



Public and Products Liability Policy
Claims Made

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 Claims Made Policy

This Policy is issued on a Claims made and notified basis. This means that the Policy only covers the Insured for Claims first made against the Insured during the Period of Insurance and notified to the insurer during the Period of Insurance.

Section 40(3) of the *Insurance Contracts Act 1984* may provide additional rights at law. That section provides that where the insured gave notice in writing to the insurer of facts that might give rise to a Claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but during the period of insurance, the insurer is not relieved of liability under the contract in respect of the Claim, when made, by reason only that it was made after the expiration of the period of insurance.

1.4 Retroactive Date

This Policy is limited by a Retroactive Date. This means that the Policy excludes liability arising out of an occurrence which happened prior to the Retroactive Date.

1.5 Good and Services Tax

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*.

1.6 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.

1.7 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.

1.8 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 Insurer 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”.

1.9 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. Definitions

Any word or expression which this policy defines as having particular meaning will have the meaning everywhere it appears.

2.1 “Business” means the business described in the Schedule including the provision and management of canteens, social, sports and welfare organisations for the benefit of the Insured’s employees, first aid, fire and ambulance services and the maintenance of the Insured’s premises.

2.2 “Claim” or “Claims means:

2.2.1 any writ, statement of Claim, summons, application or other originating legal or arbitral process, cross Claim, counter-Claim or third or similar party notice served on the Insured; or

2.2.2 the receipt by the Insured of any written or verbal notice of demand for compensation made against the Insured.

2.3 “Damage” Means:

2.3.1 physical damage to or destruction of tangible property, (other than Product) including all resulting loss of use of that property. All such loss

of use shall be deemed to happen at the time of the physical damage that caused it.

2.3.2 loss of use of tangible property, (other than Product) that is not physically damaged or destroyed provided such loss of use is caused by physical damage of other tangible property which first happened during the Period of Insurance. All such loss shall be deemed to happen at the time of the physical damage or destruction that caused it.

2.4 “Employee” means any person engaged under a contract of or for service or apprenticeship with the Insured designated in Clause 2.8.1 or 2.8.2 but does not include any person employed under such a contract who is excluded from the definition of ‘worker’ under any workers’ compensation legislation

2.5 “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 employment or prospective employment of any person or persons by the Insured.

2.6 “Excess” means the amount payable by the Insured stated in the Schedule.

2.7 “Injury” means:

2.7.1 bodily injury, disease, sickness, death, disability, shock, fright, mental anguish and mental injury;

2.7.2 the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution;

2.7.3 the effects of wrongful entry or eviction;

2.7.4 the effects of a publication or utterance of defamatory or disparaging material;

2.7.5 the effects of assault and battery not committed by the Insured or at the Insured’s direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

2.8 “Insured” means:

2.8.1 The Insured named in the Schedule, and;

2.8.2 all the subsidiary companies (now or subsequently constituted) of the Insured named in the Schedule;

2.8.3 any director, executive officer, employee, partner or shareholder of one of the Insured designated in Clause 2.8.1 or 2.8.2 but only whilst

- acting within the scope of their duties in such capacity;
- 2.8.4 every principal, in respect of that principal's vicarious liability for the acts or omissions of one of the Insured designated in Clause 2.8.1 or 2.8.2 in the performance by them of work for that principal, but subject always to the extent of coverage and the Limit of Indemnity provided by this Policy;
- 2.8.5 every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with the consent of the Insured designated in Clause 2.8.1 or 2.8.2 in respect of Claims arising from their duties connected with the activities of any such club, organisation or service, provided that this Clause shall not apply to an Insured designated in Clause 2.8.4 or 2.8.6.
- 2.8.6 each partner, joint venturer, co-venturer or joint lessee of the Insured named in the Schedule but only:
- 2.8.6.1 if the Insured named in the Schedule assumes active control of, or is required to arrange insurance for, the partnership, joint venture, co-venture or joint lease; and
- 2.8.6.2 with respect to liability incurred as the partnership, joint venture, co-venture or joint lease; and
- 2.8.7 any director or senior executive of the Insured designated in Clause 2.8.1 or 2.8.2 in respect of private work undertaken by the Insured's employees for such director or senior executive.
- 2.9 **"Insurer"** means the Insurer(s) stated in the Schedule participating in this Policy.
- 2.10 **"Limit of Indemnity"** means the applicable Limit of Indemnity stated in the Schedule.
- 2.11 **"Medical Persons"** means qualified medical practitioners, nurses and first aid attendants.
- 2.12 **"Multiple Damages"** means additional damages resulting from the multiplication of compensatory damages against an Insured, such additional damages being awarded as a result of the Insured or their legal advisors or both having engaged in unnecessary delaying tactics or having hindered the due process of the court in some other manner.
- 2.13 **"Occurrence"** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.14 **"Pen Underwriting"** means Pen Underwriting Pty Ltd ABN 89 113 929 516 AFSL 290518.
- 2.15 **"Period of Insurance"** means the period stated in the Schedule.
- 2.16 **"Policy"** means this policy wording, the Certificate of Insurance, the Schedule, and any Endorsements attaching to this policy wording and these documents shall be read together as one contract.
- 2.17 **"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.
- 2.18 **"Product"** means any goods, products and property (after they have ceased to be in the Insured's possession or under the Insured's control), which are or is deemed to have been manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured (including any container thereof other than a vehicle).
- 2.19 **"Retroactive Date"** means the date specified in the Schedule
- 2.20 **"Schedule"** means the schedule signed and issued by Pen Underwriting or the Insurer.
- 2.21 **"Territorial Limits"** means anywhere in the world subject to Exclusions 4.9 and 4.20.
- 2.22 **"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 organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 2.23 **"Tool of Trade"** means any Vehicle, which has any equipment either forming part of it or as an attachment, which is designed or used as a tool, including but not limited to, use in excavation, digging, scraping, grading, drilling, lifting, levelling, pumping, spraying, vacuuming and the like, whilst the equipment is at rest or being used or being prepared for

use or being decommissioned after use for which it was designed.

2.24 “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. Coverage

3.1 General Operative Clause

The Insurer will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation including Claimants’ costs and expenses. This indemnity only applies to such liability arising out of the Business from Claim(s) first made against the Insured and notified to the Insurer during the Period of Insurance subject to the terms, Conditions and Exclusions of this Policy.

3.2 Defence of Claims

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

3.2.1 defend in the Insured’s name and on the Insured’s behalf any Claim against the Insured seeking damages on account of Injury or Damage even if the action is groundless, false or fraudulent, and the Insurer will investigate, negotiate and settle any Claim as the Insurer sees fit.

3.2.2 pay all legal costs and expenses incurred by the Insurer and all interest accruing after entry of judgement until the Insurer has paid, tendered or deposited in court such part of the judgement as does not exceed the Limit of Indemnity;

3.2.3 reimburse the Insured for all reasonable expenses, other than loss of earnings incurred, with the Insurer’s consent, in the defence of a Claim against the Insured seeking damages on account of Injury or Damage;

3.2.4 pay reasonable expenses incurred by the Insured for first aid to others at the time of Injury caused by an Occurrence (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973).

Provided that:

3.2.5 The Insurer will not be obliged to pay any Claim or judgement or to defend any Claim after the Limit of Indemnity has been exhausted by payment of judgements or settlements;

3.2.6 if a payment exceeding the Limit of Indemnity has to be made to dispose of a Claim, the Insurer’s liability to pay any costs, expenses and interest under section 3.2 will be limited to that proportion of those costs, expenses and interest as the Limit of Indemnity bears to the amount paid to dispose of the Claim.

The amounts thus incurred, except payments in settlement of Claims, actions and all costs awarded against the Insured, are payable by the Insurer in addition to the Limit of Indemnity.

3.3 Limit of Indemnity

3.3.1 The Insurer’s maximum liability in respect of any Claim or series of Claims for Injury or Damage caused by or arising out of one Occurrence shall not exceed the Limit of Indemnity.

3.3.2 The Insurer’s total aggregate liability during any one Period of Insurance for all Claims arising out of the Insured’s Products shall not exceed the Limit of Indemnity.

3.4 Cross Liability

Where more than one party comprises the Insured, each of the parties will be considered as a separate and distinct entity and this Policy shall 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 Clause will result in an increase of the Insurer’s Limit of Indemnity in respect of any Occurrence or Period of Insurance.

4. Exclusions

This Policy does not cover liability in respect of:

4.1 Aircraft and Aircraft Products

Claims arising out of:

4.1.1 the ownership, maintenance, operation or use by the Insured or on the Insured’s behalf of any aircraft.

4.1.2 Products that are aircraft component parts where such component parts affect the safety, flight, controls or take-off or landing of an aircraft.

4.2 Asbestos

Injury or Damage directly or indirectly caused by, contributed to, or arising from exposure to asbestos.

4.3 Assault and Battery

Injury or Damage caused by or arising from assault and battery committed by the Insured or at the Insured’s direction unless

reasonably necessary for the protection of persons or property.

4.4 Biological or Chemical Materials

Loss, Damage 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.

4.5 Contractual Liability

Any obligation assumed by the Insured under any agreement or contract except to the extent that:

- 4.5.1 the liability would have been implied by common law;
- 4.5.2 the liability arises from a provision in a contract for lease of real or personal property other than a provision which obliges the Insured to effect insurance or provide indemnity in respect of the subject matter of the contract;
- 4.5.3 the obligation is assumed under those agreements specified in the Schedule.

4.6 Defamation

- 4.6.1 made prior to the commencement of the Period of Insurance; or
- 4.6.2 made by the Insured or at the Insured's direction with knowledge of its falsity; or
- 4.6.3 related to advertising, broadcasting or telecasting activities conducted by the Insured or on their behalf.

4.7 Employment Liability

Injury imposed:

- 4.7.1 by any workers' compensation law;
- 4.7.2 by the provision of any industrial award, 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, agreement or determination or contract of employment or workplace agreement; or
- 4.7.3 for or in respect of Employment Practices

provided that if the Insured is:

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

- 4.7.5 not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a worker or employee for the purposes of the relevant workers' compensation law or the Injury is not an injury which is subject to such law;

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

4.8 Excess

The Excess stated in the Schedule being the first amount of all Claims (including any costs and expenses) arising out of any one Occurrence.

4.9 Exports to the USA or Canada

Claims in respect of Injury or Damage caused by or arising out of the Insured's Products knowingly exported by the Insured, or their agents or servants, to the United States of America or Canada.

4.10 Faulty Workmanship

Damage to that part of any property upon which the Insured is or has been working where the Damage arises from the Insured's work, or the costs of performing, correcting or improving any work undertaken by the Insured.

4.11 Fines, Penalties

Fines, penalties, aggravated, punitive, multiple, exemplary and liquidated damages.

4.12 Loss of Use

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

- 4.12.1 a delay in or lack of performance by or on the Insured's behalf of any agreement;
- 4.12.2 the failure of the Insured's Product to meet the level of performance, quality, fitness or durability expressly or implied, warranted or represented by the Insured, but this Exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to, or loss or destruction of the Products after they have been put to use by any person or organisation other than the Insured designated in Clause 2.8.1 or 2.8.2.

4.13 Pollution

- 4.13.1 Injury or Damage 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, but this Exclusion 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;

- 4.13.2 Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this Exclusion 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 Injury and / or Damage.
- 4.13.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others.

The Insurer's liability under Clauses 4.13.1 and 4.13.2 in respect of any one discharge, dispersal, release, seepage, migration and for all discharges, dispersals, releases and escape of Pollutants during any one Period of Insurance shall not exceed the Limit of Indemnity.

4.14 Product Defect

Damage to Product if the Damage is attributed to any defect in it or its harmful nature or unsuitability.

4.15 Product Recall

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

4.16 Professional Liability

The rendering of or failure to render professional advice or service by the Insured or any related error or omission, but this Exclusion does not apply to the rendering of or failure to render professional medical advice by Medical Persons employed by the Insured to provide first aid on the Insured's premises.

4.17 Property in Custody or Control

Damage to:

- 4.17.1 property owned or leased or rented to the Insured; or

- 4.17.2 property in the Insured's physical or legal control.

But this Exclusion does not apply to liability for Damage to:

- 4.17.3 premises (including landlord's fixtures and fittings) which are leased or rented to the Insured;
- 4.17.4 premises (or their contents) not owned, leased or rented by the Insured but temporarily occupied by the Insured for work therein;
- 4.17.5 Vehicles (not belonging to or used by the Insured) in the Insured's physical or legal control where the Damage occurs while the Vehicles are in a car park owned or operated by the Insured, unless the Insured owns or operates the car park for reward;
- 4.17.6 the property of an employee of the Insured designated in Clause 2.8.1 or 2.8.2;
- 4.17.7 property (excluding any Vehicle which is registered or which is required under any legislation to be registered) in the Insured's physical or legal control for the purpose of repair, service, maintenance or alteration or which is on temporary hire or loan to the Insured, subject to a maximum indemnity of \$50,000 any one Occurrence.

4.18 Radioactive Contamination

Claims directly or indirectly caused by or contributed to, by or arising from:

- 4.18.1 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.
- 4.18.2 Nuclear weapons material.
- 4.18.3 The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

4.19 Retroactive Date

Arising out of an Occurrence which happened prior to the Retroactive Date specified in the Schedule.

4.20 Territorial Limits

- 4.20.1 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.

4.20.2 Claims and actions to which the laws of the United States of America or Canada apply.

Provided that:

4.20.3 Exclusions 4.20.1 and 4.20.2 do not apply to Claims and actions arising from the presence of any employees' and / or directors, partners of the Insured resident outside the United States of America or Canada who are not undertaking manual work or supervision of work of any kind whilst in the United States of America or Canada;

4.20.4 the Limit of Indemnity in respect of coverage provided under Clause 4.20.3 is inclusive of all costs, expenses and interest as set out in Clause 3.2 of this Policy.

4.21 Terrorism

Injury or Damage of whatsoever nature directly or indirectly caused by, or resulting from or in connection with any:

4.21.1 Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Injury or Damage; or

4.21.2 action taken in controlling, preventing, suppressing or in any way relating to Terrorism.

4.22 Tobacco

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

4.22.1 tobacco or tobacco smoke;

4.22.2 any ingredient or additive present in any articles, items or goods which contain or include tobacco.

4.23 Vehicles

4.23.1 Injury arising out of the ownership, possession or use by the Insured of any Vehicle in respect of which there is required at law to be in force a policy of compulsory liability insurance or statutory indemnity for bodily injury.

Provided however this Exclusion 4.23.1 shall not apply to liability for Injury arising out of an Occurrence which is partially or totally outside the indemnity afforded under such compulsory liability insurance or other legislation relating to vehicles.

4.23.2 Damage arising out of the ownership, possession or use by the Insured of any Vehicle in respect of which at the time of the

Occurrence giving rise to any Claim insurance is required by virtue of any law or legal requirement relating to the use of any Vehicle.

Provided however this Exclusion 4.23.2 shall not apply to liability for Damage:

4.23.2.1 arising out of or in connection with the loading and unloading of any Vehicle and / or any delivery or collection to or from any Vehicle for which the Insured is legally liable;

4.23.2.2 arising out of the use of any Vehicle as a Tool of Trade;

4.23.2.3 arising from the use of any Vehicle (other than registered Vehicles owned or used by the Insured) in the physical or legal control of the Insured where such Damage occurs in a car park owned or operated by the Insured.

4.24 War

Any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, 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.

4.25 Watercraft

Claims arising out of

4.25.1 the ownership, maintenance, operation or use by the Insured or on their behalf of any watercraft exceeding ten (10) metres in length, except where such watercraft are owned and operated by others and used by the Insured for business entertainment.

4.25.2 Products that are watercraft component parts.

4.26 Known Claims and Circumstances

4.26.1 any Claim made against any Insured prior to the Period of Insurance;

4.26.2 any fact, matter or circumstance of which notice has been given, or ought reasonably have been given, under any previous policy; or

4.26.3 any fact, matter or circumstance of which any Insured was aware prior

to the Period of Insurance and which the Insured knew, or ought reasonably to have known might give rise to a Claim.

5. Conditions

5.1 Amendments

This Policy does not cover Injury or Damage directly or indirectly caused by or arising out of any change in the nature of the business which:

- 5.1.1 occurred during the Period of Insurance; and
- 5.1.2 was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy,

unless the Insured shall give the Insurer notice in writing of such change, and such change shall be allowed by the Insurer by Endorsement and / or Certificate prior to the happening of any Occurrence caused by, contributed by or arising out of the said change.

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

5.2 Cancellation

- 5.2.1 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.

- 5.2.2 The Insurer may cancel this Policy at any time where:

- 5.2.2.1 it is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments thereto;
- 5.2.2.2 the Insured has failed to notify the Insurer of any specific act or omission where such notification is required under the terms and conditions of this Policy.

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

Any notice of cancellation given by the Insurer shall take effect either at

the time when another contract of insurance between the Insured and the Insurer or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4.00pm on the third business day after the date on which notice was given to the Insured by the Insurer (whichever is earlier).

5.3 Claims

- 5.3.1 The Insured shall give written notice to the Insurer as soon as possible after any Occurrence that may give rise to a Claim under this Policy and shall give all such additional information as the Insurer may require. Every letter, Claim shall be forwarded to the Insurer immediately it is received.

- 5.3.2 If any Claim, in whole or in part, is intentionally exaggerated by the Insured or if the Insured or anyone entitled to benefit under this Policy uses any fraudulent means or devices or if any liability is occasioned by the wilful act or with the connivance of any party entitled to benefit under this Policy, all benefit in respect of such fraudulent or exaggerated Claim shall be forfeited.

- 5.3.3 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the written consent of the Insurer who shall be entitled to take over the conduct in the name of the Insured of the defence or settlement of any Claim or to prosecute in the name of the Insured for their own benefit any Claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any Claim and the Insured shall give all such information and assistance as the Insurer shall require.

5.4 Discharge of Liability

The Insurer may at any time discharge its total liability to the Insured in respect of any one Claim or series of Claims arising from one Occurrence by paying to or on behalf of the Insured:

- 5.4.1 the total amount in respect of the said Claim or Claims to which the Insured is entitled to indemnity under this Policy, or
- 5.4.2 the total amount sought by the Claimant(s) in the said Claim or Claims, or

5.4.3 the total amount for which the said Claim or Claims can be settled,

and in addition to such payment the Insurer will pay defence costs incurred up to the date of the said payment in accordance with Clause 3.2 of this Policy.

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

5.5 Insurance Contracts Act 1984

Nothing contained in this Policy is to be construed to reduce or waive either the Insured's or the Insurer's privileges, rights or remedies available under the Insurance Contracts Act 1984.

5.6 Jurisdiction

This Policy shall be interpreted in accordance with the laws of Australia and all Claims for indemnity under this Policy shall be decided in accordance with those laws.

5.7 Notices

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

5.8 Premium Adjustment

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

5.9 Prohibited by Law

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

5.10 Reasonable Care

The Insured must:

5.10.1 exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;

5.10.2 take all reasonable precautions to prevent Injury and Damage, and prevent the manufacture, sale or

supply of defective Product, and comply with and ensure that employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:

5.10.2.1 safety of persons or property;

5.10.2.2 disposal of waste products;

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

5.10.2.4 At the Insured's own expense take reasonable action to trace, recall or modify any of the Insured's Product containing any defect or deficiency of which the Insured has knowledge or has reason to suspect, including (but not limited to) any Product subject to governmental or statutory ban.

5.11 Sanctions and Embargo

5.11.1 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.

5.11.2 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.

