



# Public and Products Liability Insurance

## Policy Wording

Dated 1<sup>st</sup> October 2017

Issued by ATC Insurance Solutions Pty Ltd ("ATC") (ACN 121 360 978, AFS Licence No. 305802) acting under a binder as an agent of certain underwriters at Lloyd's of London ("Lloyd's")

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## IMPORTANT INFORMATION

### About the insurer

This insurance is underwritten by certain Underwriters at Lloyd's of London whose definitive numbers and the proportions underwritten by them, will be supplied on application. In consideration of the premium specified in the Schedule, the said underwriters are hereby bound, severally and not jointly, each for his own part and not one for another, their executors and administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon. The Insurers are referred to in the Policy as "We", "Our" and "Us" or "Insurers".

### About ATC

The Policy is issued by ATC Insurance Solutions Pty Ltd (ATC) ACN 121 360 978 AFSL 305802 acting under a binder as an agent of the Insurers who are certain Underwriters at Lloyd's. ATC acts on behalf of the Insurers and not you.

ATC can be contacted as follows:

ATC Insurance Solutions Pty Ltd  
Level 4, 451 Little Bourke Street  
Melbourne VIC 3000

Telephone: (03) 9258 1777  
Facsimile: (03) 9867 5540  
Website: [www.atcis.com.au](http://www.atcis.com.au)

### Your duty of disclosure

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

The duty applies until we first agree to insure you, and until we agree to any variation, extension, reinstatement or renewal (as applicable).

#### a. Answering our questions

In all cases, 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.

It is important that you understand you are answering our questions in this way for yourself and anyone else that you want to be covered by the contract.

#### b. Variations, extensions and reinstatements

For variations, extensions and reinstatements, you have a broader 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.

#### c. Renewal

Where we offer renewal, we may, in addition to or instead of asking specific questions, 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.

We will tell you what your duty is on renewal before we agree to any renewal.

**d. What you do not need to tell us**

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.

**e. If you do not tell us something**

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.

**General Insurance Code of Practice**

The General Insurance Code of Practice was developed by the Insurance Council of Australia to further raise standards of practice and service across the general insurance industry.

You can obtain more information on the Code of Practice, how it applies in relation to ATC and Your rights under its terms, by contacting Us and/or ATC. Information on the Code can be found at <http://codeofpractice.com.au/>.

**Change in circumstances**

You shall throughout the Period of Insurance give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the proposal. We are entitled to refuse to cover the additional exposure, activity or circumstance and no cover will be provided under this insurance in relation to any material change in any fact, activity or circumstance to those described in the proposal unless we agree to provide cover in writing and you have paid any additional premium we require to cover the additional risk. If the nature of the change in circumstances entails a substantially different risk, whether in type or degree, from that previously envisaged the Insurer may in its absolute discretion refuse to cover the additional risk. We are entitled to cancel this insurance by reason you failing to give notice in accordance with this condition.

**Renewal procedure**

This insurance is not automatically renewable. Before this insurance expires we will advise you, via your intermediary, of whether we intend to offer renewal, any information we require to do so and if so on what terms. This document also applies for any offer of renewal we may make, unless we tell you otherwise.

It is important that you check the terms of any renewal offer before renewing to satisfy yourself that the details are correct. In particular, check the Limit of Indemnity and Excess(es) applicable and to ensure the levels of cover are appropriate for you.

Please note that you need to comply with your duty of disclosure before each renewal (see above).

## Dispute resolution

We view seriously any complaint made about Our products or services and will deal with it promptly and fairly. If you have a complaint please first try to resolve it by speaking to the relevant member of Our staff.

We have an Internal Disputes Resolution process and suggest you contact Our Internal Dispute Resolution Officer on (03) 9258 1777 or by writing to Us at the address given above. We will acknowledge receipt of your complaint within three working days and, provided We have sufficient information, will complete the review within 15 working days. Otherwise, We will agree a new timeframe for responding to you. In any event, We will provide you with an update every 10 working days.

If the matter is still not resolved, you may then contact:

Lloyd's Underwriters' General Representative in Australia  
Level 9, 1 O'Connell Street,  
SYDNEY NSW 2000  
AUSTRALIA  
Telephone: (02) 8298 0783  
Facsimile: (02) 8298 0788

Following receipt of your dispute, you will be advised whether your dispute will be handled by either Lloyd's Australia or the Policyholder & Market Assistance Department at Lloyd's in London.

If you are still not satisfied with the final decision and you are a natural person or a small business, you may wish to contact the Financial Ombudsman Service Australia, which is a free independent external disputes resolution service provided to customers to review and resolve complaints where We have been unable to satisfy your concerns.

For further details you can visit their website [www.fos.org.au](http://www.fos.org.au) or contact them:  
Address: GPO Box 3, Melbourne, VIC, 3001  
Telephone: 1800 367 287  
Email: [info@fos.org.au](mailto:info@fos.org.au)

Lloyd's Australia may refer your dispute to Policyholder & Market Assistance Department at Lloyd's. Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

## Privacy

In this Privacy statement "we", "us" and "our" means the Insurer and ATC acting under a binder as its agent and "you" or "your" means any individual whose personal information we collect for the purposes of the Policy.

We are bound by the requirements of the Privacy Act 1988 (Cth), which set out standards on the collection, use, disclosure and handling of personal information.

Personal information is essentially any information or an opinion about an identified individual, or an individual who is reasonably identifiable. See the Privacy Act for full details of what constitutes personal information.

Our Privacy Policy is available at [www.atcis.com.au](http://www.atcis.com.au) or by calling us on the number below.

We, and our agents, need to collect, use and disclose your personal information in order to consider your application for insurance and to provide the cover you have chosen, administer the insurance and assess any claim and to make special offers of other services and products provided by us or those we have an association with, that might be of interest to you.

You can choose not to provide us with some of the details or all of your personal information, but this may affect our ability to provide the cover, administer the insurance or assess a claim.

We may disclose your personal information to third parties (and/or collect additional personal information about you from them) who assist us in providing the above services and some of these are likely to be overseas recipients, including in the United Kingdom. These parties, which include our related entities, distributors, agents, -insurers, claims investigators, assessors, lawyers, medical practitioners and health workers, anyone either of us appoint to review and handle complaints or disputes, any other parties where permitted or required by law and federal or state regulatory authorities, including Medicare Australia and Centrelink, will only use the personal information for the purposes we provided it to them for (unless otherwise required by law).

Information will be obtained from individuals directly where possible and practicable to do so. Sometimes it may be collected indirectly (e.g. from your representatives or co-insureds or through websites from data you input directly or through cookies and other web analytic tools). If you provide information for another person you represent to us that:

- you have the authority from them to do so and it is as if they provided it to us; and
- you have made them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

By providing us with personal information, you and any person you provide personal information for, consent to these uses and these disclosures unless you tell us otherwise. If you wish to withdraw your consent, including for things such as receiving information on products and offers by us or persons we have an association with please contact ATC on (03) 9258 1777 or write to us at the address given above.

### **Electronic Communication**

Pursuant to the *Insurance Contracts Act 1984* (Cth), a notice or other document may be given by electronic communication in accordance with the *Electronic Transactions Act 1999* (Cth) and any regulations made under that Act. Amongst other things, this means that We can communicate with You by email.

If You are represented by an agent (e.g. your insurance broker) and they provide Us with their nominated email address, they and You consent to Us delivering documents electronically to that email address, unless you or they tell us otherwise. Any documents sent by email will be considered to have been received by You and Your Agent twenty four hours from the time We send them to that email address.

In all other cases, if You provide Us with Your nominated email address You consent to Us delivering documents electronically to that email address, unless You tell us otherwise. Any documents sent by email will be considered to have been received by You twenty four hours from the time We send them to t email address.

It is You and Your Agent's obligation to ensure that any email address provided to Us is up to date and let Us know promptly if it changes.

### **Preventing the Underwriters' right to recovery**

The Underwriter's liability to indemnify you for loss or damage under this Policy may be excluded or limited if you enter into a contract that excludes or limits the Underwriter's rights

or ability to recover compensation in respect of that loss or damage from any other person or entity.

### **Claims Management**

In the event of a claim please contact us using the details above.

Claims will be managed on our behalf by Proclaim Management Solutions Pty Ltd. Proclaim are an independent claims management company based in Melbourne. They can be contacted as follows:

Address: Locked Bag 32012, Collins St. East VIC 8003  
Telephone: (03) 9660 5200  
Website: [www.proclaim.com.au](http://www.proclaim.com.au)

However, please contact ATC in the first instance so that we can assist.

## Public & Products Liability

We will indemnify the Insured according to the terms of this Policy in consideration of the payment of the premium and in reliance on the contents of the proposal and any other information submitted by the Insured or on its behalf.

### 1 INSURING CLAUSES

1.1 We will indemnify the Insured for the Insured's legal liability to pay compensation in respect of:

- a) Injury, and/or
- b) Damage, and/or
- c) Advertising Injury

happening within the Policy Territory during the Period of Insurance as a result of an Occurrence in connection with the Business.

1.2 We will also pay the Defence Costs incurred with Our prior written consent in the defence, settlement or investigation of any claim covered under clause 1.1.

### 2 LIMIT OF INDEMNITY AND EXCESS

2.1 The total amount payable by Us will not exceed the Limit of Indemnity in respect of any one Occurrence or series of Occurrences arising out of one originating cause.

2.2 Defence Costs will be paid in addition to the Limit of Indemnity. However, Our liability to pay Defence Costs in respect of any Occurrence will cease once We have paid compensation up to the Limit of Indemnity.

2.3 The Insured must pay the Excess specified by the Policy for each Occurrence that is the subject of a claim covered under clause 1.1. We are only required to indemnify the Insured for amounts over and above the Excess.

2.4 The Excess does not apply to Defence Costs.

2.5 For the purposes of applying the Limit of Indemnity and to determine the number of Excesses payable by the Insured, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence .

### 3 DEFINITIONS

3.1 **Advertising Injury** means injury arising from:

- a) libel, slander or defamation, or
- b) any infringement of copyright or passing off of title or slogan, or
- c) unfair competition, piracy, idea misappropriation contrary to implied contract, or
- d) invasion of privacy

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of the Insured's advertising activities.

- 3.2 **Business** means the activities specified in the Schedule conducted by the Insured, as well as all associated official activities conducted by the Insured.
- 3.3 **Contractor** means an individual, partnership or company which provides goods or services to the Insured under terms specified in a contract or agreement.
- 3.4 **Damage** means:
- a) physical loss or destruction of, or damage to, tangible property, including its loss of use at any time as a result, and/or
  - b) loss of use of tangible property that has not been physically lost, destroyed or damaged provided that such loss of use is caused by or arises out of an Occurrence.
- 3.5 **Defence Costs** means the fees and expenses incurred by the Insured with Our prior written consent in defending, settling or investigating a claim covered by the Policy.
- 3.6 **Employee** means any person employed by the Insured under a contract of service, traineeship or apprenticeship, including volunteers (but excluding Labour Hire Personnel, Contractors and Sub-Contractors)
- 3.7 **Employment Dispute** means any dispute arising from actual or alleged: unfair or wrongful dismissal, discrimination, denial of natural justice, workplace harassment, unfair or wrongful demotion (or failure to promote, employ or recommend for employment) of any person (including an Employee) or misleading representation or advertising with respect to employment, breach of a contract of employment, or any violation of any law concerning employment.
- 3.8 **Excess** means the amount specified in the Schedule.
- 3.9 **General Liability** means the Insured's legal liability for Injury, Damage or Advertising Injury as a result of any one Occurrence happening in connection with the Business other than Products Liability.
- 3.10 **Injury** means:
- death, bodily injury, illness, sickness, disease, disability,
  - shock, fright, mental anguish, humiliation, or loss of consortium or services as a result,
  - defamation,
  - unlawful arrest, unlawful imprisonment, wrongful detention, and/or
  - wrongful eviction, wrongful entry or other invasion of privacy
- 3.11 **Insured** means the following:
1. the Insured stated in the Schedule;
  2. every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, Employee or volunteer of the Insured stated in the Schedule, including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the Business, while such persons are acting for or on behalf of the Insured stated in the Schedule and/or within the scope of their duties in such capacities;

3. every principal in respect of the principal's liability arising out of:
  - (a) the performance by or on behalf of the Insured stated in the Schedule of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and Limit of Indemnity as is provided by this Policy;
  - (b) any Products sold or supplied by the Insured stated in the Schedule, but only in respect of the Insured's own acts or omissions in connection with such products and in any event only for such coverage and Limit of Indemnity as is provided by this Policy;
4. every person, corporation, organisation, joint venture company or partnership, to whom the Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and Limit of Indemnity as is provided by this Policy;
5. every officer, member, Employee or voluntary helper of the Insured's canteen, social and/or sporting clubs, first aid, medical, ambulance or firefighting services, charity or welfare work and/or child care facilities, while acting in their respective capacities as such; and
6. any director, partner, proprietor, officer or executive of the Insured stated in the Schedule in respect of private work undertaken by the Insured's Employees for such person, and any Employee whilst actually undertaking such work.

3.12 **Labour Hire Personnel** means any person engaged in any aspect of the Insured's Business whilst employed by an employment agency, placement agency, labour hire company or any other company or person whose business is or includes the supply and/or provision of labour only.

For the purposes of the application of an Excess, the above definitions do not include persons who are engaged to perform office, administrative, and/or sales tasks, and who do not perform manual or physical labour.

3.13 **Limit of Indemnity** means the amount(s) stated in the Schedule or any lesser limit shown in the Schedule or Policy. The Limit of Indemnity is:

- a) the maximum amount We shall be liable to pay in respect of any one claim or series of claims for General Liability arising from any one Occurrence, and
- b) the maximum amount We shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one Period of Insurance, for Products Liability.

3.14 **Occurrence** means an event that results in Injury and/or Damage and/or Advertising Injury neither expected nor intended by the Insured and includes the continuous or repeated exposure to substantially the same general conditions.

With respect to Injury and/or Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

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

- 3.15 **Period of Insurance** means the period specified in the Schedule.
- 3.16 **Policy** means the Public & Products Liability policy in this wording, the General Exclusions, General Conditions and Claims Conditions, the Schedule, the written proposal made by the Insured to Us (including any attachments), and any endorsement to the Policy issued by Us at the commencement of or during the Period of Insurance.
- 3.17 **Policy Territory** means anywhere in the world except the United States of America and Canada and their territories and protectorates unless agreed otherwise.
- 3.18 **Pollution** means pollution or contamination of the atmosphere or of any water, land or other tangible property.
- 3.19 **Product/s** means anything (after it has ceased to be in the possession or control of the Insured) manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, distributed, imported or exported, by or on behalf of the Insured, including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which by law the Insured is deemed to have manufactured in the course of the Business including discontinued products.
- 3.20 **Product Recall Expense** means the reasonable and necessary costs and expenses incurred by the Insured in relation to effecting the recall of a Product for:
1. communications to customers and the public, including media announcements;
  2. external advice to prepare such communications;
  3. transporting any recalled Product to a place designated by the Insured;
  4. the hiring of necessary additional persons to conduct the duties performed by regular Employees of the Insured who are involved in effecting the recall of a Product, and the hiring of necessary additional storage space;
  5. additional remuneration paid to Employees (other than salaried Employees);
  6. expenses incurred by Employees for transport and accommodation; and
  7. disposing of any recalled Product that cannot be reused.
- 3.21 **Product Liability** means the Insured's legal liability for Injury and/or Damage arising from any Products or the reliance upon a representation or warranty made at any time with respect to such Products, but only where such Injury and/or Damage occurs away from premises owned or leased by, or rented to, the Insured and after physical possession of such Products has been relinquished to others.

3.22 **Schedule** means the schedule to this Policy containing the specific insurance details of the Policy issued by Us.

3.23 **Sub-Contractor** means an individual, partnership or company which provides goods or services to a Contractor under terms specified in a contract or agreement.

3.24 **Subsidiary** means any entity over which the Insured is in a position to exercise effective direction or control through ownership or control of more than 50 per cent of the issued voting shares of that entity, or any subsidiary at law.

3.25 **We, Us and Our** mean ATC acting under a binder as an agent of certain underwriters at Lloyd's

#### 4 **AUTOMATIC EXTENSIONS**

These extensions are included automatically and are subject to the terms of the Policy except to the extent varied by the extension. They do not increase the Limit of Indemnity.

##### 4.1 **Multiple Insureds Clause**

- (i) It is noted and agreed that if the Insured described in the Schedule comprises more than one insured party each operating as a separate and distinct entity then (save as described in this Multiple Insureds Clause) cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Underwriters to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity including any inner limits set by memorandum or endorsement stated in the policy.
- (ii) It is understood and agreed that any payment or payments by Underwriters to any one or more such insured parties shall reduce to the extent of that payment Insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- (iii) It is further understood that the Insured parties will at all times preserve the various contractual rights and agreements entered into by the insured parties and the contractual remedies of such parties in the event of loss or damage.
- (iv) It is further understood and agreed that Underwriters shall be entitled to avoid liability to or (as may be appropriate) claim damages from any of the Insured parties in circumstances of fraud, material misrepresentation, material non-disclosure or breach of any warranty or condition of this policy each referred to in this clause as a Vitiating Act.
- (v) It is however agreed that (save as described in this Multiple Insureds Clause) a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- (vi) Underwriters hereby agree to waive all rights of subrogation which they may have or acquire against any insured party except where the rights of subrogation or recourse are required in consequence of or otherwise following a Vitiating Act in which circumstances Underwriters may

enforce such rights notwithstanding the continuing or former status of the vitiating party as an insured.

- (vii) The lenders to the project shall not be entitled to any indemnity under this policy for or arising from loss or damage in respect of which Underwriters are by reason of a Vitiating Act no longer liable to indemnify any one or more other insured party.

#### 4.2 **Representation costs**

We will pay the reasonable and necessary fees, costs and expenses incurred with Our prior written agreement relating to the Insured's representation:

(a) at any formal legal inquiry into the circumstances surrounding an Occurrence that resulted in the death of any person, including a coroner's inquest; or

(b) at any other formal inquiry or proceeding in respect of any matter that is either the subject of a claim for indemnity under this Policy or could directly give rise to a claim for indemnity under this Policy.

Any representation costs payable under this extension will be treated as Defence Costs for the purpose of applying the Limit of Indemnity as stated in Part 2 above.

#### 4.3 **First aid expenses**

If We indemnify the Insured for a claim made under this Policy for Injury We will also pay the expenses reasonably and necessarily incurred by the Insured for first aid provided at the time of Injury.

#### 4.4 **Temporary repairs**

If We indemnify the Insured for Damage We will also pay the expenses reasonably and necessarily incurred by the Insured with Our prior agreement for temporary repairs, shoring up or other protection of property belonging to others.

#### 4.5 **New Subsidiaries, mergers and acquisitions**

We will cover:

(a) any Subsidiaries that are either created or acquired by the Insured during the Period of Insurance, and

(b) any other entities that are merged into or acquired by the Insured, or over which the Insured becomes entitled to control its daily decision making, during the Period of Insurance,

for a period of 30 days during the Period of Insurance from the date of creation, acquisition or merger (as the case may be) provided that We will only indemnify the Insured for its legal liability in relation to Injury and/or Damage and/or Advertising Injury first happening after the date of creation, acquisition or merger.

Cover under this extension will only apply to Subsidiaries and other entities whose business activity is of a similar nature as that of the Insured

Cover beyond 30 days will only be available if application is made by the Insured and agreed to by Us and any additional premium paid.

#### 4.6 **Product Recall Expenses coverage**

We will pay to the Insured any Product Recall Expense necessary because the use or consumption of any Product has resulted in or may result in Injury, death, illness or disability or physical damage to or destruction of tangible property due to:

1. the accidental omission of a substance or the accidental introduction or substitution of a harmful or damaging substance in the manufacture of the Product; or
2. any unintentional error or deficiency in the manufacture, design, blending, mixing, compounding or labelling of the Product; or
3. a ruling of a government or other regulatory body requiring the Insured to recall any Product as a result of any of the matters set out in 1 or 2 above.

Coverage under this extension is subject to:

- (a) the Insured first discovering during the Period of Insurance that the use or consumption of any Product has resulted or may result in Injury, death, illness or disability or physical damage to or destruction of tangible property; and
- (b) the Injury, death, illness or disability or physical damage to or destruction of tangible property being indemnifiable under this Policy.
- (c) Our maximum liability in respect of this extension for all Product Recall Expenses during the Period of Insurance not exceeding \$1,000,000, or as otherwise stated in the Schedule, whichever is greater.

#### 4.7 **Errors or Omissions Coverage (Products)**

We will pay to or on behalf of the Insured all sums which the Insured becomes legally liable to pay as compensation in respect of financial loss solely and directly attributable to any negligent act, error or omission committed or alleged to have been committed by or on behalf of the Insured in connection with the Insured's Products.

Coverage under this extension is subject to:

1. such act, error or omission occurring after the inception date of this Policy
2. such act, error or omission occurring within the Policy Territory; and
3. a demand for compensation being first made against the Insured and notified to the Insurer during the Period of Insurance; and
4. The Insurer's maximum liability in respect of this extension for all claims payable during the Period of Insurance not exceeding \$1,000,000, or as otherwise stated in the Schedule, whichever is greater.

#### 4.8 **Registered Vehicles**

Notwithstanding Specific Exclusion 5.4, We will cover Injury or property Damage arising out of the ownership, maintenance, possession or use by the Insured of any vehicle which is registered or any vehicle in respect of which

insurance is required by virtue of any legislation. This applies to vehicles solely used for camp purposes, is only used within the camp confines (including nature strips), and is travelling at less than 20 kilometres per hour. A \$500.00 Excess will apply to any claim.

## **5 SPECIFIC EXCLUSIONS**

We will not cover the Insured for:

### **5.1 Assumed liability**

Any liability:

- a) for delay in performance by the Insured or anyone acting on its behalf arising from any contract or agreement, or
- b) under a contractual warranty, guarantee or undertaking unless liability would have been implied by law or would have existed in the absence of the contractual warranty, guarantee or undertaking.

This exclusion does not apply to liability that is assumed by the Insured under a lease of real or personal property (other than a provision which obliges the Insured to insure such property).

### **5.2 Waiver of rights**

Any liability that the Insured has either waived or limited its right of recovery from another party (either in whole or in part).

### **5.3 Fines, penalties and aggravated damages**

Liability to pay: fines; penalties; aggravated, punitive or exemplary damages; or liquidated damages.

### **5.4 Motor vehicles**

Liability arising out of the ownership, possession or use by or on behalf of the Insured of any motor vehicle or trailer for which compulsory insurance is required by legislation other than liability:

- (a) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer, or
- (b) arising beyond the limits of any carriageway or thoroughfare by the loading or unloading of any motor vehicle or trailer, or
- (c) for damage to any bridge weighbridge road or anything beneath caused by the weight of any motor vehicle or trailer or of the load carried thereon, or
- (d) arising out of any motor vehicle or trailer temporarily in the Insured's custody or control for the purpose of parking,

and where such liability does not require compulsory insurance by legislation governing the use of any motor vehicle or trailer.

## 5.5 Care, custody or control

Property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in its care, custody or control. However, this exclusion does not apply to:

- (a) premises occupied by the Insured for the purpose of the Business
- (b) premises (including their contents) temporarily occupied by the Insured for the purpose of carrying out works on those premises, but no indemnity is available for any liability for physical damage to that part of any premises on which the Insured is or was working to the extent that the Damage arises or arose from such work;
- (c) the clothing and personal effects of directors, partners, principals , Employees and/or visitors;
- (d) other property temporarily in the Insured's possession or physical or legal control, subject to the following provisos:
  - there is no cover available for liability in respect of physical damage to that part of any property upon which the Insured is or has been working; and
  - Our liability to indemnify the Insured under this sub-clause is limited to \$500,000 for each and every Occurrence.

## 5.6 Employment liability

- a) Liability for Injury to any Employee. Provided that if the Insured:
  - i. is required by law to insure or otherwise fund, whether through self-insurance, a statutory fund or other scheme, all or part of any common law liability for such Injury (whether limited in amount or not), or
  - ii. is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not an employee or worker within the meaning of the applicable workers' compensation law or the Injury is not an Injury that is subject to such law,

then this Policy will cover the Insured to the extent that the Insured's liability would not be covered under any such policy of insurance, self-insurance arrangement, fund or scheme had the Insured complied with its legal obligations.

- b) Any other liability than that referred to under sub-paragraph a) imposed by any workers' compensation law.
- c) Any other liability imposed by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination, or any such contract of employment or workplace agreement.
- d) Liability arising from any Employment Dispute

## 5.7

**Products**

1. The cost of recalling, withdrawing, replacing or repairing Products, or of making any refund on the price paid for Products. However this exclusion shall not apply:
  - a) to liability for physical damage to or destruction of Products caused by other Products if they were physically independent at the time of such physical damage or destruction; or
  - b) where coverage is provided under Automatic Extension 4.6 – Product recall expense coverage.
2. For Product Recall Expense directly or indirectly caused by or arising from:
  - a) any Product of the same trade or brand name but which is of a different batch, code or other identification from the Product for which Product Recall Expense cover has been provided;
  - b) inherent deterioration or decomposition of any Product or its packaging;
  - c) loss of customer approval or confidence, or any costs incurred to regain customer approval, or other consequential loss;
  - d) knowledge of the Insured at the inception of this Policy of any pre-existing condition of the Product that may result in a claim under this Policy;
  - e) mislabelling or non-labelling of any Product or any container or packaging in relation to a 'use by' or 'best before' date authorised or required by a government agency or other statutory or regulatory authority;
  - f) continued use by the Insured of materials that have been banned or declared unsafe by a government agency or other responsible body; or
  - g) errors or omissions of the Insured or any of its Employees of which officers or directors of the Insured knew or ought to have discovered on reasonable enquiry.

This exclusion applies to Automatic Extension 4.6 – Product Recall Expense coverage

3. Liability to reinstate, repair or replace Products or to pay for the cost of such reinstatement, repair or replacement where the Damage was caused by those Products.
4. Any Product that is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.

## 5.8

**Aircraft, watercraft and hovercraft**

The ownership, maintenance, operation, possession or use by or behalf of the Insured of any aircraft, aerial device, watercraft (except watercraft while stored on land or that do not exceed eight metres in length) or hovercraft .

## 5.9

**Faulty workmanship**

Liability to perform, complete or rectify any work carried out by or on behalf of the Insured, or to pay for the cost to do any of those things.

#### 5.10 Professional Indemnity

Liability arising from or in connection with any breach of duty owed by the Insured in a professional capacity except:

- a) liability where such breach is in relation to advice or services given gratuitously, or
- b) liability arising from advice given in relation to the use or storage of Products, or
- c) the rendering of, or failure to render, professional medical advice by qualified medical practitioners employed by the Insured to provide first aid and other medical service on the Insured's premises.

#### 5.11 Assault and battery

Liability for assault or battery committed by the Insured or at its direction, unless reasonably necessary for the purpose of preventing or eliminating danger to persons or property.

#### 5.12 Defamation

Liability for the publication or utterance of a defamatory statement made before the Period of Insurance or made by the Insured, or at its direction, with knowledge of its falsity.

#### 5.13 Advertising Injury

Liability to pay compensation for Advertising Injury arising from:

- a) offences committed prior to the inception date of this Policy;
- b) offences committed at the direction of the Insured with knowledge of the illegality or falsity thereof;
- c) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- d) incorrect description of the price of the Products, goods or services;
- e) infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the Products, goods or services sold, offered for sale or advertised, but this exception does not apply to titles or slogans;
- f) failure of the Products, goods or services to conform with advertised performance, quality, fitness or durability; or
- g) any Insured whose business is advertising, broadcasting, publishing or telecasting.

#### 5.14 Pollution

Liability arising out of Pollution other than caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance.

All Pollution which arises out of one incident shall be deemed to have occurred at the time such incident takes place.

Our liability for all damages and compensation payable in respect of all Pollution which is deemed to have occurred during the Period of Insurance shall not exceed the Limit of Indemnity for any one Occurrence and in the aggregate in the Period of Insurance.

## General Exclusions

The following exclusions apply unless stated otherwise.

We will not indemnify the Insured against the following:

### 6.1 **Terrorism**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes death, injury, illness, 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.

This exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.

For the purpose of this exclusion, "Terrorism" means an act, including but not limited to the use of force or violence and/or 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.

### 6.2 **USA and Canada**

Any legal liability:

- (a) that arises directly or indirectly out of any act, error or omission committed within the territorial limits of the United States of America or Canada or their territories or protectorates;
- (b) for any action or proceeding for damages that is brought against the Insured in a court of law of the United States of America or Canada or their territories or protectorates;
- (c) Any action or proceeding for the enforcement of any judgement, order or award obtained in or pursuant to the laws of the United States of America or Canada or their territories or protectorates; or
- (d) Any legal liability that arises directly or indirectly out of the export of the Insured's Products or services to the United States of America or Canada.

unless agreed otherwise by Us.

### 6.3 **War and invasion**

Legal liability 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, nationalisation, requisition or damage to property by or under the order of any government or local authority.

6.4 **Radioactive, contamination, chemical, biological, bio-chemical and electromagnetic weapons**

Loss, damage, liability or expense directly or indirectly caused by or contributed to, by or arising from:

- a. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel,
- b. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,
- c. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter,
- d. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter (the exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes), or
- e. any chemical, biological, bio-chemical, or electromagnetic weapon.

6.5 **Asbestos**

Any actual or alleged legal liability whatsoever in respect of claims directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

6.6 **Non-medically prescribed drugs**

Any legal liability arising directly or indirectly from the use of:

- a) non-medically prescribed drugs; or
- b) drugs which are not readily available from federal or state approved vendors within Australia.

6.7 **Computers and electronic data**

Any legal liability:

- a) arising anywhere in the world caused by, contributed to by, or arising directly or indirectly from loss or damage to Electronic Data or caused by or arising directly or indirectly out of the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data or any error in creating, amending, entering, deleting or using Electronic Data or total or partial inability or failure to receive, send, access or use Electronic Data for any time at all or any consequential loss resulting from any of these things.

For the purpose of this exclusion, "Electronic Data" means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

- b) arising anywhere in the world caused by, contributed to by, or arising directly or indirectly out of or in connection with the use of the internet or any intranet by any of the insured

6.8 **Sexual molestation**

Any legal liability of the Insured to pay damages or compensation to any third party, or legal costs associated with any claim, in respect of an Injury sustained by a third party in circumstances where;

- that Injury arises either directly or indirectly from sexual abuse; and
- the perpetrator of the sexual abuse was a representative, member, Employee, or service provider of the Insured; and
- the Insured knew or ought reasonably to have known that the perpetrator of the sexual abuse had previously;

(a) committed sexual abuse; and/or

(b) been convicted of sexual abuse; and/or

(c) whilst being a representative, member, Employee, or service provider of the insured; been the subject of a prior complaint in respect of a sexual abuse, which has not been appropriately investigated.

For the purpose of this Exclusion:

**Sexual Abuse** includes any assault or abuse of a sexual nature, any type of molestation, indecent exposure, sexual harassment or intimidation, whether such act is the subject of criminal investigation or not.

**Injury** includes any physical, mental or psychological injury.

6.9 **Tobacco and smoking**

Any legal liability arising directly or indirectly from the inhalation or ingestion of, or exposure to, tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

6.10 **Demolition, excavation and building works**

Any legal liability arising directly or indirectly out of, or in connection with:

- i. demolition of property exceeding ten metres from ground level,
- ii. pile driving tunnelling or quarrying,
- iii. excavations below three metres in depth, or
- iv. the erection striking or alteration of scaffolding equipment for any purpose.

6.11 **Underground cables**

Any legal liability for Damage to cables pipes or other services located underground unless the Insured has:

- a) taken or caused to be taken all reasonable measures to identify the location of such cables pipes and services before any work is commenced which may involve a risk of damage thereto (reasonable measures

include contacting the appropriate authorities where it is possible cables pipes or services are under the site),

- b) retained a written record of the measures which were taken to locate such cables pipes or other services, or
- c) conveyed the location of such cables pipes and services to Employees or others who are carrying out such work on behalf of the Insured

6.12 **Fees and debts**

Any Claim arising from any liability to refund the Insured's professional fees or charges, or to pay trading debts.

6.13 **Solarium use**

Any legal liability directly or indirectly arising from:

- a) the use of any equipment that can be used for the purpose of artificial sun tanning, or
- b) the presence of such equipment on Your premises.

6.14 **Malicious Damage**

Any Claim caused by the Insured or others for whom the Insured is responsible.

6.15 **Claims outside of the Commonwealth of Australia and New Zealand**

Any claim brought against the Insured in any country or jurisdiction outside of the Commonwealth of Australia and New Zealand, unless specifically agreed otherwise.

## General Conditions

The following conditions apply unless stated otherwise:

### 7.1 Payment of premium

Our liability to indemnify the Insured is conditional upon the Insured having paid the premium.

### 7.2 Reasonable care

The Insured must:

- a) take all reasonable precautions to prevent Injury and/or Damage and/or Advertising Injury occurring and to prevent the manufacture, sale or supply of defective Products;
- b) ensure that only competent Employees use, operate, maintain and service plant and equipment;
- c) maintain all premises, fittings, plant and equipment in sound condition; and
- d) at its own expense, act immediately to trace, recall or modify all Products that it knows or has reason to suspect are defective or deficient.

### 7.3 Alteration to risk

The Insured must notify Us within 30 days of any material change to the nature of the Business or any act of insolvency or bankruptcy of the Insured, including an inability to pay debts as and when they fall due.

If the Insured fails to notify us, We will not be obliged to indemnify the Insured for any claim made under this insurance.

### 7.4 One contract

The Policy and the Schedule shall be read together as one contract of insurance and any word or expression to which a specific meaning applies in any part of this Policy or the Schedule shall have the same meaning wherever it may appear.

### 7.5 Other insurance

If the Insured seeks indemnity under any Policy in respect of a liability that is or may be covered in whole or in part by any other insurance, then the Insured must advise Us of the full details of such other insurance when making a claim with Us.

Subject to the *Insurance Contracts Act 1984*, We reserve the right to seek contribution from other insurer(s).

### 7.6 Insurance arranged by Principal

If the Insured enters into an agreement with any other party (who for the purpose of this clause is called the "Principal") pursuant to which the Principal has agreed to provide a policy of insurance which is intended to indemnify the Insured for any loss or liability arising out of the performance of the said agreement, then We will (subject to the terms and conditions of this

insurance) only indemnify the Insured for loss or liability not covered by the policy of insurance provided by the Principal.

7.8 **Jurisdiction**

This insurance shall be interpreted in accordance with the laws of Australia and the state or territory where it was issued.

7.9 **Cancellation**

**Cancellation by the Insured:**

This insurance may be cancelled at any time at the request of the Insured by notifying the Insurer or its agent in writing.

**Cancellation by Us:**

We may also cancel this insurance on any grounds subject to the Insurance Contracts Act 1984 (Cth) where We have given the Insured written notice of such cancellation in accordance with the Act. The cancellation will be effective from 4pm on the day specified in the notice given to the Insured.

In the event that We or the Insured cancel the insurance, We may deduct a pro rata proportion of the premium for time on risk, reasonable administrative costs related to the acquisition and termination of the insurance and any government taxes or duties we cannot recover. In the event that you have made a Claim under the insurance and we have agreed to pay the Claim, no return of premium will be made for any unused portion of the premium.

7.10 **Assignment**

The Insured must not assign this insurance or any rights under this insurance without first obtaining Our consent in writing by endorsement to this insurance.

7.11 **Goods and Services Tax (GST)**

Where the Insured makes any payment relevant to a Claim covered under this insurance that includes GST, or where the Insured would pay such an amount, We will indemnify the Insured for that GST less any input tax credit the Insured is or would be able to claim for it (the " GST amount ").

We will pay the GST amount in addition to the Limit of Indemnity shown in the Schedule. If the Limit of Indemnity is not sufficient to cover the amount of the Claim, We will only pay the GST amount that relates to Our payment under this insurance.

We will reduce the GST amount by the amount of any input tax credit that the Insured is or would be entitled to.

We will not indemnify the Insured for any GST liability that arises due to the Insured's failure to notify us of the Insured's entitlement or correct entitlement to an input tax credit on the premium.

7.12 **Severability**

In the event that any part of this insurance is found to be invalid or unenforceable, the remainder of the insurance shall remain in force.

7.13 **Service of suit**

We agree that:

a) In the event of a dispute arising under this Insurance, We will at the request of the Insured 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 Us may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Level 9, 1 O'Connell Street,  
SYDNEY NSW 2000  
AUSTRALIA

who has authority to accept service and to enter an appearance on Our 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 Our behalf.

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

7.14 **Several Liability Notice**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

7.15 **Sanction Limitation and Exclusion Clause**

No insurer shall be deemed to provide cover and no insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

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## Claims Conditions

- 8.1 The Insured shall give Us immediate notice in writing of any claim and provide all information that We or Our representatives reasonably require to investigate the claim.
- 8.2 The Insured must not make any admission of liability, promise or payment (or offer of payment), or incur any costs or expenses in connection with any claim, without Our prior written consent.
- The Insured must at its own expense take all reasonable steps and precautions in doing all things reasonably practicable to avoid or minimise any actual or potential loss, injury or damage arising from any actual or possible claim under this insurance.
- 8.3 We shall be entitled to take over the defence or settlement of the claim in the name of the Insured, and We will have full discretion and control in doing so, and the Insured shall provide Us at their own expense with all assistance and information that We may reasonably require.
- 8.4 The Insured shall not be required to contest any claim unless a Senior Counsel (mutually agreed upon by the Insured and Us) advises that the claim should be contested based upon the likelihood of success (including a consideration of any costs recoverable from the third party), the likely amount of all Defence Costs, and the likely amount of damages and costs recoverable by the third party.
- 8.5 The Insured may elect to contest a claim, but if We consider that the claim should be settled Our liability to indemnify the Insured will not exceed the total amount for which the claim could have been settled (including the Defence Costs incurred up to the date of the election by the Insured).
- 8.6 We may at any time pay to the Insured in connection with any claim or series of claims an amount equal to the indemnity available under this insurance or any lesser amount for which the claim or claims could be settled. If We make such a payment We shall relinquish the control of and have no further liability for such claim/s.
- 8.7 We shall be entitled to direct the Insured to conduct the defence or settlement of any claim if We consider that the claim will not exceed the Excess. We will reimburse the Insured for all reasonable costs and expenses in the event that any payment made to dispose of the claim exceeds the Excess.
- 8.8 We shall be entitled to claim indemnity or contribution at any time in the name of the Insured from any party against whom the Insured may have such rights and the Insured shall provide all assistance and information We reasonably require to exercise Our rights of subrogation, including the signing of statements and the giving of evidence.