



Public and Products Liability Policy
Excess Liability

v12.15



Pen Underwriting Pty Ltd
ABN 89 113 929 516 AFSL 290518

Our name comes from the expression 'to pass the pen'. It reflects what we do and what we bring to the insurance industry – specialist expertise and quality underwriting. We strive to exceed the expectations of brokers by providing professional and flexible solutions for their clients' risks across a wide range of major and boutique general insurance products.

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1. Important Information

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 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 renew, 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 something

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.

1.3. GST

Where the Premium includes an amount for GST, the Insurer's liability to indemnify the Insured under this Policy is calculated less any Input Tax Credit to which the Insured is entitled for any relevant Acquisition, or to which the Insured would have been entitled had it made a relevant Acquisition. The Insured must inform the Insurer of the extent to which it is entitled to an Input Tax Credit for that GST, and any GST liability arising from the Insured's provision of incorrect advice is payable by the Insured.

GST, Input Tax Credit and Acquisition have the meaning given to those words in *A New Tax System (Goods and Services Tax) Act 1999*.

1.4. Privacy

Pen Underwriting handles 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 and India. 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 or visit www.penunderwriting.com.au.

1.5. Complaints Handling

If you are dissatisfied with a decision Pen Underwriting makes, our service, the service of others we appoint to discuss insurance matters with you, or a claim settlement, we have an internal dispute resolution process to assist you. For further information, ask for a copy of our Complaints and Disputes Resolution Policy or visit www.penunderwriting.com.au.

1.6. Australian Terrorism Insurance Act

The Insurer has treated this insurance (or part of it) as an insurance to which the Australian Terrorism Insurance Act 2003 (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 Insurer(s) have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such Insurers 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 Insurer's liability for payment for "eligible terrorism losses".

1.7. Further Information

Your insurance broker has arranged this insurance on your behalf. If you have any questions or need further information concerning your insurance, you should contact your insurance broker to assist you with your enquiry. You should direct all of your correspondence to us through your insurance broker as he is your agent for this insurance.

2. General Operative Clause

Whereas the Primary Insurer (as noted in the schedule hereto) has issued to the Insured named in the Schedule, a policy/ies of Liability Insurance (hereinafter called Primary Insurances).

In consideration of payment of the premium the Insurer agrees to indemnify the Insured in accordance with the applicable terms and exclusions of the Primary Insurance except where amended by this Policy, its conditions, exclusions or by endorsement hereto.

Provided that the Insurer shall only be liable for the Ultimate Net Loss after the exhaustion of the Limit of Liability of the applicable Primary Insurance and any other underlying excess policy Limits of Liability, if applicable and then only up to the Limits of Liability as stated in the Schedule.

3. Definitions

3.1 The term "Ultimate Net Loss" shall mean the loss actually sustained by the Insured after making deductions for all recoveries, all salvages, and all claims upon other insurance, whether collected or not, and shall not include legal costs and expenses.

3.2 Computer Equipment includes but is not limited to data or parts of data, computer hardware, operating system, computer network, equipment, web site, server, extranet, software, applications software, computer chip including microprocessor chip and coded instructions as well as any new technology, product or service replacing existing computer equipment or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated.

3.3 Insurer means the Insurer(s) specified in the Schedule participating in this contract of insurance.

4. Conditions

4.1 The Insured shall pay promptly to the Insurer the premium, and adjustments of premium and other amounts charged for this Policy and any renewal, extension or endorsement to the Policy.

4.2 The Primary Insurances shall be maintained in full effect during the currency of this Policy except for any reduction of the Limits contained therein by payment of claim or claims. The failure of the Insured to comply with the foregoing shall not invalidate this Policy but in the event of such failure the Insurer shall only be liable to the same extent as if the Insured had complied with this condition.

4.3 This Policy is to be subject to the same terms, conditions and exclusions (except as regard the limit of liability, the premium, any agreement to renew or as specifically provided for herein) as are contained in the Primary Insurances. No amendment to the Primary Insurances during the period of this Policy, in respect of which the Primary Insurers require an additional premium or deductible shall be effective in extending the scope of this Policy until agreed in writing by the Insurer.

4.4 The Insured shall immediately advise the Insurer of any occurrence or circumstances of which the Insured becomes aware which is likely to give rise to a claim under this Policy. The Insurer shall not however be called upon to assume charge or the settlement or defence of any claim made, or suits brought, or proceedings instituted against the Insured, but shall have the right and be given the opportunity to associate with the Insured or the Primary Insurer in the defence or control of any such claim, suit or proceeding. In which event the Insured or the Primary Insurer and the Insurer shall co-operate in all things in the defence or control of such claim, suit or proceeding, but no obligation shall be incurred on behalf of the Insurer without its consent first being obtained. However, in the event that the amount of the excess becomes certain either through trial court judgement or agreement among the Insured, the claimant and the Insurer, then the Insured may pay the amount of excess loss to the claimant to effect settlement and, upon submission of due proof thereof, the Insurer will indemnify the Insured for such payment, or the Insurer will upon request of the Insured pay such amount to the claimant on behalf of the Insured.

4.5 In the event of any claim or claims against the Insured that appear likely to exceed the indemnity available under the Primary Insurance or any underlying excess insurances, the Insurer shall not be liable for costs or expenses incurred in the defence or settlement of such claim or

claims. However, in the event of the Insurer providing written consent to the Insured, the Insurer shall contribute to the costs and expenses incurred in such a claim or claims in the proportion that the Insurer(s) share of the loss as finally settled bears to the total sum payable. If, however any claim or claims be settled within the indemnity available under the Primary Insurances or if applicable, any underlying excess insurances, then no costs or expenses shall be payable by the Insurer.

The Insurer shall require written notification of any such claim where the claim is likely to exceed a sum of fifty per cent of the Primary Insurance or any underlying excess insurances and shall further require that the Insured and all underlying insurers shall provide to the Insurer full details of the claim and shall co-operate fully with the Insurer as to the future conduct and settlement of the said claim.

4.6 No settlement of a loss by agreement shall be effected by the Insured for a sum in excess of the limits available under the Primary Insurances without the consent of the Insurer.

4.7 In the event of the exhaustion of any aggregate limit whether partial or total of the Primary Insurances or any other underlying excess insurances by reason of loss paid thereunder this policy shall:

4.7.1 in the event of partial exhaustion in excess of the reduced underlying excess limits or if applicable the reduced Primary Insurance Limit or

4.7.2 in the event of total exhaustion

continue in force as the Primary Policy subject to the terms conditions exceptions exclusions and endorsements of the Primary Insurance except where amended by this Policy, its conditions or exclusions or by endorsement hereto.

4.8 The Insured may cancel this Policy at any time by giving notice in writing to the Insurer.

Upon cancellation at the request of the Insured, a pro rata refund up to eighty percent (80%) of the unexpired portion of the premium is acceptable.

4.9 The Insurer may cancel this Policy at any time where:

4.9.1 they are entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments thereto.

4.9.2 the Insured has failed to notify the Insurer of any specific act or omission where such notification is required under the terms or conditions of this Policy.

Upon cancellation by the Insurer a pro rata refund of premium for the unexpired Period of Insurance will be allowed.

4.10 Nothing contained in this policy shall be construed to reduce or waive either the Insured's privileges, rights or remedies available under the Insurance Contracts Act 1984 as amended.

4.11 Any dispute concerning the interpretation of the terms Conditions, Definitions, limitations or Exclusions contained herein is understood and agreed by the Insured and all Insurers of the Primary Insurance or any underlying excess insurance together with the Insurer to be subject to Australian law. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within Australia and to comply with at requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court

4.12 All salvages, recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to the aforesaid settlement and all necessary adjustments shall be made by the parties hereto. Provided always that nothing in this clause shall be construed to mean that losses under this Policy are not recoverable until the Insured's Ultimate Net Loss has been ascertained.

4.13

4.13.1 If, by virtue of any law or regulation which is applicable at the inception of this Policy or which becomes applicable at any time thereafter, providing coverage to the Insured and/or paying a claim and/or providing a benefit under this Policy directly or indirectly breaches an embargo or sanction, the Insurer shall not indemnify nor make any payment or provide any economic benefit to the Insured or to any other party under this Policy to the extent that it would be in breach of such law or regulation.

4.13.2 In circumstances where the payment or provision of a valid and otherwise collectable claim or benefit may directly or indirectly breach an embargo or sanction, then the Insurer will take all reasonable measures to obtain the necessary authorisation to make such payment or provision.

5. Exclusions

Notwithstanding anything contained to the contrary in any Primary Insurance, or any

underlying excess insurances, this Policy does not apply to:

- 5.1 Punitive or exemplary damages
- 5.2 Fines, penalties or liquidated damages.
- 5.3 Injury or Damage (including loss of use of property) directly or indirectly caused by, contributed to or arising from exposure to asbestos.
- 5.4 The rendering or failure to render;
 - 5.4.1 professional service or advice by the Insured or any error or omission connected therewith.
 - 5.4.2 advice, design, formula or specification given for a fee.

Provided that this exclusion does not apply to the rendering of first aid on the Insureds' premises by a legally qualified registered nurse or first aid attendant employed by the Insured.
- 5.5 Claims made and actions;
 - 5.5.1 instituted within the United States of America, the Dominion of Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada
 - 5.5.2 to which the laws of the United States of America, the Dominion of Canada and their respective territories and protectorates apply or to any order made anywhere in the world to enforce any judgement, award, payment or settlement either in whole or in part.
- 5.6 total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation, misappropriation or other use of Computer Equipment or
 - 5.6.1 error in creating, amending, entering, directing, deleting or using Computer Equipment
 - 5.6.2 total or partial inability or failure to receive, send, access or use Computer Equipment for any time or at all.
- 5.7 Injury, Damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
 - 5.7.1 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 expropriation including lawful seizure, resumption, confiscation, nationalisation, destruction or damage to property by or under the order of any Government or public or local authority;

- 5.7.2 any act of terrorism;
- 5.7.3 any action taken in controlling, preventing, suppressing or in any way relating to 5.7.1 or 5.7.2

For the purposes of exclusion 5.7.2 an act of terrorism means an act including but not limited to the use of force or violence and / or the threat thereof of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or governments(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and / or to put the public, or any section of the public in fear.

If the Insurer alleges that by reason of this exclusion 5.7 any Injury, Damage, loss, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event that any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- 5.8 Claims directly or indirectly caused by or contributed to, by or arising from:
 - 5.8.1 ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purposes of this exclusion only, combustion shall include any self sustaining process of nuclear fission or fusion;
 - 5.8.2 nuclear weapons material;
 - 5.8.3 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 5.9 any claim, benefit or coverage to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.
- 5.10 Injury, Damage, loss, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use

of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

Where this Policy provides any indemnity to the Insured which is prohibited by Law, this Policy shall be varied by operation of this clause so that this Policy does not respond to the extent that the indemnity is prohibited by law.