



**Public & Products Liability
Pharmaceutical & Medical Devices
Claims Made 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.

Claims Made Policy

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

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

Retroactive Date

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

Good and Services Tax

The Premium may include an amount for GST.

Underwriters' 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 Underwriters 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.

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.

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.

PUBLIC & PRODUCTS LIABILITY POLICY

This is a claims made policy. No claim can be made against this policy after the expiry date stated in the Schedule. This policy is not a renewable contract.

The terms and conditions of this Policy provide that:

- (i) a Claim (as defined) must be made against the Insured during the Period of Insurance for the Policy to apply; and
- (ii) the Insured must immediately notify the Underwriter in writing of such Claim(s). Such notification must be given to the Underwriter during the Period of Insurance for the Policy to apply.

If any Circumstances or facts come to the attention of the Insured during the Period of Insurance which are likely to cause a Claim(s) to be made against the Insured or which the Insured should reasonably expect to cause a Claim(s) to be made against the Insured, the terms and conditions of this Policy provide the Insured with an option as to whether or not to notify the Underwriter. However, failure to notify may affect Policy indemnity, i.e. all or part of any subsequent Claim may not be covered. Assuming the option to notify the Underwriter is chosen, such notification must be given in writing during the Period of Insurance for the Policy to apply.

All notifications to Underwriters will be deemed made if notified to Pen Underwriting at the address specified on the Schedule.

The time of happening of the Occurrence which gives rise to a Claim(s) or a possible Claim(s) is not of relevance provided they occur after the Retroactive Date specified in the Schedule.

Upon expiry of the Period of Insurance, no further Claims can be made under the Policy and, therefore, the maintenance of insurance provided by this Policy is essential.

1. General Operative Clause

The Underwriter will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation including claimants’ costs and expenses (but excluding fines, penalties, punitive, exemplary, and/or aggravated damages). This indemnity

only applies to such liability arising out of the Insured’s Business (“The Business”) from Claim(s) first made against the Insured during the Period of Insurance and as defined by each insured Section of this Policy, subject to the terms, conditions and exclusions of such Section and of this Policy as a whole.

All Injury or Damage arising out of or alleged to have arisen from the same cause or defect in the Products shall be considered as having resulted from a single occurrence at the point at which the first claim was made against the Insured irrespective of the number of claimants or the period over which Injury or Damage could result in any claim or claims being made against the Insured at some future date.

For the purpose of determining the indemnity granted:

- 1.1. “Injury” means death, disease, illness, physical and mental injury of or to an individual
- 1.2. “Product” means:
 - 1.2.1. any goods, products (other than real property) or, including containers, packaging, materials, parts or equipment leaflets, warnings, instructions and other literature furnished in connection with such goods and products, manufactured, sold, handled, treated, altered, distributed or disposed by the Insured that are no longer in the Insured’s physical possession or in Insured’s custody or control, provided such goods or products;
 - 1.2.1.1. are licenced in the country in which the product is sold in accordance with legislation or regulations relating to licensing of medicines, drugs, cosmetics, dietary supplements or medical devices; or
 - 1.2.1.2. are authorised for marketing in the country in which the Product is sold by the applicable regulatory body; or
 - 1.2.1.3. are exempt in the country in which the Product is sold from any requirement for a licence or marketing authorisation;
 - 1.2.2. licences, research results and

- formulae granted to others whether for a fee or not by the Insured or on behalf of the Insured with the Insured's written consent.
- 1.3. "Damage" means:
 - 1.3.1. loss of, destruction of or damage to tangible property; and/or
 - 1.3.2. loss of use of tangible property that has been lost, destroyed or damaged
 - 1.4. "Underwriters" means those syndicates in Lloyds of London participating in this contract of insurance.
 - 1.5. "Business" is as described in the Description of Operations as shown in the Schedule.
 - 1.6. "Period of Insurance" is the period shown in the Schedule.
 - 1.7. "Insured" means:
 - 1.7.1. the company or other organisation including any subsidiary companies of the insured that are in existence at the inception date of the insurance and have been declared to the Underwriter until such time as they may be sold or otherwise disposed (but not excluding any liabilities incurred prior to disposal), and
 - 1.7.2. the person or people shown as insured in the Schedule
 - 1.7.3. including in either case the legal or personal representatives of the insured in respect of any claim under this policy incurred on behalf of the insured
 - 1.8. "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
 - 1.9. "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.
 - 1.10. "Workers' Compensation Law" means any law relating to compensation for Injury to Workers or employees.
 - 1.11. "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.
 - 1.12. "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.
 - 1.13. "Year 2000 Conformity" means the standard which requires that neither performance nor functionality is affected by dates prior to, during or after the Year 2000 and, in particular but without limitation, that:
 - 1.13.1. no value for current date will cause any interruption in operation;
 - 1.13.2. date based functionality must behave consistently for dates prior to, during and after Year 2000;
 - 1.13.3. in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules;
 - 1.13.4. Year 2000 must be recognised as a leap year in terms of handling both 29 February and day 366; and
 - 1.13.5. 9 September 1999 must be 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 MP77:1998 and shall be interpreted in accordance with that document.

- 1.14. "Claim" or "Claims" means:
- 1.14.1. any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter-claim or third or similar party notice issued against or served on the Insured; or
 - 1.14.2. the receipt by the Insured of any written or verbal notice of demand for compensation made against the Insured.
- 1.15. 'Retroactive Date' means the date specified in the schedule.
- 1.16. "Clinical Trial" means an investigation in human subjects intended to discover or verify the clinical, pharmacological and/or other pharmacodynamic effects of an Investigational Product(s) and/or to identify any adverse reactions to an Investigational Product(s) and/or to study absorption, distribution, metabolism and excretion of an Investigational Product(s).
- 1.17. "Investigational Product" means a new drug, antibiotic drug or biological drug, including a biological product used in vitro for diagnostic purposes that is used in a Clinical Trial.
- 1.18. "Fungus" includes but is not limited to any plants or organisms belonging to the major group fungi lacking chlorophyll and including Moulds rusts mildews and mushrooms.
- 1.19. "Moulds" means, but is not limited to any superficial growth produced on damp or decaying organic matter or on living organisms and fungi that produced moulds
- 1.20. "Spore(s)" means any dormant or reproductive body produced by or arising or emanating out of any Fungus(i) Mould(s) mildew plants organisms or micro organisms
- 1.21. "Schedule" means the document titled schedule that includes the name and address of the Insured, the premium and other variables to this standard Policy (including endorsement clauses) and is incorporated in this Policy and accepted by the Insured. Schedules may be re-issued from time to time where each successor overrides the earlier document.
- 1.22. "Legionella" means any discharge release or escape of legionella or other airborne pathogens from water tanks, water systems, air-conditioning plants, cooling towers and the like.
- 1.23. "Territorial limits" means Australia and such other countries as stated in the

Schedule

- 1.24. "Circumstance(s)" means an incident, occurrence, dispute, fact, matter, act or omission that is likely to give rise to a claim, including an intention or belief of a demand or request for compensation or indemnity under this Policy.
- 1.25. "Policy" means this document, the Schedule (including any Schedules issued in substitution), the proposal and any endorsements attaching to this document or Schedule that will be considered part of the legal.

2. Indemnity to Others

The indemnity granted extends to:

- 2.1. any principal in respect of the liability of such principal arising out of the performance by the Insured of any contract or agreement for the performance of work for such principal only to the extent required by such contract or agreement. But subject always to the terms, conditions, exclusions and Limit of Indemnity provided in this Policy.
- 2.2. any director, executive officer, Worker or partner of the Insured but only while acting within the scope of their duties in such capacity.
- 2.3. the officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such.
- 2.4. the legal personal representative of any person entitled to indemnity under this Clause 2 in Circumstances giving rise to indemnity under this Policy.

Provided always that all such persons or parties shall observe, fulfil and be subject to the terms, conditions and exclusions of this Policy (insofar as they can apply) as though they were the Insured.

3. Cross Liabilities

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 Underwriter's total liability shall not exceed the stated Limit of Indemnity.

4. Limits Of Indemnity

The Underwriter's liability to pay compensation shall not exceed the sum stated in the Schedule against each Section in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of the Underwriter for any one Period of Insurance for all claims under Section 2 shall not exceed the sum stated in the

Schedule.

If both Sections of this policy respond to one Occurrence, the total aggregate liability of the Underwriter for all claims relating to that Occurrence under Section 1 or Section 2 or both shall not exceed in total the highest single limit under any one Section.

5. Defence Costs

In addition to the stated Limit of Indemnity, the Underwriter will pay all reasonable costs and expenses incurred with the Underwriter's prior written consent in:

- 5.1. the defence or settlement of any third party claim under this Policy;
- 5.2. the defence or settlement of any third party claim under this Policy which arises from rendering first aid for injuries to others;

incurred in connection with any claim or potential claim which falls to be dealt with under this Policy.

Provided that the Underwriter shall not be liable for legal 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 that the Underwriter shall not be obliged to pay any costs or expenses in respect of any Occurrence after the Underwriter's liability to pay compensation up to the Limits of Indemnity has been exhausted by payment of judgments or settlements or otherwise.

Provided further following any event which is or may be the subject of indemnity under this policy the Underwriter agrees to indemnify the insured for costs and expenses but the costs and expenses form part of and are not additional to the limit of indemnity with respect to any insured event under this policy.

6. Section 1 - Indemnity

The Insured is indemnified by this Section in accordance with Clause 1 of the General Operative Clause in respect of Injury and/or Damage first happening after the Retroactive Date specified in the Schedule as a result of an Occurrence but not against claims arising out of or in connection with any Product.

7. Section 1 - Exclusions

This Section does not cover liability:

- 7.1. for or in respect of any Injury directly or indirectly arising out of the ownership, maintenance, operation, possession, use, loading or unloading of a motor vehicle or trailer, where at the time of Injury the liability for such Injury was required by law to be insured or in relation to which there existed a statutory scheme

providing compensation for such Injury.

- 7.2. directly or indirectly arising out of the ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by legislation to be registered or in respect of which there is required by legislation to be in force a policy of compulsory liability insurance, but this exclusion does not apply to:

- 7.2.1. Injury or Damage for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance.
- 7.2.2. Injury or Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer.
- 7.2.3. Damage to any bridge, weighbridge, road, or anything beneath caused by the weight of any motor vehicle or trailer or of the load carried thereon.
- 7.2.4. Damage to any motor vehicle or trailer temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.

- 7.3.

- 7.3.1. assumed under a contract or agreement unless the Insured would have been held legally liable in the absence of such contract or agreement;
- 7.3.2. to pay any sum which the Insured may have been able to recover from another party (ies) but for an agreement between the Insured and such party(ies) where the Insured has waived any right of recourse or recovery against such other party(ies).

This exclusion 7.3 shall not apply to those written contracts or agreements specified in the Schedule of Insurance.

8. Section 2 - Indemnity

The Insured is indemnified by this Section in accordance with Clause 1 of the General Operative Clause against claims arising out of or in connection with any Product in respect of Injury and/or Damage first happening after the Retroactive Date specified in the Schedule as a result of an Occurrence.

9. Section 2 - Exclusions

This Section does not cover liability:

- 9.1. arising out of costs incurred in or in connection with the repair, reconditioning, replacement, removal or recalling of any Product or component part.
- 9.2. 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.
- 9.3.
- 9.3.1. assumed under a contract or agreement unless the Insured would have been liable in the absence of such contract or agreement;
- 9.3.2. to pay any sum which the Insured may have been able to recover from another party(ies) but for an agreement between the Insured and such party(ies) where the Insured has waived any right of recourse or recovery against such other party(ies).
- 9.4. arising out of any Product which is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.
- 9.5. 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.
- 9.6.
- 9.6.1. arising from any Product that is not:
- 9.6.1.1. licenced in accordance with legislation or regulations relating to licensing of medicines, drugs, cosmetics, dietary supplements or medical devices in the country in which the Product is sold; or
- 9.6.1.2. approved for marketing by the applicable regulatory body in the country in which the Product is sold where prior approval is required by legislation or regulations; or
- 9.6.1.3. exempt from any requirement for a licence or marketing authorisation in the country in which the
- Product is sold.
- 9.6.2. arising from any Product causing or failing to cure or alleviate any condition directly or indirectly caused by or associated with:
- 9.6.2.1. Hepatitis; or
- 9.6.2.2. Human Immunodeficiency Syndrome (HIV) initially named as either HTLV III or LAV or the mutants, derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome (AIDS) or AIDS related complex (ARC) or any syndrome or condition of a similar kind howsoever it may be named; or
- 9.6.2.3. Bovine Spongiform Encephalopathy (BSE), Transmissible Spongiform Encephalopathy (TSE) Creutzfeldt-Jakob Disease (CJD) variant Creutzfeldt-Jakob Disease (vCJD) or new variant Creutzfeldt- Jakob Disease (nvCJD).
- 9.7. arising from or caused by the production, sale or provision of the following (or any derivatives thereof):-
- a) Agent Orange – Dichlorophenoxyacetic Acid (2,4-D) and Trichlorophenoxyacetic Acid (2,4,5-T)
- b) Any product containing Silicone which is in any form implanted or injected in the body
- c) Chlorinated Hydro-carbons (CHC's)
- d) Chlorofluorocarbons / Chloro Fluoride Carbons
- e) Chromated Copper Arsenate (CCA)
- f) Ethylenediaminetetraacetic Acid (EDTA)
- g) Lead
- h) Lindane
- i) Methyl Tertiary Butyl Ether (MTBE)
- j) Polychlorinated Biphenyls (PCB's), the harmful properties of Polychlorinated Biphenyls

- (PCB's), or any Polychlorinated Biphenyls-containing product or material or derivative thereof or to the presence of or the actual or threatened use, installation, withdrawal, or disposal of any such product or material
- k) Tobacco or any Tobacco Products (or ingredients thereof)
- l) Urea Formaldehyde or any products containing Formaldehyde
- m) 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD).

10. General Exclusions Applicable to All Sections of This Policy

Sections 1 and 2 do not cover liability:

10.1. imposed:

- 10.1.1. by any Workers' Compensation Law;
- 10.1.2. 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;
- 10.1.3. for or in respect of Employment Practices.

10.2. for loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- 10.2.1. a delay in or lack of performance by or on behalf of the Insured of any contract or agreement, or
- 10.2.2. 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 have been put to use by any person or organisation other than the Insured.

10.3. for Injury or Damage directly or indirectly caused by or arising out of any change in the nature of the Business which:

- 10.3.1. occurred during the currency of this Policy; and
- 10.3.2. 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 Underwriter notice in writing of such change, and such change shall be allowed by the Underwriter by Endorsement and/or Certificate prior to the happening of any Occurrence caused by, contributed by or arising out of the said change.

For the purposes of this exclusion, 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.

10.4. caused by or arising out of:

- 10.4.1. the rendering of or failure to render professional advice or service by the Insured or any error or omission connected therewith.
- 10.4.2. advice, design, formula or specification given for a fee.

10.5. directly or indirectly arising out of or caused by or relating to:

- 10.5.1. the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants, provided always that this paragraph 10.5.1 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.
- 10.5.2. any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.
- 10.5.3. testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect.
- 10.5.4. 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 Underwriter during any one Period of Insurance for all claims in respect of coverage afforded by the proviso within 10.5.1 shall not exceed the sum within the Limits of Indemnity shown in the Schedule.

- 10.6. arising out of any Injury directly or indirectly due to the inhalation or ingestion of, or exposure to:
 - 10.6.1. tobacco or tobacco smoke.
 - 10.6.2. any ingredient or additive present in any articles, items or goods which contain or include tobacco.
- 10.7. for fines, penalties, punitive, exemplary, liquidated damages and/or aggravated damages
- 10.8. directly or indirectly caused by or arising out of or in connection with Circumstances which were known to the Insured prior to the commencement of the Period of Insurance. For the purpose of this exclusion, Circumstances refer to any matters likely to give rise to an Occurrence or otherwise to a claim for compensation against the Insured.
- 10.9. directly or indirectly caused by or contributed to, by or arising from:
 - 10.9.1. 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.
 - 10.9.2. nuclear weapons material.
- 10.10. for 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;
 - 10.10.1. 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;
 - 10.10.2. any act of terrorism;
 - 10.10.3. any action taken in controlling,

preventing, suppressing or in any way relating to 10.10.1 or 10.10.2

For the purposes of exclusion 10.10.2 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 Underwriters allege that by reason of this exclusion 10.10 any Injury, Damage, loss, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

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

- 10.11. for the excess stated in the Schedule being the first amount of all claims (including any costs and expenses) arising out of any one Occurrence. If any Product from one prepared or acquired batch causes Damage or Injury to more than one person, all Damage or Injury to all persons resulting from that common cause shall be considered as arising out of one Occurrence.
- 10.12. in respect of which the Insured is entitled to indemnity pursuant to a separate policy of insurance more specifically providing cover in respect of such liability except to the extent that the Insured's liability for any claim exceeds the amount of cover payable under such other policy.
- 10.13. arising out of the ownership, maintenance, operation, possession or use by or on behalf of the Insured of any aircraft, aerial device, watercraft or hovercraft.
- 10.14. arising directly or indirectly out of, caused by or in connection with the erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured
- 10.15. directly or indirectly caused by, contributed to, or arising from exposure to asbestos.
- 10.16.
 - 10.16.1. 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,
- 10.16.2. 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.
- Provided that this exclusion 10.16 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.
- 10.17. arising directly or indirectly from, or is in any way connected with, the fact that the performance or functionality of any Computer Equipment has been or may be affected because that Computer Equipment does not meet Year 2000 Conformity.
- 10.18. total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation, misappropriation or other use of Computer Equipment or
- 10.18.1. error in creating, amending, entering, directing, deleting or using Computer Equipment
- 10.18.2. total or partial inability or failure to receive, send, access or use Computer Equipment for any time or at all.
- 10.19. for Claims made against the Insured prior to the commencement of the Period of Insurance nor in respect of any claim(s) or Circumstance(s) notified under any previous policy, nor in respect of any claim(s) or Circumstance(s) which might give rise to a Claim which was known to the Insured at the inception date of this insurance or which is stated on the proposal form, declaration or underwriting information being the basis of this insurance.
- 10.20. arising out of an Occurrence which happened or allegedly happened prior to the Retroactive Date specified in the Schedule.
- 10.21. from Injury or Damage arising out of or from a Clinical Trial.
- 10.22. arising from any loss, liability or costs and expenses arising out of or from advertising injury including but not limited to:
- 10.22.1. breach of contract including liability for unauthorised misappropriation of advertising ideas based upon breach or alleged breach of an implied contract;
- 10.22.2. infringement of registered trademarks, patents, registered designs, service marks or trade name including infringement of titles or slogans;
- 10.22.3. the failure of goods, products or services to conform with advertised quality or performance;
- 10.22.4. incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
- 10.22.5. arising out of or from libel, slander or the disparagement of goods, products or services of others;
- 10.22.6. advertising activities undertaken on behalf of another party by any Insured engaged in the business of advertising or undertaken for a fee;
- 10.22.7. the oral, broadcast, telecast or written publication of material whose first publication took place before the inception of the Period of Insurance;
- 10.22.8. an offence committed by the Insured whose business is advertising, broadcasting, publishing or telecasting.
- 10.23. arising from any loss, liability or costs and expenses arising out of or from any Insured in their capacity as a director, officer or trustee in respect of the performance or non-performance of their duties as a director, officer or trustee.
- 10.24. arising from any loss, liability or costs and expenses arising out of or from:
- 10.24.1. any deliberate act in violation of any law or ordinance; or
- 10.24.2. any deliberate or wilful misconduct of the insured; or
- 10.24.3. any dishonest, fraudulent, or criminal act of the Insured; or
- 10.24.4. any conduct of the Insured or Worker while under the influence of intoxicants or narcotics.
- 10.25. arising from any loss, liability or costs and expenses arising out of or from:
- 10.25.1. any Fungus, Mould, mildew or yeast; or
- 10.25.2. any Spore or toxins created or produced by or emanating from such Fungus, Mould, mildew or yeast; or
- 10.25.3. any substance vapour gas or

- other emission or organic or inorganic body substance produced by or arising out of any Fungus, Mould, mildew or yeast; or
- 10.25.4. any material product building component building structure or any concentration of moisture water or other liquid within such material product building component building or structure that contains harbours nurtures or acts as a medium for any Fungus, Mould, mildew, yeast or Spore or toxins emanating therefrom;
- regardless of any other cause event material product and/or building component that contributed concurrently or in any sequence to that loss, liability or costs and expenses.
- 10.26. arising from any loss, liability or costs and expenses where:
- 10.26.1. non-admitted insurance is not permitted by local legislation in any country or territory;
- 10.26.2. any government embargo or sanction prohibits the Insured from trading;
- or
- 10.26.3. any claim or any benefit to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Underwriters or any member of the Underwriters' group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.
- 10.27. arising from any loss, liability or costs and expenses arising out of or from the Insured's deliberate, conscious or intentional disregard of the need to take all reasonable precautions to prevent an insured event or loss arising or continuing.
- 10.28. arising from any loss, liability or costs and expenses arising out of or from, contributed to or caused by;
- 10.28.1. the pharmacological, toxicological or pathological (including any adverse or allergic reaction to the) properties of natural rubber latex, non-vulcanised rubber, synthetic latex, latex compounds or latex contained in any product or material;
- 10.28.2. any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the use, handling, storage or possession of natural rubber latex, non-vulcanised rubber, synthetic latex, latex compounds or latex contained in any product or material.
- 10.29. arising from any loss, liability or costs or expenses arising out of or from or alleging or attributable to the existence of Legionella.
- 10.30. arising from or caused by the publication or utterance by or on behalf of the Insured of a libel or slander.
- 10.31. arising from any loss, liability or costs and expenses arising out of or from the non-performance or inadequacy of the Insured's Product to cure, alleviate, prevent, monitor, detect, eliminate or retard any illness, malady, condition or syndrome.
- 10.32. arising from any loss, liability or costs and expenses arising from the Insured's subsidiary companies, branch offices or representatives with power of attorney, that are domiciled outside of the Territorial Limits as stated in the schedule.
- 10.33. arising from any loss, liability or costs and expenses arising out of or from or in any way connected with actual or attempted sexual relations, sexual contact or intimacy, sexual harassment, or sexual exploitation.
- 10.34. arising from any loss, liability or costs and expenses arising out of or from work carried out by the Insured, for and in the name of any other company or association of which the Insured forms part for the purpose of undertaking any joint venture unless the Underwriter's prior agreement has been obtained and the inclusion of such work endorsed upon this Policy with the acceptance of any such other terms and conditions as may be imposed.
- 10.35. arising from any loss, liability or costs and expenses arising from an occurrence outside the territorial limits including any contract, or arising from the business carried out from the Insured's own offices situated outside the Territorial Limits.
- 10.36. arising from liability for pure financial loss not consequent upon bodily injury or damage
- 10.37. arising out of damage to property owned, leased, hired or held in trust by the insured or under hire purchase or on loan

to the insured or held otherwise in the insured's care, custody or control

said claim or claims can be settled,

and in addition to such payment the Underwriter will pay Defence Costs incurred up to the date of the said payment.

Upon such payment, the Underwriter shall relinquish conduct or control of such claims and be under no further liability under this Policy in connection with such claim or claims.

11. General Conditions

11.1. The Insured shall give written notice to the Underwriter as soon as possible (but in no event more than 60 days) after any Occurrence that may give rise to a claim under this Policy and shall give all such additional information as the Underwriter may require. Every letter, claim, writ, summons or process shall be forwarded to the Underwriter immediately it is received.

11.6. 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.

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

11.7. The Insured must:

11.7.1. exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;

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

11.7.2. take all reasonable precautions to:

11.7.2.1. prevent Injury and Damage,

11.7.2.2. prevent the manufacture, sale or supply of defective Products,

11.7.2.3. comply, and ensure that its Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;

11.4. This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

11.7.3. at its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.

11.5. The Underwriter may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:

The amount of any benefit under this Policy for any liability arising from Injury and/or Damage caused or contributed to, or by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which the Underwriter's interests have been prejudiced thereby.

11.5.1. the total amount in respect of the said claim or claims to which the Insured is entitled to indemnity under this Policy, or

11.5.2. the total amount sought by the claimant(s) in the said claim or claims, or

11.5.3. the total amount for which the

11.8. 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 Underwriter 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.

11.9. Cancellation

11.9.1. The insured may cancel this policy at any time by giving notice in writing to the Underwriter.

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

11.9.2. The Underwriter may cancel this policy at any time where:

11.9.2.1. it is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments thereto;

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

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

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

11.10. 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.

11.11. It is a condition precedent to the

Underwriters liability under this Policy that the Insured maintains full rights of recourse against any manufacturer or supplier with whom the Insured has entered into a legal contract for the provision of Products as defined by the Policy

11.12.

11.12.1. For each and every claim the Insured and any person acting on behalf of the Insured must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or suit that may give rise to a claim under this insurance.

11.12.2. The Insured will at the request and expense of the Underwriter do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Underwriter for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the Underwriter will be or would become entitled or subrogated upon its paying an indemnity under this Policy, whether such acts and things will be or become necessary or required before or after their indemnification by the Underwriter.

11.12.3. In the event of any payment under this insurance, the Underwriter will act in concert with all other interested persons (including the Insured) concerned in the exercise of any rights of recovery.

11.12.4. The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including the Insured) that will have paid an amount over and above any payment hereunder, will first be reimbursed up to the amount paid by them; the Underwriter is then to be reimbursed out of any balance then remaining up to the amount paid hereunder, lastly, the interested persons (including the Insured) to whom this coverage is in excess shall be entitled to claim the residue, if any.

11.12.5. Expenses necessary to the recovery of any such amounts will be apportioned between the

interested parties concerned, in the ratio of their respective recoveries as finally settled.