



**Public and Products Liability Policy**  
**Claims Occurring**

vAUS12.15



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.

## Contents

1. Important Information	1
2. Our Agreement	2
3. Definitions	3
4. Exclusions	7
5. Conditions	11

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## IMPORTANT INFORMATION

### 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.

### 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.

### 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](http://www.penunderwriting.com.au).

### 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](http://www.penunderwriting.com.au).

### Australian Terrorism Insurance Act

The Underwriters have treated this insurance (or part of it) as an insurance to which the Australian Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism Exclusion to which this Policy is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism Exclusion to which this Policy is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insurance coverage and Exclusions of this Policy including applicable limits and excesses remain unchanged.

If any or all of the Underwriters have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

### 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.

## 1. OUR AGREEMENT

### 1.1. Coverage

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

- 1.1.1. **Personal Injury**, and/or
- 1.1.2. **Property Damage; and/or**
- 1.1.3. **Advertising Injury;**

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

Other than as provided under Clause 1.2 (Defence Costs and Supplementary Payments), the most **We** will pay hereunder is fixed as set forth in the Limits of Liability of this insurance.

### 1.2. Defence Costs And Supplementary Payments

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

- 1.2.1. defend, in **Your** name and on **Your** behalf, any claim or suit against **You** alleging such **Personal Injury** and/or **Property Damage** and/ or **Advertising Injury** and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent.
- 1.2.2. pay all charges, expenses and legal costs incurred by **Us** and/or by **You** at **Our** written request or with **Our** written consent (which consent shall not be unreasonably withheld):
  - 1.2.2.1. In the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of **Your** attendance at hearings or trials at **our** request, or
  - 1.2.2.2. in bringing or defending appeals in connection with such claim or suit.
- 1.2.3. pay all charges, expenses and legal costs recoverable from or awarded against **You** in any such claim or suit, and
- 1.2.4. pay pre-judgment interest awarded against **You** on that part

of the judgment payable by **Us**; and

- 1.2.5. pay all interest accruing on **Our** portion of any judgment until **We** have paid, tendered or deposited in court that part of such judgment which does not exceed the Limit of Liability.
- 1.2.6. pay premiums on:
  - 1.2.6.1. bonds to release attachments for amounts not exceeding the applicable Limit of Liability of this Policy but **We** shall have no obligation to apply for or furnish any such bond.
  - 1.2.6.2. appeal bonds and/or security for costs required in any suit but **We** shall have no obligation to apply for or furnish any such bonds and/ or security for costs.
- 1.2.7. pay expenses incurred by **You** for:
  - 1.2.7.1. rendering first aid and/or surgical and/or medical and/or therapeutic relief to others at the time of any **Personal Injury** (other than any medical expenses, which **We** are prevented from paying by any law).
  - 1.2.7.2. temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or unpinning thereof.
  - 1.2.7.3. purchasing and/or hiring and/ or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which **You** must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.
- 1.2.8. pay all legal costs incurred by **You** with **Our** consent for

representation of **You** at:

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

Provided that **Our** liability under Clauses 1.2.8.3 and 1.2.8.4 shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one **Occurrence**.

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

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

### 1.3. Limits Of Liability And Excesses

Subject to Clause 1.2 above and Clauses 1.4 and 3.16.5 below:

- 1.3.1. The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims for Public Liability arising out of any one Occurrence.
- 1.3.2. The Limit of Liability specified in the Schedule represents the

maximum amount which We shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one Period of Insurance, for Products Liability.

With respect to **Personal Injury** and/or **Property Damage** all related **Occurrences** and all series of continuous, repeated or related **Occurrences** shall be deemed one **Occurrence**.

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

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

Notwithstanding the Clause 1.2 and 1.3 hereon, should an amount greater than the Limit of Liability hereon be required to settle a claim, the amount payable under Clause 1.2 of this Policy, shall be reduced to the same proportion that the Limit of Liability of this Policy represents to the amount required to settle the claim.

### 1.4. Claims Preparation Costs

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

The cover provided under section Claims Preparation Costs operates in addition to and shall not in any way affect the cover provided under Clause 1.2 of this Policy.

## 2. DEFINITIONS

For the purpose of determining the cover provided by this Policy:

### 2.1. Act of Terrorism means:

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

### 2.2. Advertising Injury means:

Injury other than **Personal Injury** or **Property Damage**, sustained by a person or organisation and caused by an act of infringing, in that particular part of your

advertisement about your goods, **Products** or services, upon their:

- 2.2.1. copyrighted advertisement;
- 2.2.2. registered collective mark, registered service mark or other registered trademarked name, slogan, symbol or title;

committed or alleged to have been committed during the **Period of Insurance**.

**2.3. Aircraft** means:

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

**2.4. Bodily Injury** means:

injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom.

**2.5. Business** means:

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

- 2.5.1. any prior operations or activities which have ceased or have been disposed of but for which You may retain a legal liability.
- 2.5.2. the ownership of premises and/or the tenancy thereof by You.
- 2.5.3. participation in any exhibition by You or on Your behalf.
- 2.5.4. the hire or loan of plant and/or equipment to other parties.
- 2.5.5. conducted tours of Your premises.
- 2.5.6. the provision of any sponsorships, charities, galas, first aid, medical, ambulance or fire fighting services by You or on Your behalf.
- 2.5.7. private work undertaken by Your employees for any of Your directors, partners, proprietors, officers or executives.
- 2.5.8. the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and/or child care facilities by You or on Your behalf, which are primarily for the benefit of Your employees.

**2.6. Compensation** means:

monies paid or agreed to be paid by judgment, award or settlement in respect of

**Personal Injury** and/or **Property Damage** and/or **Advertising Injury**.

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

**2.7. 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.

**2.8. Employment Practices** means:

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

**2.9. Endorsement** means:

any endorsement to the Policy issued by **Us**.

**2.10. Excess** means:

the first amount of each claim or series of claims arising out of any one **Occurrence** for which **You** are responsible. Such amount will be deducted before any amount is paid to **You** or on **Your** behalf.

The **Excess** applicable to this insurance appears in the **Schedule**.

The **Excess** applies to all amounts for which **We** will be liable, including the indemnity provided by **Our** Agreement as per Clause 1.2 (Defence Costs and Supplementary Payments).

**2.11. Geographical Limits** means:

2.11.1. anywhere in the world except **North America**.

2.11.2. **North America**, but only with respect to:

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

2.11.2.2. **Products** exported to **North America** without **Your** knowledge.

**2.12. Hovercraft** means:

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



**2.13. Incidental Contracts** means:

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

**2.14. Medical Persons** includes but is not limited to:  
medical practitioners, medical nurses, dentists and first aid attendants.

**2.15. Named Insured** means:

- 2.15.1. the person(s), corporations and/or other organisations specified in the **Schedule**,
- 2.15.2. all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the **Named Insured** incorporated in the Commonwealth of Australia and/or any other organisations under the control of the **Named Insured**;
- 2.15.3. all subsidiary and/or controlled corporations (including subsidiaries thereof) of the **Named Insured** and/or any other organisations under the control of the **Named Insured** incorporated in the Commonwealth of Australia and which are constituted or acquired by the **Named Insured** during the **Period of Insurance**.
- 2.15.4. every subsidiary and/or controlled corporation and/or other organisation of the **Named Insured** which is divested during the **Period of Insurance**, but only in respect of claims made against such divested subsidiary or

controlled corporation or organisation caused by or arising out of **Occurrences** insured against by this Policy, which occurred prior to the date of divestment.

**2.16. North America** means:

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

**2.17. Occurrence** means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** and/or **Property Damage** and/or **Advertising Injury** that is neither expected nor intended (except for the matters set out in Clause 2.19.6) from **Your** standpoint.

**2.18. Period of Insurance** means:

the **Period of Insurance** specified in the **Schedule** at **Your** principal place of **Business** and any extension thereof which may be agreed in writing between **You** and **Us**.

**2.19. Personal Injury** means:

- 2.19.1. **Bodily Injury**;
- 2.19.2. false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- 2.19.3. wrongful entry or wrongful eviction;
- 2.19.4. defamation or invasion of privacy, unless arising out of **Advertising Injury**;
- 2.19.5. discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by **You** or at **Your** direction, but only with respect to liability other than fines and penalties imposed by law;
- 2.19.6. Assault and battery not committed by **You** or at **Your** direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of **Personal Injury** claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability then such injury, sickness,

disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

**2.20. Pollutants means:**

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

**2.21. Public Liability means:**

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

**2.22. Products means:**

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

**2.23. Products Liability means:**

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

**2.24. Property Damage means:**

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

**2.25. Schedule means:**

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

**2.26. Tool of Trade means:**

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

**2.27. Vehicle means:**

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

**2.28. Watercraft means:**

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

**2.29. We, Us, Our means:**

"Pen Underwriting" means pen underwriting Pty Ltd ABN 89 113 929 516 AFSL 290518

**2.30. Worksite means:**

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

**2.31. You, Your, Insured**

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

2.31.1. the **Named Insured**.

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

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



does not extend to indemnify **You** for any liability:

- 2.31.3.1. in relation to claims arising directly or indirectly from any loss, or diminution in value, of any such superannuation fund or pension scheme;
- 2.31.3.2. arising out of **Your** statutory or civil fiduciary liabilities owed as a director or officer of any such superannuation fund or pension scheme.
- 2.31.4. every principal in respect of the principal's vicarious liability arising out of:
  - 2.31.4.1. the performance by or on behalf of the **Named Insured** of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of
  - 2.31.4.2. the **Named Insured**, but only in respect of the **Named Insured's** own acts or omissions in connection with such **Products** and in any event only for such coverage and Limits of Liability as are provided by this Policy.
- 2.31.5. every officer, member, employee or voluntary helper of the **Named Insured's** canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, educational, welfare and/or child care facilities, while acting in their respective capacities as such.
- 2.31.6. any director, partner, proprietor, officer or executive of the **Named Insured** in respect of private work undertaken by the **Named Insured's** employees for such person and any employee whilst actually undertaking such work.
- 2.31.7. the estates, legal representatives, heirs or assigns of:
  - 2.31.7.1. any deceased or insolvent persons, or
  - 2.31.7.2. persons who are

unable to manage their own affairs by reason of mental disorder or incapacity, who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such persons as described in Clauses 2.31.7.1 and 2.31.7.2 above.

- 2.31.8. any joint venture companies and partnerships to whom the **Named Insured** is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy but only with respect to the operation of such joint venture or partnership.

### 3. EXCLUSIONS

**We** do not cover any liability:

#### 3.1. Advertising Injury for Advertising Injury:

- 3.1.1. resulting from statements made at **Your** direction with knowledge that such statements are false.
- 3.1.2. resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.
- 3.1.3. resulting from any incorrect description of **Products** or services.
- 3.1.4. resulting from any mistake in advertised price of **Products** or services.
- 3.1.5. failure of **Your Products** or services to conform with advertised performance, quality, fitness or durability.
- 3.1.6. incurred by any **Insured** whose principal occupation or **Business** is advertising, broadcasting, publishing or Telecasting.

#### 3.2. Aircraft, Hovercraft or Watercraft for Personal Injury and/or Property Damage arising from:

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

Provided that Exclusion 3.2.2 shall not apply with regard to claims arising out of:

- 3.2.2.1. **Watercraft** used in operations carried out by any independent contractors for whose conduct **You** may be held liable.
  - 3.2.2.2. **Hovercraft** owned and operated by others and used by **You** for **Business** entertainment.
  - 3.2.2.3. **Watercraft** owned by others and used by **You** for **Business** entertainment.
- 3.3. Aircraft Products**  
arising out of **Your Products** that are **Aircraft** or **Aircraft** component parts used for maintaining an **Aircraft** in flight or moving upon the ground or used in the construction of an **Aircraft** hull or machinery which to **Your** knowledge are incorporated in an **Aircraft**.
- 3.4. Asbestos**
- 3.4.1. for damages, loss, cost or expense directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.
  - 3.4.2. for any damages, loss, cost or expense arising out of any:
    - 3.4.2.1. demand, order, request by a regulatory authority or any statutory requirement that **You** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the presence or effects of asbestos; or
    - 3.4.2.2. claim or proceeding by or on behalf of any regulatory, statutory or governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of asbestos.

- 3.5. Breach of Professional Duty**  
arising out of any breach of duty owed in a professional capacity by **You** and/or any person(s) for whose breaches **You** may be held legally liable, but this exclusion shall not apply to claims:
- 3.5.1. in respect of **Personal Injury** and/or **Property Damage** arising from such breach of duty.
  - 3.5.2. arising out of the rendering of or failure to render professional medical advice by **Medical Persons** employed by **You** to provide first aid on **Your** premises.
  - 3.5.3. arising out of advice or service which is not given for a fee.
  - 3.5.4. arising out of advice given in respect of the use or storage of **Your Products**.
- 3.6. Contractual Liability**  
which has been assumed by **You** under any contract or agreement that requires **You** to:
- 3.6.1. effect insurance over property, either real or personal.
  - 3.6.2. assume liability for, **Personal Injury** and/or **Property Damage** regardless of fault; provided that this exclusion shall not apply with regard to:
    - 3.6.2.1. liabilities which would have been implied by law in the absence of such contract or agreement; or
    - 3.6.2.2. liabilities assumed under **Incidental Contracts**; or
    - 3.6.2.3. terms regarding merchantability, quality, fitness or care of **Your Products** which are implied by law or statute; or
    - 3.6.2.4. liabilities assumed under the contracts specifically designated in the **Schedule** or in any **Endorsement(s)** to this Policy.
- 3.7. Damage to Products**  
for **Property Damage** to any **Products** where such damage is directly caused by a fault or defect in such **Products**; but this exclusion shall be interpreted to apply with respect to damage to that part and only that part of such **Product** to which the damage is directly attributable.

**3.8. Defamation**

for defamation:

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

**3.9. Electronic Data**

Arising out of:

- 3.9.1. the communication, display, distribution or publication of **Electronic Data**; provided that this Exclusion 3.9.1 does not apply to **Personal Injury** and /or **Advertising Injury** arising therefrom;
- 3.9.2. the total or partial distortion, erasure, corruption, alteration, misrepresentation, or misappropriation of **Electronic Data**;
- 3.9.3. error in creating, amending, entering, deleting or using **Electronic Data**;
- 3.9.4. the total or partial inability or failure to receive, send, access or use **Electronic Data** for any time or at all;

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

**3.10. Employers Liability**

- 3.10.1. for **Bodily Injury** to any employee in respect of which **You** are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by legislation relating to Workers' Compensation or Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected.
- 3.10.2. imposed by:
  - 3.10.2.1. the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such

industrial award or agreement or determination or contract of employment or workplace agreement.

3.10.2.2. any law relating to **Employment Practices**.

**3.11. Faulty Workmanship**

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

**3.12. Fines, Penalties, Exemplary or Punitive Damages**

for:

- 3.12.1. aggravated, exemplary or punitive damages;
- 3.12.2. fines or other penalties; or
- 3.12.3. multiple portion of any multiplied damages award.

**3.13. Loss of Use**

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

- 3.13.1. a delay in or lack of performance by **You** or on **Your** behalf of any contract or agreement; or
- 3.13.2. failure of any **Products** or work performed by **You** or on **Your** behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by **You**; but this Exclusion 3.13.2 shall not apply to **Your** liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any **Products** or work performed by **You** or on **Your** behalf after such **Products** or work have been put to use by any person or organisation other than **You**.

**3.14. Nuclear**

arising out of:

- 3.14.1. ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 3.14.2. radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**3.15. Pollution**

3.15.1. for **Personal Injury** and/or **Property Damage** directly or

indirectly caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of **Pollutants** into or upon land, property, the atmosphere or any water course or body of water.

- 3.15.2. for any costs and expenses incurred in preventing the discharge, dispersal, release, seepage, migration or escape of, or, testing and monitoring for, containing, removing, nullifying, or cleaning up of, **Pollutants**.

Provided that Exclusions 3.15.1 and 3.15.2 shall not apply where such discharge, dispersal, release, seepage, migration or escape is caused by a sudden, identifiable, unintended and unexpected event from **Your** standpoint which takes place in its entirety at a specific time and place.

- 3.15.3. For any damages, loss, cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

3.15.3.1. happening in **North America**, or their territories or possessions; or

3.15.3.2. in respect of which an action for damages is brought in the courts of **North America**, or their territories or possessions.

**3.16. Property in Your care, custody or control**

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

- 3.16.1. the personal property, tools and effects of any of **Your** directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of **Your** visitors.

- 3.16.2. premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, **You** for the purpose of the **Business**, but no cover is provided by this Policy if **You** have assumed the responsibility to insure such premises.

- 3.16.3. premises (and/or their contents) temporarily occupied by **You** for the purpose of carrying out work in connection with the **Business**, or any other property temporarily in **Your** possession for the purpose

of being worked upon.

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

- 3.16.4. any **Vehicle** (including its contents, spare parts and accessories while they are in or on such **Vehicle**) not belonging to or used by **You**, whilst any such **Vehicle** is in a car park owned or operated by **You** provided that **You** do not operate the car park for reward, as part of **Your Business**.

- 3.16.5. notwithstanding Exclusion 3.6 "Contractual Liability", any property (except property that **You** own) not mentioned in Exclusion 3.16.1 to 3.16.4 above whilst in **Your** physical or legal care, custody or control whether or not **You** have accepted or assumed legal liability for such property. Provided that **Our** liability under this Exclusion 3.16.5 shall not exceed \$250,000 in the aggregate during the **Period of Insurance**.

**3.17. Property owned by You**

for **Property Damage** to property owned by **You**.

**3.18. Product Guarantee**

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

**3.19. Product Recall**

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

**3.20. Terrorism**

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

Provided that, Exclusion 3.20 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**.

### 3.21. Vehicles

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

- 3.21.1. which is registered or which is required under any legislation to be registered, or
- 3.21.2. in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected);
- 3.21.3. but Exclusions 3.22.1 and 3.22.2 shall not apply to:
  - 3.21.3.1. **Personal Injury** where that compulsory liability insurance or statutory indemnity does not provide indemnity, and the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by **You** of legislation relating to **Vehicles**.
  - 3.21.3.2. any **Vehicle** (including any tool, implement, machinery or plant forming part of or attached to or used in connection with such **Vehicle**) whilst being operated or used by **You** or on **Your** behalf as a **Tool of Trade** at **Your** premises or on any **Worksite**.
  - 3.21.3.3. the delivery or collection of goods to or from any **Vehicle**.
  - 3.21.3.4. the loading or unloading of any **Vehicle**.
  - 3.21.3.5. any **Vehicle** temporarily in **Your** custody or control for the purpose of parking.

### 3.22. War

In respect of war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under the

order of any government or public or local authority.

## 4. CONDITIONS

### 4.1. Adjustment of Premium

If the first premium or any renewal premium for this Policy or any part thereof shall have been calculated on estimates provided by **You**, **You** shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow **Us** to inspect such record.

**You** shall, where requested by **Us** after the expiry of each **Period of Insurance**, provide to **Us** such particulars and information as **We** may require as soon as reasonably practicable. The premium for such **Period of Insurance** shall thereupon be adjusted and any difference paid by or allowed to **You**, as the case may be, subject to retention by **Us** of any minimum premium that may have been agreed upon between **Us** and **You** at inception or the last renewal date of this Policy.

### 4.2. Alteration of Risk

Every change which substantially varies any of the material facts or circumstances existing at the commencement of each **Period of Insurance**, that shall come to the knowledge of **Your** officer responsible for insurance matters, shall be notified to **Us** as soon as reasonably practicable thereafter and **You** shall (if so requested) pay such reasonable additional premium as **We** may require.

### 4.3. Bankruptcy or Insolvency

In the event that **You** should become bankrupt or insolvent, **We** shall not be relieved thereby of the payment of any claims indemnifiable under this Policy because of such bankruptcy or insolvency.

### 4.4. Breach of Condition or Warranty

**Your** rights under this Policy shall not be prejudiced by any unintentional and/or inadvertent:

- 4.4.1. breach of a condition or warranty without **Your** knowledge or consent; or
- 4.4.2. error in the name or title of any person(s), corporation and/or other organisation which forms part of the definition of "**You, Your, Insured**"; or
- 4.4.3. error in name, description or situation of property; or
- 4.4.4. failure to report any property and/or entity and/or insurable exposure in which **You** have an interest.

Provided always that, upon discovery of any such fact or circumstances referred to



above, **Your** officer responsible for insurance matters shall give written notice thereof to **Us** as soon as reasonably practicable thereafter and **You** shall (if so requested) pay such reasonable additional premium that **We** may require.

#### 4.5. Cancellation of this Policy

##### By You

4.5.1. **You** may cancel this Policy at any time by tendering notice in writing to **Us** to that effect, in which event the cancellation will become effective from the earlier of the date the notice is received by **Us** or the date on which **You** arranged alternative insurance protection.

##### By Us

4.5.2. Subject to Conditions 4.4 and 4.12, **We** may cancel this Policy in any of the circumstances set out in Sections 60 or 61 of the Insurance Contracts Act 1984 (as amended).

Such cancellation shall take effect at the earlier of the following times:

4.5.2.1. the time when another policy of insurance between **You** and **Us** or some other insurer, being a policy that is intended by **You** to replace this Policy, is entered into: or

4.5.2.2. at 4.00PM on the thirtieth (30th) **Business** day after the day on which notification was given to **You**.

In the event of cancellation of this Policy by either party, **You** shall be entitled to a pro rata refund of premium subject to any minimum and deposit premium that may apply.

If the premium is subject to adjustment, cancellation will not affect **Your** obligation to supply **Us** with such information as is necessary to permit the premium adjustment to be calculated.

#### 4.6. Cross Liabilities

This insurance extends to indemnify:

4.6.1. each of the parties comprising the Named Insured, and

4.6.2. each of the Insureds hereunder, separately in the same manner and to a like extent as though policies had been issued in their separate names.

In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in Clauses 4.6.1 and 4.6.2 in respect of claims made by any other of such parties.

Provided always that:

4.6.3. each of such parties shall be separately subject to the terms, Definitions, Exclusions and Conditions and **Endorsements** of this Policy in the same manner and to a like extent as though separate policies had been issued, and

4.6.4. in no case shall the amount payable by **Us** in respect of any one claim or series of claims arising out of any one **Occurrence** or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the **Schedule**.

#### 4.7. Duties in the event of an Occurrence, Claim or Suit

4.7.1. **You** must give written notice to **Us**, as soon as reasonably practicable, of any claim made against **You** or any **Occurrence** that may give rise to a claim being made against **You** and which is covered by this Policy.

4.7.2. **You** must provide all additional information that **We** may reasonably require and every demand, writ, summons, proceedings, impending prosecution or inquest and all documents relating to the claim or **Occurrence** shall be forwarded to **Us** as soon as practicable after they are received by **You**.

4.7.3. All written notices (including facsimile transmissions and electronic mail) must be given to **Us** via Pen Underwriting.

4.7.4. **You** shall not, without **Our** written consent (which consent shall not be unreasonably withheld), make any admission, offer, promise or payment in connection with any **Occurrence** or claim.

4.7.5. **You** shall use the best endeavours to preserve all property, **Products**, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without **Our**



consent until **We** have had an opportunity of inspection.

- 4.7.6. **You** shall, when so requested, provide **Us** with details of any other insurances current at the time of any **Occurrence**, and/or **Personal Injury** and/or **Property Damage** and/or **Advertising Injury** and covering any of the liability insured by this Policy.

#### 4.8. Our Rights regarding Claims

- 4.8.1. Following any **Occurrence** in respect of which a claim is, or may be, made under this Policy, **We** shall have full discretion in the conduct of any proceedings in connection with any claim. **You** shall give such information and assistance that **We** may reasonably require in the prosecution, defence or settlement of any claim.

- 4.8.2. We may at any time pay to **You**, in respect of all claims against **You** arising directly or indirectly from one source or original cause:

4.8.2.1. the amount of the Limit of Liability or such other amount specified in respect thereof (after deduction of any sum(s) already paid by **Us**, which sum(s) would reduce the amount of Our unfulfilled liability in respect thereof); or

4.8.2.2. any lesser sum for which the claim(s) can be settled.

- 4.8.3. Upon making such payment, **We** shall relinquish conduct and control of, and be under no further liability under this Policy in connection with, such claim(s) except for Defence Costs and Supplementary Payments:

4.8.3.1. recoverable from **You** in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or

4.8.3.2. incurred by **Us** or by **You** with **Our** written consent, prior to the date of such payment.

#### 4.9. Goods and Services Tax

**You** must inform **Us** of the extent to which **You** are entitled to an input tax credit for

the premium each time that **You** make a claim under this Policy. No payment will be made to **You** for any GST liability that arises on the settlement of a claim under this Policy when **You** have not informed **Us** of **Your** entitlement or correct entitlement to an input tax credit.

Notwithstanding anything contained in this Policy (including the **Schedule** and any endorsements attached hereto) to the contrary, **Our** liability will be calculated after taking into account:

4.9.1. any input tax credit to which **You**, or any claimant against **You**, is entitled for any acquisition relevant to a claim paid under this Policy; and

4.9.2. any input tax credit to which **You**, or any claimant against **You**, would have been entitled were **You** or the claimant to have made a relevant acquisition; and

4.9.3. the GST exclusive amount of any supply made by **You** which is relevant to **Your** claim.

If the applicable Limit of Liability is not sufficient to cover **Your** claim, **We** will only pay GST (less any relevant input tax credit) that relates to **Our** proportion of **Your** claim.

The terms 'GST', 'input tax credit', 'acquisition' and 'supply' have the meanings ascribed to them in the A New Tax System (Goods and Services Tax) Act 1999.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, Definitions, Exclusions and Conditions of this Policy other than as stated above.

#### 4.10. Inspection and Audit

**We** shall be permitted, but not obligated, to inspect **Your** premises and operations at any reasonable time. Neither **Our** right to make inspections, nor **Our** failure to make inspections, nor the making of inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of **You** or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

**We** may examine and audit **Your** books and records at any time during the currency of this Policy and within three (3) years after the final termination of this Policy but only with regard to matters which in **Our** opinion are relevant to this Policy.

#### 4.11. Jurisdiction

This contract of insurance shall be governed by and construed in accordance

with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this Policy shall be determined in accordance with the law and practice of such Court.

#### 4.12. Premium Funding

If the premium has been funded by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney, then subject to Section 60 of the Insurance Contracts Act 1984, **We** may cancel this Policy at the request of the premium funding company, after substantiation of the debt and default in payment by **You** has been made and proven to **Us**, by giving **You** not less than three (3) **Business** days written notice to that effect, following which a refund will be made to the premium funding company the proportionate part of the premium applicable to the unexpired **Period of Insurance**.

#### 4.13. Reasonable Precautions

**You** must:

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

4.13.2. take reasonable precautions:

4.13.2.1. to prevent **Personal Injury** and/ or **Property Damage** and/or **Advertising Injury**.

4.13.2.2. to prevent the manufacture, sale or supply of defective **Products**.

4.13.2.3. to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.

4.13.3. at **Your** own expense take reasonable action to trace, recall or modify any **Products** containing any defect or deficiency which defect or deficiency **You** have knowledge of or have reason to suspect.

#### 4.14. Release

Where **You** are required by contractual agreement to release any Government or Public or Local Authority or other Statutory

Authority or any landlord from liability in respect of loss, destruction or damage or legal liability insured against under this Policy, such release is allowed without prejudice to this insurance.

Notwithstanding Condition 4.18 of this Policy, **We** agree to waive all **Our** rights of subrogation against any such Authority or landlord in the event of any **Occurrence** for which a claim for indemnity may be made under this Policy.

#### 4.15. Non-imputation

Where this insurance is arranged in the joint names of more than one **Insured**, as described in clause 2.15.1, it is hereby declared and agreed that:

4.15.1. each **Insured** shall be covered as if it made its own proposal for this insurance.

4.15.2. any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each **Insured**.

4.15.3. any knowledge possessed by any **Insured** shall not be imputed to the other **Insured(s)**.

#### 4.16. Foreign Currency

All amounts referred to in this Policy are in Australian Dollars.

If **You** incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by **Us** shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date on which **We** pay to **You** (or some other person or party as directed by **You**) the indemnity in respect of such award or settlement; subject always to the applicable Limit of Liability.

#### 4.17. Subrogation and Allocation of the Proceeds of Recoveries

Subject to Condition 4.18, any corporation, organisation or person claiming under this insurance shall, at **Our** request and at **Our** expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by **Us** for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which **We** shall be or would become entitled upon **Us** paying for or indemnifying **You** in respect of legal liability under this insurance.

Should **You** incur any legal liability which is not covered by this insurance:

- 4.17.1. due to the application of an **Excess**; and/or
- 4.17.2. where the amounts of any judgments or settlements exceed the applicable Limit of Liability;

**You** will be entitled to the first call on the proceeds of all recoveries made, by either **You** or **Us**, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by **Us**) and any remaining amount(s) will be applied to reimburse **Us**.

#### **4.18. Subrogation Waiver**

Notwithstanding Condition 4.17 **We** hereby agree to waive all **Our** rights of subrogation under this Policy against:

- 4.18.1. each of the parties described under Clause 2.31.
- 4.18.2. any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this Policy. However where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, **Our** right of subrogation is not waived to the extent and up to the amount that protection from liability is provided by the other policy.

#### **4.19. Interpretation**

This Policy incorporates the **Schedule**, Our Agreement, Definitions, Exclusions and Conditions, and **Endorsements** any other terms herein contained or endorsed hereon, which are to be read together. Where any word or expression has been given specific meaning in any part of this Policy, such word or expression shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which such word or expression appears.

Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.