



**Umbrella Liability
Policy Wording**

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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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.

GST

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

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

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.

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.

Australian Terrorism Insurance Act

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

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

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

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

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

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. 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 in respect of:

- 1.1. Injury, or
- 1.2. Damage, or
- 1.3. Advertising Injury

during the Period of Insurance within the Territorial Limits arising out of the Insured's Business.

2. DEFINITIONS

For the purpose of determining the cover provided under the Operative Clause:

- 2.1. "Advertising Injury" means unintentional libel, slander, defamation, infringement of copyright, title or slogan, piracy, unfair competition, idea misappropriation or invasion of rights of privacy, arising out of the Insured's advertising activities first published or broadcast during the Period of Insurance.
- 2.2. "Aircraft" means any vessel, craft or thing made or intended to fly in or through the atmosphere or space.
- 2.3. "Business" is as described in the Description of Operations as shown in the Schedule.
- 2.4. "Damage" means:
 - 2.4.1. 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.
 - 2.4.2. 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 that caused it.
- 2.5. "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.
- 2.6. "Hovercraft" means any vessel, craft or thing made or intended to float or hover over land or water.
- 2.7. "Injury" means:
 - 2.7.1. bodily injury, death, illness, disability, shock, fright, mental anguish or mental injury, and loss of consortium

2.7.2. false arrest, detention, false imprisonment, malicious prosecution or humiliation

2.7.3. the publication or utterance of libel or slander or of other defamatory or derogatory material, or publication or utterance in violation of an individual's rights of privacy except:

2.7.3.1. when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy, or

2.7.3.2. when any such publication or utterance is made in the course of or related to broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured

2.7.4. wrongful entry or wrongful eviction or other invasion of the right of private occupancy

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

In the event of claims for Injury arising from latent injury, latent disease, latent sickness or latent disability, such Injury, disease, sickness or disability in respect of each claim shall be deemed to have first happened on the day such Injury, disease, sickness or disability was first medically diagnosed, which diagnosis must first occur during the Period of Insurance.

2.8. "Insured" means the Insured named in the Schedule and:

2.8.1. any subsidiary company (including subsidiaries thereof) of the Insured and any other organisation under the control of the Insured and over which it is exercising active management,

2.8.2. any director, executive officer, employee, partner or shareholder of the Insured, but only whilst acting within the scope of their duties in such capacity,

2.8.3. any person, principal, organisation, trustee or estate to whom or to which the Insured is obligated by virtue of a written contract to provide insurance as is afforded by this Policy, but only to the extent required by such contract and in any event only for such coverage and Limit of Indemnity as provided in this Policy,

- 2.8.4. any officer, committee and member of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such,
- 2.8.5. any director or senior executive of the Insured in respect of private work undertaken by the Insured's employees for such director or senior executive,
- 2.8.6. if the Insured is declared in the Schedule as a partnership or joint venture, any partner or member thereof but only with respect to the extent of his liability as a partner or member of such partnership or joint venture,
- 2.8.7.
- 2.8.7.1. any person while using, with the permission of the Insured, any Motor Vehicle owned by, loaned to or hired for use by or on behalf of the Insured and any person or organisation legally responsible for the use thereof, provided the actual operation or their actual use is within the scope of such permission, and
- 2.8.7.2. any officer, director or shareholder of the Insured with respect to the use of a Motor Vehicle not owned by the Insured but only while such Motor Vehicle is being used in the Business of the Insured.
- The insurance with respect to any person or organisation other than the Insured does not apply under clause 2.8.7 to:
- 2.8.7.3. any person or organisation, or to any agent or employee thereof, operating a Motor Vehicle sales agency, repair shop, service station, storage garage, private or public parking place.
- 2.8.7.4. the owner or a lessee (of whom the Insured is a sub-lessee) thereof other than the Insured, or to any agent or employee of such owner or lessee for or in respect of any Motor Vehicle hired by or loaned to the Insured.
- 2.9. "Insured's Retained Limit" means either of the following amounts, whichever is applicable:
- 2.9.1. for any liability indemnified by an Underlying Insurance listed in the attached Schedule, an amount equal to the Limit of Indemnity as specified in such Insurance plus the applicable limit of any other Insurance collectible by the Insured whether listed in the Schedule or not.
- 2.9.2. for any liability not indemnified by an Underlying Insurance listed in the attached Schedule or by any other insurance collectible by the Insured and otherwise indemnified under the terms and conditions of this Policy, an amount equal to the Self Insured Retention specified in the Schedule.
- 2.10. "Insurer" means the Insurer(s) stated in the Schedule participating in this contract of insurance.
- 2.11. "Motor 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 attachments made or intended to be drawn by any such machine.
- 2.12. "Occurrence" means an event including continuous or repeated exposure to substantially the same general conditions which results in Injury or Damage or Advertising Injury 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.
- With respect to Advertising Injury, all Injury arising out of the same injurious material, regardless of the frequency of repetition or the number or kind of media used, or whether a claim is made by one or more persons, shall be deemed to arise out of one Occurrence.
- 2.13. "Period of Insurance" is the period shown in the Schedule.
- 2.14. "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured, including any container thereof but does not mean a Motor Vehicle.

- 2.15. "Product Liability" means Injury and/or Damage arising out of or in connection with any Product where such Injury and/or Damage first happened during the Period of Insurance as a result of an Occurrence.
- 2.16. "Territorial Limits" means anywhere in the world except the United States of America, the Dominion of Canada and their respective territories and protectorates where this Policy will only apply in respect to travelling executives and salesmen who are normally resident in Australia.
- 2.17. "Ultimate Net Loss" means the sum actually paid or payable in the settlement or satisfaction of losses for which the Insured is legally liable either by adjudication or compromise with the written consent of the Insurer after making proper deduction for all recoveries and salvages collectible, but excludes all loss expenses, legal expenses, court costs and interest on any judgment or award and all salaries of employees and office expenses of the Insured, the Insurer or any underlying insurers so incurred.
- 2.18. "Watercraft" means any vessel, craft or thing made or intended to float on or in or travel on or through water.
- 2.19. "Worker" means any person employed by the Insured or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise.
- 2.20. "Workers' Compensation Law" means any law relating to compensation for Injury to Workers or employees.
- 2.21. "Computer Equipment" includes but is not limited to data or parts of data, computer hardware, operating system, computer network, equipment, web site, server, extranet, software, applications software, computer chip including microprocessor chip and coded instructions as well as any new technology, product or service replacing existing computer equipment or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated.
- 2.22. "Year 2000 Conformity" means that neither performance nor functionality is affected by dates prior to, during, and after Year 2000 and in particular
 - 2.22.1. no value for current date will cause any interruption in operation
 - 2.22.2. date-based functionality must behave consistently for dates prior to, during and after Year 2000
 - 2.22.3. in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithm, or inferencing rules

- 2.22.4. Year 2000 must be recognised as a leap year
- 2.22.5. 9 September 1999 is recognised as that date.

The above definition of "Year 2000 Conformity" is based on a definition contained in a document published by Standards Australia and Standards New Zealand under reference no. SAA/SNZ HB 104:1997.

3. CROSS LIABILITY

Subject at all times to the terms, conditions, exclusions and other provisions of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that the Insurers' total liability shall not exceed the stated Limit of Indemnity.

4. LIMIT OF INDEMNITY

The Insurer shall be liable only for the Ultimate Net Loss in excess of the Insured's Retained Limit.

Provided that

- 4.1. the Insurer's liability for Ultimate Net Loss shall not exceed the Limit of Indemnity stipulated in the Schedule,
- 4.2. in the event the aggregate Limit of Indemnity of the Underlying Insurances as listed in the Schedule are reduced or exhausted solely as a result of Injury, Damage or Advertising Injury taking place during the Period of Insurance, the Insurer will continue coverage for the remainder of the Period of Insurance in excess of the reduced or exhausted Limits subject to the terms and conditions of this Policy and the Insurer's Limit of Indemnity but not for broader coverage than that provided by the reduced or exhausted Underlying Insurances.

5. DEFENCE COSTS

In respect of Occurrences covered under this Policy and providing the Insurer's prior written consent has been obtained, the Insurer shall, in addition to the amount of Ultimate Net Loss payable, but not after the Insurer's Limit of Indemnity has been exhausted by payment of judgments or settlements:

- 5.1. pay all expenses incurred by the Insurer, all costs taxed against the Insured in any suit defended by the Insurer and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Insurer has paid or tendered or deposited in court that part of the judgment which does not exceed the Insurer's Limit of Indemnity
- 5.2. pay monies on appeal bonds required in any suit, money on bonds to release attachments in any such suit for an amount not in excess of the applicable Limit of

Indemnity of this Policy, and the cost of bail bond required of the Insured because of accident or traffic law violation arising out of the use of any Motor Vehicle to which this Policy applies, but the Insurer shall have no obligation to apply for or furnish any such bonds

- 5.3. pay reasonable expenses incurred by the Insured in assisting the Insurer in the investigation or defence of any claim or suit including actual loss of earnings
- 5.4. pay all charges, expenses and legal costs as above including compensation covered by this Policy if the Insurer is prevented by law or otherwise in any territory from making payments on behalf of the Insured. If the Insurer is not legally permitted to, or cannot for any other reason, defend any suit against the Insured, the Insurer will reimburse the Insured for the expense of such defence.

Provided that the Insurer shall not be liable for the above costs or expenses which are covered by any Underlying Insurances.

Provided that the Insurer shall not be liable for costs or other expenses for or in respect of representation at any formal legal inquiry involving an accident resulting in the death or Injury of a person or at any Coroner's Inquiry or defending any proceedings in a Court of summary jurisdiction.

Provided further that the costs or expenses incurred in connection with claims made and/or actions instituted within the United States of America, the Dominion of Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the stated Limit of Indemnity and shall in no way be payable by the Insurer in addition to the Limit of Indemnity.

6. EXCLUSIONS

This Policy does not cover:

- 6.1. any liability for Injury to any Worker.

Provided that if the Insured:

- 6.1.1. is 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
- 6.1.2. is 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" within the meaning 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 its obligations pursuant to such Law.

- 6.2. any liability imposed:
 - 6.2.1. by any Workers' Compensation Law
 - 6.2.2. by 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,
- for or in respect of Employment Practices.
- 6.3. damage to
 - 6.3.1. property owned by the Insured, or
 - 6.3.2. the Insured's Product or any part of it if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof, or
 - 6.3.3. any part of any property that must be repaired, reconditioned or replaced by reason of incorrect work performed by the Insured or on the Insured's behalf, or by reason of materials or equipment which are or are proved to be defective or inadequate in connection with such work, provided this exclusion shall not apply to Injury or Damage resulting from such work.
- 6.4. any liability for loss of use of tangible property which has not been physically damaged or destroyed resulting from
 - 6.4.1. a delay in or lack of performance by or on behalf of the Insured of any contract or agreement, or
 - 6.4.2. the failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured; but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.
- 6.5. any liability arising out of costs incurred in or in connection with the repair, reconditioning, replacement, removal or recalling of any Product or component part and/ or any financial loss consequent upon the necessity for such repair, reconditioning, replacement or removal.
- 6.6. any liability arising out of any Product or component part that does not meet or exceed any applicable standard recommended by Standards Australia

- and/or the International Standards Organisation.
- 6.7. any liability arising from product guarantee given by or on behalf of the Insured, but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
 - 6.8. Advertising Injury resulting from
 - 6.8.1. failure of performance of contract but this shall not relate to claims for unauthorised appropriation of ideas based upon breach of an implied contract
 - 6.8.2. infringement of trade mark, service mark or trade name, but this shall not relate to titles or slogans
 - 6.8.3. incorrect description of any article or commodity
 - 6.8.4. mistake in advertised price.
 - 6.9. any liability directly or indirectly arising out of or caused by or relating to
 - 6.9.1. the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants, provided always that this clause 6.9.1 shall not apply to liability which is caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place
 - 6.9.2. any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants
 - 6.9.3. testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect
 - 6.9.4. 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 word "Pollutants" wherever used in this Exclusion means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Furthermore, the total aggregate Liability of the Insurer during any one Period of Insurance for all claims in respect of coverage afforded by the proviso within 6.9.1 shall not exceed the aggregate limit as set out in the Limit of Indemnity shown
 - 6.10. any liability for Damage in respect of premises tenanted by the Insured to the extent that the Insured would be held legally liable due to any specific agreement, but no coverage is afforded if the Insured has assumed responsibility to insure such premises.
 - 6.11. any liability arising out of the ownership, maintenance, operation, loading, unloading or use of Aircraft or Watercraft except:
 - 6.11.1. non-owned Aircraft or Watercraft operation, but only when such craft are hired, leased or chartered to the Insured with a pilot/master and crew supplied.
 - 6.12. any liability arising out of the:
 - 6.12.1. selling, leasing, hiring or manufacturing of Aircraft or aerial device
 - 6.12.2. the manufacture and/or supply of parts and/or Product which are incorporated into the structure, machinery or controls of any Aircraft or aerial device.
 - 6.13. Injury arising out of the use of any registered Motor Vehicle owned by or in the physical control of the Insured in respect of which insurance is required by virtue of any legislation relating to Motor Vehicles. Provided this exclusion shall not apply in the event of:
 - 6.13.1. unintended failure to effect, renew or maintain such statutory insurance, or
 - 6.13.2. coverage not being collectible by the Insured under any Underlying Insurance relating to the use of Motor Vehicles

subject to the Self Insured Retention as shown in the Schedule.
 - 6.14. liquidated damages or penalty clauses, performance warranties, fines or penalties imposed by law, aggravated, punitive or exemplary damages.
 - 6.15. Injury, Damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
 - 6.15.1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or expropriation including lawful seizure, resumption, confiscation,

nationalisation, destruction or damage to property by or under the order of any Government or public or local authority;

- 6.15.2.any act of terrorism;
- 6.15.3.any action taken in controlling, preventing, suppressing or in any way relating to 6.15.1 or 6.15.2

For the purposes of exclusion 6.15.2 an act of terrorism means an act including but not limited to the use of force or violence and / or the threat thereof of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or governments(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and / or to put the public, or any section of the public in fear.

If the Insurers allege that by reason of this exclusion 6.15 any Injury, Damage, Advertising Injury, loss, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon Insured.

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

- 6.16. any liability directly or indirectly caused by or contributed to, by or arising from:
 - 6.16.1.ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion only, combustion shall include any self sustaining process of nuclear fission or fusion
 - 6.16.2.nuclear weapons material.
 - 6.16.3.The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

any liability directly or indirectly caused by, contributed to, or arising from asbestos.

- 6.17.
 - 6.17.1. for claims made and actions instituted within the United States of America, the Dominion of Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada,
 - 6.17.2. for claims and actions to which the laws of the United States of America, the Dominion of Canada and their respective territories and protectorates apply or to any order made anywhere in the world to enforce any judgement, award,

payment or settlement either in whole or in part.

Provided that this exclusion 6.18 does not apply to claims and actions arising from the presence outside Australia of any travelling executives or salesmen who are normally resident in Australia.

- 6.18. any liability directly or indirectly caused by or arising out of any change in the nature of the Business which change:
 - 6.18.1. first happened during the currency of this Policy, and
 - 6.18.2. 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 or contributed to, or arising out of the said change.

For the purposes of this exclusion 6.18, 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.

- 6.19.
 - 6.19.1. total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation, misappropriation or other use of Computer Equipment or error in creating, amending, entering, directing, deleting or using Computer Equipment
 - 6.19.2. total or partial inability or failure to receive, send, access or use Computer Equipment for any time or at all.
- 6.20. any liability for or in respect of Injury or Damage directly or indirectly caused by or arising out of or relating to the failure of any computer hardware, operating system, application, software, or computer chip including microprocessor chip or embedded control logic to meet Year 2000 Conformity.
- 6.21. any liability directly or indirectly arising out of Injury, Damage or Advertising Injury which is the subject of a sub-limit as part of any policy specified in the Schedule of Underlying Insurances or any other insurance collectible by the Insured.
- 6.22. any liability caused by or arising out of:
 - 6.22.1. the rendering of or failure to render professional advice or

service by the Insured or any error or omission connected therewith.

- 6.22.2. advice, design, formula or specification given for a fee.

Provided that this exclusion does not apply to the rendering of first aid on the Insured's premises by a legally qualified registered nurse or first aid attendant employed by the Insured.

- 6.23. any claim, benefit or coverage to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.
- 6.24. Injury, Damage, loss, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

7. CONDITIONS

7.1. Premium

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.

7.2. Insured's Duties in the Event of an Occurrence, Claim or Suit

7.2.1. In the event of an Occurrence or the likelihood of an Occurrence, the Insured shall immediately take, at his own expense, all reasonable steps to prevent Injury or Damage arising or continuing out of such Occurrence.

7.2.2. 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, in particular every demand, writ, summons, proceedings, inquest and all information in relation thereto which may exceed twenty-five percent (25%) of the applicable amount as described in the Schedule of the Insured's Retained Limit.

7.2.3. The Insured shall not, without the Insurer's written consent, make any admission, offer, promise or payment in connection with any Occurrence or claim.

7.2.4. If the amount of Ultimate Net Loss becomes certain through either trial, court judgment or agreement among the Insured, the claimant and the Insurer, then the Insured may pay the amount of Ultimate Net Loss to the claimant to effect settlement and, upon submission of due proof thereof, the Insurer shall indemnify the Insured for that part of such payment which is in excess of the Insured's Retained Limit, or, the Insurer will, upon request by the Insured make such payment to the claimant on behalf of the Insured which is in excess of the Self Insured Retention.

7.2.5. The Insured shall promptly reimburse the Insurer for any amount within the Insured's Retained Limit paid by the Insurer on behalf of the Insured in settlement or satisfaction of any claim or suit.

7.3. Right to Defend; Assistance and Co-Operation of the Insured

7.3.1. In respect of Occurrences covered under this Policy, the Insurer shall have the right, if it so elects, to defend any suit against the Insured seeking compensation on account of an Occurrence even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient; but the Insurer shall not be obligated to pay any claim or judgment or to defend any suit after the Insurer's Limit of Indemnity has been exhausted by payment of judgments or settlements.

7.3.2. Without derogating from the right contained in condition 7.3.1 above, the Insurer shall not be obligated to assume charge of the settlement or defence of any claim made or suit brought or proceedings instituted against the Insured, but the Insurer shall have the right and shall be given the opportunity to associate with the Insured or the Insured's underlying insurers, or both, in the defence and control of any claim, suit or proceedings relative to any Occurrence where the claim or suit which in the Insurer's opinion

involves or appears reasonably likely to involve the Insurer in which event the Insured, the underlying insurers and the Insurer shall co-operate in all things in the defence of such a claim, suit or proceeding.

- 7.3.3. The Insured shall co-operate with the underlying insurers as required by the terms of the Underlying Insurances and comply with all the terms and conditions thereof, and shall enforce any right of contribution or indemnity against any person, corporation or organisation who may be liable to the Insured because of Injury, Damage or Advertising Injury with respect to which insurance is afforded under this Policy or the Underlying Insurances.
- 7.4. Appeals
If the Insured or the Insured's underlying insurer elects not to appeal a judgment in excess of the Insured's Retained Limit, the Insurer may elect to do so at its own expense, and shall be liable for the taxable costs, disbursements and interest incidental thereto, but in no event shall the Liability of the Insurer for Ultimate Net Loss exceed the amount specified in Item 4 of the Limit of Indemnity section of the Schedule plus the taxable costs, disbursements and interest incidental to such appeal.
- 7.5. Contribution
When a loss paid under this Policy is also recoverable under another Policy or Policies and the Insurer has paid more than its rateable share, the Insurer reserves the right to seek contribution from the other insurer or insurers.
- 7.6. Subrogation
In the event of any payment under this Policy, the Insurer shall be subrogated to all the Insured's rights of recovery against any person or organisation and the Insured shall execute and deliver any appropriate instruments and papers and do whatever else is necessary to secure such rights. Any amount so recovered shall be applied in the following order of priority:
- 7.6.1. First to the uninsured proportion of the loss
- 7.6.2. Second to reimburse the Insurer to the extent of its actual payment hereunder
- 7.6.3. Third if any balance then remains unpaid it shall be applied to reimburse the Insured as their interest may appear.

The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no

such recovery in proceedings conducted solely by the Insurer, it shall bear the expenses thereof.

- 7.7. Assignment
Assignment of interest under this Policy shall not bind the Insurer until its consent is endorsed hereon. If the Insured shall die or be adjudged bankrupt or insolvent, such insurance as is afforded by this Policy shall apply:
- 7.7.1. to the Insured's appropriate legal representative as the Insured, but only whilst acting within the scope of such duties
- 7.7.2. with respect to the property, whether real or personal, of the Insured, to the person or corporation having proper temporary custody thereof, as the Insured, but only until the appointment and qualification of the legal representative.
- 7.8. Maintenance of Underlying Insurances
The Insured shall maintain the Underlying Insurances and renewals or replacements thereof with Limits and coverage not more restrictive than as stated in the Schedule in full effect during the Period of Insurance except for any reduction or exhaustion of the aggregate Limit or Limits contained in such Insurances solely by payment of claims arising out of Occurrences covered thereunder. Failure to comply with the foregoing or bankruptcy or insolvency of any of the Underlying Insurers shall not invalidate this Policy but in the event of such circumstances the Insurer shall be liable only to the extent that it would have been liable had such circumstances not existed during the Period of Insurance.
- 7.9. Statutory Requirements
The Insured shall take reasonable measures to comply with all statutory obligations and regulations imposed by any statutory or government authority.
- 7.10. Applicable Law
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.
- 7.11. Cancellation
- 7.11.1. 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 shall be allowed.
- 7.11.2. The Insurer may cancel this Policy at any time where:

- 7.11.2.1. they are entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments thereto.
 - 7.11.2.2. the Insured has failed to notify the Insurer of any specific act or omission where such notification is required under the terms or conditions of this Policy.
- 7.12. Notices
Where the Insured comprises more than one person or company, it is agreed that the named 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 pursuant to this clause, or any other notice, statement, document or information relating to this insurance 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.
- 7.13. Insurance Contract Act 1984 (as amended)
Nothing contained in this Policy shall 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 (as amended).
- 7.14. Prohibited by Law
Where this Policy provides any indemnity to the Insured which is prohibited by Law, this Policy shall be varied by operation of this clause so that this Policy does not respond to the extent that the indemnity is prohibited by Law.
- 7.15. Sanctions
 - 7.15.1. 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.
 - 7.15.2. 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.