



**Commercial Motor and  
Public and Products Liability  
Insurance Package**



Pen Underwriting Pty Ltd  
ABN 89 113 929 516 AFSL 290518

## Commercial Motor and Public and Products Liability Insurance Package

### Incorporating:

**Policy 1: Commercial Motor Insurance Product  
Disclosure Statement and Policy  
Wording vL0217**

**Policy 2: Commercial Motor Public and Products  
Liability Insurance Policy Wording  
v01.16**

Contact Details:  
Current as at February 2017

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# **Commercial Motor Insurance**

## **Product Disclosure Statement and Policy Wording**

vL0217

## COMMERCIAL MOTOR INSURANCE PRODUCT DISCLOSURE STATEMENT

### About the Commercial Motor Insurance Product Disclosure Statement and Policy

This Product Disclosure Statement (PDS) is designed to help you understand the Commercial Motor Insurance Policy and to provide you with sufficient information to enable you to make an informed choice about whether to buy this insurance. It sets out some important information about the Policy, including its features, benefits and costs. Please read this PDS carefully together with the Policy Wording which attaches to and forms part of this PDS.

Preparation Date of this PDS: 27 February 2017

### About the Insurer

This PDS and Commercial Motor Insurance Policy are issued by Pen Underwriting Pty Ltd ABN 89 113 929 516 AFSL 290518 on behalf of certain Underwriters at Lloyd's and Berkley Insurance Company trading as Berkley Reinsurance Australia ABN 53 126 559 706. Details of the Lloyd's syndicate numbers and the proportions of this insurance for which each of the Lloyd's Underwriters and Berkley Reinsurance Australia are liable may be obtained from Pen Underwriting.

### Contacting Us

Pen Underwriting can be contacted at the addresses shown on the Contact Details page.

If you have any questions or need further information concerning this insurance, you should contact your insurance broker to assist you with your enquiry. You should direct all of your correspondence to Pen Underwriting through your insurance broker as he or she is your agent for this insurance.

### Policy Features and Benefits

#### Definitions

Defined terms, as set out in the Definitions section, are used throughout this PDS and the Policy Wording and apply accordingly when used in this document.

#### Your Policy

Your Policy is comprised of the policy wording, Your Schedule and any current Endorsements.

#### Coverage

The Commercial Motor Insurance Policy provides the following comprehensive cover:

- Cover under Section 1 for loss or damage to Your Vehicle;
- Cover under Section 2 for loss or damage to third party property; and
- Cover under Section 2 for third party death or bodily injury.

For full details of Your Coverage, Definitions, extensions and additional benefits, Sum(s) Insured, Sub-Limits, Exclusions and Conditions refer to the Policy Wording and Your Schedule.

#### Policy Costs

The premium is calculated taking into account certain factors including:

- the number and type of Vehicles You insure.
- Sums Insured.

- Your claim and loss history.
- the Excess or Aggregate Deductible You choose.
- Whether Your Vehicles are driven locally, intrastate or interstate.
- The amount and type of goods You carry.

The premium also includes amounts payable in respect of government taxes and charges such as stamp duty and GST.

#### Excess

When you make a claim, an Excess applies. The Standard Excess is stated in Your Schedule. Other Excesses which may apply are as set out in Your Schedule, the Claims Conditions of this Policy Wording and any Endorsement. Other Excesses which may apply are:

- An Age and Inexperienced Driver Excess for Vehicles under 4.5 Tonnes
- Tipping Hoist Excess
- Imposed Excess
- Operating Radius Excess
- Aggregate Deductible

#### Cooling-off Period

If, for any reason, You decide that You do not require the Policy, and no claim has been made under the Policy, You have the right to cancel and return the Policy to Us within 14 days, which starts on the earlier of:

- The date you received confirmation of the Policy; or
- The end of the fifth day after the Policy was issued to You.

If You cancel within this 14 day period, We will refund the premium You have paid unless You have made a claim.

#### Your Duty of Disclosure

##### Your Duty of Disclosure before You enter into Your Policy

Before You enter into an insurance contract, You have a duty of disclosure under the Insurance Contracts Act 1984.

If We ask you questions that are relevant to Our decision to insure You and on what terms, You must tell Us anything that You know and that a reasonable person in the circumstances would include in answering the questions.

You have this duty until We agree to insure You.

##### Your Duty of Disclosure before renewal

Before You renew this contract of insurance, You have a duty of disclosure under the Insurance Contracts Act 1984.

If We ask you questions that are relevant to Our decision to insure You and on what terms, You must tell Us anything that You know and that a reasonable person in the circumstances would include in answering the questions.

Also, we may give you a copy of anything You have previously told Us and ask You to tell Us if it has changed. If We do this, You must tell Us about any change or tell Us that there is no change.

If You do not tell Us about a change to something You have previously told Us, You will be taken to have told Us that there is no change.

You have this duty until We agree to renew the contract.

**If You do not tell Us something (before You enter into Your Policy and before renewal)**

If You do not tell Us anything You are required to tell Us, We may cancel Your contract or reduce the amount We will pay You if You make a claim, or both.

If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

**Privacy**

Pen Underwriting handles your personal information with care and in accordance with the Privacy Act 1988 and the Australian Privacy Principles. We collect personal information about you to provide you with insurance and insurance related services. We may disclose your personal information to third parties for the purposes described in our Privacy Policy, including related entities, insurers, reinsurers, agents and service providers, some of whom may be located in the United States of America, United Kingdom, Germany, Sweden and India. By asking us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure (including overseas disclosure) of your personal information for the purposes described in our Privacy Policy. Where you provide personal information about others, you represent to us that you have made them aware of that disclosure and of our Privacy Policy and that you have obtained their consent. If you do not consent to provide us with the personal information that we request, or withdraw your consent to the use and disclosure of your personal information at any stage, we may not be able to offer you the products or provide the services that you seek. For information about how to access and or correct the personal information we hold about you or if you have any concerns or complaints, ask us for a copy of our Privacy Policy or visit [www.penunderwriting.com.au](http://www.penunderwriting.com.au).

**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](http://www.codeofpractice.com.au).

**Claims**

In the event of a claim arising under this insurance immediate notice must be given to Pen Underwriting at the following address:

Transport Claims  
Pen Underwriting  
GPO Box 541  
Brisbane QLD 4001

(T) 7 3056 1400

(E) [claims.au@penunderwriting.com](mailto:claims.au@penunderwriting.com)

**Complaints**

If you are dissatisfied with a decision Pen Underwriting makes, our service, the service of others we appoint to discuss insurance matters with you, or a claim settlement, we have an internal dispute resolution process to assist you. For further information, ask for a copy of our Complaints and Disputes Resolution Policy or visit [www.penunderwriting.com.au](http://www.penunderwriting.com.au)

**Litigation Dispute Resolution**

Certain Underwriters at Lloyd's hereon agree that:

- (a) In the event of a dispute arising under this Insurance, the Underwriters at the request of the

Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

- (b) Any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia

Level 9, 1 O'Connell Street  
Sydney, NSW 2000

(T) 02 8298 0700

(F) 02 8298 0788

who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on the Underwriters' behalf.

If a suit is instituted against any one of the Underwriters, all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

**Jurisdiction**

This Policy shall be interpreted in accordance with the laws of Australia and shall be subject to determination by any court of competent jurisdiction within Australia.

**Several Liability**

The liability of an Insurer under this contract is several and not joint with other Insurer(s) party to this contract. An Insurer is liable only for the proportion of liability it has underwritten. An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer(s). Nor is an Insurer otherwise responsible for any liability of any other Insurer(s) that may underwrite this contract.

The proportion of liability under this contract underwritten by an Insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an Insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer(s) that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

**Premium**

The amount of Premium specified in the Schedule is the amount due to the Insurer(s) and any commission allowed by them is to be regarded as remuneration of Pen Underwriting.

## COMMERCIAL MOTOR INSURANCE POLICY WORDING

### Definitions

The following terms have specific meanings:

<b>Accident</b>	An event, other than fire, theft, hail, flood, rainstorm, windstorm earthquake or malicious damage, which is unexpected and unintended by You.
<b>Accessories</b>	Vehicle Manufacturer's standard tools, accessories and equipment fitted to Your Vehicle when made, together with other tools, accessories or equipment which have been fitted to Your Vehicle including those as separately specified in Your Schedule.
<b>Airfield</b>	An area of land set aside for the takeoff, landing, taxiing, parking and maintenance of aircraft.
<b>Airside</b>	The section of an airfield where aircraft are situated and operated.
<b>Approved Driver</b>	A driver who We agree in writing is an approved driver. We approve them to drive or be in control of a Drivers Licence for a particular class of Vehicle as from a specific date. We may also impose specific restrictions, limitations or requirements on their approval.
<b>Aggregate Deductible</b>	The amount specified as the aggregate deductible in Your Policy Schedule. This is the total amount which You pay, instead of Us, for the cumulative net cost of claims, until the value of the amount of the aggregate deductible in Your Policy Schedule is reached. Where no aggregate deductible is specified in Your Policy Schedule, Condition 5.7.6 does not apply.
<b>Business</b>	Your business, trade or profession as specified as Business in the Policy Schedule.
<b>Dangerous Goods</b>	Any goods so defined in the Australian Code for the Transport of Dangerous Goods by Road and Rail.
<b>Driver's Licence</b>	A statutorily issued current and valid Australian licence to drive a particular type of vehicle at a particular time and within a particular geographical area.
<b>Excess</b>	Is the first amount, which You pay when You claim for loss or damage which is covered by Your Policy. The Excess is applied each time You make a claim and applies to each and every Vehicle the subject of each claim.

<b>Market Value</b>	The value We determine as being the reasonable amount of money it would cost to buy or sell a Vehicle of the same make, model and condition that Your Vehicle was in as at the date of its loss or damage.
<b>Operating Radius</b>	The maximum radial distance from Your base within which You are indemnified under Your Policy, as specified in Your Schedule.
<b>Pen Underwriting</b>	Pen Underwriting Pty Ltd ABN 89 113 929 516.
<b>Period of Insurance</b>	The period of time during which We provide cover under this Policy. It is set out in Your Schedule.
<b>Policy</b>	Your policy of insurance which includes this Policy Wording, Your Schedule, any endorsements and Your Proposal.
<b>Proposal</b>	The form, completed by You, in application for insurance, which We use with other information to determine whether to provide You with a Policy, and if so, its terms.
<b>Rigid Vehicle</b>	Is a Vehicle for which a driver is required to have an Australian Driver's Licence of Light Rigid (LR), Medium Rigid (MR) or Heavy Rigid (HR).
<b>Schedule</b>	The current schedule issued by Pen Underwriting.
<b>Sum Insured</b>	The amount specified in Your Schedule. Claims Condition 5.5 Co-insurance may reduce this amount.
<b>Total Loss</b>	Your Vehicle is regarded as being a Total Loss when it is stolen and not recovered within sixty (60) days, or it is damaged or destroyed and We consider the cost of repairing Your Vehicle is greater than the Sum Insured or Market Value, whichever is the lesser, less the Excess and salvage value of the damaged Vehicle.
<b>Vehicle</b>	The motor vehicle, mobile machine, plant, equipment, trailer as described in Your Schedule.
<b>We/Our/Ours/Us</b>	The Insurer(s) as shown in Your Schedule.
<b>You/Your/Yours</b>	The insured person or entity named in Your Schedule or other persons specifically covered by Your Policy.

## Our Agreement

After You have paid or agreed to pay the premium, including Endorsement premiums, We will insure You against loss, damage or liability as provided by Your Policy from an event which occurs during the Period of Insurance. Your Policy sets out Our Agreement with You. Your Schedule sets out the cover sections which apply.

### Section 1. Your Vehicle Cover

#### 1.1. Loss or Damage

If during the Period of Insurance Your Vehicle incurs loss or damage due to:

- Accident;
- fire, hail, flood, storm or earthquake;
- theft or attempted theft; or
- malicious damage,

We will at Our option:

- (a) Pay the amount of Our liability for the reasonable cost of repairing or replacing Your Vehicle; or
- (b) Repair or replace Your Vehicle.

Unless otherwise allowed for in Total Loss Extensions 1.3.1, 1.3.2 or 1.3.3, Our liability will not exceed the lesser of the Sum Insured, Market Value or the amount We calculate after the application of Co-insurance of Your Vehicle(s), less any applicable deductions.

The most We will pay in aggregate under Section 1 for the total of any number of losses arising out of the one event is \$10,000,000.

If any new or secondhand part or Accessory necessary for repair of Your Vehicle is not available in Australia at the time of repair, We will pay, at Our option, up to the latest listed Australian price of the manufacturer or distributor for that part or Accessory.

#### 1.2. Associated Costs Extensions:

When We pay a claim under Section 1.1 for repairs to Your Vehicle, then provided the repair costs do not exceed the Sum Insured for the Vehicle, We will also pay the following associated costs You incur under Associated Costs Extensions 1.2.1 to 1.2.6 inclusive. However, We shall not pay in total for repairs and those associated costs, an amount greater than the Sum Insured for that Vehicle.

##### 1.2.1. Accessories

We will pay up to \$5,000 or such other amount as shown on Your Schedule, towards the cost of replacing Your Vehicle's Accessories which are lost or damaged whilst they are in, on, or attached to Your Vehicle.

##### 1.2.2. Driver Transportation

Where Your Vehicle was more than 100 kilometres from its usual garage at the time of the event causing loss or damage, We will pay the reasonable costs of transporting Your driver and any non-

paying passengers to the point of departure or to the driver's destination.

#### 1.2.3. Emergency Costs

In the case of an emergency, We give You the authority to arrange the following:

- (a) repair or replacement of Your Vehicle's windscreen and/or windows; and or
- (b) the towing of Your Vehicle to the nearest repairer or place of safety or to any other place already approved by Us.

The most We will pay towards emergency costs for a claim or claims involving any number of Your Vehicles where loss or damage results from the one event is \$3,000.

#### 1.2.4. Expediting Costs

We will pay the reasonable additional costs incurred by You:

- (a) for necessary immediate and temporary repairs; or
- (b) to expedite permanent repairs to Your damaged Vehicle.

The most We will pay towards expediting costs for a claim or claims involving any number of Your Vehicles where loss or damage results from the one event is \$3,000.

#### 1.2.5. Personal Property

We will pay the replacement costs of any personal property owned and belonging to You or Your driver that is lost or damaged while in Your Vehicle at the time of an incident giving rise to a claim under Section 1 provided that We will not pay to replace money, negotiable instruments, jewellery, mobile telephones, computers, notebooks or iPad devices, personal music devices, portable GPS unit or furs.

The most that we will pay towards replacing personal property for a claim or claims involving any number of Your Vehicles where loss or damage results from the one event is \$2,500.

#### 1.2.6. Signwriting

When We repair Your Vehicle, We will pay the reinstatement costs of sign-writing, artwork or fixed advertising signs as existing on Your Vehicle at the time of the loss or damage. The most We will pay under this Extension where loss or damage results from the one event is \$5,000.

#### 1.3. Total Loss Extensions

When We indemnify You for the Total Loss of Your Vehicle under Section 1.1, the following Extensions may apply subject to the terms and conditions of each Extension.

### 1.3.1. Finance Payout

If We admit a claim under Section 1.1 and:

- (a) Your Vehicle is a Total Loss; and
- (b) the loss or damage to Your Vehicle was not caused directly or indirectly by theft or attempted theft or by fire, other than fire resulting from impact damage; and
- (c) Your claim is not settled under the terms of the New Vehicle Replacement Extension 1.3.2 or 1.3.3; and
- (d) Your Vehicle as at the date of loss is less than five (5) years old from the date when Your Vehicle was first registered; and
- (e) as at the date of commencement of the Period of Insurance, the Sum Insured for Your Vehicle was at least the finance amount outstanding for Your Vehicle (net of any payments outstanding, amounts in arrears or amounts due to penalties); and
- (f) the original finance amount was a loan amount (net of GST) for Your Vehicle, or the GST amount has been repaid to the loan (if not, We will deduct the original GST amount from this finance payout amount); and
- (g) The amount of the outstanding loan relates to the outstanding amount owing on the finance for the purchase of Your Vehicle determined to be a Total Loss and not for any other vehicle or purpose,

We will pay You the greater of the Market Value or the finance payout figure as at the date of the event causing the Total Loss, provided the finance payout figure amount is net of all arrears and outstanding payments, GST and or penalties, and less the Excess which applies to the claim. Where You are entitled to an Input Tax Credit, the amount of Your Input Tax Credit will reduce any GST We pay on the settlement of this claim.

Where the Sum Insured is less than the finance payout as required under paragraph (e) of this Extension, then We may settle Your claim for Your Vehicle at 20% above the Sum Insured as shown on Your Schedule, or at 20% above the Market Value after adjustment for Your Input Tax Credit entitlement, whichever is the greater, but we will not exceed the finance payout figure net of all arrears and outstanding payments, net of GST, net of penalties, and less the Excess which applies to the claim.

### 1.3.2. New Vehicle Replacement - GVM 5 Tonnes and Above

If We admit a claim under Section 1.1 and Your Vehicle is:

- (a) A Prime Mover or Rigid Truck with a Gross Vehicle Mass of 5 tonnes and over; and
- (b) Less than 24 months old from the date of Your Vehicle's first registration; and
- (c) A Total Loss; and
- (d) If Your Vehicle is under finance, Your financier agrees to this vehicle replacement,

We agree to replace Your Vehicle with a new vehicle of a like make, model, series and specification or if unavailable a vehicle of similar make, model, series and specification. It is Our option to agree to the supplier and invoiced cost of any replacement vehicle. We will do this in writing to You. We will pay an amount up to the Sum Insured shown in Your Schedule in respect of Your damaged Vehicle but not costs of Vehicle registration and CTP insurance.

However, if You elect not to replace Your Vehicle, or if the similar model is not readily available, then We agree to pay the lesser of:

- (a) the amount You have specified as the Sum Insured less any Input Tax Credit entitlement amount; or
- (b) Market Value less any Input Tax Credit entitlement amount plus 10% where a Sum Insured is not specified in Your Schedule.

### 1.3.3. New Vehicle Replacement -- To GVM 3.5 Tonnes

If We admit a claim under Section 1.1 and Your Vehicle is:

- (a) A sedan, station wagon, mini bus, 4WD, utility or other goods carrying Vehicle with a Gross Vehicle Mass of 3.5 Tonnes or less;
- (b) Less than 1 year old from the date of Your Vehicle's first registration as a new vehicle;
- (c) A Total Loss; and
- (d) If Your Vehicle is under finance, Your financier agrees to this vehicle replacement,

We agree to replace Your Vehicle with a new vehicle of a like make, model, series and specification or if unavailable a vehicle of similar make, model, series and specification. It is Our option to agree to the supplier and invoiced cost of any replacement vehicle. We will do this in writing to You. We will pay an amount up to the Sum Insured shown in Your Schedule in respect of Your damaged



Vehicle but not costs of Vehicle registration and CTP insurance.

However, if You elect not to replace Your Vehicle, or if the similar model is not readily available, then We agree to pay the lesser of:

- (a) the amount You have specified as the Sum Insured less any Input Tax Credit entitlement amount; or
- (b) Market Value less any Input Tax Credit entitlement amount plus 10% where a Sum Insured is not specified in Your Schedule.

#### 1.4. Additional Benefits:

The following Additional Benefits are:

- available in addition to cover provided under Section 1.1; and
- in addition to the Sum Insured,

provided the amount payable under Section 1.1 at least exceeds the applicable Excess.

##### 1.4.1. Costs of Towing

If Your Vehicle cannot be driven as a result of an event giving rise to a claim covered under Section 1.1, We will pay the reasonable cost of removing it to the nearest repairer or place of safety, or to any other place approved by Us. The most We will pay under this benefit is \$10,000.

##### 1.4.2. Debris Removal

- (a) Where as a result of an event giving rise to a claim included under Section 1.1, debris forming part of Your Vehicle needs to be removed from the scene of an Accident, We will pay up to \$25,000 towards the costs of removing such debris.
- (b) Where the goods You were carrying have fallen from Your Vehicle as a result of a collision or overturning, and the amount of this loss is in excess of the settlement amount for the removal of debris costs paid by the Cargo Transit or Carriers Liability policy for the load, We will pay up to \$25,000 for the removal or salvage of the fallen load but not the amount of any policy excess or deductible under the Cargo Transit or Carriers liability Policy. Provided that this Additional Benefit shall not apply if the goods were Dangerous Goods.

##### 1.4.3. Traffic Management Costs

Whereas the result of an event giving rise to a claim covered under Section 1.1, debris forming part of Your Vehicle is causing an obstruction and the police require the use of a traffic management and control company which is licensed and accredited in the state to direct and control traffic following an Accident, We

will pay up to \$5,000 toward the costs You incur for such traffic control.

#### 1.5. Marine Average Extension

If Your Vehicle is being transported by sea between places within Australia during the Period of Insurance, We will pay Your contribution for general average and salvage charges where such maritime conditions apply, whether or not Your Vehicle suffers loss or damage under Section 1.1. The maximum amount We will pay is the Sum Insured for Your Vehicle which is being transported.

## Section 2. Third Party Cover

### 2.1. Legal Liability Cover

We will cover You for Your legal liability to pay for loss or damage to third party property occurring during the Period of Insurance arising out of:

- (a) the use of Your Vehicle;
- (b) the direct and immediate operation of the loading or unloading of Your Vehicle from and to directly beside Your Vehicle;
- (c) goods or parts being carried by or falling from Your Vehicle;
- (d) any authorised passenger in or on, or getting into or out of Your Vehicle;
- (e) the transportation of Dangerous Goods, provided that the Sum Insured is \$1,000,000 or such Dangerous Goods Sub-Limit as shown in Your Schedule. Coverage under Section 2.1(e) includes the resulting costs by or on behalf of a Public Authority for the cleaning up and removal of a contained escape but no cover is provided for the removal or salvage of the load carried.

Under Section 2.1 We include the resulting costs by or on behalf of a Public Authority for the cleaning up and removal of a contained escape for Non Dangerous goods but not for the removal or salvage of the load carried. The maximum amount We will pay for these costs for Public Authorities is \$250,000.

#### 2.1.1. Legal Liability Extension

We will also indemnify Your employer, principal or partner for their legal liability for accidental damage to property caused by You through Your using Your Vehicle on their behalf and where such liability arises in respect of damage which:

- (a) is of the type covered under this Section 2.1;
- (b) which You cause and for which You are liable at law; and
- (c) where the use of Your Vehicle is not a use excluded by this Policy.

## 2.2. Third Party Death or Bodily Injury Supplementary Cover

We will cover any legal liability incurred by You for death or bodily injury to others which results from an Accident occurring during the Period of Insurance and arises out of the use of Your Vehicle.

However, We will not pay:

- (a) If You are entitled to be partially or wholly compensated by any statutory compulsory insurance or other insurance or fund, or accident compensation scheme; or
- (b) Any amount which is below the excess or deductible amount of any statutory compulsory insurance or other insurance or fund, or accident compensation scheme; or
- (c) For any amount in excess of that recoverable under any such statutory compulsory insurance or other insurance or fund or scheme; or
- (d) For any claim for which You would have been partially or wholly compensated, but for Your failure to insure or register Your Vehicle or lodge a claim in accordance with a requirement of any statutory compulsory insurance or other insurance or fund, or accident compensation scheme, or comply with any other term or condition; or
- (e) Liability for or arising out of death or bodily injury including loss of consortium to any:
  - (i) person driving or in charge of Your Vehicle; or
  - (ii) of Your employees, partners, co-directors, or family members, or persons with whom You ordinarily reside; or
  - (iii) person if Your Vehicle is registered in the Northern Territory of Australia; or
  - (iv) arising from any industrial award, employment agreement or similar agreement or determination.

## 2.3. Sum Insured - Third Party Cover

Our total liability under this Section 2 – Third Party Cover is the amount shown as the Sum Insured in Your Schedule, for all claims arising from any one Accident except for claims arising from Dangerous Goods which is limited to \$1,000,000 as per Section 2.1e) above. This limit is inclusive of all costs and expenses, including clean up costs, for all claims arising from any one Accident.

### Section 3. General Extensions

#### 3.1. Newly Acquired Vehicle Extension

We will provide interim cover for You for any additional or replacement vehicle of a like kind or similar nature to Your Vehicle, that You purchase or permanently lease during the Period of Insurance, limited to a maximum period of 30 consecutive days commencing at 4 pm on the date You purchase, permanently lease or become legally responsible for the vehicle but not beyond the expiry date of the Period of Insurance.

During this interim cover period You will advise Us of the details of the newly acquired vehicle and We will advise Our terms to insure the vehicle up to the expiry date of the Period of Insurance.

The Interim Cover We provide has a maximum Sum Insured of:

- (a) \$50,000, or the Market Value whichever is the lesser, in total for any number of newly acquired vehicles under 2 tonne carrying capacity; or
- (b) For all other newly acquired vehicles, \$300,000 in total for any number of Vehicles or the Market Value, whichever is the lesser.

Cover under this Extension is subject to all the terms and conditions of this Policy, provided that:

- (a) Cover for Dangerous Goods is limited to those Dangerous Goods as previously declared by You and agreed by Us; and
- (b) the Sum Insured for Dangerous Goods in respect of the newly acquired vehicle is limited to \$250,000.

For the purposes of the interim cover period and until such time as You are advised Our terms to insure the newly acquired vehicle, You agree that the premium and Excess which applies to Your Vehicle of a like kind or similar nature shall apply to the additional or replacement vehicle from the date You buy or permanently lease them or become legally responsible for them.

#### 3.2. No Fault Excess

If the Excess applicable to Your claim is \$10,000 or less, you will not have to pay the Excess if:

- (a) We determine that the claim involves a collision with another vehicle and the driver of the other vehicle is totally at fault; and

You are able to supply the registration number of the other vehicle and the name and address of the at fault driver

### Section 4. Exclusions

We will not pay for any loss, damage or liability, if:

#### 4.1. Airfield and Airside

Your liability arises out of the use of Your Vehicle at any Airfield or Airside.

#### 4.2. Alteration of Your Business

At the time of the loss, damage or liability, Your Vehicle was being used, other than in accordance with Your business as stated in Your Schedule.

#### 4.3. Approved Fuel Systems

Your Vehicle is fitted with a fuel system that does not comply with the relevant Australian Standard (applicable at the time of the loss) and the loss arises directly or indirectly from or is caused by such fuel system.

**4.4. Australia**

Your Vehicle is outside Australia, except when Your Vehicle is in transit by sea or air between places within Australia.

**4.5. Cranes**

The loss, damage or liability occurs while Your Vehicle:

- (a) is being used as a crane unless agreed by Us and noted in Your Schedule. This Exclusion does not apply to a goods carrying Vehicle with an attached crane which is used for the sole purpose of loading and unloading goods from Your Vehicle;
- (b) is being used in any raising or lowering operation in which a single load is shared between two or more cranes or lifting devices, unless agreed by Us and noted in Your Schedule;
- (c) is lifting, lowering, carrying or suspending a load in excess of that for which it was constructed or for which it was licensed to lift, lower, carry or suspend.

**4.6. Dangerous Goods**

- (a) You transport Dangerous Goods, unless declared and agreed by Us; or
- (b) You have not complied with the requirements and procedures of the Australian Code for the Transport of Dangerous Goods by Road or Rail including any other statute relating to or in respect of the transportation, storage, compatibility, labelling, or packaging of dangerous goods or any other relevant legislative or regulatory requirements.

**4.7. Driving Under the Influence**

- (a) The event causing an Accident, loss or liability occurred while Your Vehicle was being driven by any person impaired by, or under the influence of any drug or alcohol, or by any person with a percentage of drug or alcohol in their breath or blood in excess of that permitted by law or regulation; and/or
- (b) Following an event causing an Accident, loss or liability, the driver of Your Vehicle refused to submit to any of the necessary tests to determine the percentage of drug or alcohol in the breath, blood or urine.

However, if You can prove that You could not reasonably have known that the driver of Your Vehicle, being a driver other than You, was impaired by or under the influence of any drug or alcohol, We will indemnify You but not the driver of Your Vehicle.

**4.8. Experiments**

Your Vehicle was used in connection with the motor trade for experiment, test, trial or demonstration.

**4.9. Hire of Your Vehicle**

Your Vehicle was being used for hire, fare or reward.

**4.10. Illegal Purpose**

Your Vehicle was used for any illegal purpose or used illegally with Your knowledge or consent.

**4.11. Motor Sports Events**

Your Vehicle was being used in connection with a race, trial, contest or sports event.

**4.12. Refrigerated and Livestock Carriers**

Your Vehicle is carrying refrigerated goods or livestock unless We have approved this in writing.

**4.13. Other Agreements**

Liability is accepted by You because You have entered into any agreement without our written permission, unless Your entering into that agreement did not prejudice Our rights

**4.14. Overloaded, Excess Mass or Over-dimensional Vehicle**

- (a) The loss, damage or liability occurred while Your Vehicle was lifting, carrying, towing a load or used in a trailer combination in excess of that for which Your Vehicle was designed, or which is unlawful at the situation where the Accident, loss or liability occurred; or
- (b) The loss, damage or liability occurred while Your Vehicle was lifting, carrying or towing a load of greater weight or dimension than that permitted by law or regulation; or
- (c) You do not have the correct permits for Your excess mass, or over-dimensional Vehicle freight or You do not comply with the requirements of Your permit.

**4.15. Police Evasion**

Your Vehicle is being driven so as to evade police apprehension.

**4.16. Rail**

Your Vehicle is a vehicle running on rails.

**4.17. Seizure of Vehicle**

Your legal interest in Your Vehicle ceases, or Your Vehicle is seized or taken possession of by any person lawfully entitled to do so or by operation of law.

**4.18. Stock in Trade**

Your Vehicle was in the possession of another person for the purposes of sale.

**4.19. Theft**

- (a) Your Vehicle is stolen by a person comprising You, or a person to whom the Vehicle is security on a loan, or by a person to whom Your Vehicle is hired or leased, or who has a financial interest over the Vehicle or where the theft relates to a debt, such as contractual payments or wages and the like, owed or allegedly owed to them; or
- (b) You have any gate, chain, tiedowns or tarpaulin stolen unless lost as a result of the theft of Your Vehicle.

**4.20. Tests**

The loss, damage or liability occurred while Your Vehicle was being tested, other than in connection with service or repair by a person who is qualified to carry out the service or repair or who is acting under the supervision of such a person.

**4.21. Unapproved Driver**

The driver is not an Approved Driver as required when cover under Your Policy is subject to the Approved Driver Condition.

**4.22. Underage and Inexperienced Drivers**

Unless otherwise approved by Us in writing:

- (a) Your Vehicle is a Rigid Vehicle and is being driven by or is in the control of any person under 23 years of age; or
- (b) Your Vehicle is a Rigid Vehicle and is being driven by or is in the control of any person with less than 2 years of practical driving experience in Australia in the required Vehicle licence category; or
- (c) Your Vehicle is an articulated Vehicle and is being driven by or is in the control of any person under 25 years of age; or
- (d) Your Vehicle is an articulated Vehicle and is being driven by or is in the control of any person with less than 2 years of practical driving experience in Australia in the required Vehicle licence category.

**4.23. Underground Mining**

The loss, damage or liability occurred while Your Vehicle was used or driven underground, in an underground mine or a mining shaft.

**4.24. Unlicensed Drivers**

Your Vehicle is driven by You or by any person with Your consent who does not hold a current and valid Driver's Licence under all relevant laws, by-laws and regulations to drive such a Vehicle.

**4.25. Unregistered Vehicles**

Your Vehicle was unregistered at the time of the event giving rise to the loss, damage or liability.

**4.26. Un-roadworthy Vehicles**

Your Vehicle was operated while in an un-roadworthy or unsafe condition which would be normally and reasonably detected by You, or by a reasonable person in Your circumstances, and this condition contributed to the Accident or event giving rise to the loss, damage or liability.

**4.27. War Risks**

Loss, damage or liability is 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.

**Furthermore We will not pay for**

**4.28. Asbestos**

Any liability directly or indirectly caused by, contributed to or in connection with asbestos or asbestos products in whatever form or quantity.

**4.29. Caravans and Trailers**

- (a) Loss or damage to annexes, camping equipment and the like, which is caused by wind or storm;

- (b) Loss or damage to property or death or bodily injury to any person occurring as a result of entering or alighting from the caravan; or

- (c) Loss or damage to property occurring as a result of theft or burglary from a caravan or trailer unless the theft or burglary is due to visible violent and forcible entry to a locked caravan or trailer.

**4.30. Concrete, bitumen, other substances**

Loss or damage to any agitator, barrel, bowl, tank, container, pump, hoses or fittings caused by the hardening or setting of concrete, bitumen, cement or any other substance, unless the emptying of these items becomes impossible or impractical following an Accident involving Your Vehicle and the loss or damage to Your Vehicle is covered by Your Policy.

**4.31. Cutting Tools**

Loss of or damage to a drill bit, drill rod, auger or blades attached to Your Vehicle while being used for the purposes for which they were designed.

**4.32. Dangerous Goods**

Loss, damage or liability where Dangerous Goods:

- (a) are not being carried in accordance with the requirements of the Australian Code for the Transport of Dangerous Goods by Road and Rail;
- (b) are or include classes 1, 6.2 and 7 as described in the Australian Code for the Transport of Dangerous Goods by Road and Rail.

**4.33. Due Observance**

Loss, damage or liability if You fail to comply with any provision of Your Policy. We may refuse to pay a claim, but in any event Our rights will be subject to the law.

**4.34. Explosives**

- (a) Loss, destruction of, or damage to any property, or any loss or expense whatsoever resulting or arising therefrom; or
- (b) Any consequential loss, attributable to explosives.

**4.35. Fines, Penalties, Punitive Damages**

Any fines, penalties, or aggravated, exemplary or punitive damages.

**4.36. Intentional Damage**

Loss or damage intentionally caused by You, or any other person acting with Your express or implied consent.

**4.37. Loss of Use or Value**

Any type of loss incurred because Your Vehicle could not or cannot be used, or its performance is below expectations or a usual level of performance, or where, following repairs, Your Vehicle has a depreciated value.

**4.38. Mechanical, Structural, Electrical or Computer Failure**

Mechanical, structural, electrical or computer failures, malfunctions or non-performance.

**4.39. Nuclear waste, Nuclear material or Radioactive substance**

- (a) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
- (b) Any legal liability of whatsoever nature, directly or indirectly caused by or contributed to by or arising from:
  - (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**4.40. Pre-existing Damage**

The costs of repairing pre-existing damage or the costs of fixing faulty repairs.

**4.41. Property in Your Custody**

Loss of use of or arising out of, from or for loss or damage to property, other than property listed in Your Schedule, belonging to or in the care, custody or control of You. This exclusion shall not limit cover provided under Section 2 where damage occurs to motor vehicles belonging to employees or visitors located within Your car park or the immediate vicinity of Your car park on property owned or operated by You.

**4.42. Repossession**

Loss or damage to Your Vehicle caused by any person lawfully repossessing or attempting to lawfully repossess Your Vehicle where Your Vehicle is used as security for a debt.

**4.43. Safeguard of Vehicle**

Further loss or damage to Your Vehicle, unless reasonable steps were taken to protect or safeguard Your Vehicle following the initial event.

**4.44. Terrorism**

- (a) 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; or
- (b) 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 an Act of Terrorism.

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. If We allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this insurance, the burden of proving the contrary shall be upon You. In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**4.45. Tool of Trade**

- (a) Liability for or arising out of damage to underground services, pipes, cables or the like caused by or arising out of the use of Your Vehicle as a tool; or
- (b) Liability in respect of or arising out of damage to any land or fixed property arising howsoever from vibration or from the removal or weakening of or interference with support to land, buildings or any other property, arising out of the use of Your Vehicle as a tool.

**4.46. Trailers**

Damage or liability caused by or attributed to more than the legally permitted number of trailers attached to Your Vehicle.

**4.47. Tyres or Wheel Rims**

Damage to tyres or wheel rims caused by the application of brakes, road punctures, cuts or bursts or shredding of tread, or damage to tracks made from rubber, metal or similar material.

**4.48. Underground Services**

Your liability, or any resultant damage, in respect of loss or damage to any underground sewers, water pipes, gas pipes, electric wire cables or their supports including any transmission cables and their supports or any other underground pipes or cables or their supports if such damage is caused by Your Vehicle while it is involved in any digging or excavating.

**4.49. Voluntary Loss**

You voluntarily or otherwise parting with the title to, or possession of Your Vehicle whether or not induced to do so by a fraudulent scheme, trick, device or false pretence.

**4.50. Water Damage**

Any loss or damage to Your Vehicle caused by water:

- (a) in a known watercourse or floodway; or
- (b) in areas where tidal movement of water occurs,

when You or the driver drive Your Vehicle into one of these areas, and Your Vehicle becomes stranded, and such an event could have been foreseen.

However, this Exclusion shall not apply if You and the driver demonstrate to Our satisfaction that all reasonable actions and considerations were taken and implemented to protect Your Vehicle from loss or damage.

**4.51. Wear and Tear**

Loss or damage attributable to vermin, insects, inherent vice, latent defect, wear, tear, gradual

deterioration, developing flaws, contamination, rust, oxidation, corrosion, depreciation, mould or rot.

#### **4.52. Consequential Loss**

Consequential losses suffered by You as a result of You not having the use of Your Vehicle.

## **Section 5. Claims Conditions**

The following Claim Conditions apply to all Sections of Your Policy:

### **5.1. Accident, Theft and Malicious Damage – Your Obligations**

- (a) In the event of an Accident, You must obtain the other driver's name, address, vehicle details, the name of their insurance company and any other relevant details such as telephone numbers of other drivers, witnesses, passengers, and Driver's Licence details of the other drivers, and other vehicle make, model and registration details, and details of owners of other property.
- (b) In the event of theft and/or malicious damage, You must notify the police as soon as possible after You become aware of the theft of or from or malicious damage to Your Vehicle. We will require details of the name of the police officer, police station and event number they give to this notification.

### **5.2. Claim Notification Procedures**

If an event occurs which may result in a claim under this Policy, You must without delay forward to Pen Underwriting:

- (a) Full details in writing; and
- (b) Any letters, notices or court documents received in connection with a claim or any potential claim.

We do not pay for any costs or amounts, which are attributable to delays in Your advising Us of any event, third party matters or demands for payment.

### **5.3. Your Claim Responsibilities**

You, or anyone on Your behalf must:

- (a) not make any admission, offer, promise, payment or indemnity, which would prejudice Our rights at law, without Our written consent to the contrary;
- (b) use due diligence in doing everything reasonably possible to avoid or diminish any loss, damage or liability;
- (c) use Your best endeavours to preserve anything which might prove useful by way of evidence in connection with any claim;
- (d) not carry out any repairs or alterations, other than those of a necessary and temporary nature, without Our written consent;
- (e) take back the property stolen when it is recovered prior to Us paying You for the theft, if We ask You to do so. Under these circumstances We will pay Our liability for any loss or damage caused as a result of the theft;
- (f) give Us notice in writing as soon as possible of every occurrence, claim, writ, summons, proceedings, intended prosecution and inquest, together with all information in relation to them in respect of which liability under Your Policy may arise, or on the receipt of written notice from any third party

that it is their intention to make a claim against You;

- (g) give to Us all information and assistance We require in the prosecution, defence or settlement of any claim;
- (h) allow Us, at Our discretion, to take over and conduct in Your name, the defence or settlement of any claim;
- (i) notify Us of any other insurance that also provides cover for any claim or part thereof that is covered under Your Policy;
- (j) pay any contribution on the cost of repairs or parts as directed by Us; and
- (k) allow Us to pay to a nominated Interested Party any amounts of Your claim settlement which You owe to them.

#### 5.4. Our Rights and Responsibilities in respect to a claim

- (a) 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.
- (b) We may at Our option take over and conduct in Your name, the defence, settlement or management of any repair or third party action against You.
- (c) We may at Our option at any time pay to You, in respect of a claim the Sum Insured, Market Value or any other amount which is the limit of Our liability.

Upon such payment We shall relinquish conduct or control of and be under no further liability under Your Policy in connection with such claim or claims except for costs, charges and expenses in respect of the period prior to the date of such payment covered by Your Policy (whether or not pursuant to an order made subsequently) or incurred by Us with Our written consent prior to the date of such payment.

- (d) If We agree to pay any claim under Your Policy, then regardless of whether or not actual payment has been made, We shall immediately be subrogated to any rights contractual or otherwise which You may have in connection with that claim.
- (e) We will tell You, when, how and to whom the Excess should be paid.
- (f) We will deduct any unpaid Excesses payable before paying any claim amount.

#### 5.5. Co-insurance

If the Sum Insured for Your Vehicle is less than eighty five percent (85%) of the Market Value at the time of an event causing an Accident, loss or liability, then the amount We pay of any claim for loss or damage to Your Vehicle will be reduced. The amount We pay will be the repair cost, multiplied by the Sum Insured amount, divided by eighty five percent (85%) of the Market Value amount, then less the Excess which applies.

When Your Vehicle is a Total Loss and the Sum Insured is less than 85% of the Market Value, We pay the Sum Insured less the Excess. If the repair cost is less than 5% of Your Vehicle's Sum Insured, We do not apply Coinsurance.

#### 5.6. Depreciation and Contribution

You may have to pay a proportion of the cost of repairing or replacing parts, which are affected by wear and tear or rust and corrosion. These parts include tyres, engines, agreed Accessories, paintwork, bodywork, batteries, trims or radiators and others not listed. The amount You have to pay is dependent upon the amount of wear these parts have when the damage or Accident occurs.

#### 5.7. Excess

You are required to contribute an Excess or Excesses towards each claim made under Your Policy. The amount of the Standard Excess and any other Excess which applies is shown in Your Schedule, in this Policy Wording and on any Endorsements which apply. All Excesses shall cumulatively apply to each damaged Vehicle. The total Excess amount is to be paid as directed by Us.

##### 5.7.1. Standard Excess

This is the amount, which applies to each Vehicle as shown in Your Schedule.

##### 5.7.2. Age and Inexperienced Driver Excess for Vehicles under 4.5 Tonnes

- (a) For Vehicles with a Gross Vehicle Mass of 4.5 tonnes or less, including sedans, utilities, four wheel drives, light commercial Vehicles, and for plant and equipment irrespective of Gross Vehicle Mass (GVM), the following Age and Inexperienced Driver Excess applies:

- Age up to and including 21 years \$1,000
- Over age 21, and up to 25 and licensed less than one year \$750
- Over age 21, and up to 25 and licensed more than one year but less than two years \$500
- Age 25 and over and licensed less than one year \$500

- (b) The Age and Inexperienced Driver Excess applies in addition to all other Excess amounts payable as shown either in Your Schedule or elsewhere in Your Policy. The licence period is the consecutive time that the driver has held a Drivers Licence other than a Learning Permit.

- (c) The Age and Inexperienced Driver Excess does not apply on a claim for windscreens damage.

#### 5.7.3. Tipping Hoist Excess

You will have to contribute an additional Excess to the amount of any claim under Your Policy if Your Vehicle is a Rigid Vehicle or an articulated Vehicle combination and at the time of an Accident or event causing loss or liability the tipping hoist is either partially or fully in use. Under these circumstances the Excess which otherwise applies, including any Standard or Imposed Excess, will be doubled.

#### 5.7.4. Imposed Excess

An additional imposed Excess may be applied to a Vehicle for a specific driver of Your Vehicle and or to specific Vehicles and which applies at the time of an Accident. The Imposed Excess is in addition to any other Excess.

#### 5.7.5. Operating Radius Excess

When You are to make a journey which is greater than the Operating Radius which We have agreed to and You advise Us in writing prior to the commencement of the journey, We will agree terms and cover in writing for this journey prior to Your departure. If You depart on this journey without our prior agreement, then an additional Excess of \$5,000 in addition to any other Excess will apply.

#### 5.7.6. Aggregate Deductible

An Aggregate Deductible amount applies to Your Policy when shown in Your Schedule. Losses under Section 1 and/or Section 2.1, but not Section 2.2, are offset against the amount of Your Aggregate Deductible.

The Aggregate Deductible amount at the commencement of the Period of Insurance is the minimum value of the Aggregate Deductible for the whole of this period. The value of the Aggregate Deductible as applying at a particular time may change for a subsequent particular time as other Vehicles are added to or deleted from Your Policy.

For each claim or loss as covered by Your Policy, We determine the usual amount of Policy liability. You pay these amounts until the value of the Aggregate Deductible applying at the time of the loss is reached. The terms and conditions of Section 5 Claims Conditions continue to apply.

#### 5.8. Repairs

- (a) You may appoint a repairer of Your choice, but We reserve the right to invite, accept, adjust or decline estimates or to arrange for the removal of Your Vehicle to other repairers.

- (b) You or Your repairer must obtain Our written agreement to commence repairs before We will accept responsibility for their cost. You agree to make Your Vehicle available for inspection by Us at a time convenient to Us. Repairs must not commence until We have inspected the Vehicle.

- (c) We reserve the right to seek additional quotations prior to repairs being effected.

#### 5.9. Salvage

In the event of a Total Loss of Your Vehicle the salvage at Our option becomes Our property, alternatively at Our option We may deduct the value of the salvage from any claim settlement. If We elect not to take possession of Your Vehicle, You cannot abandon Your responsibilities for it.

#### 5.10. Total Loss

In the event of a Total Loss of any item or Vehicle listed in Your Schedule the remaining premium for that item or Vehicle shall be retained by Us without any refund to You and the item or Vehicle removed from Your Schedule.

### Section 6. General Conditions

These General Conditions apply to all Sections of Your Policy.

#### 6.1. Alteration of Risk

You agree to give written notice to Us, as soon as is reasonably practicable of any fact or event which materially affects the risk insured by Your Policy, including but not limited to:

- (a) changes to the use of Your Vehicle, the Freight Task or the Operating Radius;
- (b) changes to the prior or current accident history, driving experience, Driver Licence history or medical condition of currently Approved Drivers, or other factors which may increase the risk of a driver being involved in an Accident; and
- (c) deterioration in the commercial viability of Your Business, bankruptcy, liquidation, or receivership or threats thereof.

In such circumstances, We reserve Our rights to vary Your Policy.

#### 6.2. Driving History Record

You must within fourteen (14) days of a request from Us obtain from the relevant statutory traffic authority a record of traffic offences for which You or Your drivers have been reported, charged or convicted and all endorsements, suspensions or cancellations of a Driver's Licence.

#### 6.3. Due Diligence and Reasonable Precautions

At Your own expense You shall take all reasonable precautions and use all due diligence to prevent or minimise bodily injury and loss of or damage to Vehicles and shall take all reasonable measures to maintain all Vehicles and Accessories in sound efficient working condition and comply with all statutory obligations, regulations and by-laws imposed by any public authority for the safety of persons or property.



#### 6.4. GST

- (a) The premium includes an amount for GST.
- (b) Our liability to indemnify You under Your Policy is calculated less any Input Tax Credit to which You are entitled for any relevant Acquisition, or to which You would have been entitled had You made a relevant Acquisition. You must inform Us of the extent to which You are entitled to an Input Tax Credit for that GST amount each time that You notify a claim under Your Policy, and any GST liability arising from Your provision of incorrect advice is payable by You.

GST, Input Tax Credit and Acquisition have the same meaning as given to those words in a New Tax System (Goods and Services Tax) Act 1999 and related legislation and amendments.

#### 6.5. Inspection

Our representatives and agents shall at all reasonable times have the right to inspect and examine any Vehicle insured under Your Policy.

#### 6.6. Other Interests and Joint Insured's

Your Policy only protects Your interests and such other interests including financiers, owners, and lessors as are notified to and accepted by Us at the time Your Schedule is issued by Us or thereafter by Us in writing. No interest in Your Policy may be transferred without Our written consent and all persons entitled to benefit under Your Policy shall be bound by the terms and conditions of Your Policy and Our rights at law. A claim lodged by any one of the persons named as the Insured in Your Policy is considered to be a claim by all of You.

#### 6.7. Limit of Liability

- (a) We will pay no more than the relevant Sum Insured shown in Your Schedule (or any sub-limit shown in this Policy Wording) for any number of claims arising out of any one event.
- (b) Such payment shall include, within the Sum Insured, the costs and expense incurred by You or on Your behalf in defense of any claim for which indemnity is provided by Us and We have confirmed Our offer to pay for such costs in writing to You.

#### 6.8. Payment of Premium and Due Dates

We will advise You of the total amount of premium You have to pay and when this payment is due to Us. You must pay this full amount by the due date for this Policy cover to be available to You. If You pay Us after the due date, We can reject Your payment to Us and the Policy will lapse.

#### 6.9. Policy Cancellation

- (a) You may cancel Your Policy at any time by giving Us a written notice signed by You. Policy cancellation is effective from the date and time nominated by You or 4pm on the day on which Your cancellation notice has been received by Us, whichever is the later. In the event of Your cancellation, We may retain 20% of the unexpired premium as a cancellation fee.

- (b) We may cancel Your Policy only when the law allows Us to do so. We will do this by giving You a written notice. After cancellation by Us, We will be entitled to retain the premium for the period during which Your Policy has been in force and You shall be entitled to a refund of the unexpired premium.

#### 6.10. Policy Interpretation

- (a) Paragraph titles in Your Policy are for descriptive purposes only and do not form part of Your Policy for the purposes of its construction or interpretation.
- (b) In Your Policy, the singular includes the plural and vice versa.

# **Commercial Motor Public and Products Liability Insurance Policy**

v01.16

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

### **Complaints Handling**

If you are dissatisfied with a decision Pen Underwriting makes, our service, the service of others we appoint to discuss insurance matters with you, or a claim settlement, we have an internal dispute resolution process to assist you. For further information, ask for a copy of our Complaints and Disputes Resolution Policy or visit [www.penunderwriting.com.au](http://www.penunderwriting.com.au).

### **Australian Terrorism Insurance Act**

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

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

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

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

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

### **Further Information**

Your insurance broker has arranged this insurance on your behalf. If you have any questions or need further information concerning your insurance, you should contact your insurance broker to assist you with your enquiry. You should direct all of your correspondence to us through your insurance broker as he is your agent for this insurance.

## Definitions

The following terms have specific meanings:

<b>Advertising Liability</b>	<ul style="list-style-type: none"> <li>(a) defamation</li> <li>(b) infringement of copyright, title or slogan;</li> <li>(c) unfair competition, misappropriation of advertising ideas or style of doing Business;</li> <li>(d) invasion of privacy arising out of any advertising activities conducted by You or on Your behalf in the course of the Business.</li> </ul>
<b>Business</b>	The business described in the Schedule operated by You including the provision and management of canteens, social, sports and welfare organisations for the benefit of the Employees, first aid, fire and ambulance services and the maintenance of the Insured's premises.
<b>Dangerous Goods</b>	Any goods so defined in the Australian Code for the Transport of Dangerous Goods by Road and Rail.
<b>Electronic Data</b>	Facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.
<b>Employee</b>	Any person engaged in the Business under a contract of service or apprenticeship with the Insured or any person deemed an employee of the Insured by law.
<b>Employment Practices</b>	Any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment of any person or persons by the Insured.
<b>Excess</b>	The amount stated in the Schedule which is payable by the Insured as the first part of any claim.
<b>Limit of Indemnity</b>	<p>The Limit of Indemnity stated in the Schedule.</p> <p>Our total aggregate liability during any one Period of Insurance for all claims for Personal Injury, Property Damage or Advertising Liability</p>

## Occurrence

shall not exceed the Limit of Indemnity.

An event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury, Property Damage or Advertising Liability neither expected nor intended from Your standpoint. All Personal Injury or Property Damage arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence. All Advertising Liability arising out of the same injurious material or act regardless of the number or kind of media used, the frequency or repetition thereof and number of claimants shall be deemed to be one Occurrence.

## Pen Underwriting

Pen Underwriting Pty Ltd ABN 89 113 929 516 AFSL 290518.

## Period of Insurance Personal Injury

The period stated in the Schedule.

- (a) bodily injury, disease, sickness, death, disability, shock, fright, mental anguish, mental injury or loss of consortium resulting from any of these;
- (b) the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution;
- (c) the effects of wrongful entry, eviction, detention or humiliation;
- (d) the effects of a publication or utterance of defamatory or disparaging material;
- (e) the effects of assault and battery not committed by You or at Your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

## Policy

This policy wording, the Schedule and any Endorsements.

## 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.

## Products

Goods, products and property (after they have ceased to be in Your possession or under Your control) which are deemed to have

	been manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by You (including any container of such goods, products or property other than a Vehicle).		insurance is effected).
<b>Property Damage</b>	<p>(a) physical damage to or physical loss or physical destruction of tangible property, including any resulting loss of use of that property;</p> <p>(b) loss of use of tangible property which has not been physically damaged, physically lost or physically destroyed, provided such loss if caused by an Occurrence.</p>	<b>We/Our/Us</b>	The Insurer stated in the Schedule.
<b>Territorial Limits</b>	<p>(a) the Commonwealth of Australia; and</p> <p>(b) subject to Exclusion 5.19 Sanctions, elsewhere in the world but only in respect of commercial visits by the Insured, or directors, partners or senior executives of the Insured, while ordinarily resident in the Commonwealth of Australia.</p>	<b>You/Your</b>	<p>(a) The Insured person or entity named in the Schedule whose place of residence or incorporation (as applicable) is within the Commonwealth of Australia;</p> <p>(b) any director, executive officer, partner or shareholder of the Insured or any Employee but only whilst acting within the scope of their duties in such capacity;</p> <p>(c) every office bearer or member of the Insured's social and sporting clubs, canteen and welfare organisations and any member of the Insured's first aid, fire and ambulance services (other than qualified medical practitioners) in respect of claims arising from their duties connected with the activities of any such club, organisation or service.</p> <p>(d) any director, partner or senior executive of the Insured in respect of private work undertaken by any Employee for such director, partner or senior executive.</p>
<b>Terrorism</b>	An act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.		
<b>Vehicle</b>	<p>Any type of machine on wheels or self laid track made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine:</p> <p>(a) where such machine, trailer or attachment is registered or required under any legislation to be registered; and or</p> <p>(b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that</p>		

## 1. Liability Cover

1.1 We will cover Your legal liability to pay:

- (a) all sums by way of compensation; and
- (b) all costs awarded against You,

in respect of:

- (i) Personal Injury;
- (ii) Property Damage;
- (iii) Advertising Liability,

first happening during the Period of Insurance and caused by an Occurrence within the Territorial Limits and in connection with the Business.

## 2. Costs

2.1 If we agree to cover You, We will pay:

- (a) all legal costs and expenses incurred by Us or You (with our prior written consent) in the defence or settlement of any claim for compensation covered under clause 1.1(a);
- (b) Your legal costs of representation at any coroner's inquest incurred with our prior written consent;
- (c) all reasonable expenses incurred by You for first aid to others at the time of Personal Injury caused by an Occurrence (other than medical expenses prohibited by law).

Payment of Your legal costs and expenses under clause 1.2 is in addition to the Limit of Indemnity provided that:

- (i) the Limit of Indemnity has not been exhausted; and or
- (ii) if Your legal liability under clause 1.1 exceeds the Limit of Indemnity, Our payment of costs will be limited to the same proportion as the Limit of Indemnity bears to the amount paid to dispose of the claim.

## 3. Cross Liability

3.1 Where more than one party comprises You, this Policy will be considered as if a separate policy had been issued to each party, however, the Limit of Indemnity is not affected or increased as a consequence of this clause.

## 4. Principal's Liability

4.1 Where we agree to cover a principal, this Policy extends cover under clauses 1.1, 1.2 and 1.3 to that principal for Your legal liability for Personal Injury or Property first happening during the Period of Insurance and caused by an Occurrence within the Territorial Limits and in connection with the Business provided that:

- (a) the Limit of Indemnity is not affected or increased by this extension;

- (b) the principal will comply with and be subject to all definitions, terms, exclusions and conditions of this Policy as if they were You.

## 5. Exclusions

This Policy does not cover:

### 5.1 Aircraft

claims arising out of the ownership, maintenance, operation or use by You or on Your behalf of any aircraft.

### 5.2 Asbestos

Personal Injury or Property Damage directly or indirectly arising out of, resulting from, in consequence of or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

### 5.3 Biological or Chemical Materials

any liability, loss, cost or expense of whatsoever nature directly or indirectly caused by, arising from, 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.

### 5.4 Contractual Liability

liability assumed by You under any contract or agreement unless that liability would have attached in the absence of the contract or agreement.

However, this Exclusion will not apply to:

- (a) liability assumed by You under a lease or tenancy agreement for premises occupied by You in connection with Your Business, other than a provision which requires You to:
  - (i) effect insurance for such premises; or
  - (ii) indemnify the lessor of such premises for Personal Injury or Property Damage regardless of fault.
- (b) liability assumed by You under a warranty of fitness or quality in respect of Products.

### 5.5 Cyber Attack

- (a) loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means of inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
- (b) provided that, where this Policy is deemed to cover any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA, Exclusion 5.5(a) shall not operate to exclude losses (which would otherwise be

covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

**5.6 Defamation**

defamation:

- (a) prior to the commencement of the Period of Insurance; or
- (b) by You or at Your direction with knowledge of its falsity; or
- (c) related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf.

**5.7 Electronic Data**

liability in respect of:

- (a) communication, display, distribution or publication of Electronic Data, provided that this Exclusion #(a) does not apply to Personal Injury or Advertising Liability resulting therefrom;
- (b) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- (c) error in creating, amending, entering, deleting or using Electronic Data;
- (d) total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all'

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

**5.8 Employer's Liability**

- (a) Personal Injury to any Employee arising out of, or in the course of their employment;
- (b) Personal Injury in respect of which You are entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any workers' compensation, accident compensation or similar legislation; whether or not you are a party to such policy of insurance.
- (c) liability in respect of the provisions of any workers compensation legislation or any industrial award, agreement or determination;
- (d) liability in respect of Employment Practices.

**5.9 Faulty Workmanship**

the costs of performing, correcting or improving any work undertaken by You or on Your behalf.

**5.10 Fines, Penalties and Liquidated Damages**

Fines, penalties, aggravated, punitive, exemplary

and or liquidated damages.

**5.11 Injury to Contractors**

any liability arising directly or indirectly from or caused by, contributed to by or arising from Personal Injury:

- (a) to any contractor or subcontractor of You or employee of any contractor or subcontractor of You whilst such employee or contractor or subcontractor is acting in such capacity, or
- (b) to any labour hire personnel hired by or on behalf of the Insured.

**5.12 Loss of Use**

claims in respect of the loss of use of tangible property, which has not been physically damaged or destroyed, resulting from:

- (a) a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- (b) the failure of Products to meet the level of performance, quality, fitness or durability warranted or represented by You.

**5.13 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:

- (i) is sudden, identifiable, unexpected and unintended;
- (ii) takes place in its entirety at a specific time and place; and
- (iii) is not the consequence of a failure to maintain plant and equipment in sound functional order (unless such condition could not be readily detectable by You) or the consequence of prolonged wear and tear; or

- (b) any costs and expenses incurred in preventing, removing, nullifying or cleaning up any Pollutants 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.

Our liability under Exclusions 5.13(a)(i) and 5.13(a)(ii) in respect of any one discharge, dispersal, release, seepage, migration and for all discharges, dispersals, releases and escape of Pollutants during any one Period of Insurance shall not exceed the Limit of Indemnity.



**5.14 Product Defect**

Property Damage to Products if the Property Damage is attributed to any defect in Your Products or their harmful nature or unsuitability.

**5.15 Product Recall**

loss, cost or expense incurred by you for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of any Products.

**5.16 Professional Liability**

breach of duty owed by You in a professional capacity other than the provision of or failure to provide first aid on Your premises.

**5.17 Property in Care, Custody or Control**

Property Damage to:

- (a) property owned by or leased or rented to You;
- (b) property in Your physical or legal control, including customer's goods:
  - (i) when the goods are first moved for the purpose of transit;
  - (ii) during transit;
  - (iii) during unloading from and loading to directly beside any Vehicle;
  - (iii) temporary storage in the ordinary course of transit;

provided that this Exclusion does not apply to Property Damage to:

- (c) premises (including landlord's fixtures and fittings) which are leased or rented to You;
- (d) premises (or their contents) not owned, leased or rented by You but temporarily occupied by You for work therein;
- (e) Vehicles (not belonging to or used by You) in Your physical or legal control where the Property Damage occurs while the Vehicles are in a car park owned or operated by You, unless You own or operate the car park for reward;
- (f) property belonging to any director, executive officer, partner, shareholder or Employee up to \$10,000 any one Occurrence; or
- (g) other property temporarily in Your physical or legal control up to \$100,000 any one Occurrence and in the aggregate and subject to an excess of 10% of any claim or the first \$500, whichever is the greater.

**5.18 Radioactive Contamination**

- (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or
- (b) any legal liability of whatsoever nature directly or indirectly caused by or contributed to, by or arising from:
  - (i) ionising radiations or contamination from any nuclear fuel or from any

nuclear waste from the combustion of nuclear fuel. For the purposes of this exclusion only, combustion shall include any self sustaining process of nuclear fission or fusion;

- (ii) nuclear weapons material; or
- (iii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**5.19 Sanctions**

or be liable to pay any claim or provide any benefit under this Policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or United States of America.

**5.20 Sports Participation**

Personal Injury to any person caused by or arising out of the participation of such person in any game, match, race, practice, trial, training, competition, warm ups, warm downs and other preliminary activities unless such Personal Injury is as a result of Your negligence in regard to the facility provided.

**5.21 Terrorism**

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

- (a) Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Personal Injury, Property Damage or Advertising Liability; or
- (b) action taken in controlling, preventing, suppressing or in any way relating to Terrorism.

If We allege that by reason of this Exclusion, any Personal Injury, Property Damage or Advertising Liability is not covered by this insurance, the burden of proving the contrary shall be upon the Insured.

**5.22 Tobacco**

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

- (a) tobacco or tobacco smoke;
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

**5.23 Vehicles**

Personal Injury or Property Damage arising out of:

- (a) the use of any Vehicle;

- (b) the direct and immediate operation of the loading or unloading of any Vehicle from and to directly beside any Vehicle;
- (c) goods or parts being carried by or falling from any Vehicle;
- (d) any authorised passenger in or on, or getting into or out of any Vehicle;
- (e) Dangerous Goods.

#### 5.24 War

Personal Injury, Property Damage or Advertising Liability directly or indirectly occasioned by, happening through or in consequence war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or expropriation, lawful seizure, resumption, confiscation, nationalisation, destruction or damage to property by or under the order of any Government or public or local authority.

#### 5.25 Watercraft and Hovercraft

claims arising out of the ownership, maintenance, operation or use by You or on Your behalf of:

- (a) any watercraft exceeding ten (10) metres in length, except where such watercraft are owned and operated by others and used by You for business entertainment;
- (b) any vessel, craft or thing made or intended to transport persons or property over land or water supported on a cushion of air.

#### 5.26 Welding and Hotwork

any liability arising directly or indirectly from, caused or contributed to by the use of any electric, oxy-acetylene or similar welding or cutting equipment and allied processes by or on Your behalf unless such welding or cutting was done in full compliance with Australian Standard 1674 Safety in Welding and Allied Processes.

### 6. Conditions

#### 6.1 Alteration of Risk

You must tell Us as soon as possible if circumstances occur, or if changes or alterations are intended or made which increase the risk of Personal Injury, Property Damage or Advertising Liability.

You must tell Us immediately in writing of every change that comes to Your knowledge which materially varies any of the facts or circumstances existing at the commencement of this Policy. We may at Our discretion, for what We consider to be an increase of risk:

- (a) charge additional premium;
- (b) amend or impose additional terms or conditions;
- (c) cancel the Policy.

#### 6.2 Claims

You must:

- (a) immediately give us written notice after

any Occurrence that may give rise to a claim and of any claim, writ, summons, proceeding, impending prosecution or inquest that is or may result in a claim together with all relevant information.

- (b) supply Us with all information We require to defend and or settle the claim;
- (c) take all reasonable precautions to prevent further loss or damage;
- (d) pay the amount of the Excess in relation to each Occurrence within 14 days of receiving a request from Us to pay Your excess.

You must not make any admission, offer, promise, or payment without Our written consent.

We may take over and conduct the defence or settlement of any claim or issue legal proceedings for damages. If We do this, We will do it in Your name. We have full discretion in the conduct of any legal proceedings and in the settlement of any claim. You will give all such information and assistance as We require.

#### 6.3 Discharge of Liability

At any time We can pay to You or on Your behalf in respect of all claims made against You for any one Occurrence:

- (a) the Limit of Indemnity, after deducting any amounts already paid;;
- (b) any lower sum for which the claim may be settled;
- (c) any legal costs and expenses payable under Clause 1.2 Costs, up to the date of the payment.

If We do so the conduct of any outstanding claim(s) will become Your responsibility and we will not be liable to pay any further amounts in relation to that Occurrence.

#### 6.4 Jurisdiction

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

#### 6.5 Notices

Any notice given by Us to the Insured person or entity first named in the Schedule will be treated as notice to all parties comprising You and it will be effective immediately if it is delivered to You personally or by electronic communication or three business days after having been posted if it is posted by Us to Your address last known to Us.

#### 6.6 Policy Cancellation

- (a) You may cancel this Policy at any time by giving written notice to Us. Upon cancellation at your request, a pro rata refund up to eighty percent (80%) of the unexpired portion of the premium is acceptable;

- (b) We may cancel this Policy subject to the Insurance Contracts Act 1984. Upon cancellation by us a refund of premium for the unexpired period of insurance will be allowed,

Provided that where an Occurrence or claim has been made under this Policy, the premium will be deemed to be fully earned.

#### **6.7 Premium Adjustment**

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

#### **6.8 Prohibited by Law**

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

#### **6.9 Reasonable Care**

You must:

- (a) exercise reasonable care that only competent Employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- (b) take all reasonable precautions to prevent Personal Injury, Property Damage and Advertising Liability, and prevent the manufacture, sale or supply of defective Products, and comply with and ensure that Employees and Your servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:
  - (i) safety of persons or property;
  - (ii) disposal of waste products;
  - (iii) handling, storage or use of flammable liquids or substances, gases or toxic chemicals.
- (c) At Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency of which You have knowledge or have reason to suspect, including (but not limited to) any Products subject to governmental or statutory ban.

#### **6.10 Subrogation**

We may prosecute in Your name for damages or otherwise. We may do this before or after We have paid Your claim and whether or not You have been fully compensated for Your actual loss. You must execute and deliver instruments and papers and do everything that is necessary to assist Us in the exercise of those rights.