** of the extent to which **you** are entitled to an input tax credit for that GST amount each time that **you** make a **claim** under this **policy**. No payment will be made to **you** for any GST liability that **you** may have on the settlement of a **claim** if **you** do not inform **us** of **your** entitlement or correct entitlement to an input tax credit.

Despite the other provisions of this insurance **our** liability to **you** will be calculated taking into account any input tax credit to which **you** are entitled for any acquisition which is relevant to **your claim**, or which **you** would have been entitled were **you** to have made a relevant acquisition.

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

Governing Law

This **policy** will be governed in accordance with the laws of Australia. Any disputes relating to the interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

Privacy

IBL Limited, trading as Focus Underwriting, is committed to protecting **your** privacy in accordance with the Privacy Act 1998 (Cth) and the Australian Privacy Principles. **Our** Privacy Policy describes our current policies and practices in relation to the collection, handling, use and disclosure of personal information. It also deals with how **you** can complain about a breach of the privacy laws and how **you** can access the personal information **we** hold and how to have that information corrected.

Our contact details for all privacy enquiries are:

Focus Underwriting

Level 21 41 Exhibition Street Melbourne 3000

Phone: 1800 234 338

ABN: 65 005 754 718

AFSL: 23123

Email: enquiries@focusuw.com.au

Web: www.focusuw.com.au

Our full Privacy Policy is contained on **our** website and we encourage you check regularly for any updates.

What information do **we** collect and how do **we** use it?

We collect from **you** all information **we** need to assess **your** application for insurance and to administer **your policy** and any **claims you** may make. **We** provide any information that the insurer who provide our capacity require to enable them to decide whether to insure **you** and on what terms. This insurer may in turn pass on this information to their reinsurers. Some of these companies are located outside Australia.

When **you** make a **claim** under **your policy**, **we** assist **you** by collecting information about **your claim**. Sometimes **we** also need to collect information about **you** from others. **We** provide this information to **your** insurer (or anyone **your** insurer has appointed to assist it to consider **your claim**, e.g. loss adjusters or legal advisers etc) to enable it to consider **your claim**. Again this information may be passed on to reinsurers.

What if **you** don't provide some information to **us**?

We can only fully consider **your** risk if **we** have all relevant information. The insurance laws also require **you** to provide **your** insurers with all the information they need in order to be able to decide whether to insure **you** and on what terms. **You** have a duty to disclose the information which is relevant to the **insurers** decision to insure **you**. If **you** provide inaccurate or incomplete information **we** may not be able to provide **you** with **our** products and services.

Your consent.

By asking **us** to assist with **your** insurance needs, **you** consent to the collection and use of the information **you** have provided to **us** for the purposes described above.

Section One – General Conditions

1.1 Acquisition of Properties or Companies

The cover granted by this **policy** extends to properties, assets, companies, firms, entities or other bodies:

- a. formed or acquired by **you** or for which **you** assume management responsibility during the **period of insurance**;
- b. which undertake activities consistent with the description of the **business** in the **policy schedule** subject to disclosure to **us** prior to any new acquisition which represents more than 15% of the current group turnover, in which event **we** may seek revised terms including but not limited to payment of an additional premium. **You** are not obliged to accept such terms, but if **you** do not, that new acquisition will not be covered by this **policy**.

Provided that no indemnity shall be granted in respect of claims for **personal injury, property damage** or **advertising liability** which first happened prior to the date of such acquisition, formation or assumption of management responsibility.

1.2 Cancelling Your Policy

You may request cancellation of this **policy** at any time in writing to Focus Underwriting Level 21 / 41 Exhibition Street, Melbourne, Victoria 3000, Telephone: 1800 234 338

We will retain a pro-rata premium for the time the **policy** has been in place.

You are not entitled to receive any refund of any underwriting levy charged.

1.3 Changes to the Policy

If **you** want to make a change to this **policy** the change becomes effective when **we**:

- a. agree to it; and
- b. give **you** an new policy schedule or endorsement schedule detailing the change.

1.4 Cross Liability

Where more than one party comprises the **insured** each of the parties will be considered as a separate and distinct unit and the words '**you**', '**your**' or '**insured**' will be considered as applying to each party in the same manner as if a separate **policy** had been issued to each of them.

Provided that nothing in this condition will result in an increase of the **limit of liability**.

1.5 Discharge of Liabilities

At any time **we** can pay to **you** or on **your** behalf, all claims made against **you** for any one **occurrence**:

- a. the **limit of liability** after deducting any amount already paid; and
- b. any lower sum for which the claim may be settled.

If **we** do so:

- a. the conduct of any outstanding claim will become **your** responsibility; and
- b. **we** will not be liable to pay any further amounts in relation to that **occurrence** other than costs and charges or expenses that **we** agreed to pay before or when **we** made the payment.

1.6 Inspection of Property

We will be permitted but not obligated to inspect **your** property and operations at any time.

Neither **our** right to inspect nor **our** failure to inspect nor the making of any inspection nor any report of an inspection may be used by **you** or others in any action or proceeding involving **us**.

We may examine and audit **your** books and records at any time during the **period of insurance** and within three years thereafter but that examination and audit will be restricted to matters which in **our** opinion are relevant to the **policy**.

1.7 Insurers' Several Liability

The subscribing **insurers'** obligations under this **policy** 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.

1.8 Reasonable Care

You must comply with and take reasonable steps to ensure that your employees, *contractors, employees of labor hire organisations utilised by you, comply in all material respects with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:*

- (a) *safety of persons or property;* or
- (b) *disposal of waste products;* or

handling, storage or use of flammable liquids or substances, gases or toxic chemicals.

1.9 Rights of recovery

We have the right to take action or institute legal proceedings, in your name, for the recovery of payments made and expenses incurred in relation to any claim insured by this **policy**, against any person, company or entity legally liable to you in respect of that claim.

You must provide **us** with full information and all reasonable assistance in the recovery of those payments or expenses.

You must not enter into any agreement or make any admissions that have the effect of limiting or excluding your rights and our rights to recover payments and expenses without first obtaining **our** approval in writing to do so.

1.10 Service of Suit

We agree that:

- a. in the event of a dispute arising under this insurance, the **insurers** at the request of the **insured** 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; and
- b. any summons notice or process to be served upon the **insurers** may be served upon:
Lloyd's Underwriters' General Representative in Australia
Level 9, 1 O'Connell Street
Sydney NSW 2000
Telephone Number: (02) 8298 0700

They have the authority to accept service and to enter an appearance on the **insurers'** behalf, and who is directed at the request of the **insured** to give a written undertaking to the **insured** that he will enter an appearance on the **insurers'** behalf; and

- c. if a suit is instituted against any one of the **insurers**, all **insurers** hereon will abide by the final decision of such Court or any competent Appellate Court.

1.11 Subrogation

We may prosecute in **your** name for damages or otherwise. **We** may do this before or after **we** have paid **your** claim and whether or not **you** have been fully compensated for **your** actual loss. **You** must execute and deliver instruments

and papers and do everything that is reasonably necessary to assist **us** in the exercise of those rights.

Section Two – Claims Conditions

Focus Underwriting

Level 21 / 41 Exhibition Street

Melbourne, Victoria 3000

Telephone: 1800 234 338

2.1 Conduct of claims

We may take over and conduct the defence or settlement of any claim or issue legal proceeding for damages. If **we** do this **we** will do it in **your** name. **We** have full discretion in the conduct of any legal proceedings and in the settlement of any claim. **You** must co-operate by giving **us** any statements, documents or assistance we reasonably require. This may include evidence in any legal proceedings.

2.2 What you must do

You must notify **us** promptly upon the occurrence of an insured event.

You must supply **us** with all reasonably necessary information **we** require to settle a claim.

You must take all reasonable precautions to prevent further loss or damage.

You must endeavor to preserve all property, products, appliances, plant and all other things which may assist in the investigation or defence of a claim or in the exercise of right of subrogation, and as may be reasonably practicable, **you** must not without **our** written consent carry out any alterations or repair until **we** have had an opportunity to inspect, unless costs need to be incurred in order to mitigate against potential further loss.

You must co-operate with **us** fully in any action **we** take if **we** have a right to recover any money payable under this policy from any other person.

You must pay the **deductible** in relation to each **occurrence** within 14 days of receiving a request from **us**. Indemnity under this policy will not be available until the **deductible** has been paid.

2.3 What you should not do

You should not admit liability, make an admission, offer, promise or payment if an incident occurs which is likely to result in someone claiming against **you**.

You should not make any admission of guilt or promise or offer payment in connection with any such claim, unless **we** first agree to it in writing.

You should not negotiate, admit repudiate or pay any claim by any person.

Section Three – Definitions

The following definitions apply to the words or terms used in this **policy**

3.1 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.

3.2 Advertising Liability or Advertisement

Means liability arising out of one or more of the following:

- a. defamation;
- b. infringement of copyright, title or slogan;
- c. unfair competition, misappropriation of advertising ideas or style of doing business;
- d. invasion of privacy committed or alleged to have been committed in any **advertisement** and arising out of any advertising activities conducted by **you** or on **your** behalf, in the course of carrying out **your business**.

For the purposes of this definition, **advertisement** means any manner of communication given to the public including by way of any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet, world wide web or exhibit.

3.3 Aircraft

Means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

3.4 Business

Means the **business** shown in the **schedule** including the provision and management of canteens, social, sports and welfare

organisations for the benefit of **your employees**, first aid, fire and ambulance services and the maintenance of **your** premises.

3.5 Compensation

Means any monies paid or agreed to be paid by judgment, award or settlement for **personal injury, property damage** and/or **advertising liability**.

Provided that **compensation** is only payable in respect of an **occurrence** to which this **policy** applies.

3.6 Deductible

Means the amount **you** first bear in relation to each **occurrence**. The **deductible** applies to all amounts payable under this **policy** including the indemnity provided under clause 4.2 Defence of Claims.

3.7 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.

3.8 Employee

Means any person engaged by **you** under a contract of service, apprenticeship, traineeship, or work experience but does not include any person employed under such contract who is excluded from the definition of worker under any workers' compensation legislation.

3.9 Employment Practices

Means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to an employee or prospective employee or **yours**.

3.10 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.

3.11 Incidental Contracts

Means:

- a. any written rental agreement or lease of real or personal property not requiring an obligation to insure such property or be strictly liable regardless of fault; or

- b. any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control system, waste disposal facilities, telephone and communications services or other essential services, except those contracts with work done for such authorities or entities; or
- c. any written contract with any railway authority for the loading, unloading or transport of products, including contracts relating to the operation of railway sidings.

3.12 Limit of Liability

Means the **limit of liability** specified in the **policy schedule**.

3.13 Medical Persons

Means any qualified medical practitioners, nurses, dentists and first aid officers.

3.14 Occurrence

Means an event which results in **personal injury** or **property damage** or **advertising liability**, neither expected nor intended from **your** standpoint. All **personal injury** or **property damage** or **advertising liability** arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one **occurrence**.

With regards to **advertising liability**, all liability arising out of the same injurious material or act regardless of the number or kind of media used, the frequency or repetition thereof and number of claimants shall be deemed to be one **occurrence**.

3.15 Period of Insurance

Means the **period of insurance** shown in the **policy schedule**.

3.16 Personal Injury

Means

- a. bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish and mental injury. In the event of any claims, for **Personal Injury** arising from latent injury, latent disease or latent sickness, each claim shall be deemed to have first happened on the day such injury, disease or sickness was first medically diagnosed provided that such diagnosis first occurred during the **period of insurance**;

- b. the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution;
- c. the effects of wrongful entry or eviction;
- d. the effects of the publication or utterance of defamatory or disparaging material;
- e. the effects of assault and battery not committed by **you** or at **your** direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

3.17 Policy

Means this policy wording, **schedule**, and any endorsements attaching to the **schedule**.

3.18 Pollutants

Means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

3.19 Products

Means any goods, products and property (after they have ceased to be in **your** possession or under **your** control), which are or is deemed to have been manufactured, grown, extracted, produced, processed, constructed, assembled, erected, installed, repaired, serviced, treated, sold, supplied or distributed by **you** (including any container thereof other than a vehicle).

3.20 Property Damage

Means

- a. physical damage to or physical loss or physical destruction of tangible property including any resulting loss of use of that property;
- b. loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an **occurrence**.

3.21 Schedule

Means the **schedule** to the policy.

3.22 Subsidiary

Means any subsidiary of the **insured** as defined in the Corporations Act 2001.

3.23 Territorial Limits

Means anywhere in the world subject to the Exclusion Territorial Limits 5.21.

3.24 Tool of Trade

Means a **vehicle** which has a tool or plant forming part of, attached to, or used in connection with it while such tool or plant is engaged on a work site.

Tool of trade does not include any **vehicle** whilst travelling to or from a work site, or **vehicles** that are used to carry goods to or from any premises.

3.25 Vehicle

Means any type of machine on wheels or self laid track made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.

3.26 Watercraft

Means any vessel, craft or thing made or intended to float on or in or travel on or through or under water.

3.27 We, Our, Us, Insurer

Means certain underwriters at Lloyd's participating in this contract of insurance via Focus Underwriting.

3.28 You, Your, Yours, Insured

Means

- a. the person, companies or firm named on the **policy schedule** as the **insured**; or
- b. all the **subsidiary** companies (now, previously or subsequently constituted) of the **insured** named on the **schedule**, provided their places of incorporation are within Australia or any Territory of Australia; or
- c. directors, executive officers, **employees**, volunteers, work experience students, partner or shareholder of the parties shown in this Definition 3.28 a. and b., but only while acting within the scope of their duties in such capacity; or
- d. principals, in respect of that principal's vicarious liability for the acts or omissions of the parties shown in this definition 3.28 a. and b. in the performance by them of work for that principal, but subject always to the extent of coverage and the **limit of liability** provided by this **policy**; or
- e. partner, joint venture partner, co venturer or joint leasee of the parties shown in definition 3.28 a. and b. but only:

- i. where **you** assume active control of, or are required to arrange insurance for the partnership, joint venture, co venture or joint lease; or
 - ii. with respect to liability incurred as the partnership, joint venture, co-venture or joint lease; or
- f. every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services (other than the parties shown in this definition 3.28 d. or e. in respect of claims arising from their duties connected with the activities of any such club, organisation or service; or
 - g. any director or senior executive of the parties shown in definition 3.28 a. and b. in respect of private work undertaken by **your employees** for such director or senior executive.

Section Four – Cover

4.1 Liability

We will cover **your** legal liability to pay:

- a. all sums by way of **compensation**, and
- b. all costs awarded against **you**

in respect of:

- (i) **personal injury**
- (ii) **property damage**
- (iii) **advertising liability**

first happening during the **period of insurance** and caused by an **occurrence** within the **territorial limits** in connection with **your business**.

4.2 Defence of Claims

If **we** agree to cover **you we** will:

- a. defend in **your** name and on **your** behalf any claim or legal action against **you** seeking damages for **personal injury**, **property damage** or **advertising liability** even if the action is groundless, false or fraudulent, and **we** will investigate, negotiate and settle any claim or legal action as **we** see fit; and
- b. pay all legal costs and expenses incurred by **us** and all interest accruing after entry of judgement until **we** have paid, tendered or deposited in court such part of the judgement as does not exceed the **limit of liability**; and
- c. reimburse **you** for all reasonable expenses, other than loss of earnings, incurred by **you** with **our** consent in connection with the defence of a claim

- or legal action, unless costs need to be incurred in order to mitigate against potential further loss
- d. pay reasonable expenses incurred by **you** for first aid to others at the time of a **personal injury** caused by an **occurrence** (other than medical expenses prohibited by Law);
- e. pay up to \$25,000 in respect of each claim or series of claims arising out of any one **occurrence** and in the aggregate during the **period of insurance** for reasonable professional fees and such other expenses incurred by **you** for the preparation of a claim under the **policy** with **our** prior written agreement, unless costs need to be incurred in order to mitigate against potential further loss.

We will do this, provided that:

We will not be obliged to pay any claim or judgment or to defend any claim or legal action after the **limit of liability** has been exhausted by payment of judgments or settlements.

If a payment exceeding the **limit of liability** has to be made to dispose of a claim, **our** liability to pay any costs, expenses and interest under 4.2 Defence of Claims a. to d. will be limited to that proportion of those costs, expenses and interest as the **limit of liability** bears to the amount paid to dispose of the claim.

Any amount **we** pay, other than payments in settlement of claims, suits and all costs awarded against **you**, are payable over and above the **limit of liability** set out in the **policy schedule**.

4.3 Limit of Liability

Our maximum liability in respect of any claim or any series of claims for **personal injury, property damage** or **advertising liability** caused by or arising out of one **occurrence** will not exceed the **limit of liability** shown on **your policy schedule**.

Our total aggregate liability during any one **period of insurance** for all claims arising out of **your products** will not exceed the **limit of liability** shown on **your policy schedule**.

4.4 Deductible

The **deductible** that applies to any claim made on this **policy** is shown on **your policy schedule**.

If more than one **deductible** is payable for any claim, or series of claims arising from the one **occurrence you**:

- a. must pay the highest **deductible**, but
- b. pay only one **deductible**.

4.5 Optional Benefit - Products Exported to North America with Your Knowledge (Applicable only where this Additional Benefit is confirmed in the Policy 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: -

a. 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.

b. cover is not provided for:

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

Section Five – General Exclusions

This policy does not cover any liability in respect of:

5.1 Advertising liability

any **advertising liability**:

- a. resulting from statements made at **your** direction with knowledge that such statements are false; or
- b. resulting from failure of performance of contract. Provided that this shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract; or

- c. resulting from any incorrect description of **products** or services; or
- d. resulting from any mistake in advertised price of **products** or services; or
- e. failure of **your products** or services to conform with advertised performance, quality, fitness or durability; or
- f. liability incurred by **you** if **your business** is **advertising**, broadcasting, publishing or telecasting.

5.2 Aircraft, aircraft products, watercraft and hovercraft

any claims arising out of:

- a. the ownership, maintenance, operation or use by **you** or on **your** behalf of any **aircraft**;
- b. the ownership, operation or use by **you** or on **your** behalf of:
 - i. any **watercraft** exceeding 10 metres in length, except where such **watercraft** are owned and operated by others and used by **you** for **business** entertainment;
 - ii. **hovercraft**.
- c. **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**.

5.3 Asbestos

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

5.4 Assault and Battery

personal injury or **property damage** caused by or arising from assault and battery committed by **you** or at **your** direction.

Provided that this exclusion does not apply to '**you, your, insured**' definition 3.27 a. b. and f. where reasonably necessary for the protection of persons or property.

5.5 Contractual Liability

any obligation assumed by **you** under any contract or agreement that requires **you** to:

- a. effect insurance over property, either real or personal; or

- b. assume liability for, **personal injury**, **property damage** or **advertising liability** regardless of fault.

Provided that this shall not apply with regard to;

- a. liabilities which would have been implied by law in the absence of such contract or agreement; or
- b. liabilities assumed under **incidental contracts**; or
- c. terms regarding merchantability, quality, fitness or care of **your products** which are implied by law or statute; or
- d. any obligation that is assumed under those agreements specified in the **policy schedule**.

5.6 Defamation

any defamation as determined by a court:

- a. made prior to the commencement of the **period of insurance**, or
- b. made by **you** or at **your** direction with knowledge of its falsity; or
- c. if **your business** is **advertising**, broadcasting, publishing or telecasting.

5.7 Electronic Data

- a. communication, display, distribution or publication of **electronic data**, provided that this exclusion does not apply to **personal injury** or **advertising liability** resulting therefrom; or
- b. total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation, or misappropriation of **electronic data**; or
- c. error in creating, amending, entering, deleting or using **electronic data**; or
- d. 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.

5.8 Employment Liability

- a. **personal injury** to any of **your employees** arising out of, or in the course of their employment in **your business**; or
- b. **personal injury** to any person who is deemed to be **your employee** pursuant to any legislation relating to workers' compensation; or
- c. which **you** are entitled to seek indemnity under any policy of insurance required

- d. the provisions of any workers' compensation legislation or any industrial award or agreement or determination; or
- e. Employment practices.

5.9 Faulty Workmanship

the cost of performing, correcting, improving or replacing any work undertaken by **you** or on **your** behalf.

5.10 Fines, penalties, liquidated damages

liquidated damages or fines and penalties whether imposed by law or by a regulatory authority or professional body.

5.11 Loss of Use

loss of use of tangible property which has not been physically injured, or physically lost or physically destroyed resulting from:

- a. a delay in or lack of performance by or on **your** behalf of any agreement;
- b. the failure of **your products** to meet the level of performance, quality, fitness or durability expressed or implied, or warranted or represented by **you**.

Provided that this exclusion does not apply to the loss of use of other tangible property resulting from the sudden unintended and unexpected physical damage to or loss or destruction of **your products** after they have been put to use by any person or organisation other than **you** as specified within definition 3.27 a. and b. of **you, your** or **insured**.

5.12 Participation

personal injury to any person caused by or arising out of the participation of such person in any game, match, race, practice, trial, training, competition, warm ups, warm downs and other preliminary activities unless such **personal injury** is as a result of **your** negligence in regard to the facility provided.

5.13 Pollution

- a. **personal injury** 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.

Provided that this Exclusion 5.13 a. does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place and which occurs outside of the United States of America or Canada;

- b. any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution. Provided that this Exclusion 5.13 b. does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in **personal injury** and/or **property damage** and which occurs outside of the United States of America or Canada
- c. the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of **pollutants** caused by **your product** that has been discarded, dumped, abandoned or thrown away by **you** or on **your** behalf.

Our liability under this Exclusion 5.13 a. and b. in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of **pollutants** during any one **period of insurance** will not exceed the **limit of liability** any one **occurrence** and in the aggregate.

5.14 Product Defect

property damage to **your products** if the damage is resultant from any defect in them or to their harmful nature or unsuitability.

5.15 Product Recall

claims arising out of or resulting from any loss, cost or expense incurred by **you** for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of **your products** or of any property of which they form a part, if such **products** or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

5.16 Professional Liability

the rendering of or failure to render professional advice or service by **you** or any related error or omission, provided that this exclusion shall not apply to:

- a. **personal injury** and/or **property damage** arising from such rendering of or failure to render professional advice or service, providing such professional advice or service is not given for a fee;
- b. medical advice by **medical persons** employed by **you** to provide first aid and other medical services on **your** premises providing **your business** is not involved in the provision of medical services.

5.17 Property in Custody or Control

property damage to:

- a. property owned by or leased or rented to **you**; or
- b. property in **your** physical or legal control.

Provided that this exclusion does not apply to liability for **property damage** to:

- a. premises (including landlord's fixtures and fittings) which are leased or rented to **you**; or
- b. premises (or their contents) not owned, leased or rented by **you** but temporarily occupied by **you** for work therein; or
- c. **vehicles** (not belonging to or used by **you**) in **your** physical or legal control where the **property damage** occurs while the **vehicles** are in a car park owned or operated by **you**, unless **you** own or operate the car park for reward; or
- d. the property of **yours** or property of an **employee**; or
- e. other property temporarily in **your** physical or legal control provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which **you** are or have been working on and our limit under this Exclusion 5.17 e. does not exceed \$250,000 for any one **occurrence**.

No cover under this exclusion in respect of liability assumed by **you** under any contract or agreement which requires **you** to effect material damage insurance on premises, property or goods which **you** do not own.

5.18 Punitive Damages

punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

5.19 Radioactivity

liability directly or indirectly caused by, contributing to or arising from:

- a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion only, "combustion" shall include any self-sustaining process of nuclear fission; or
- b. the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

5.20 Sanctions

any claim payment or benefit that would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

5.21 Territorial Limits

- a. claims made or actions instituted within any Country, State or Territory (outside Australia) where the laws of that Country, State or Territory require insurance to be effected or secured with an insurer or organisation licensed in that Country, State or Territory to grant such insurance; or
- b. claims made and actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the courts of the United States of America or Canada; or
- c. claims and actions to which the laws of the United States of America or Canada apply.

Provided that Exclusion 5.21 b. and c. do not apply to:

- i. claims and actions arising from the presence outside Australia of any of **your employees** and/or directors or partners who are normally resident in Australia and who are not undertaking manual work or supervision work of any kind while in the United States of America or Canada; or

- ii. claims for **personal injury, property damage** or **advertising liability** caused by or arising out of **your products** not knowingly exported by **you** or on **your** behalf to the United States of America or Canada.

The **limit of liability** in respect of coverage provided under exclusion 5.21 i. and ii. is inclusive of all costs, expenses and interest as set out in 4.2 defence of claims of this **policy**.

5.22 Terrorism

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.

This exclusion 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**.

5.23 Tobacco

personal injury arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- a. tobacco or tobacco smoke; or
- b. any ingredient or additive present in any articles, items or goods which contain or include tobacco.

5.24 Vehicle

personal injury or **property damage** arising out of the ownership, possession, operation, or use by **you** or on **your** behalf of any **vehicle**:

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

This exclusion does not apply to:

- a. **personal injury** where that compulsory liability insurance or statutory indemnity does not provide indemnity and the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity does not

involve a breach by **you** of legislation relating to **vehicles**; or

- b. **property damage** arising out of and during the loading or unloading of goods to or from any **vehicle**; or
- c. **property damage** caused by or arising from the operation or use of any **vehicle** which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by **you** or on **your** behalf within the confines of **your** premises; or
- d. **property damage** caused by or arising out of the use of:
 - i. any **vehicle** whilst being used as a **tool of trade**; or
 - ii. plant forming part of **your vehicle** being used as a tool operating at any worksite; but excluding **property damage** caused by or arising whilst the **vehicle** is transporting or carting goods.

5.25 War

invasion, acts of foreign enemies, hostilities or war-like 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, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.

5.26 Communicable Disease Exclusion

1. Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

2. For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify,

remove, monitor or test for a Communicable Disease.

3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

3.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and

3.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and

3.3. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or **property damage**.

5.27 Cyber Exclusion

The following exclusion applies to all sections of the policy. Insurers will not pay for any cyber loss:

Cyber Loss

All actual or alleged loss, damage, liability, injury, compensation, sickness, disease, death, medical payment, claim, cost, defence costs, expense or any other amount incurred by or accruing to the Insured, including but not limited to any mitigation cost or statutory fine or penalty, directly or indirectly caused by, contributed to by, resulting from, arising out of or in any way connected with a cyber incident.

Cyber Incident

1. the alteration, modification, distortion, corruption of or damage to any computer or other equipment or component or system or item which processes, stores, transmits or receives data or any part thereof whether tangible or intangible (including but without limitation any information or programs or software); or

2. any alteration, modification, distortion, erasure, corruption of data processed or stored by any computer system or other equipment or component or system or item; or

3. loss or damage of or to a computer system or any digital assets; or

4. any loss whatsoever or any consequential loss, whether to the Insured's property or not, where such loss is directly or indirectly caused by or contributed to by or arising from or occasioned by, resulting from, arising out of or in any way connected with:

- a. Computer viruses;
- b. Security breaches;
- c. Cyber extortion;
- d. Cyber terrorism;
- e. a denial of service attack;
- f. any or alleged breaches of any data protection laws
- g. any breach of duty, statutory duty or regulatory duty or trust or series thereof; or
- h. any failure to act, any error or omission or accident or series thereof.

5.28 Fraudulent Claims

any claim in any respect fraudulent or if any fraudulent means or devices be used by the **Insured** or anyone acting on the Insured's behalf to obtain any benefit under this Policy, or if any loss hereunder be occasioned by the wilful act or with the connivance of the **Insured**, the Underwriters, without prejudice to any other right(s) they might have under this Policy, shall be entitled to refuse to pay such claim.

Definitions

For the purposes of this exclusion, the following words will have special meaning:

Computer system(s)

any computer, hardware, software, application, process, code, programme, information technology, communications system or electronic device owned or operated by the Insured or any other party, including any similar system and any associated input, output or data storage device or system, networking equipment or back up

facility. This includes a group of computer systems and other electronic devices or network facilities connected via a form of communications technology, including the internet, intranet and virtual private networks (VPN), allowing the networked computing devices to exchange data.

Computer viruses

includes, but not be limited to, a virus, malicious code or worm which either damages the Insured's computer system or allows unauthorised use of or access to any digital asset.

Cyber extortion

any threat or malicious act or series thereof, including but not limited to a demand for funds, regardless of time or place, designed to extort, corrupt, damage or introduce a computer virus or a denial of service attack.

Cyber terrorism

an act or series of acts of any natural person or group(s) of persons, whether acting alone or on behalf of or in connection with any third party organisations, committed for political, religious, personal or ideological purposes including but not limited to the intention to influence any government and/or put the general public in fear for such purposes by using activities perpetrated electronically or otherwise that are directed towards the destruction, disruption or subversion of communications and information systems, infrastructure computers, digital assets, the internet,

telecommunications or electronic networks and/or its content or sabotage and/or threat therefrom.

Data protection laws

any legislation or rules governing the use of personal data including, but not limited to the Data Protection Act 2018, EU General Data Protection Regulations (GDPR) (Regulation (EU) 2016/679) and/or the Data Protection Directive 95/46/EC or equivalent or successive local legislation.

Denial of service attack

any unlawful attempt by a party to temporarily or indefinitely interrupt or suspend service to a digital asset.

Digital assets

any computer or mobile device or other electronic data processing device, equipment or system, any hardware, software, programme, instruction, data or component utilised or intended to be utilised therein or thereby, or any actual or intended function of or process performed by any of the foregoing. Digital assets shall also include the Insured's computer system.

Security breaches

any unauthorised access or unauthorised use of digital assets.

Burden of Proof

If the Insurers allege that by reason of this exclusion any Cyber Loss sustained by the Insured is not covered by this policy, the burden of proving the contrary shall be upon the Insured.