



**GENERAL AND PRODUCTS  
LIABILITY INSURANCE POLICY**

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### **ENDORSEMENTS** (if any)

## **IMPORTANT INFORMATION**

This Policy and Your current Schedule are important. Please ensure that You read them carefully and keep them in a safe place.

The Policy, current Schedule, Claims Conditions, General Conditions, Exclusions, Definitions and Endorsements (if any), are to be read together as one contract.

Where any word or expression has been given a specific meaning under the heading 'DEFINITIONS - Words with special meaning', such word or expression shall bear that meaning wherever it may appear in this Policy, unless such meaning is inapplicable to the context in which such word or expression appears.

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.

The insurance by this Policy shall be invalid unless the Schedule and any alterations to the wording are signed by a person authorised by Us.

If You have any questions regarding this Policy, please contact Your Broker.

## **PRIVACY STATEMENT**

Berkley Insurance Australia seeks at all times to comply with the Privacy Act 1988 and the Australian Privacy Principles therein. If we disclose personal information to you for any reason you must also act in accordance with and comply with the terms of the Privacy Act and the Australian Privacy Principles.

### **Purpose for collection of information**

The information contained in this document and any other documents provided to us will be dealt with in accordance with our Privacy Policy.

### **Disclosure of Information that you provide to us**

Berkley Insurance Australia will only use the information in accordance with the terms of the Privacy Policy. Without limiting the application of the Policy Berkley Insurance Australia may disclose personal information to other individuals or organisations in connection with your claim, including legal advisors, other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in the matter. By submitting your notification and continuing to deal with us you consent to Berkley Insurance Australia and these parties collecting, using and disclosing personal and sensitive information about you for these purposes. By signing the claim form you are consenting to the above.

You warrant to us that where you provide us with personal information that you have collected from other individuals:

- That the information has been collected in accordance with the Privacy Act 1988.
- That we are authorised to receive that information from you and to use it for the purpose of providing legal claims management services and advice.
- You, and the person who provided you with the information, are aware and have complied with the Privacy Act 1988 and have notified the person about whom the personal information is collected of the collection use and disclosure of such information.

By executing the claim form you are indemnifying Berkley Insurance Australia against any breach that arises directly or indirectly out of any act or omission of your part which does not accord with the conduct required under the Privacy Act 1988.

### **Direct Marketing**

We do not disclose personal information that We collect to a third party for the purpose of allowing them to direct market their products and services unless You have given Us Your permission for Us to do this.

### **Cross Border**

We will share Your personal information with the Berkley group of companies. Our data containing Your information is stored in our data centre using dedicated Berkley hardware and network. We may also use Saas, Cloud computing or other

technologies from time to time and Your information may be stored outside Australia. We will not transfer personal information to a recipient in a foreign country unless We have appropriate protections in place as required by the relevant privacy laws. Your information will be stored on our data base for such period of time as required by law.

**Further information**

If you would like further information, please review our full Privacy Policy on our website [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au) or if you have any complaints or concerns over the protection of the information you have given to us or that we have collected from others, contact the National Head of Claims at the Sydney address listed below or alternatively send an email to [australiacclaims@berkleyinaus.com.au](mailto:australiacclaims@berkleyinaus.com.au).

**Contact Details**

Berkley Insurance Australia  
Level 23, 31 Market Street  
SYDNEY NSW 2000

Ph: 02 9275 8500  
Fax: 02 9261 2773  
Email: [australia@berkleyinaus.com.au](mailto:australia@berkleyinaus.com.au)  
Web site: [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

## **YOUR RESPONSIBILITIES**

### **Your Duty of Disclosure**

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984 (Cth), to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance, and if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of any matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the course of his business, ought to know;
- as to which compliance with your duty is waived by the insurer.

### **Non-disclosure**

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a Claim, or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

## **DUTIES OF INSURER**

We will act and conduct Ourselves with utmost good faith.

## **CLAIMS**

This Policy only provides cover in respect of Personal Injury and/or Property Damage and/or Advertising Liability that occurs during the Period of Insurance.

## **LIABILITY ASSUMED BY YOU UNDER AN AGREEMENT**

It is not possible for You to transfer to Us the entire spectrum of legal liabilities which You may be compelled to bear under the terms of a wide variety of Indemnity and/or Hold Harmless Clauses frequently inserted into commercial business contracts by principals, lessors or other parties.

Liability assumed by You under an agreement is covered only to the extent described in this General and Products Liability Insurance Policy.

Prior to accepting legal liability for loss, destruction, damage or injury, which would not otherwise have attached to You at law, You should contact either Your Broker or Us to enquire whether this General and Products Liability Insurance Policy covers such liability or, if not, whether it may be so extended.

## **CONTACT FOR ASSISTANCE OR CONFIRMATION OF COVER**

If You need to confirm any Policy transaction or clarify any of the information contained in this Policy document or if You have any other queries, please contact either Your Broker or Us.

## 1. DEFINITIONS - words with special meaning:

For the purpose of determining the cover provided by this Policy:

### 1.1 “Act of Terrorism” means:

an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

### 1.2 “Advertising Injury” means:

Injury arising out of:

1.2.1 defamation, or

1.2.2 any unintentional breach of the misleading or deceptive conduct provisions of the Trade Practices Act 1974 (Commonwealth) or any Fair Trading or similar legislation of any country, state or territory; or

1.2.3 any infringement of copyright or passing off of title or slogan; or

1.2.4 unfair competition, piracy, misappropriation of advertising ideas or style of doing business; or

1.2.5 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 Your advertising activities.

### 1.3 “Aircraft” means:

any craft or object designed to travel through air or space, other than model aircraft or unmanned inflatable balloons used for advertising or promotional purposes.

### 1.4 “Business” means:

the business as described in the Schedule and/or as further described in any more specific underwriting information provided to Us, at the time when this insurance was proposed to Us or at the time of any renewal of this Policy, and shall also include:

1.4.1 any prior operations or activities which have ceased or have been disposed of but for which You may retain a legal liability.

1.4.2 the ownership of premises and/or the tenancy thereof by You.

1.4.3 participation in any exhibition by You or on Your behalf.

1.4.4 the hire or loan of plant and/or equipment to other parties.

1.4.5 conducted tours of Your premises.

1.4.6 the provision of any sponsorships, charities, galas, first aid, medical, ambulance or fire fighting services by You or on Your behalf.

- 1.4.7 private work undertaken by Your employees for any of Your directors, partners, proprietors, officers or executives.
- 1.4.8 the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and/or child care facilities by You or on Your behalf, which are primarily for the benefit of Your employees.
- 1.5 **“Compensation”** means:
- monies paid or agreed to be paid by judgment, award or settlement in respect of Personal Injury and/or Property Damage and/or Advertising Injury.
- Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies.
- 1.6 **“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 programmes, software and other coded instruction for such equipment.
- 1.7 **“Employment Practices”** means:
- any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of Your employees.
- 1.8 **“Excess”** means:
- the first amount of each claim or series of claims arising out of any one Occurrence for which You are responsible.
- The Excess applicable to this insurance appears in the Schedule.
- The Excess applies to all amounts for which We will be liable, including the indemnity provided by Insuring Clause 2.2 (Defence Costs and Supplementary Payments).
- 1.9 **“General Liability”** means:
- Your legal liability in respect of Personal Injury and/or Property Damage and/or Advertising Injury caused by or arising out of an Occurrence happening in connection with the Business other than Products Liability.
- 1.10 **“Geographical Limits”** means:
- 1.10.1 anywhere in the World except North America.
- 1.10.2 North America, but only with respect to:
- 1.10.2.1 overseas business visits by any of Your directors, partners, officers, executives or employees, who are non-resident in North America, but not where they perform manual work in North America.
- 1.10.2.2 Products exported to North America without Your knowledge.

- 1.11 **“Hovercraft”** means:
- any vessel, craft or thing made or intended to transport persons or property over land or water supported on a cushion of air.
- 1.12 **“Incidental Contracts”** means:
- 1.12.1 any written rental and/or lease and/or hiring agreement of real and/or personal property, other than with respect to any term or condition contained in such rental, lease and/or hiring agreement that requires You to insure such property.
- 1.12.2 any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities.
- 1.12.3 any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings.
- 1.12.4 those contracts designated in the Schedule.
- 1.13 **“Medical Persons”** includes but is not limited to:
- medical practitioners, medical nurses, dentists and first aid attendants.
- 1.14 **“Named Insured”** means:
- 1.14.1 the person(s), corporations and/or other organisations specified in the Schedule,
- 1.14.2 all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured incorporated in the Commonwealth of Australia and/or any other organisations under the control of the Named Insured;
- 1.14.3 all subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Named Insured during the Period of Insurance.
- 1.14.4 every subsidiary and/or controlled corporation and/or other organisation of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to the date of divestment.
- 1.15 **“North America”** means:
- 1.15.1 the United States of America and the Dominion of Canada,
- 1.15.2 any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and
- 1.15.3 any country or territory subject to the laws of the United States of America or the Dominion of Canada.

1.16 **“Occurrence”** means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended (except for the matters set out in clause 1.18.6) from Your standpoint.

With respect to Personal Injury and/or Property 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 out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

1.17 **“Period of Insurance”** means:

the Period of Insurance specified in the Schedule and any extension thereof which may be agreed in writing between You and Us.

1.18 **“Personal Injury”** means:

1.18.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom;

1.18.2 false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;

1.18.3 wrongful entry or wrongful eviction;

1.18.4 defamation or invasion of privacy, unless arising out of Advertising Injury;

1.18.5 discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by You or at Your direction, but only with respect to liability other than fines and penalties imposed by law;

1.18.6 assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability: such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

1.19 **“Pollutants”** means:

any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material. ‘Waste material’ includes materials that are intended to be recycled, reconditioned or reclaimed.

1.20 **“Products”** means:

anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by You or on Your behalf (including Your predecessors in the Business), 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 or otherwise, You are deemed to have manufactured in the course of the Business including discontinued products.

Provided always that for the purpose of this insurance the term “Products” shall not be deemed to include:

1.20.1 food and beverages supplied by You or on Your behalf primarily to Your employees as a staff benefit ,

1.20.2 any vending machine or any other property rented to or located for use of others but not sold by You;

and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection therewith shall be regarded as General Liability claims hereunder.

1.21 **“Products Liability”** means:

Your legal liability in respect of Personal Injury and/or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such products; but only where such Personal Injury and/or Property Damage occurs away from premises owned or leased by or rented to You and after physical possession of such products has been relinquished to others.

1.22 **“Property Damage”** means:

1.22.1 physical loss, destruction of or damage to tangible property, including the loss of use thereof at any time resulting therefrom; and/or

1.22.2 loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence.

1.23 **“the Schedule”** means:

the most current schedule issued by Us in connection with this Policy.

1.24 **“Tool of Trade”** means:

a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by You at Your premises or on any Worksite. Tool of Trade does not include any Vehicle whilst travelling to or from a Worksite or Vehicles that are used to carry goods to or from any premises.

1.25 **“Vehicle”** means:

any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

1.26 **“Watercraft”** means:

any vessel, craft or thing made or intended to float on or in or travel on or through water, other than model boats.

1.27 **“We, Us, Our, Ourselves”** means:

the Insurer named in the Schedule.

1.28 **“Worksite”** means:

any premises or site where any work is performed for and/or in connection with the Business together with all areas surrounding such premises or site and/or all areas in between such premises or site that You shall use in connection with such work.

1.29 **“You, Your, Insured”**

Each of the following is an Insured to the extent specified below:-

1.29.1 the Named Insured.

1.29.2 every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the Named Insured (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 Named Insured and/or within the scope of their duties in such capacities.

1.29.3 any employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any such employee superannuation fund or pension scheme which is not administered by corporate fund managers.

1.29.4 every principal in respect of the principal's liability arising out of:

1.29.4.1 the performance by or on behalf of the Named Insured 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 Limits of Liability as are provided by this Policy.

1.29.4.2 any Products sold or supplied by the Named Insured, but only in respect of the Named Insured's own acts or omissions in connection with such products and in any event only for such coverage and Limits of Liability as are provided by this Policy.

1.29.5 every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of any law, agreement or permit (whether written or implied) to provide insurance such as is afforded by this Policy, but only to the extent required by such law, agreement or permit and in any event only for such coverage and Limits of Liability as are provided by this Policy.

1.29.6 every officer, member, employee or voluntary helper of the Named Insured's canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, educational, welfare and/or child care facilities, while acting in their respective capacities as such.

1.29.7 any director, partner, proprietor, officer or executive of the Named Insured in respect of private work undertaken by the Named Insured's employees for such person and any employee whilst actually undertaking such work.

1.29.8 the estates, legal representatives, heirs or assigns of:

1.29.8.1 any deceased or insolvent persons, or

1.29.8.2 persons who are unable to manage their own affairs by reason of mental disorder or incapacity,

who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such persons as described in clauses 1.29.8.1 and 1.29.8.2 above.

- 1.29.9 every party including joint venture companies and partnerships to whom the Named 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 Limits of Liability as are provided by this Policy.

## **2. INSURING CLAUSES**

### **2.1 What We Cover**

We agree (subject to the terms, Claims Conditions, General Conditions, Exclusions, Definitions and Limits of Liability incorporated herein) to pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation in respect of:

2.1.1 Personal Injury, and/or

2.1.2 Property Damage; and/or

2.1.3 Advertising Injury;

happening during the Period of Insurance within the Geographical Limits, in connection with the Business or Your Products and/or work performed by You or on Your behalf and caused by or arising out of an Occurrence.

### **2.2 Defense Costs and Supplementary Payments**

With respect to the indemnity provided by this Policy, We will:

2.2.1 defend, in Your name and on Your behalf, any claim or suit against You alleging such Personal Injury and/or Property Damage and/or Advertising Injury and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent.

2.2.2 pay all charges, expenses and legal costs incurred by Us and/or by You at Our written request or with Our written consent (which consent shall not be unreasonably withheld):

2.2.2.1 in the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of Your attendance at hearings or trials at Our request, or

2.2.2.2 in bringing or defending appeals in connection with such claim or suit.

2.2.3 pay

2.2.3.1 all charges, expenses and legal costs recoverable from or awarded against You in any such claim or suit, and

2.2.3.2 pre-judgment interest awarded against You on that part of the judgment payable by Us; and

2.2.3.3 all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability thereon.

- 2.2.4 pay premiums on:
  - 2.2.4.1 bonds to release attachments for amounts not exceeding the applicable Limit of Liability of this Policy but We shall have no obligation to apply for or furnish any such bond.
  - 2.2.4.2 appeal bonds and/or security for costs required in any suit but We shall have no obligation to apply for or furnish any such bonds and/or security for costs.
- 2.2.5 pay expenses incurred by You for:
  - 2.2.5.1 rendering first aid and/or surgical and/or medical and/or therapeutic relief to others at the time of any Personal Injury (other than any medical expenses, which we are prevented from paying by any law).
  - 2.2.5.2 temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or unpinning thereof.
  - 2.2.5.3 purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.
- 2.2.6 pay all legal costs incurred by You with Our consent for representation of You at:
  - 2.2.6.1 any Coronial Inquest or Inquiry
  - 2.2.6.2 any proceedings in any court or tribunal in connection with liability insured against by this Policy.
  - 2.2.6.3 any Royal Commission or Government Enquiry arising out of any alleged breach of statutory duty, or other similar judicial enquiry into circumstances relating to any Occurrence, claim or potential claim which would be the subject of indemnity under this insurance.
  - 2.2.6.4 any enquiry, prosecution or hearing of a disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like.

Provided that Our liability under clauses 2.2.6.3 and 2.2.6.4 shall not exceed **\$250,000** in respect of any one claim or series of claims arising out of any one Occurrence.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by Us in addition to the applicable Limit of Liability of this Policy.

However, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all Defence Costs and Supplementary Payments.

Where We are prevented by law or otherwise from making payments on Your behalf, We will indemnify You for legal liability incurred to the extent that such liability is covered by this Policy.

In jurisdictions where We may not legally be permitted to, or cannot for any other reason, defend any claim or suit against You, We will reimburse You for the expense of such defence incurred with Our written consent.

## 2.3 Limits of Liability and Excess

Subject to clause 2.2 above and clauses 2.4 and 3.16.5 below:

2.3.1 The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims for General Liability arising out of any one Occurrence.

2.3.2 The Limit of Liability specified in the Schedule represents the maximum amount which 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.

The applicable Limit of Liability will not be reduced by the amount of any Excess payable by You.

## 2.4 Additional Benefit - Claims Preparation Costs

In addition to the amount of cover provided by this Policy, We will pay up to **\$25,000** in respect of each claim or series of claims arising out of any one Occurrence for reasonable professional fees and such other expenses incurred by You for the preparation of a claim under this Policy.

The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under clause 2.2 of this Policy.

## 2.5 Optional Additional Benefit - Products Exported to North America with Your Knowledge (Applicable only where this Additional Benefit is confirmed in the Schedule)

The cover provided by this Policy is extended to include any judgment, award or settlement made within North America or any order made anywhere in the World to enforce such judgment, award or settlement either in whole or in part, subject to the following additional terms and exclusions in respect of any such judgment, award or settlement:-

2.5.1 cover only applies to Your legal liability in respect of Personal Injury and/or Property Damage that arises out of any Products exported to North America with Your knowledge.

2.5.2 cover is not provided for:

2.5.2.1 Personal injury and/or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, emission, release or escape of Pollutants.

2.5.2.2 the cost of removing, nullifying or clean up of Pollutants.

2.5.2.3 the cost of preventing the escape of Pollutants.

2.5.2.4 any claim for Compensation if in North America You have:

- (a) any assets other than Products,
- (b) a related or subsidiary company;
- (c) any person or entity with power of attorney; and/or
- (d) any franchisor.

### 3. WHAT WE EXCLUDE

We do not cover any liability:

#### 3.1 Advertising Injury

for Advertising Injury:

- 3.1.1 resulting from statements made at Your direction with knowledge that such statements are false.
- 3.1.2 resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.
- 3.1.3 resulting from any incorrect description of Products or services.
- 3.1.4 resulting from any mistake in advertised price of Products or services.
- 3.1.5 failure of Your Products or services to conform with advertised performance, quality, fitness or durability.
- 3.1.6 incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

#### 3.2 Aircraft, Hovercraft or Watercraft

for Personal Injury and/or Property Damage arising from:

- 3.2.1 the ownership, maintenance, operation or use by You of any Aircraft.
- 3.2.2 the ownership, operation or use by You of any Watercraft or Hovercraft exceeding ten (10) metres in length, whilst such Watercraft or Hovercraft is on, in or under water.

Provided that Exclusion 3.2.2 shall not apply with regard to claims arising out of:

- 3.2.2.1 Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable.
- 3.2.2.2 Hovercraft owned and operated by others and used by You for business entertainment.
- 3.2.2.3 Watercraft owned by others and used by You for business entertainment.
- 3.2.2.4 hand propelled or sailing craft exceeding ten (10) metres in length, whilst such craft is in territorial waters.

#### 3.3 Aircraft Products

arising out of Your Products that are Aircraft or Aircraft component parts used for maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery which to Your knowledge are incorporated in an Aircraft.

#### 3.4 Asbestos

directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

### 3.5 **Breach of Professional Duty**

arising out of any breach of duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable, but this exclusion shall not apply to claims:

- 3.5.1 in respect of Personal Injury and/or Property Damage arising from such breach of duty.
- 3.5.2 arising out of the rendering of or failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises.
- 3.5.3 arising out of advice or service which is not given for a fee.
- 3.5.4 arising out of advice given in respect of the use or storage of Your Products.

### 3.6 **Contractual Liability**

which has been assumed by You under any contract or agreement that requires You to:

- 3.6.1 effect insurance over property, either real or personal.
- 3.6.2 assume liability for, Personal Injury and/or Property Damage regardless of fault; provided that this exclusion shall not apply with regard to:
  - 3.6.2.1 liabilities which would have been implied by law in the absence of such contract or agreement; or
  - 3.6.2.2 liabilities assumed under Incidental Contracts; or
  - 3.6.2.3 terms regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute; or
  - 3.6.2.4 liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.

### 3.7 **Damage to Products**

for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to damage to that part and only that part of such product to which the damage is directly attributable.

### 3.8 **Defamation**

for defamation:

- 3.8.1 resulting from statements made prior to the commencement of the Period of Insurance.
- 3.8.2 resulting from statements made at Your direction with knowledge that such statements are false.
- 3.8.3 incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

### 3.9 **Electronic Data**

arising out of:

- 3.9.1 the communication, display, distribution or publication of Electronic Data; provided that this Exclusion 3.9.1 does not apply to Personal Injury and/or Advertising Injury arising therefrom;
- 3.9.2 the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of Electronic Data;
- 3.9.3 error in creating, amending, entering, deleting or using Electronic Data;
- 3.9.4 the 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.

### 3.10 **Employers Liability**

- 3.10.1 for Bodily Injury to any Worker in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Workers' Compensation of Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected.

Provided that this Policy will respond to the extent that Your liability would not be covered under any such policy, fund, scheme or self insurance arrangement had You complied with Your obligations pursuant to such law.

- 3.10.2 imposed by:

- 3.10.2.1 the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement.

- 3.10.2.2 any law relating to Employment Practices.

Notwithstanding Exclusion clause 3.6 - Contractual Liability, Exclusions 3.10.1 and 3.10.2 shall not apply with respect to liability of others assumed by the Named Insured under a written contract or agreement.

For the purpose of Exclusions 3.10.1 and 3.10.2:

- (a) the term 'Worker' means any person deemed to be employed by You pursuant to any Workers' Compensation Law. Voluntary workers, secondees and work experience students (if any) shall not be deemed to be Your Workers.
- (b) the term 'Bodily Injury' means bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom.

### 3.11 **Faulty Workmanship**

for the cost of performing, completing, correcting or improving any work undertaken by You.

**3.12 Fines, Penalties, Punitive, Exemplary or Aggravated Damages**

for any fines, penalties, punitive, exemplary or aggravated damages.

**3.13 Liquidated Damages**

arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

**3.14 Loss of Use**

for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:

3.14.1 a delay in or lack of performance by You or on Your behalf of any contract or agreement; or

3.14.2 failure of any Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You; but this Exclusion 3.14.2 shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after such products or work have been put to use by any person or organisation other than You.

**3.15 Pollution**

3.15.1 for Personal Injury and/or Property Damage directly or indirectly 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.

3.15.2 for any costs and expenses incurred in preventing the discharge, dispersal, release, seepage, migration or escape of, or, testing and monitoring for, containing, removing, nullifying, or cleaning up of, Pollutants.

Provided that, with respect to any such liability which may be incurred anywhere other than North America, Exclusions 3.15.1 and 3.15.2 shall not apply where such discharge, dispersal, release, seepage, migration or escape is caused by a sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

**3.16 Property in Your care, custody or control**

for Property Damage to property in Your physical or legal care, custody or control; but this exclusion shall not apply with regard to:

3.16.1 the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of Your visitors.

3.16.2 premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of the Business, but no cover is provided by this Policy if You have assumed the responsibility to insure such premises.

3.16.3 3.16.3.1 premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Business, or

3.16.3.2 any other property temporarily in Your possession for the purpose of being worked upon;

but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work.

3.16.4 any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or used by You, whilst any such Vehicle is in a car park owned or operated by You; provided that You do not operate the car park for reward, as a principal part of Your business.

3.16.5 notwithstanding Exclusion clause 3.6 "Contractual Liability", any property (except property that You own) not mentioned in clauses 3.16.1 to 3.16.4 above whilst in Your physical or legal care, custody or control whether or not You have accepted or assumed legal liability for such property. Provided that Our liability under this clause 3.16.5 shall not exceed **\$250,000** in respect of any one claim or series of claims arising out of any one Occurrence.

### 3.17 **Property owned by You**

for Property Damage to property owned by You.

### 3.18 **Product Guarantee**

for any Products warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

### 3.19 **Product Recall**

for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by the Named Insured because of any known, alleged or suspected defect or deficiency in such Products.

### 3.20 **Radioactivity**

directly or indirectly caused by, contributing to by or arising from radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

Provided that Exclusion 3.20 shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

### 3.21 **Terrorism**

for loss, damage, liability, cost or expense of any 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.

Provided that, Exclusion 3.21 also excludes loss, damage, liability, cost or expense of any 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.

### 3.22 **Vehicles**

for Personal Injury and/or Property Damage arising out of the ownership, possession or use by You of any Vehicle:

3.22.1 which is registered or which is required under any legislation to be registered, or

3.22.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected);

but Exclusions 3.22.1 and 3.22.2 shall not apply to:

3.22.3 Personal Injury where:

3.22.3.1 that compulsory liability insurance or statutory indemnity does not provide indemnity, and

3.22.3.2 the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles.

3.22.4 any Vehicle (including any tool, implement, machinery or plant forming part of or attached to or used in connection with such vehicle) whilst being operated or used by You or on Your behalf as a Tool of Trade at Your premises or on any Worksite.

3.22.5 the delivery or collection of goods to or from any Vehicle.

3.22.6 the loading or unloading of any Vehicle.

3.22.7 any Vehicle temporarily in Your custody or control for the purpose of parking.

3.22.8 Property Damage caused by or arising out of the movement of any Vehicle (which is required to be Conditionally Registered in accordance with the law of any State or Territory in Australia) in the event of Your inadvertent and unintentional failure to effect Conditional Registration.

### 3.23 **War**

in respect of war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or 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.

## **4. CLAIMS CONDITIONS**

### **4.1 NOTIFICATION OF OCCURRENCE, CLAIM OR SUIT**

You shall give:

4.1.1 written notice to Us, as soon as reasonably practicable, of any claim made against You or any Occurrence that may give rise to a claim being made against You and which is covered by this Policy.

4.1.2 all such additional information that We may reasonably require and every demand, writ, summons, proceedings, impending prosecution or inquest and all documents relating to the claim or Occurrence shall be forwarded to Us as soon as practicable after they are received by You.

4.1.3 Written notice (including facsimile transmission) must be given to Us via Your Broker.

## 4.2 YOUR DUTIES IN THE EVENT OF AN OCCURRENCE, CLAIM OR SUIT

- 4.2.1 You shall not, without Our written consent (which consent shall not be unreasonably withheld), make any admission, offer, promise or payment in connection with any Occurrence or claim.
- 4.2.2 You shall use the best endeavours to preserve all property, products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without Our consent until We have had an opportunity of inspection.
- 4.2.3 You shall, when so requested, provide Us with details of any other insurances current at the time of any Occurrence, and/or Personal Injury and/or Property Damage and/or Advertising Injury and covering any of the liability insured by this Policy.

## 4.3 OUR RIGHTS REGARDING CLAIMS

- 4.3.1 Following the happening of any Occurrence in respect of which a claim is, or may be, made under this Policy, We shall have full discretion in the conduct of any proceedings in connection with any claim. You shall give such information and assistance that We may reasonably require in the prosecution, defence or settlement of any claim.
- 4.3.2 We may at any time pay to You, in respect of all claims against You arising directly or indirectly from one source or original cause:
  - 4.3.2.1 the amount of the Limit of Liability or such other amount specified in respect thereof (after deduction of any sum(s) already paid by Us, which sum(s) would reduce the amount of Our unfulfilled liability in respect thereof); or
  - 4.3.2.2 any lesser sum for which the claim(s) can be settled.
- 4.3.3 Upon making such payment, We shall relinquish conduct and control of, and be under no further liability under this Policy in connection with, such claim(s) except for Defence Costs and Supplementary Payments:
  - 4.3.3.1 recoverable from You in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or
  - 4.3.3.2 incurred by Us, or by You with Our written consent, prior to the date of such payment.

## 4.4. GOODS AND SERVICES TAX

You must inform Us of the extent to which You are entitled to an input tax credit for the premium each time that You make a claim under this Policy. No payment will be made to You for any GST liability that arises on the settlement of a claim under this Policy when You have not informed Us of Your entitlement or correct entitlement to an input tax credit.

Notwithstanding anything contained in this Policy (including the Schedule and any endorsements attached hereto) to the contrary, Our liability will be calculated after taking into account:

- 4.4.1 any input tax credit to which You, or any claimant against You, is entitled for any acquisition relevant to a claim paid under this Policy; and
- 4.4.2 any input tax credit to which You, or any claimant against You, would have been entitled were You or the claimant to have made a relevant acquisition; and

4.4.3 the GST exclusive amount of any supply made by You which is relevant to Your claim.

If the applicable Limit of Liability is not sufficient to cover Your claim, We will only pay GST (less any relevant input tax credit) that relates to Our proportion of Your claim.

The terms 'GST', 'input tax credit', 'acquisition' and 'supply' have the meanings ascribed to them in the A New Tax System (Goods and Services Tax) Act 1999.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, Claims Conditions, General Conditions, Exclusions or Definitions of this Policy other than as stated above.

## **5. GENERAL CONDITIONS**

### **5.1 ADJUSTMENT OF PREMIUM**

If the first premium or any renewal premium for this Policy or any part thereof shall have been calculated on estimates provided by You, You shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow Us to inspect such record.

You shall, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information as We may require as soon as reasonably practicable. The premium for such Period shall thereupon be adjusted and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum premium that may have been agreed upon between Us and You at inception or the last renewal date of this Policy.

### **5.2 ALTERATION OF RISK**

Every change which substantially varies any of the material facts or circumstances existing at the commencement of each Period of Insurance, that shall come to the knowledge of Your officer responsible for insurance matters, shall be notified to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium as We may require.

### **5.3 BANKRUPTCY OR INSOLVENCY**

In the event that You should become bankrupt or insolvent, We shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

### **5.4 BREACH OF CONDITION OR WARRANTY**

Your rights under this Policy shall not be prejudiced by any unintentional and/or inadvertent:

5.4.1 breach of a condition or warranty without Your knowledge or consent, or

5.4.2 error in the name or title of any person(s), corporation and/or other organisation which forms part of the definition of "You, Your, Insured"; or

5.4.3 error in name, description or situation of property or

5.4.4 failure to report any property and/or entity and/or insurable exposure in which You have an interest.

Provided always that, upon discovery of any such fact or circumstances referred to above, Your officer responsible for insurance matters shall give written notice thereof to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium that We may require.

## 5.5 CANCELLATION OF THIS POLICY

### By You

- 5.5.1 You may cancel this Policy at any time by tendering notice in writing to Us to that effect, in which event the cancellation will become effective from the earlier of the date the notice is received by Us or the date on which You arranged alternative insurance protection.

### By Us

- 5.5.2 Subject to General Conditions 5.4 and 5.12, We may cancel this Policy in any of the circumstances set out in Sections 60 or 61 of the Insurance Contracts Act 1984 (as amended).

Such cancellation shall take effect at the earlier of the following times:

- 5.5.2.1 the time when another policy of insurance between You and Us or some other insurer, being a policy that is intended by You to replace this Policy, is entered into; or
- 5.5.2.2 at 4.00 p.m. on the thirtieth (30th) business day after the day on which notification was given to You.

In the event of cancellation of this Policy by either party, You shall be entitled to a pro rata refund of premium subject to any minimum and deposit premium that may apply.

If the premium is subject to adjustment, cancellation will not affect Your obligation to supply Us with such information as is necessary to permit the premium adjustment to be calculated.

## 5.6 CROSS LIABILITIES

This insurance extends to indemnify:

- 5.6.1 each of the parties comprising the Named Insured, and

- 5.6.2 each of the Insureds hereunder,

separately in the same manner and to a like extent as though policies had been issued in their separate names.

In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in clauses 5.6.1 and 5.6.2 in respect of claims made by any other of such parties.

Provided always that:

- 5.6.3 each of such parties shall be separately subject to the terms, Claims Conditions, General Conditions, Exclusions and Definitions of this Policy in the same manner and to a like extent as though separate policies had been issued, and

- 5.6.4 in no case shall the amount payable by Us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

## 5.7 INSPECTION AND AUDIT

We shall be permitted, but not obligated, to inspect Your premises and operations at any reasonable time. Neither Our right to make inspections, nor Our failure to make inspections, nor the making of inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

We may examine and audit Your books and records at any time during the currency of this Policy and within three (3) years after the final termination of this Policy but only with regard to matters which in Our opinion are relevant to this Policy.

## 5.8 JURISDICTION

This contract of insurance shall be governed by and construed in accordance with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this Policy shall be determined in accordance with the law and practice of such Court.

## 5.9 PREMIUM FUNDERS

If the premium has been funded by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney, then subject to Section 60 of the Insurance Contracts Act 1984, We may cancel this Policy at the request of the premium funding company, after substantiation of the debt and default in payment by You has been made and proven to Us, by giving You not less than three (3) business days written notice to that effect, following which a refund will be made to the premium funding company the proportionate part of the premium applicable to the unexpired Period of Insurance.

## 5.10 REASONABLE PRECAUTIONS

You must:

5.10.1 exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition.

5.10.2 take reasonable precautions:

5.10.2.1 to prevent Personal Injury and/or Property Damage and/or Advertising Injury.

5.10.2.2 to prevent the manufacture, sale or supply of defective Products.

5.10.2.3 to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.

5.10.3 at Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency You have knowledge of or have reason to suspect.

## 5.11 RELEASE

Where You are required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority or any landlord from liability in respect of loss, destruction or damage or legal liability insured against under this Policy, such release is allowed without prejudice to this insurance.

Notwithstanding General Condition 5.14 of this Policy, We agree to waive all Our rights of subrogation against any such Authority or landlord in the event of any Occurrence for which a claim for indemnity may be made under this Policy.

#### 5.12 **NON-IMPUTATION**

Where this insurance is arranged in the joint names of more than one Insured, as described in clause 1.14.1, it is hereby declared and agreed that:

5.12.1 each Insured shall be covered as if it made its own proposal for this insurance.

5.12.2 any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each Insured.

5.12.3 any knowledge possessed by any Insured shall not be imputed to the other Insured(s).

#### 5.13 **FOREIGN CURRENCY**

All amounts referred to in this Policy are in Australian Dollars.

If You incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by Us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date on which We pay to You) or some other person or party as directed by You) the indemnity in respect of such award or settlement; subject always to the applicable Limit of Liability.

#### 5.14 **SUBROGATION AND ALLOCATION OF THE PROCEEDS OF RECOVERIES**

Subject to General Condition 5.15 'Subrogation Waiver', any corporation, organisation or person claiming under this insurance shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by Us for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which We shall be or would become entitled upon Us paying for or indemnifying You in respect of legal liability under this insurance.

Should You incur any legal liability which is not covered by this insurance:

5.14.1 due to the application of an Excess; and/or

5.14.2 where the amounts of any judgments or settlements exceed the applicable Limit of Liability;

You will be entitled to the first call on the proceeds of all recoveries made, by either You or Us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by Us) and any remaining amount(s) will be applied to reimburse Us.

#### 5.15. **SUBROGATION WAIVER**

Notwithstanding General Condition 5.14 We hereby agree to waive all Our rights of subrogation under this Policy against:

5.15.1 each of the parties described under clause 1.29.

5.15.2 any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this Policy. Where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other policy.

#### 5.16 **INTERPRETATION**

This Policy incorporates the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and any other terms herein contained or endorsed hereon, which are to be read together. Where any word or expression has been given specific meaning in any part of this Policy, such word or expression shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which such word or expression appears.

Words importing the singular gender shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender.

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.