



Pharmaceutical Liability

Policy Wording

vQ12.15



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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Contact Details:

Current as at December 2015

BRISBANE

Level 9, 60 Edward St P: +61 7 3056 1400
Brisbane Qld 4000 F: +61 7 3056 1477
GPO Box 541
Brisbane Qld 4001

MELBOURNE

Level 3, 333 Collins St P: +61 3 9810 0600
Melbourne Vic 3000 F: +61 3 9810 0650
PO Box 230
Collins St West Vic 8007

SYDNEY

Level 19, 347 Kent St P: +61 2 9323 5000
Sydney NSW 2000 F: +61 2 9323 5077
GPO Box 4431
Sydney NSW 2001

E: info@penunderwriting.com

W: www.penunderwriting.com.au

About this booklet

This booklet contains 2 separate parts:

General Information and the Policy Terms and Conditions.

General Information

This part of the booklet contains information You need to know. Please read it carefully before taking out this insurance.

Policy Terms and Conditions

The Policy part of this booklet details all the Policy terms, General Conditions and Exclusions relating to the Policy. It forms part of Your legal contract with Us.

If We issue You with an insurance Policy, You will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to Your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule We send to You form Your legal contract with Us so please keep them in a safe place for future reference.

If You require further information about this product, please contact Your Financial Services Provider.

GENERAL INFORMATION FOR PHARMACEUTICAL LIABILITY POLICY

The information contained in this part is general information only and does not form part of Your contract with Us. The Policy Terms and Conditions in the remainder of this booklet contain the details of Your contract.

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.

Claims made

Section 2: Products liability of this Policy operates on a 'Claims made and notified' basis. This means that the Policy covers You for Claims made against You and notified to Us during the Period of Insurance.

The Policy does not provide cover in relation to:

- acts, errors or omissions actually or allegedly committed prior to the retroactive date of the Policy (if such a date is specified)
- Claims made after the expiry of the Period of Insurance even though the event giving rise to the Claim may have occurred during the Period of Insurance
- Claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous Policy
- Claims made, threatened or intimated against You prior to the commencement of the Period of Insurance
- facts or circumstances of which You first became aware prior to the Period of Insurance, and which You knew or ought reasonably to have known had the potential to give rise to a Claim under this Policy

- Claims arising out of circumstances noted on the proposal form for the current Period of Insurance or on any previous proposal form.

Where You give notice in writing to Us of any facts that might give rise to a Claim against You as soon as reasonably practicable after You become aware of those facts but before the expiry of the Period of Insurance, You may have rights under Section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any Claim subsequently made against You arising from those facts notwithstanding that the Claim is made after the expiry of the Period of Insurance. Any such rights arise under the legislation only. The terms of the Policy and the effect of the Policy is that You are not covered for Claims made against You after the expiry of the Period of Insurance.

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.

General Insurance Code of Practice

Pen Underwriting and Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The Code commits general insurers to uphold high standards of service and practice. A copy of the Code can be obtained from us upon request or from www.codeofpractice.com.au.

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.

POLICY TERMS AND CONDITIONS FOR PHARMACEUTICAL LIABILITY POLICY

Insurer

This Policy is underwritten by certain underwriters at Lloyd's through Pen Underwriting Pty Ltd ABN 89 113 929 516.

Our agreement with you

This Policy is a legal contract between you and us. You pay us the premium, and we provide you with the cover you have chosen as set out in the Policy, occurring during the period of insurance shown on your Policy Schedule or any renewal period.

The amount of any excess that applies to your Policy will be shown on your Policy Schedule.

The exclusions in the section(s) headed 'When you are not covered' and conditions in the section headed 'General Conditions' apply to all types of cover.

Your Policy

Your Pharmaceutical Liability Policy consists of the Policy Terms and Conditions in this booklet and the Policy Schedule we give you.

Please read your Policy carefully, and satisfy yourself that it provides the cover you require.

If you want more information about any part of your Policy, please ask us, or your Financial Services Provider.

The address and telephone number of your QBE Placement Solutions are on your Policy Schedule.

You should keep your Policy Booklet and Policy Schedule together in a safe and convenient place for future reference.

Other party's interests

You must tell us of the interests of all parties (e.g. financiers, owners, lessors) who will be covered by this insurance. We will protect their interests only if you have told us about them and we have noted them on your Policy Schedule.

Paying your premium

You must pay your annual premium by the due date. If we do not receive your premium by this date or your payment is dishonoured this Policy will not operate and there will be no cover.

Preventing our right of recovery

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy, we will not cover you under this Policy for that loss, damage or liability.

How Goods and Services Tax affects any payments we make

The amount of premium payable by you for this Policy includes an amount on account of the GST on the premium.

When we pay a claim, your GST status will determine the amount we pay.

When you are:

- a) not registered for GST, the amount we pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST.
- b) registered for GST, we will pay the sum insured/limit of indemnity or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a damaged item insured under the Policy) we will pay for the GST amount.

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number & Taxable Percentage.

Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of your claim is less than the sum insured/limit of indemnity or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

Definitions

Some key words and terms used in this Policy have a definition.

If words and terms are only used in just one section of the Policy, we will describe their definitions in that section.

Wherever the following words or terms are used in the Policy, they mean what is set out below:

Business

as specified in the Policy Schedule and shall include the provision and management of canteens, social, sports and welfare organisation for the benefit of employees and first aid, fire and ambulance services, the maintenance of own premises and participation in exhibitions.

Clinical Trial

any product undergoing tests or studies under controlled conditions undertaken by or on behalf of you and where such product falls within the provisions of the Therapeutic Goods Act 1989 or the equivalent local legislation/local drugs advisory committees.

Damage

loss of possession or control of or actual damage to tangible property happening during the period of insurance within the geographical limits, other than in respect of any product, in connection with the business.

Defence Costs

all costs, fees and expenses incurred with our prior consent in the investigation, defence or settlement of any claim made against you and costs of representation at any inquest, inquiry or other proceedings of summary jurisdiction arising out of any alleged breach of statutory duty resulting in injury or damage in respect of matters which have a direct relevance to any claim made or which might be made against you, provided such claims or claims are the subject of indemnity by this Policy.

Employee

any:

- (a) person under a contract of service or apprenticeship
- (b) labour master and persons supplied by him
- (c) persons employed by labour only sub-contractor
- (d) self employed person
- (e) person hired or borrowed from any public authority company, firm or individual
- (f) person under work experience schemes

While working for you in connection with the business.

Events

one occurrence or all occurrences of a series consequent upon or attributable to one source or original cause.

Excess

the total amount payable by you including defence costs arising out of any one claim before we shall be liable to make any payment.

Injury

bodily injury and shall include death, disease and illness (including mental illness) also wrongful arrest, invasion of the right of privacy, detention, wrongful imprisonment or wrongful eviction of or to any person during the period of insurance within the geographical limits, other than in respect of any product, in connection with the business

Period of Insurance

the period shown in the Policy Schedule.

Policy Schedule

the schedule of insurance, or any future renewal schedule, or endorsement schedule.

Pollutants

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

Product

any property after it has left your custody or control which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on your behalf, but shall not mean food and drink supplied by or on behalf of you primarily to employees as a staff benefit.

Vehicle

mechanically propelled vehicle or trailer which is licensed for road use or for which compulsory insurance or security is required by law.

This definition shall not apply to any:-

- (a) vehicle or trailer being used as a tool of trade
- (b) vehicle or trailer being used at your premises
- (c) loading or unloading of any vehicle or trailer or the bringing to or taking away of a load from such vehicle or trailer;
- (d) vehicle or trailer temporarily in your custody or control for the purpose of parking;

except where indemnity is provided by any motor insurance policy. No cover is provided by this section for liability for which compulsory insurance or security is required by law.

We, our, us

certain underwriters at Lloyd's through Pen Underwriting Pty Ltd ABN 89 113 929 516.

You, your

- (a) the person, persons, partnership, company, corporation or other entity specified as the insured in the Policy Schedule and its predecessors in Business; and
- (b) any person who is, during the period of insurance, a principal, partner, director or employee.

Section 1: Public liability (losses occurring basis)

We will indemnify you against your liability to pay damages for and/or arising out of injury or damage (including claimants' costs, fees and expenses) in accordance with the law of any country but not in respect of any judgement, award or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement award, payment or settlement either in whole or in part) unless you have requested that there shall be no such limitation and has accepted the terms offered by us in granting such cover, which offer and acceptance must be signified by specific endorsement to this Policy.

Our liability in respect of any claim shall not exceed the limit of indemnity stated in the Policy Schedule. The limit of indemnity is inclusive of defence costs.

Exclusions applicable to Section 1

We shall not be liable in respect of:

1. Injury or damage caused by or arising in connection with the ownership, possession or use by or on your behalf of aircraft, hovercraft, waterborne craft (other than hand-propelled or sailing craft in territorial waters) or Vehicles.
2. Damage to property held in trust by or in your custody or control other than:
 - (a) Employees' or visitors' property;
 - (b) Premises:
 - (i) at which you temporarily undertaking work in connection with the business, but excluding damage to that part of the property you are working on;
 - (ii) leased, occupied, owned or rented to you for the purpose of the business, provided that liability for such damage is not assumed by you under agreement and or, if assumed, would have attached in the absence of such agreement;
3. Claims arising out of advice, design or specification given for a fee;
4. Any legal liability arising from any condition directly or indirectly caused by or associated with:
 - (a) Human Immunodeficiency Virus I (HIV I), Human Immunodeficiency Virus II (HIV II), or any condition directly or indirectly caused by or associated therewith;
 - (b) Human T-Cell Lymphotropic Virus Type (HTLV I) or any mutants, derivatives or variations thereof; and
 - (c) Acquired Immune Deficiency Syndrome or any syndrome or conditions of a similar kind whatsoever it be named;
 - (d) Creutzfeldt-Jakob Disease (CJD), variant Creutzfeldt-Jakob Disease (vCJD) or new variant Creutzfeldt-Jakob Disease (nvCJD);
5. Injury to any employee.

Conditions applicable to Section 1

1. You shall take reasonable precautions to prevent injury and damage and to maintain all buildings, furnishings, ways, works, machinery, plant and Vehicles in sound condition. You shall as soon as possible after discovery cause any defect or damage to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstance may require.
2. You shall comply with all statutory requirements concerning the inspection of passenger lifts and steam pressure apparatus.

Section 2: Products liability (claims made basis)

We will indemnify you against your liability to pay damages for and/or arising out of injury or damage (including claimants' costs, fees and expenses) in accordance with the law of any country but not in respect of any judgement, award or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement award, payment or settlement either in whole or in part) unless you have requested that there shall be no such limitation and have accepted the terms offered by us in granting such cover, which offer and acceptance must be signified by specific endorsement to this Policy.

Our liability in respect of all claims in the Period of Insurance shall not exceed the limit of indemnity stated in the Policy Schedule. The limit of indemnity is inclusive of defence costs.

Exclusions applicable to Section 2

We shall NOT be liable in respect of:

1. For and/or arising out of damage to any product or part thereof;
2. Costs incurred in the repair, reconditioning, modification or replacement of any product or part thereof and/or any financial loss consequent upon the necessity for such repair, reconditioning, modification or replacement;
3. Costs arising out of the recall of any product or part thereof;
4. Costs arising out of any product or part thereof which with your knowledge is intended to be incorporated into the structure, machinery or controls of any aircraft;
5. Liability assumed by you under agreement in respect of any product unless such liability would have attached in the absence of such agreement;
6. Injury arising out of any clinical trial, healthy volunteer study, bio-availability or bio-equivalence studies undertaken by or on behalf you;
7. Claims arising out of any product unless such product:
 - (a) is the subject of a product registration under the provisions of the Therapeutic Goods Act 1989; or
 - (b) is exempt by the class of product from requiring a product registration or such approval;
8. Claims arising out of:
 - (a) any veterinary product to which the Therapeutic Goods Act 1989 applies;
 - (b) the trial of any veterinary product to which the Therapeutic Goods Act 1989 applies prior to such product being on open sale to the public.
9. Liability arising from the following (or any derivatives thereof):
 - Alosetron Hydrochloride
 - Antipsychotics
 - Aprotinin (Bovine Pancreatic Trypsin Inhibitor)
 - Canthaxanthin
 - Cerivastatin and/or any other Statins and/or Fibrates
 - Cisapride
 - Contraceptives (including Birth Control Pills), Fertility Drugs and products specifically designed and marketed for use during and in connection with Pregnancy
 - Cox-2 Inhibitors
 - Danthron
 - Debendox
 - Dicyclomine (when given to children under 4 years of age)
 - Diethylstilbestrol (DES)
 - Dioxins
 - Doxazosin
 - Drugs used to treat Erectile Dysfunction
 - Ephedrine (but this exclusion shall not apply to cough and/or cold medications sold over the counter)
 - Fenfluramine (whether individually or in combination with Phentermine)
 - Germanium
 - Hormone Replacement Therapies (HRT's)
 - Leflunomide
 - Monoclonal Antibodies
 - Methylphenidate
 - Metoclopramide
 - Nefazodone
 - Phenylpropanolamine (PPA)
 - Primodos / Amenorone Forte
 - Selective Serotonin Reuptake Inhibitors and Serotonin Norepinephrine Reuptake Inhibitors
 - Skin Whitening or Lightening Agents
 - Tacrolimus
 - Thalidomide
 - Thimerosal and/or Thiomersal
 - Thiazolidinediones
 - Tretinoin (retinoic acid or its salts)
 - Vigabatrin
 - Any Product causing Hepatitis
10. Injury and/or damage occurring prior to the retroactive date stated in the Policy Schedule. Provided always that any injury or damage arising from continuous or continual inhalation, ingestion or application of any substance where you and us cannot agree when the injury or damage occurred, then:
 - (a) injury shall be deemed to have occurred when the claimant first consulted a qualified medical practitioner in respect of such injury;
 - (b) damage shall be deemed to have occurred when it first became evident to the claimant, even if the cause was unknown;
11. Any legal liability arising from any condition directly or indirectly caused by or associated with:

- (a) Human Immunodeficiency Virus I (HIV I), Human Immunodeficiency Virus II (HIV II), or any condition directly or indirectly caused by or associated therewith;
 - (b) Human T-Cell Lymphotropic Virus Type (HTLV I) or any mutants, derivatives or variations thereof; and
 - (c) Acquired Immune Deficiency Syndrome or any syndrome or conditions of a similar kind whatsoever it be named;
 - (d) Creutzfeldt-Jakob Disease (CJD), variant Creutzfeldt-Jakob Disease (vCJD) or new variant Creutzfeldt-Jakob Disease (nvCJD);
12. Liability arising from resulting from the failure of your product to cure, alleviate, prevent, monitor, detect, eliminate or retard any disease, illness, malady, condition or syndrome.

Condition applicable to Section 2

Rights of Recourse

It is a condition precedent to our liability under this policy that you maintain full rights of recourse against any person or company with whom you have entered into a legal contract for the provision of products as defined in the policy.

Extensions applicable to Sections 1 and 2

1. The person(s), companies or firms named on the current Policy Schedule as the insured including, as if they were you:
 - (a) all the subsidiary companies (now or subsequently constituted) of the named insured specified in the Policy Schedule provided their places of incorporation are within Australia or any territory of Australia
 - (b) every director, executive officer, employee, partner or shareholder of you or of the parties shown in paragraph (a) above, but only while acting within the scope of their duties in such capacity
 - (c) every principal, in respect of that principal's vicarious liability for the acts or omissions of you or of the parties shown in paragraph (a) in the performance by them of work for that principal, but subject always to the extent of coverage and the limit of liability provided by this Policy
 - (d) each partner, joint venturer, co-venturer or joint lessee of the insured named in the Policy Schedule but only if we agree to insure them and the insured named in the Policy Schedule agrees to pay the premium we require.
 - (e) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with your consent (other than one of the parties shown in paragraphs (c) or (d) above) in respect of claims arising from their duties connected with the activities of any such club, organisation or service. This insurance will not apply to personal injury to or property damage of any participants of any game, match, race, practice or trial
 - (f) any director or senior executive of you or one of the parties shown in paragraph (a) above in respect of private work undertaken by your employees for such director or senior executive.

However, you/your does not include the interest of any other person other than as described in this definition.

2. Where more than one party comprises the insured each of the parties will be considered as a separate and distinct unit and the words 'you, 'your' or insured' will be considered as applying to each party in the same manner as if a separate Policy has been issued to each of them, provided that nothing in this clause will result in an increase of our limit of liability in respect of any occurrence or period of insurance.

General conditions applicable to all sections

1. After notice to us has been given of a claim or of circumstances likely to give rise to a claim in accordance with General condition 10, you shall not disclose to any person without our written consent, the nature or terms of this Policy and no liability shall be admitted or costs or expenses incurred and no admission, arrangement, offer, promise or payment shall be made by you without our written consent we shall be entitled to take control of the defence of any claim or to prosecute in your name for our benefit any claim for indemnity, contribution or damage or otherwise against any third party and shall have full discretion in the conduct of any negotiations or proceedings on the settlement of any claim.

Nevertheless, we shall not exercise our subrogated rights of recovery against any person who has been or may be under a contract of service or apprenticeship with you unless the payment giving rise to such right has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act of such person or such person's serious or wilful misconduct.

2. In the event that you and us fail to agree on any settlement of a claim recommended by us and you shall elect to contest or continue any legal proceedings in connection therewith, then our liability for such damages, costs and expenses incurred with our consent up to the date of such failure to agree, shall not exceed the amount for which the claim could have been so settled, less the excess and subject always to the limit of indemnity available under this Policy.
3. It is hereby understood and agreed that notwithstanding any excess specified in the Policy Schedule, all claims, complaints or threats of action must be notified to us and handled and controlled by us, or no indemnity shall be afforded by this Policy in respect of such claims, complaints or threats of action.
4. In the event we are at any time entitled to void this Policy ab initio by reason of the inaccuracy or omission of any material information given or which ought to have been given by you, we may at our election instead of voiding this Policy ab initio, give notice in writing to you that they regard this Policy as of full force and effect save that there shall be excluded from the indemnity afforded hereunder any claim which has arisen or which may arise and which is related to circumstances which ought to have been disclosed but which were not disclosed to us. This Policy shall then continue in full force and effect but shall be deemed to exclude as if the same had been specifically endorsed ab initio the particular claim or possible claim referred to in the said notice.
5. If any part of the premium or renewal premium is based on estimates furnished by you, the insured shall keep an accurate record containing all relative particulars and shall allow us to inspect such records. You shall as soon as practicable after the expiry of each Period of insurance furnish such information as we may require, the premium

or renewal premium shall thereupon be adjusted at the rates specified herein and the difference paid by or allowed to you subject to the retention us of any minimum premium stated in the Policy Schedule.

6. You may cancel this insurance by giving not less than 30 days written notice to us. If the insurance is cancelled by you, we shall retain the customary short rate proportion of the premium, subject to any "agreed minimum premium". The premium shall be deemed to have been fully earned if before the date of cancellation any claim has been made against you or you have in accordance with general condition 1 notified any claim or the receipt of notice from any person of an intention to make a claim or any circumstances likely to give rise to a claim.
7. We may cancel in any of the circumstances permitted by law by informing you in writing this insurance by giving not less than 30 days written notice to you at the address stated in the Policy Schedule or your usual or last known address or, if a company, its registered office. We shall retain the pro-rata proportion of the premium, but payment or tender of unearned premium by us shall not be a condition precedent to the effectiveness of the cancellation. The premium shall be deemed to have been fully earned if before the date of cancellation any claim has been made against you or you have in accordance with general condition 1 notified any claim or the receipt of notice from any person of an intention to make a claim or any circumstances likely to give rise to a claim. Any cancellation of this insurance by us shall be without prejudice of any claim made or notified or deemed to have been made before the effective date of cancellation.
8. Any dispute between us and you concerning this Policy, its validity or the interpretation of the terms, conditions, limitations and/or exclusions contained herein shall be decided in accordance with Australian law and/or the courts of Australia.

The premium for this Insurance has been calculated accordingly and no consideration has been paid in respect of sums payable as a result of interpretation outside the jurisdiction of such courts.
9. The terms of this Policy shall not be waived, altered or changed in any way except by endorsement issued by us to form a part of this Policy
10. You shall as a condition precedent to your right to be indemnified under this Policy and regardless of any deductible give written notice as soon as reasonably practicable and in any event within 30 days to us of;
 - (a) the receipt by you of any claim,
 - (b) any specific event which in your opinion may give rise to a claim.

Every claim writ summons or process shall be forwarded to us immediately on receipt.

General Exclusions

The following general exclusions apply to all sections of this Policy.

We shall not be liable for:

1. any claim directly or indirectly caused or contributed to or by any dishonest, fraudulent or criminal act of the insured;
2. any claim in respect of which you are entitled to indemnity under any other insurance except in respect of any excess beyond the amount which would have been payable under such insurance had this Policy not been effected;
3. any claim arising out of any circumstance(s) or occurrence(s) which has been notified under any policy or certificate of insurance attaching prior to the period of insurance;
4. loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, 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;
5. any excess shown in the Policy Schedule;
6. any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
 - (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
7. fines, penalties, punitive or exemplary damages;
8. notwithstanding any provision to the contrary within this Policy or any endorsement thereto, loss, damage, cost or expense of whatsoever 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.

For the purpose of this exclusion 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 organisation(s) or government(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.

This exclusion also applies to loss, damage, cost or expense of whatsoever 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.

If we allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon you.

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

9. any claim arising out of the deliberate, conscious or intentional disregard by your technical or administrative management of the need to take all reasonable steps to prevent injury or damage.
10. any claim arising out of:
 - (a) mould;
 - (b) any substance which has the same chemical formula as mould;
 - (c) any substance which has a similar chemical formula, structure or function as mould;
 - (d) mould or fungi or its spores, bacteria, yeasts, mildew, algae, mycotoxins or any other metabolic products, enzymes or protein secreted by the above whether toxic or otherwise.
11. Pollution
 - (a) Personal injury or property damage caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of pollutants into or upon land, the atmosphere, or any water course or body of water, but this exclusion does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.
 - (b) Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this exclusion does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in personal injury and/or property damage.
 - (c) 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.
 - (d) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants in the United States of America (USA) or Canada or in any country to which the laws of the USA or Canada apply.

Our liability under clauses 11(a) and 11(b) above in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of pollutants during any one period of insurance will not exceed the limit of liability.
12. Any claim arising out of an occurrence the circumstances of which you were aware, or ought reasonably to have been aware, prior to the inception of this Policy.

13. Any claim arising in connection with personal injury or property damage (including loss of use of property) directly or indirectly caused by or arising from the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.

North American Jurisdiction Extension Clause (in respect of Sections 1 & 2)

Where you have requested an extension for indemnity to be granted in respect of any judgement award or settlement made within the countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part) such extension is only granted where so stated in the Policy Schedule to this Policy and where a specific amount has been entered against "excess" (below), and where a specific date has been entered against "retroactive date" below. Acceptance by the insured of this Policy is deemed to be acceptance of the above conditions as precedent to the granting of indemnity against such "North American Jurisdiction".

In consideration of the granting of such indemnity, the insured agrees to accept the following additional terms and Exclusions in respect of any such judgement, award or settlement:

- (a) We shall not be liable for-
 - (i) injury or damage directly or indirectly caused by seepage, pollution or contamination;
 - (ii) the cost of removing, nullifying or cleaning-up seepage, polluting or contaminating substances.
- (b) the limit of indemnity is inclusive of defence costs.
- (c) We shall not be liable for injury and/or damage occurring prior to the retroactive date shown below. Provided always that in the event of any injury or damage arising from continuous or continual inhalation, ingestion or application of any substance and where you and us cannot agree when the injury or damage occurred, then:
 - (i) injury shall be deemed to have occurred when the claimant first consulted a qualified medical practitioner in respect of such injury;
 - (ii) damage shall be deemed to have occurred when it first became evident to the claimant, even if the cause was unknown.

Retroactive Date:

- (d) We shall not be liable for the excess shown below, which excess shall apply to the first amount of each and every claim or series of claims arising out of one originating cause.

A claim shall be deemed to include:

- (i) defence costs;
- (ii) compensation, damages and claimants' costs, fees and expenses payable by you which form the subject of indemnity under this Section.

Excess: AUD each and every claim.

All other Policy terms and conditions remain unaltered.