

**Swiss Re International SE Australia Branch  
Combined General & Products Liability Policy**

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### **Your Duty of Disclosure**

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

### **Non-disclosure**

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

## Privacy Statement

We (Swiss Re International SE Australia Branch) are bound by the Australian Privacy Principles of Privacy Act 1988 (Cth) when we collect and handle your personal information. We will only collect personal information from you that is necessary in order for us to process and administer the policy and any claims you may make under the policy. Where possible, we will collect personal information directly from you or, where that is not reasonably practical, from other sources. We may also use your personal information for the purpose of designing or underwriting new insurance products, for research and analytical purposes, to perform administrative functions, and to comply with our legal obligations.

We may disclose your personal information to third parties for the purposes described above, including insurers, reinsurers, reinsurance brokers, loss adjusters, external claims data collectors, investigators and others involved in the claims handling process, agents and service providers and related entities some of whom may be located in overseas countries.

In providing personal information, you consent to the collection, use and disclosure, including overseas disclosure of your personal information for the purposes described above. Where you provide us with personal information about others, you represent to us that you have made them aware of that disclosure and of our privacy policy and that you have obtained their consent.

If you do not consent to provide us with the personal information that we request, or withdraw your consent to the use and disclosure of your personal information at any stage, we may not be able to offer you the products or provide the services that you seek.

We realise that this information is often very sensitive in nature and will treat it with the utmost care and security. Information on how we handle your personal information is explained in our privacy policy including:

- What information we collect and how we use it;
- When do we disclose your information overseas;
- How do we hold and protect your information;
- How we disclose the information;
- How you can check, update or change the information we are holding;
- What happens if you wish to complain.

A copy of our privacy policy is available by contacting us or your broker.

### Contact Details

You may seek access to, and correction of, your personal information we hold about you by contacting our Privacy Compliance Officer on (02) 8295 9500 or by writing to:

Privacy Compliance Officer  
Swiss Re International SE Australia Branch  
Level 36, Tower Two, International Towers Sydney  
200 Barangaroo Avenue, Sydney NSW 2000  
Telephone +61 8295 9500  
[www.swissre.com](http://www.swissre.com)

We will respond to your request within a reasonable time after we receive it.

**POLICY SCHEDULE**

1. **Policy Number:** XXXX
2. **Insured:** XXXX including subsidiary and controlled companies
3. **Business:** XXXX
4. **Period of Insurance:** From Inception Date: XXXX at 4.00pm  
Local Standard Time at Insured's principal place of business  
To Expiration Date: XXXX at 4.00pm  
Local Standard Time at Insured's principal place of business
5. **Currency:**
6. **Limits of Liability:** Public Liability: XXXX each & every Occurrence;  
Products Liability: XXXX each & every Occurrence and in  
the aggregate any one Period of Insurance.
7. **Deductible:** ] each and every Occurrence inclusive of Costs and Expenses
8. **Premium:**

The Insured is liable for all taxes or charges on or arising from the premium paid for this Policy. Any such amounts are in addition to the premium.

9. **Notice of Occurrence to:** **Company:**  
Claims Department  
Swiss Re International SE Australia Branch  
Level 36, Tower Two, International Towers Sydney  
200 Barangaroo Avenue, Sydney NSW 2000  
Telephone +61 8295 9500  
www.swissre.com
10. **All other Notices to:** **Company:**  
Swiss Re International SE Australia Branch  
Level 36, Tower Two, International Towers Sydney  
200 Barangaroo Avenue, Sydney NSW 2000  
Telephone +61 8295 9500  
www.swissre.com  
  
**Insured:**  
[To be advised]

**Policy Endorsements  
As Attached:**

**Endorsement 1:**

**Title:**

**Effective Date:**

**Signed by and on behalf of Swiss Re International SE Australia Branch (the "Company")**

**Name:**

**Signature:**

**Date:**

**Company Address:**

**Company Stamp:**

## **PREAMBLE**

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In consideration of payment of the premium, subject to the Limits of Liability, Exclusions, Conditions and Definitions contained herein, and, in reliance upon the statements made and information provided by the Insured to the Company, the Insured and the Company agree as follows:

## **SECTION 1: INSURING CLAUSES**

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### **Public and Products Liability**

**1.1** The Company shall pay to or on behalf of the Insured for all sums which the Insured shall become legally liable to pay for compensation in respect of any:

- a) Personal Injury
- b) Property Damage
- c) Advertising Liability

happening during the Period of Insurance within the Territorial Limits, caused by an Occurrence in connection with the Business or arising out of the Products of the Insured.

### **Costs and Expenses**

**1.2** Where coverage is provided under Insuring Clause 1.1, the Company shall pay to or on behalf of the Insured, in addition to the Limits of Liability:

- a) The reasonable and necessary charges, expenses and legal costs incurred by or on behalf of the Insured with the prior written consent of the Company in the investigation or defence of any claim for compensation covered under this Policy.
- b) Expenses incurred by the Insured for first aid administered to others (by Medical Persons employed by the Insured) at the time of an Occurrence for any Personal Injury to which this Policy applies.
- c) Legal Costs incurred with the prior written consent of the Company for any solicitor, defence counsel or equivalent, for representation at any Coroner's Inquest, Fatal Accident Inquiry or criminal proceedings relating to any claim for compensation covered under this Policy.
- d) Reasonable expenses incurred by the Insured, as a result of Property Damage covered under this Policy, for the temporary repair of, shoring up or preservation of property which has been damaged. Coverage for such expenses shall be limited to ten per cent (10%) of the Limits of Liability stated in the Schedule.
- e) Pre-judgement interest awarded against the Insured in any claim or series of claims on that part of the judgement that the Company pays; post-judgement interest that

accrues after the entry of judgement and before the Company has paid, offered to pay or deposited in court that part of the judgement that the Company pays that is within the Limits of Liability.

- f) the loss of wages or salary but not the loss of other income, due to the Insured's attendance at court at the Company's request, at the following rates per day for each day on which attendance in court is required: any director, officer or partner of the insured \$250.00 per day; and, any employee of the insured \$150.00 per day.

In respect to any claim brought in any court or before any other legally constituted body in North America, all Costs and Expenses shall be part of and not in addition to the Limits of Liability.

Provided always that the Company shall not be obligated to pay any Costs & Expenses after the Company's Limit of Liability has been exhausted.

## **SECTION 2: LIMITS OF LIABILITY**

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The liability of the Company to pay compensation for any one claim or series of claims arising from each Occurrence shall not exceed the Limits of Liability as stated in the Schedule.

The total aggregate liability of the Company to pay compensation in respect of all Personal Injury, Property Damage and Advertising Liability arising out of the Insured's Products occurring during any one Period of Insurance shall not exceed the Limits of Liability stated in the Schedule in respect of that Period of Insurance.

The Company shall not be obligated to pay any claim or judgement or to defend any suit after the Company's Limit of Liability has been exhausted by payment of judgements, settlements or compensation.

## **SECTION 3: DEFINITIONS**

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When used in this Policy, its Schedule and any applicable endorsements the following Definitions shall apply:

### **3.1. "Advertising Liability" means:**

Legal liability in respect of:

- (a) Libel, slander or defamation;
- (b) Infringement of copyright or of titles or slogans;
- (c) Adjudicated unfair competition, piracy or idea misappropriation under an implied contract; or
- (d) Invasion of rights of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities conducted by or on behalf of the Insured, in the course of advertising the Products, goods or services.

**3.2 "Aircraft" means:**

Any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

**3.3 "Business" means:**

All activities and operations of the Business as stated in the Schedule including:

- a) The ownership and tenancy of premises;
- b) Private work carried out with the consent of the Insured by the Insured's employees for any director or senior executive officer of the Insured;
- c) The provision or management of catering, social, sports, welfare or child care facilities for the Insured's employees;
- d) The provision of sponsorships, internal first aid, fire and ambulance services.

**3.4. "Deductible" means:**

The amount stated in the Schedule as the Deductible shall apply to each and every Occurrence. In respect of each and every Occurrence the amount of the Deductible shall be borne by the Insured at their own risk and the Company shall only be liable to pay on behalf of the Insured for that part of any Occurrence which is in excess of the Deductible. The Deductible shall remain uninsured.

**3.5. "Employment Related Practices" means:**

Any injury or damage sustained by any person, whether or not in the course of employment by the Insured, arising out of any employment-related act, omission, policy, practice or representation, including any:

- a) Wrongful or unfair dismissal;
- b) Refusal to employ;
- c) Denial of natural justice;
- d) Defamation;
- e) Misleading representation or advertising;
- f) Discrimination or Harassment, whether sexual or otherwise;
- g) Retaliation on account of whistleblowing or the exercise by any person of their legal rights.

**3.6. "Hovercraft" means:**

Any vessel, craft or device made or intended to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

**3.7. "Incidental Contracts" means:**

- (a) Any written contract or agreement for the lease of property but this does not include agreements where there is an obligation to insure such property;
- (b) Any written contract made or entered into with any public authority for the supply of water, gas, electricity, telephone or internet services except a contract made or entered into with such authority for work done or to be done for such authority;
- (c) Any written contract made or entered into with any railway authority for the loading, unloading or transport of the Products or any a contract relating to the operation of railway sidings.

**3.8. "Insured" means:**

- (a) The Insured named in the Schedule including subsidiary companies whose place of incorporation are within the Territorial Limits;
- (b) Any director, executive officer, partner or employee of the Insured specified in (a) above but only whilst acting within the scope of their duties in such capacity;
- (c) Any principal in respect of liability arising out of the performance, by the Insured specified in (a) above, of any contract or agreement for the performance of work for such principal to the extent required by such contract or agreement, but limited to the coverage provided by this Policy;
- (d) Any office bearer or member of social, sports, welfare or child care organisations for the Insured's employees and internal first aid, fire or ambulance service; formed with the consent of the Insured (other than an Insured specified in (c) above), but only whilst acting within the scope of their duties in such capacity;
- (e) Any employee of the Insured whilst undertaking private work for any director or senior executive of the Insured with the prior consent of the Insured specified in (a) above;
- (f) Any principal, lessor, organization, trustee, estate or persons to which or to whom the Insured specified in (a) above is obligated by virtue of a written contract to provide insurance as is afforded by this Policy, but only to the extent required by such contract and only in respect of the Business of such Insured.
- (g) Any joint venture or partnership in which the Insured specified in (a) above is engaged in or is a party to but only to the extent of the Insured's liability in respect of such joint venture or partnership. Cover will not apply to claims bought by the joint venture against the Insureds or claims by any partners in the joint venture against one another.
- (h) Any voluntary worker and /or person on work experience but only whilst acting within the scope of their duties in such capacity for the Insured specified in (a) above.

**3.9. "Internet Operations" means:**

- (a) Use of electronic mail systems by the Insured or the Insured's employee, including part-time and temporary staff, contractors and others within the Insured's organization;
- (b) Access through the Insured's network to the world wide web or a public internet site by the Insured's employees including part-time and temporary staff, contractors and others within the Insured's organization;
- (c) Access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for customers of the Insured or others outside the Insured's organization; and
- (d) The operations and maintenance of the Insured's web site.

**3.10. "Medical Persons" means:**

A legally qualified medical practitioner, legally qualified registered nurse, dentists and first aid attendants.

**3.11. "North America" means:**

- (a) The United States of America and Canada;
- (b) Any state, territory or protectorate incorporated in, or administered by, the United States of America or Canada; and,
- (c) Any country or territory subject to the laws of the United States of America or Canada.

**3.12. "Occurrence" means:**

An event including continuous or repeated exposure to substantially the same general conditions which results in Personal Injury, Property Damage or Advertising Liability neither expected nor intended from the standpoint of the insured, during the period of insurance.

With respect to personal injury 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.

With regards to Advertising Liability, all liability arising out of the same injurious material or act regardless of the number or kind of media used, the frequency or repetition thereof and number of claimant's shall be deemed to be one Occurrence and having occurred during that Period of Insurance in which the first such Advertising Liability occurred irrespective of the number of claimants or the period over which such Advertising Injury occurs.

**3.13. "Period of Insurance" means:**

The period specified in the Schedule.

**3.14. "Personal Injury" means:**

- (a) Bodily injury, death, sickness, disease, illness, mental anguish or mental injury;
- (b) False arrest, false detention, wrongful imprisonment or malicious prosecution;
- (c) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- (d) Defamation, libel or slander;
- (e) Assault and/or battery committed by any employee of the Insured whilst engaged in the Insured's Business activities but excluding acts committed at the direction of the Insured unless so directed for the purpose of preventing or eliminating danger to persons or property.

**3.15. "Policy" means:**

Collectively, the Schedule, any proposal form, underwriting submission, this document and any endorsements thereto.

**3.16. "Pollutants" means:**

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

**3.17 "Products" means:**

Any goods or products (after they have ceased to be in the Insured's possession or in the physical or the legal control of the Insured) manufactured, grown, extracted, produced, processed, treated, sold, handled, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by the Insured (including packaging or containers) in the course of the Business.

**3.18 "Property Damage" means:**

- (a) Physical damage to or loss of or destruction of tangible property including loss of use resulting therefrom. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or
- (b) Loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage that caused it.

**3.19. "Territorial Limits" means:**

Anywhere in the world, except North America, where the policy will only apply in respect of:

- (a) Products exported to North America; and
- (b) Business visits to North America by executives or sales persons who are normally resident outside of North America, other than where they engage in manual labour during such visits.

**3.20. "Tool of Trade" means:**

Any Vehicle which has attached as an integral part of such Vehicle any equipment for mechanical digging, scraping, grading, drilling, lifting or levelling whilst such equipment is being used for the purpose for which such equipment was designed.

**3.21. "Vehicle" means:**

Any land machine including attachments thereto designed to travel on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power.

**3.22. "Watercraft" means:**

Any vessel, craft or thing made or intended to float on or in or travel on or through or under water.

**SECTION 4: EXCLUSIONS**

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This Policy does not cover any liability arising out of or in any way connected with:

**4.1. Advertising Liability**

Advertising Liability:

- (a) for statements made at the direction of the Insured with the knowledge of the illegality or falsity thereof;
- (b) for breach of contract, other than liability for unauthorised misappropriation of advertising ideas based upon breach or alleged breach of an implied contract;
- (c) for infringement or passing off of registered trademarks, patents, registered designs, service marks or trade name on any products, goods or services sold, offered for sale or advertised. This Exclusion does not apply to infringement of titles or slogans;

- (d) for any Insured whose Business is advertising, broadcasting, publishing or telecasting;
- (e) for incorrect description or any mistake in the advertised price of products, goods or services sold, offered for sale or advertised; or
- (f) for failure of products, goods or services to conform with advertised performance, quality, fitness or durability. This Exclusion does not apply to any warranty as to product safety implied by Statute.

#### **4.2. Aircraft, Hovercraft and Watercraft**

Personal Injury or Property Damage caused by or arising directly or indirectly out of or in connection with the:

- (a) Ownership, use, maintenance or operation by or on behalf of the Insured of:
  - (i) any Watercraft exceeding ten (10) metres in length except where such watercraft are:
    - (a) operated by independent contractors;
    - (b) not owned by the Insured but used by the Insured for business entertainment;
  - (ii) any Hovercraft;
  - (iii) any Aircraft exceeding a Maximum Take-Off Mass of 25 kilograms or more except where such Aircraft is:
    - (a) operated in conflict with CASA or relevant aviation authority's regulations;
  - (iv) any property used for the purpose of an airport or any commercial aircraft landing strip or helipad.
- (b) Products or part thereof which the Insured knew or had reasonable cause to believe would be or are installed in any Aircraft.
- (c) Repair, maintenance, servicing of or installation in or on any Aircraft.

#### **4.3. Asbestos**

Liability whatsoever in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, asbestos, in whatever form or quantity.

#### **4.4. Construction Risks**

Liability of whatsoever nature caused by or arising directly or indirectly out of or in connection with any project involving the construction, demolition, alteration of and/or addition to any building, structure or infrastructure by or on behalf of the Insured where the total cost of the project is AUD 1,000,000 or greater.

#### **4.5. Contractual Liability**

Liability assumed by the Insured under any contract, warranty or agreement requiring:

- (a) insurance to be effected on any property not owned by the Insured; or
- (b) the waiving or limitation of the Insured's rights of recovery against another party.

- (c) the assumption of liability for Personal Injury or Property Damage or Advertising Liability regardless of fault, except:
  - (i) to the extent that such liability would have been implied by law; or
  - (ii) to contracts or agreements specified in the Schedule; or
  - (iii) liability assumed under any Incidental Contracts; or
  - (iv) liability assumed with respect to the Products under a warranty of safety implied by Statute.

#### **4.6. Employer's Liability**

- (a) Personal Injury for which insurance against such liability (whether the insurance is limited in amount or not) is or would have been provided under a policy in a form prescribed or approved or issued in pursuance of any legislation applicable to the Insured in respect of any Workers Compensation legislation or under any extension of such policy granted on request as a matter of usual practice by insurers authorised to issue such policies;
- (b) Liability imposed by the provisions of any legislation applicable to the Insured in respect of any compensation benefit to persons for Personal Injury, or any industrial award, agreement or determination in the course of their employment;
- (c) Liability arising directly or indirectly out of or alleged to have arisen in connection with Employment Related Practices.

However, if the Insured:

- a) Is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or any common law liability (whether limited or not) for Personal Injury; or
- b) Is not required to so insure or otherwise fund such liability by reason only that the Personal Injury is to a person who is not a 'worker' or 'employee' within the meaning of the relevant workers' compensation law or the Personal Injury is not an injury which is subject to such law,

then this policy will cover liability for Personal Injury to the extent that the Insured's liability would not have been covered under any such fund, scheme, policy of insurance or self insurance arrangement had the insured complied with its obligations pursuant to such law.

#### **4.7. Faulty Workmanship**

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

#### **4.8. Fines, Penalties, Punitive, Exemplary, Aggravated and Liquidated Damages**

Any liability for:

- (a) Fines or penalties; or

- (b) Punitive, exemplary, aggravated or liquidated damages or any multiplication of compensatory damages.

#### **4.9. Information Technology Hazards, Computer Data, Program and Storage Media**

- (a) Personal Injury or Property Damage or Advertising Liability arising, directly or indirectly, out of, or in any way involving the Insured's Internet Operations;
- (b) Personal Injury or Property Damage or Advertising Liability arising, directly or indirectly, out of a breach of the Personal Data Protection Act 2012, or any amended or similar legislation.

This Exclusion does not apply to Personal Injury or Property Damage arising out of any material which is already in print by manufacturers in support of its products, including but not limited to product use and safety instructions or warnings, and which is also reproduced on site.

- (c) Property Damage to computer data or programs and their storage media arising directly or indirectly out of caused by, through or in connection with:
  - (i) the use of any computer hardware or software; or
  - (ii) the provision of computer or telecommunications services by the Insured or on the Insured's behalf; or
  - (iii) the use of computer hardware or software belonging to any third party, whether authorized or unauthorized including damage caused by any computer virus.

#### **4.10. International Trade Control**

Liability to the extent that the provision of any cover, benefit or payment of any claim under this Policy that would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction applicable to the Company.

#### **4.11. Libel and Slander**

Liability for the publication of a libel or slander prior to the inception date of this Policy or made at the direction of the Insured with knowledge of the falsity thereof.

#### **4.12. Loss of Use**

Loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- a) Delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or
- b) The failure of the Insured's Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured. However, this Exclusion does not apply to loss of use of other tangible property

resulting from the sudden and accidental physical damage to or destruction of the Insured's Products after such Products have been put to use by any person or organisation other than the Insured

#### **4.13. Pollution**

Liability of whatsoever nature caused by or arising directly or indirectly out of or in connection with:

- (a) Personal Injury or Property Damage directly or indirectly arising out of the discharge dispersal release or escape of Pollutants; or
- (b) cost of removing, nullifying or cleaning up Pollutants; or
- (c) cost of preventing the escape of Pollutants.

Provided 4.13. (a) and 4.13. (b) shall not apply when any liability arises from a sudden identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place during the Period of Insurance and occurs outside of North America.

#### **4.14. Product Guarantee**

Liability of whatsoever nature for any Product guarantee or warranty or given by or on behalf of the Insured, but this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

#### **4.15. Professional Liability**

Any Liability caused by or arising from the rendering of or the failure to render professional advice or service provided by the Insured or any act, error or omission connected therewith.

This Exclusion 4.15 shall not apply to:

- (a) Personal Injury or Property Damage arising out of such professional advice or service in regard to the Insureds products which was not given for a fee.
- (b) the rendering of or failure to render medical advice or service by Medical Persons employed by the Insured to provide first aid and other medical services on your premises.

#### **4.16. Property Damage to Products**

Property Damage to the Products if such damage is attributed to any defect therein or the harmful nature or unsuitability thereof.

Except that this Exclusion shall not apply to Property Damage to those Products repaired, serviced or treated by the Insured after such Products were originally sold, supplied or distributed and such Property Damage directly arises from such repair, service or treatment.

#### **4.17. Property in Physical or Legal Control**

Property Damage to property owned by or leased or rented to the Insured or property in the Insured's physical or legal control other than:

- (a) premises which are not owned by the Insured but leased or rented to the Insured in the course of Business, but always excluding liability which attaches by way of any contract or agreement that would not have attached in the absence of such contract or agreement;
- (b) premises not owned by or leased or rented to the Insured which the Insured temporarily occupies in order for the Insured to carry out work in connection with the Business provided no indemnity is granted for liability in respect of Property Damage to that part of the property upon which the Insured is or has been working;
- (c) Vehicles (not belonging to the Insured or used by the Insured) in the Insured's physical or legal control whilst in a car park owned or operated by the Insured unless part of the Insured's business is the operation of a car park for reward;
- (d) employee's personal property; or
- (e) any other property temporarily in the Insured's physical or legal control (except Property Damage to that part of the property upon which the Insured is or has been working) subject to a limit AUD 500,000 one Occurrence and in the aggregate for any one Policy Period of Insurance.

#### **4.18. Radioactive Contamination**

Liability of whatsoever nature caused by or arising directly or indirectly out of or in connection with:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste from the combustion of nuclear fuel or other material whether occurring naturally or otherwise; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or
- (c) the storage, transport, assembly, disassembly, maintenance or operation of any nuclear weapon or nuclear component thereof.

#### **4.19. Repair, Replacement or Recall of Products**

Liability to pay damages, costs or expenses claimed for the inspection, adjustment, repair, alteration, removal, disposal, replacement or loss of use of the Products, or for the recall or withdrawal of the Products or work completed by or for the Insured or of any property of which the Products or work form a part.

#### **4.20. Tobacco**

Personal Injury directly or indirectly due to the inhalation or ingestion of or exposure to tobacco or tobacco smoke or any tobacco products (or ingredients thereof) or any tobacco substitute products, including e-cigarettes.

#### **4.21. Vehicles**

Personal Injury or Property Damage caused by or arising out of the use of or ownership or operation by the Insured of any Vehicle which is legally required to be registered or legally required to be insured.

This Exclusion 3.2 shall not apply to Personal Injury or Property Damage:

- (a) caused by or arising from the loading or unloading of any Vehicle when carried out beyond the limits of any carriage-way or thoroughfare by a person other than the driver or attendant of any such Vehicle and where such Personal Injury or Property Damage occurs beyond the limits of any carriage-way or thoroughfare; or
- (b) arising during the use of any Vehicle as a Tool of Trade at any site where the Insured is working or at the Insured's premises, provided that the Insured is not indemnified under this policy where the Vehicle is used only for the transportation or haulage of goods; or
- (c) caused by or arising out of the use of an unregistered Vehicle whilst being driven under its own power between its point of unloading and a worksite and whilst returning from a worksite to the point of reloading for its conveyance from the area,

provided that no other indemnity is provided for such Personal Injury or Property Damage under a contract of insurance entered into for the purpose of a law that relates to compensation for Personal Injury or Property Damage arising out of the use of a Vehicle.

#### **4.22. War and Terrorism**

Liability, loss, damage or expense of whatsoever nature directly or indirectly caused by, resulting from, happening through or in connection with:

- (a) war, invasion, acts of foreign enemies, or hostilities (whether war is declared or otherwise); or
- (b) insurrection, civil or military uprising, rebellion, revolution, civil war or usurped power; or
- (c) any act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage or expense. For the purpose of this exclusion terrorism means an act or threat of violence or an act harmful to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear. In any action or suit or other proceedings where the Company alleges that by reason of

this definition a loss, damage or expense is not covered by this Policy, the burden of proving that such loss, damage or expense is covered shall be upon the Insured. In the event any portion of this clause is found to be invalid or unenforceable, the remainder shall remain in full force and effect; or

- (d) the confiscation, nationalisation, requisition or destruction of, or damage to, any property by or under order (whether lawful or otherwise) of any government, public or local authority.

## **SECTION 5: CONDITIONS**

### **5.1. Assignment**

Assignment of interest under this policy shall only be allowed with the Company's prior written consent and only when endorsed herein. However, should any insured die or be adjudged bankrupt or insolvent, the company will consent to the assignment of this policy to such insured's legal representative provided that written notice is given to the Company within a reasonable time after the date of such death, bankruptcy or insolvency.

### **5.2. Automatic Acquisitions Clause**

This policy shall extend to apply on a contingency basis to any companies acquired or established or created by the Insured during the period of insurance, provided that:

- a) The business is consistent with the description outlined in the schedule; and
- b) The turnover of the new companies does not exceed 20% of the Insured's turnover at the Inception Date of the current Period of Insurance;
- c) The cover only applies in territories in which the Insured is currently operating;

This cover applies only for 90 days following the takeover or formation of the companies and unless confirmed in writing by the Company will expire 90 days following the takeover or formation of the companies.

An additional premium and/or apply additional terms may apply.

### **5.3. Cancellation**

- (a) The Insured may cancel this Policy at any time by giving notice in writing to the Company.
- (b) The Company may cancel this policy in any of the circumstances set out in the Insurance Contracts Act 1984 (Cth), such cancellation to take effect 30 days from the time of notification received by the insured.
- (c) After cancellation by the Insured a refund of premium will be allowed pro rata of the

premium for the unexpired Period of Insurance provided no claims have been incurred or reported during the current Period of Insurance.

(d) After cancellation by the Company a refund of premium will be allowed pro rata for the unexpired Period of Insurance.

#### **5.4. Change of Risk**

Every change materially affecting the facts or circumstances existing at the commencement of or during this Policy, or at any subsequent renewal date, shall be notified in writing to the Company as soon as such change comes to the notice of the Insured.

On receipt of such notice the Company may vary the terms of this Policy and charge such additional premium as the Company may determine appropriate in the circumstances.

#### **5.5. Cross Liability**

Where the Insured comprises more than one entity the term Insured shall be considered as applying to each entity in the same manner as though a separate policy had been issued to each of the said parties but nothing contained herein shall operate to increase the Company's Limits of Liability stated in the Schedule.

#### **5.6. Discharge of Liabilities**

The Company may at any time pay to the Insured the applicable Limit of Liability (after deducting all amounts already paid by or on behalf of the Company) or any lesser amount for which a claim or claims may be settled. Upon such payment, the Company will not be under any further liability to the Insured and will be released from all liability, except for expenses including investigation and legal costs incurred by the Insured with the Company's consent prior to the date of such payment.

If the Company has a right to recover any costs charges and expenses or other money from the Insured, then this right is not discharged or altered by this clause.

#### **5.7. Foreign Currency**

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

If the Insured incurs 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 the Insurer shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the cash rate of exchange for the purchase of Australian dollars as reported in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

#### **5.8. Fraudulent Claim**

If the Insured or anyone acting upon the Insured's behalf is in any way fraudulent in obtaining any benefit under this Policy the Company may deny liability under this Policy and cancel the Policy pursuant to Condition 5.3.

### **5.9. Goods and Services Tax**

The premium charged for this Policy will include an amount on account of GST.

The Insured must inform the Company of the extent to which it is entitled to an input tax credit for the premium each time that a claim is made under this Policy. No payment will be made to the Insured for any GST liability that may acquire on the settlement of a claim if the Insured has not informed the Company of its entitlement or correct entitlement to an input tax credit.

Despite the other provisions of this insurance (including provisions in the wording, the Schedule and any endorsements), the Company's liability will be calculated taking into account any input tax credit to which the Insured is entitled for any acquisition relevant to a claim, or to which the Insured would have been entitled were the Insured to have made a relevant acquisition.

If the Limits of Liability are not sufficient to cover the Insured's loss, the Company will only pay GST (less any relevant input tax credit) that relates to the Company's proportion of the Insured's loss. The Company will pay the GST amount in addition to the Limits of Liability.

"GST", "input tax credit", "acquisition" and "supply" have the meaning given in the A New Tax System (Goods and Services Tax) Act 1999.

### **5.10. Inspection and Audit**

The Company may inspect the Insured's property and operations on reasonable notice. Neither the Company's right to make inspections nor the making thereof nor any report thereon will constitute an undertaking by the Company on behalf of or for the benefit of the Insured or others to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation. The Company may examine and audit an Insured's books and records at any time during the Period of Insurance, including any extensions thereof, and for any time thereafter should any liability arising out of this Policy remain outstanding.

### **5.11. Insured's duties in the event of an Occurrence**

In the event of an Occurrence or if an Occurrence appears reasonably likely to take place the Insured must as soon as practicable take at its own expense all responsible steps to prevent or minimise Personal Injury, Property Damage or Advertising Liability arising out of the Occurrence.

The Insured must give notice in writing to the Company as soon as reasonably practicable but not later than thirty (30) days of every Occurrence which may give rise to a claim under this Policy together with all documents and information relevant to each such Occurrence including but not limited to every demand, writ, summons, proceedings, noticed of prosecution, inquest or inquiry and all associated information.

The Insured must use its best endeavours to preserve all property, any Products,

appliance and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair is to be effected without the consent of the Company until the Company has had an opportunity of inspection.

#### **5.12. Joint Insureds**

Notwithstanding anything to the contrary herein, where the Insured comprises more than one party, information supplied to the Company shall be deemed to have been furnished by and on behalf of all such parties and any information supplied to the Company or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such parties.

#### **5.13. Liability Not To Be Admitted**

The Insured or any other person indemnified by this Policy shall not admit liability for or offer to or agree to settle any claim incur any Costs and Expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any claim without the prior written consent of the Company. The Company shall not be liable for any claim, settlement, Costs and Expenses, admission, offer or payment, or assumed obligation to which it has not consented. The Company shall be entitled at their discretion at any time to take over and defend, in the name of the Insured or any other person indemnified by the Policy, any claim with full discretion in the conduct of that claim.

#### **5.14. Notice**

- (a) Every notice or communication to the Company shall be in writing and sent to the office of the Company at which the Policy was issued. Notice or knowledge of anything relating to the Policy or any claim hereunder or with reference to the risk insured hereunder shall not be deemed to be notice to or within the knowledge of the Company unless provided in writing.
- (b) Any notice sent in writing by the Company to the Insured as stated in the Schedule or anyone acting upon the Insured's behalf shall be deemed to be notice given to each of the parties comprising the Insured.
- (c) Service of notice by the Company shall be effective immediately on receipt by the Insured or anyone acting upon the Insured's behalf as stated in the Schedule of a personal delivery, email or facsimile transmission sent from the Company or in the case of notices by post, three (3) business days after having been posted by the Company.

#### **5.15. Proper Law and Jurisdiction**

The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with Australian Law. Any disputes relating thereto shall be submitted to the exclusive Jurisdiction of the courts of the Commonwealth of Australia.

#### **5.16. Reasonable Care and Precautions**

- (a) The Insured shall take all reasonable care and precautions:
  - (i) to prevent Personal Injury, Property Damage or Advertising Liability losses;
  - (ii) to prevent the manufacture, sale or supply of defective Products; and
  - (iii) to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.
- (b) The Insured shall at its own expense trace, recall or modify any of the Products containing any defect or deficiency of which the Insured has knowledge or has reason to suspect to be present in such Products.

#### **5.17. Subrogation**

The Insured and any other person indemnified by this Policy shall, at any time at the request and expense of the Company, permit all reasonable steps required to enforce any rights to which the Company would be entitled on payment of or making good of any loss under this Policy.

However the Company waives all rights of subrogation under this policy against:

- a) Any corporation or organisation the majority of whose capital stock is owned or controlled by the insured.
- b) 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.

Except that if such corporation, organisation or person is protected from liability insured against by any other policy of indemnity or insurance, the Company's right of subrogation is not waived to the extent and up to the amount of such other policy.