

## PUBLIC & PRODUCTS LIABILITY POLICY

### ABOUT THIS BOOKLET

This booklet contains 2 separate parts: General Information and The Policy Terms and Conditions.

### GENERAL INFORMATION

This part of the booklet contains information you need to know before you take out a Policy. Please read it carefully before taking out this insurance.

### POLICY TERMS AND CONDITIONS

The policy part of this booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to the Policy. It forms part of your legal contract with us.

If we issue you with an insurance Policy, you will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule we send to you form your legal contract with us so please keep them in a safe place for future reference.

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## GENERAL INFORMATION FOR BROADFORM LIABILITY POLICY

The information contained in this part is general information only and does not form part of your contract with us. The Policy Terms and Conditions in the rest of this booklet contain details of your contract.

### Duty of Disclosure – What you must tell us

Under the Insurance Contracts Act 1984 (the Act), you have a Duty of Disclosure. You are required before you enter into, renew, vary, extend or reinstate your Policy, to tell us everything you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be insured under the Policy, and if so, on what terms.

Y You do not have to tell us about any matter

- that diminishes the risk
- that is of common knowledge
- that we know or should know in the ordinary course of our business as an Insurer, or
- which we indicate we do not want to know.

Y If you do not tell us

If you do not comply with your Duty of Disclosure we may reduce or refuse to pay a claim or cancel your Policy. If your non-disclosure is fraudulent we may treat this Policy as never having worked.

### Privacy

#### Australis Group Underwriting

At Australis Group Underwriting, we are committed to protecting your privacy in accordance with the Privacy Act 1988 (Cth). This Privacy Policy describes our current policies and practices in relation to the handling and use of personal information.

We strive to ensure that you are comfortable in the knowledge that personal information you supply us will be treated sensitively and with the appropriate degree of privacy.

#### What information do we collect and how do we use it?

To enable us to quote on and insure risks, we collect the information we need to assess the risk and whether and on what terms we will insure it. We may need to provide this information to our risk carriers and reinsurers. Some of these companies may be located outside Australia.

When a claim is made under the policy, to enable us to assess the claim, we and our representatives (including loss adjustors, investigators, medical advisers and lawyers) collect information about the claim, some of which may be personal information. We may collect the information from our insured or from third parties. We provide this information to those we have appointed to assist us to consider the claim. Again this information may be passed on to our risk carriers and reinsurers.

We may use your personal information internally to help us improve our services and help resolve any problems.

#### What if you don't provide some information to us?

We can only issue insurance cover and assess claims under the policy if we have all relevant information. The insurance laws also require insureds to provide us with all the information we need in order to be able to decide whether to insure and on what terms.

#### **How do we hold and protect your information?**

We hold the information we collect from you in our Policy or Claim files.

We keep your information safe by security password protecting our computer workstations whilst placing hard copy into a filing system that is inaccessible to the general public. All of our staff have pledged confidentiality in respect of the material they deal with at Australis. Our offices are protected by security devices such as a monitored electronic key card system in order to gain entry during business hours. The office is alarmed and monitored outside of business hours in conjunction with the building's security system which includes key operated lifts to each floor and monitored, alarmed stairwells.

#### **Will we disclose the information we collect to anyone?**

We do not sell, trade, or rent your personal information to others.

We may need to provide your information to contractors who supply services to us, eg to handle mailings on our behalf or to other companies in the event of a corporate sale, merger, reorganisation, dissolution or similar event. However, we will do our best to ensure that they protect your information in the same way that we do.

We may provide your information to others if we are required to do so by law or under some unusual other circumstances which the Privacy Act permits.

#### **How can you check, update or change the information we are holding?**

Upon receipt of your written request and enough information to allow us to identify the information, we will disclose to you the personal information we hold about you. We will also correct, amend or delete any personal information that we agree is inaccurate.

On occasions, we may refuse to provide some personal information because it bears upon litigation with you or there is another specific reason. Should access to your information be denied, we will always provide you with the reasons why.

If you wish to access or correct your personal information please write to The Privacy Officer, Australis Group Underwriting, GPO Box 247, Sydney, NSW 2001. We do not charge for providing access to personal information or for complying with a correction request.

#### **Your consent**

By asking us to quote or insure you, you consent to the collection and use of the information you have provided to us for the purposes described above.

#### **Tell us what you think**

We welcome your questions and comments about privacy. If you have any concerns or complaints, please contact the Privacy Officer, Australis Group Underwriting, GPO Box 247 Sydney NSW 2001.

For more information on our privacy policy please visit our website at [www.ausuw.com](http://www.ausuw.com)

#### **QBE Insurance (Australia) Limited**

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. We are bound by the Privacy Act 1988 (CTH) and its principles when collecting and handling your personal information. QBE Commercial has developed a privacy policy which explains what sort of personal information we hold about you and what we do with it.

We will only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including any claims you make. We may need to disclose personal information to our reinsurers, (who may be located overseas), insurance intermediaries, insurance reference bureaus, credit reference agencies, our advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting us and them in providing relevant services and products, or for the purpose of litigation.

By providing your personal information to us, you consent to us making these disclosures. Without your personal information we may not be able to issue insurance cover to you or process your claim.

Please contact your Financial Services Provider to obtain a copy of the QBE Commercial Privacy Promise Information brochure. A copy of the brochure may also be obtained from any QBE Commercial office or from our website at [www.qbecommercial.com](http://www.qbecommercial.com).

### **The General Insurance Code of Practice**

QBE Insurance (Australia) Limited is a signatory to the General Insurance Code of Practice. The Code aims to raise standards of practice and service in the insurance industry.

It:

- promotes better communication between insurers and customers which will lead to better public understanding of insurance to allow customers to make informed choices, and
- outlines good standards of practice and service to be met by insurers to enhance their reputation for responding efficiently to their customers' needs.

### **Dispute resolution**

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to your complaint within 15 working days.

If you would like to make a complaint or access our internal dispute resolution service please contact your nearest QBE Commercial office and ask to speak to a dispute resolution specialist.

### **Cooling-off information**

If you want to return your insurance after your decision to buy it, you may cancel it and receive a full refund. To do this you may notify your Financial Services Provider electronically or in writing within 21 days from the date the Policy commenced.

This cooling-off right does not apply if you have made or are entitled to make a claim. Even after the cooling off period ends, you still have cancellation rights however your Financial Services Provider may deduct certain amounts from any refund for administration costs or any non-refundable taxes.

If your Policy is for an event that will start and finish within the 21 day cooling-off period, you can only exercise your right before the event starts or the expiry of the cooling-off period, whichever is the earlier. For example, for travel insurance, the commencement of the journey is the event.

## **POLICY TERMS AND CONDITIONS FOR BROADFORM LIABILITY POLICY**

### **Insurer**

The policy is underwritten by QBE Insurance (Australia) Limited. ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney.

In arranging and effecting this policy, Australis Group (Underwriting) Pty Ltd (ABN 80 082 459 372) and InterPacific Underwriting Agencies Pty Limited trading as Australis Group Underwriting (ABN 38 077 515 327), AFS Licence Number 234964 of Level 3, 117 Clarence Street, Sydney NSW 2000 will be acting under an authority given to it by the Insurer. It will be acting as agent of the Insurer and not as your agent.

### **Our agreement with you**

This Policy is a legal contract between you and us. You pay us the premium, and we provide you with the cover you have chosen as set out in the Policy, occurring during the period of insurance shown on your Policy Schedule or any renewal period.

The amount of any deductible that applies to your Policy will be shown on your Policy Schedule.

The exclusions in the section(s) headed 'When you are not covered' and conditions in the section headed 'General Conditions' apply to all sections of this Policy.

### **Your Policy**

Your Broadform Liability Policy consists of the Policy Terms and Conditions in this booklet and the Policy Schedule we give you.

Please read your Policy carefully, and satisfy yourself that it provides the cover you require.

If you want more information about any part of your Policy, please ask us, or your Financial Services Provider.

You should keep your Policy Booklet and Policy Schedule together in a safe and convenient place for future reference.

### **Other party's interests**

You must tell us of the interests of all parties (e.g. financiers, owners, lessors) who will be covered by this insurance. We will protect their interests only if you have told us about them and we have noted them on your Policy Schedule.

### **Paying your premium**

You must pay your premium by the due date. If we do not receive your premium by this date or your payment is dishonoured this Policy will not operate and there will be no cover.

### Preventing our right of recovery

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy, we will not cover you under this Policy for that loss, damage or liability.

### How Goods and Services Tax affects any payments we make

The amount of premium payable by you for this policy includes an amount on account of the GST on the premium.

When we pay a claim, your GST status will determine the amount we pay.

When you are:

- a) not registered for GST, the amount we pay is the sum insured limit of indemnity or the other limits of insurance cover including GST.
- b) registered for GST, we will pay the sum insured/limit of indemnity or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a Damaged item insured under the Policy) we will pay for the GST amount.

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number & Taxable Percentage.

Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of your claim is less than the sum insured/limit of indemnity or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

## WORDS WITH SPECIAL MEANINGS

Some key words and terms used in this Policy have as special meaning.

If words and terms are only used in just one Section of the Policy, we will describe their special meaning in that Section.

Wherever the following words or terms are used in the Policy, they mean what is set out below:

Aircraft	Any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
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Business	The business described in the Policy Schedule including the provision and management of canteens, social, sports and welfare organisations for the benefit of your employees, first aid, fire and ambulance services and the maintenance of your premises.
Deductible	The amount you first bear in relation to each occurrence. The deductible applies to all amounts payable under this Policy including the indemnity provided under 'Defence of claims'.
Employee	Any person engaged under a contract of or for service or apprenticeship with you, but does not include any person employed under such contract who is excluded from the definition of 'worker' under any workers' compensation legislation.
Employment Practices	Any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment of any person or persons by you.
Hovercraft	Any vessel, craft or thing made or intended to float on or in or travel on or through the atmosphere or water.
Internet operations	<p>(a) transfer of computer data or programs by use of electronic mail systems by you or your employees, including part-time and temporary staff, contractors and others within your organisation whether or not such data or programs contain any malicious or damaging code including but not limited to computer virus, worm, logic bomb or trojan horse.</p> <p>(b) access through your network to the world wide web or public internet site by your employees, including part-time and temporary staff, contractors and others within your organisation.</p> <p>(c) access to your intranet (meaning internal company information and computing resources) which is made available through the world wide web for your customers or others outside your organisation, and</p> <p>(d) the operation and maintenance of your web site.</p>
Limit of Liability	The applicable limit of liability specified in the Policy Schedule.
Medical persons	Qualified medical practitioners, nurses, dentists and first aid attendants.
Occurrence	An event which results in personal injury or property damage neither expected nor intended from your standpoint. All personal injury or property damage arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one occurrence.
Period of Insurance	The period shown in the Policy Schedule.
Personal injury	<p>(a) bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish, mental injury</p> <p>(b) the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution</p>

	(c) the effects of wrongful entry or eviction
	(d) the effects of a publication or utterance of a libel or slander or other defamatory or disparaging material
	(e) the effects of assault and battery not committed by you or at your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.
Pollutant	Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
Property damage	(a) Physical damage to or loss or destruction of tangible property including any resulting loss of use of that property, or  (b) loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an occurrence.
Policy Schedule	The schedule of insurance or any endorsement schedule we give you.
Territorial limits	Anywhere in the world subject to Exclusions 15 – ‘Territorial Limits’ and 16 – ‘Export to USA and Canada’
Vehicle	Any type of machine on wheels or self laid track made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.
Watercraft	Any vessel, craft or thing made or intended to float on or in or travel on or through or under water.
We, our, us	QBE Insurance (Australia) Limited, ABN 78 003 191 035 through its agent Australis Group (Underwriting) Pty Ltd (ABN 80 082 459 372) and InterPacific Underwriting Agencies Pty Limited trading as Australis Group Underwriting (ABN 38 077 515 327)
You, your, insured	The person(s), companies or firms named on the current Policy Schedule as the insured including, as if they were you;  (1) all the subsidiary companies (now or subsequently constituted) of the name insured specified in the Policy Schedule provided their places of incorporation are within Australia or any Territory of Australia  (2) every director, executive officer, employee, partner or shareholder of you or of the parties shown in paragraph (1) above, but only while acting within the scope of their duties in such capacity  (3) every principal, in respect of that principal’s vicarious liability for the acts or omissions of you or of the parties shown in paragraph (1) in the performance by them of work for that principal, but subject always to the extent of coverage and the limit of liability provided by this Policy  (4) each partner, joint venturer, co-venturer or joint lessee of the insured named in the Policy Schedule but only if we agree to insure them and the insured named in the Policy Schedule agrees to pay the premium we require.

(5) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with your consent (other than one of the parties shown in paragraphs (3) or (4) above) in respect of claims arising from their duties connected with the activities of any such club, organisation or service. This insurance will not apply to personal injury to or property damage of any participants of any game, match, race, practice or trial

(6) any director or senior executive of you or one of the parties shown in paragraph (1) above in respect of private work undertaken by your employees for such director or senior executive.

However, you/your does not include the interest of any other person other than as described in this definition.

Your products

Any goods, products and property (after they have ceased to be in your possession or under your control), which are or is deemed to have been manufactured, grown, extracted, produced, processed, constructed, assembled, erected, installed, repaired, serviced, treated, sold, supplied or distributed by you (including any container thereof other than a vehicle).

## WHAT YOU ARE INSURED AGAINST

### Liability

We will cover you for your legal liability to pay:

• all sums by way of compensation, and

• all costs awarded against you

In respect of

• personal injury

• property damage

happening during the period of insurance and caused by an occurrence within the territorial limits in connection with your business.

### Defence of claims

If we agree to cover you we will:

- (a) defend in your name and on your behalf any claim or legal action against you seeking damage for personal injury or property damage even if the action is groundless, false or fraudulent, and we will investigate, negotiate and settle any claim or legal action as we see fit.

### Deductible/When you are not covered

- (b) Pay all legal costs and expenses incurred by us and all interest accruing after entry of judgement until we have paid, tendered or deposited in court such part of the judgement as does not exceed the limit of liability

- (c) reimburse you for all reasonable expenses, other than loss of earnings, incurred by you with our consent in connection with the defence of a claim or legal action
- (d) pay reasonable expenses incurred by you for first aid to others at the time of personal injury caused by an occurrence (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973).

We will do this provided that:

- (e) we will not be obliged to pay any claim or judgement or to defend any claim or legal action after the limit of liability has been exhausted by payment of judgments or settlements
- (f) If a payment exceeding the limit of liability has to be made to dispose of a claim, our liability to pay any costs, expenses and interest under (a) to (d) in 'Defence of claims' above we will be limited to that proportion of those costs, expenses and interest as the limit of liability bears to the amount paid to dispose of the claim.

Any amount we pay, other than payments in settlement of claims, suits and all costs awarded against you, are payable by us over and above the limit of liability set out in the Policy Schedule.

### **What we will pay**

#### **Limit of Liability**

- (a) Our maximum liability in respect of any claim or any series of claims for personal injury or property damage caused by or arising out of one event will not exceed the limit of liability shown on your Policy Schedule.
- (b) Our total aggregate liability during any one period of insurance for all claims arising out of your products will not exceed the limit of liability shown on your Policy Schedule.

## **WHAT YOU MUST PAY IF YOU MAKE A CLAIM**

### **- Deductible**

'Deductible' means the first amount you must contribute to any claim you make under this Policy. For most claims you make on this Policy, you will have to pay the deductible which is shown on your Policy Schedule.

If more than one deductible is payable under this Policy for any claim, or series of claims arising from the one event:

• you must pay the highest deductible, but

you pay only one deductible.

## **WHEN YOU ARE NOT COVERED**

This Policy excludes loss, damage, destruction, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. War, invasion, acts of foreign enemies, hostilities or war-like 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, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority, or

2. Any act(s) of terrorism

For the purpose of this exclusion, an act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

• involves violence against one or more persons, or

• involves damage to property, or

• endangers life other than that of the person committing the action, or

• creates a risk to health or safety of the public or a section of the public, or

• is designed to interfere with or to disrupt an electronic system.

3. Radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to 1, 2 or 3 above.

This Policy does not cover:

4. Employment Liability

Personal injury imposed:

(a) by any workers' compensation law

(b) by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination or contract of employment or workplace agreement, or

Provided that if you are:

(c) required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such personal injury, or

(d) 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 for the purposes of the relevant worker's compensation law or the personal injury is not an injury which is subject to such law

then this Policy will respond to the extent that your liability would not be covered under such fund, scheme, policy of insurance or self insurance arrangement had you complied with your obligations pursuant to such law.

There is no cover under this Policy for and in respect of employment practices.

#### 5. Property in custody or control

Property damage to:

- (a) property owned by or leased or rented to you, or
- (b) property in your physical or legal control.

But this exclusion does not apply to liability for property damage to:

- (c) premises (including landlord's fixtures and fittings) which are leased or rented to you
- (d) premises (or their contents) not owned, leased or rented by you but temporarily occupied by you for work therein
- (e) vehicles (not belonging to or used by you) in your physical or legal control where the property damage occurs while the vehicles are in a car park owned or operated by you, unless you own or operate the car park for reward
- (f) the property of an employee of you or of the parties shown in paragraph (1) of the definition of 'you', 'your' or 'insured'
- (g) other property (excluding any vehicle which is registered or which is required under any legislation to be registered) temporarily in your physical or legal control provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which you are or have been working on and our limit under this clause 5(g) does not exceed \$50,000 for any one occurrence and in the aggregate for any one period of insurance.

Provided that we will not cover you under this Policy in respect of liability assumed by you under any contract or agreement which requires you to effect material damage insurance on premises, property or goods which you do not own.

#### 6. Product defect

Property damage to your products if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

#### 7. Loss of use

Loss of use of tangible property which has not been physically injured, or lost or destroyed resulting from:

- (a) a delay in or lack of performance by or on your behalf of any agreement.
- (b) the failure of your products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by you, but this exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss of destruction of your products after they have been put to use by any person or organisation other than you as defined under the definition of 'you', 'your' or 'insured'.

## 8. Product recall

Claims arising out of or resulting from any loss, cost or expense incurred by you for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your products or of any property of which they form a part, if such products or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

## 9. Aircraft, aircraft products and watercraft

Claims arising out of

- (a) the ownership, maintenance, operation or use by you or on your behalf of;
  - (i) any aircraft, or
  - (ii) any watercraft exceeding 10 metres in length, except where such watercraft are owned or operated by others and used by you for business entertainment, or
  - (iii) Hovercraft
- (b) your products that are 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.

## 10. Vehicles

Personal injury or property damage arising out of the ownership, possession, operation, maintenance or use by you or on your behalf of any vehicle:

- (a) Which is registered or which is required under any legislation to be registered, or
- (b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).

Exclusions 10(a) and (b) above do not apply to:

- (c) personal injury where;
  - (iv) that compulsory liability insurance or statutory indemnity does not provide indemnity, and
  - (v) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by you of legislation relating to vehicles.
- (d) property damage arising out of and during the loading or unloading of goods to or from any vehicle.
- (e) Property damage caused by or arising from the operation or use of any vehicle which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by you or on your behalf within the confines of your premises.
- (f) Property damage caused by the use of any tool or plant forming part of or attached to used in connection with any vehicle (excluding while the vehicle is travelling, transporting or carting goods) at any work site.

#### 11. Contractual Liability

Any obligation assumed by you under any agreement or contract except to the extent that:

- (a) the liability would have been implied by law
- (b) the liability arises from a provision in a contract for lease of real or personal property other than a provision which obliges you to effect insurance or provide indemnity in respect of the subject matter of that contract
- (c) the liability is assumed by you under a warranty of fitness or quality as regards to your products.

#### 12. Professional liability

The rendering of or failure to render professional advice or service by you or any related error or omission, but this exclusion does not apply to:

- (a) 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, or
- (b) personal injury or property damage arising from such rendering of or failure to render professional medical advice or service, providing such professional advice or service is not given for a fee.

#### 13. Libel and Slander

The publication or utterance of a libel or slander or other defamatory or disparaging materials:

- (a) made prior to the commencement of the period of insurance, or
- (b) made by you at your direction with knowledge of its falsity, or
- (c) related to advertising, broadcasting or telecasting activities conducted by you or on your behalf.

#### 14. Pollution

(a) Personal injury or property damage caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of pollution into or upon land, the atmosphere, or any water course or body of water, but this exclusion does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.

(b) Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this exclusion does not apply to the clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in personal injury and/or property damage.

(c) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants caused by any product that has been discharged, dumped, abandoned or thrown away by others.

(d) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants in the United States of America or Canada or in any other country to which the laws of the United States of America or Canada apply:

Our liability under clauses 14(a) and 14(b) above in respect of discharge, dispersal, release, seepage, migration or escape and for all discharges, disposals, releases and escape of pollutants during any one period of insurance will not exceed the limit of liability.

#### 15. Territorial Limits

(a) Claims made or actions instituted within any country, state or territory (outside Australia) that require insurance to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance.

(b) Claims made and actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the courts of the United States of America and Canada.

(c) Claims are actions to which the laws of the United States of America or Canada apply.

Provided that:

(d) exclusions 15(b) and 15(c) above do not apply to claims and actions arising from the presence outside Australia of any of your employees and/or directors, partners or proprietors who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in the United States of America or Canada.

The limit of liability in respect of coverage provided under paragraph 15(d) is inclusive of all costs, expenses and interest are set out in 'Defence of claims' of this policy.

#### 16. Exports to the USA or Canada

Claims in respect of personal injury or property damage caused by or arising out of your products knowingly exported by you, or your agents or servants, to the United States of America or Canada.

#### 17. Asbestos

Personal injury or property damage (including loss of use of property) directly or indirectly caused by or arising from the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.

#### 18. Faulty workmanship

Property damage to that part of any property upon which you are or have been working where the property damage arises from your work or the cost of performing, correcting or improving any work undertaken by you.

#### 19. Fines, Penalties:

Fines, penalties or liquidated damages.

#### 20. Punitive damages

Punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

#### 21. Assault and battery

Personal injury or property damage caused by or arising from assault and battery committed by you or at your direction unless reasonably necessary for the protection of persons or property.

22. Tobacco  
Personal injury arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:
- (a) tobacco or tobacco smoke
  - (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.
23. Information Technology Hazards, Computer Data, Program and Storage Media Exclusion
- (a) Personal injury or property damage arising, directly or indirectly out of or in any way involving your internet operations, or
  - (b) Property damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
    - (i) the use of any computer hardware or software
    - (ii) the provision of computer or telecommunication services by you or on your behalf
    - (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by the computer virus.

But this exclusion does not apply to:

- (c) personal injury or property damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site, or
- (d) liability which arises irrespective of the involvement of your internet operations, and

nothing in this exclusion will be construed to extend coverage under this policy to any liability which would not have been covered in the absence of this exclusion.

## GENERAL CONDITIONS

### Changing your Policy

If you want to make a change to this Policy, the change becomes effective when:

• we agree to it, and

• we give you a new Policy Schedule detailing the change

### Other Interests

You must not transfer any interests in this Policy without our written consent.

Any person whose interests you have told us about and we have noted on your policy Schedule is bound by the terms of this policy.

## **Cancelling your Policy**

### **How you may cancel this policy**

- You may cancel this policy at any time by telling us in writing that you want to cancel it.
- Where 'you' involves more than one person, we will only cancel the policy when a written agreement to cancel the policy is received from all persons named as the insured.

### **How we may cancel this policy**

Y We may cancel this policy in any of the circumstances permitted by law by informing you in writing.

Y We will give you this notice in person or send it to your address last known to us.

## **The premium**

We will refund to you the proportion of the premium for the remaining period of insurance, provided we shall be entitled to retain the agreed minimum premium. When the premium is subject to adjustment, cancellation will not affect your obligation to supply to us such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

## **Notices**

Any notice we give you will be in writing, and it will be effective:

- If it is delivered to you personally, or
- If it is delivered or posted to your address last known to us.

It is important for you to tell us of any change of address as soon as possible.

## **Changes to information previously advised**

You must tell us as soon as possible if circumstances occur, or if changes or alterations are intended or made which increase the risk of loss, damage or injury.

### **You must tell us immediately in writing of:**

- every occurrence, claim, writ, summons, proceeding, impending prosecution, and inquest together with all relevant information which may result in a claim under this Policy, whether or not you believe any claim amount might fall below the excess.
- every change that comes to your knowledge which materially varies any of the facts or circumstances existing at the commencement of this policy.

## **Jurisdiction**

All disputes arising out of or under this Policy will be subject to determination by any Court of competent jurisdiction within Australia.

## **Joint Insureds**

Where more than one party comprises the insured each of the parties will be considered as a separate and distinct unit and the words 'you, 'your' or 'insured' will be considered as applying to each party in the same manner as if a separate Policy had been issued to each of them, provided that nothing in this clause will result in an increase of our limit of liability in respect of any occurrence or period of insurance.

## **Discharge of Liabilities**

At any time we can pay to you or on your behalf, for all claims made against you for any one occurrence;

- the limit of liability, after deducting any amounts already paid, or
- any lower sum for which the claim may be settled.

If we do so:

- the conduct of any outstanding claim(s) will become your responsibility, and
- we will not be liable to pay any further amounts under that other than costs, charges or expenses that we agreed to pay before we made the payment referred to above.

## **Reasonable Care**

You must:

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

## **Inspection of Property**

- (a) We will be permitted by not obligated to inspect your property and operations at any time.
- (b) Neither our right to inspect nor our failure to inspect nor the making of any inspection nor any report of an inspection may be used by you or others in any action or proceeding involving us.
- (c) We may examine and audit your books and records at any time during the period of Insurance and within three years thereafter but that examination and audit will be restricted to matters which in our opinion are relevant to the Policy.

## Adjustment of Premium

Where the Policy Schedule shows premium for the Policy has wholly or partly been calculated on estimates you must, within 30 days after the expiry of each period of insurance, provide to us such matters, particulars and information relevant to the Policy as we may reasonably require. The premium for the period of Insurance will then be adjusted and any difference paid by or allowed to you, as the case may be, provided that the adjusted premium will not be less than any minimum premium specified in the Policy Schedule.

You must keep a record of all matters, particulars and information requested by us and must on reasonable notice allow us or our nominee to inspect and make copies of those records.

## CLAIMS

### What you must do

If an event happens which may give rise to a claim under this Policy you must:

- tell us or your Financial Services Provider as soon as possible. You will be provided with advice on the procedure to follow
- supply us with all Information we require to settle the claim
- Take all reasonable precautions to prevent further loss or damage
- not negotiate, admit, repudiate or pay any claim by any person
- co-operate with us fully in any action we take if we have a right to recover any money payable under this Policy from any other person

If in doubt at any time, ring us or your Financial Services Provider for advice.

### What you must NOT do

You must not:

- admit liability if an Incident occurs which is likely to result in someone claiming against you
- make any admission of guilt or promise or offer of payment in connection with any such claim, unless we first agree in writing. This applies to you or any other person making a claim under this Policy.

### What we do

We may take over and conduct the defence or settlement of any claim or issue legal proceedings for damages. If we do this we will do it in your name. We have full discretion in the conduct of any legal proceedings and in the settlement of any claim. You must co-operate by giving us any statements, documents or assistance we require. This may include giving evidence in any legal proceedings.

### What can affect a claim

We will reduce the amount of a claim by the deductible shown in the policy Terms and Conditions or on the Policy Schedule. We may refuse to pay a claim if you are in breach of your Duty of Disclosure or any of the conditions of this Policy, including any endorsements noted on or attached to the Policy Schedule. We pay only once for loss or damage from the same event covered by this Policy even if it is covered under more than one section of the Policy. We may be entitled to refuse to pay or to reduce the amount of a claim if:

- it is in any way fraudulent, or
- any fraudulent means or devices are used by you or anyone acting on your behalf to obtain any benefits under this Policy.