

# PUBLIC & PRODUCTS LIABILITY POLICY

## LLOYD'S OF LONDON

This is to certify that in accordance with the authorisation granted to Australis Group (Underwriting) Pty Ltd (ABN 80 082 459 372) by Insurers, whose definitive numbers and proportions underwritten by them, will be supplied on application, can be ascertained by reference to the said Contract which bears the Seal of Lloyd's Policy Signing Office, and in consideration of the premium specified herein, the said the Insurers are bound severally and not jointly, each for his own part and not one for another, their Executors and Administrators, to insure in accordance with the Policy.

In the event that a dispute arises between Insurers and the Insured out of or otherwise in relation to this Policy, then:

- (a) Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "**Dispute Notice**") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;
- (b) If a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:
  1. a process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (**LEADR**) (or other appropriate professional body as agreed by the parties); or
  2. referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
    - (a) will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
    - (b) will act as an expert and not as an arbitrator;
    - (c) will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
    - (d) will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
    - (e) will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute. Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause (c) below) without first pursuing such informal resolution techniques in good faith;

In the event that the dispute is not resolved by such informal process within 35 days of the Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

- (c) Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon Insurers may be served upon:

Australis Group (Underwriting) Pty Ltd

Level 3

117 Clarence Street

Sydney NSW 2000

who has authority to accept service and to appear on Insurers' behalf.

If proceedings are instituted against any one of the Insurers, all Insurers participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

- (d) Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this Policy.
- (e) Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- (f) Notwithstanding anything in this schedule, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief.

**Privacy** – We are committed to protecting you, the Insured privacy. We only use the personal information you provide to us to quote on and insure your risks. We only provide personal information to our Insurers (and their representatives) and those we appoint to assist us with claims under your policy. We will not trade, rent or sell your information.

If you don't provide us with complete information, we cannot properly quote for your insurance and we cannot insure you. You can check the personal information we hold about you at any time.

If you provide us with personal information about anyone else, we rely on you to have told them that you will provide their information to us, to whom we may provide it, the purposes for which we will use it and that they can access it. If the information is sensitive, we rely on you to have obtained their consent on these matters.

For more information about our Privacy Policy please see our website – [www.ausuw.com](http://www.ausuw.com)

## INTRODUCTION

The BROADFORM Liability Policy is in four sections

1. Definitions
2. Cover
3. Exclusions
4. Conditions

The Policy wording, Schedule and endorsements (if any) are to be read together as one Policy. Any word or expression which has been given a specific meaning in any section shall have that meaning throughout the Policy.

Marginal notes and Headings are only used to help you read this Policy and do not form a part of this Policy.

### Australian Terrorism Insurance Act 2003 Notice

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

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

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

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

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

## 1. DEFINITIONS

Any word or expression which this Policy defines as having a particular meaning will have that meaning everywhere it appears.

- 1.1 **Aircraft** means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 1.2 **Hovercraft** means any vessel, craft or thing made or intended to float on or in or through the atmosphere or water.
- 1.3 **Insured** wherever used in the Policy means:
  - 1.3.1 the Insured named in the Schedule;
  - 1.3.2 any subsidiary company (including subsidiaries thereof) of the Insured so named, and any other entity controlled by it and over which it assumes active management whose places of incorporation are within Australia or any Mandated Territories and protectorates of Australia;
  - 1.3.3 any director, executive officer, employee partner or shareholder of the Insured or a company designated in paragraph 1.3.2 but only while acting within the scope of their duties in such capacity;
  - 1.3.4 any principal in respect of the liability of such principal arising out of the performance by the Insured or by a company designated in paragraph 1.3.2 of any contract or agreement for the performance of work for such principal and only to the extent required by such contract or agreement. But subject always to the terms, conditions, conditions, exclusions and Limit of Liability provided in this Policy;
  - 1.3.5 the officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and welfare organisations formed with the consent of the Insured (other than an insured designated in paragraph 1.3.4) in respect of claims arising from duties connected with activities of any such club or organisation.
  - 1.3.6 the legal personal representative of any person entitled to indemnity under this Definition in circumstances giving rise to indemnity under this Policy.

- 1.4 **The Business** means the business shown in the Schedule including the ownership and tenancy of premises, provision and management of canteens, social, sports and welfare organisations, including first aid and safety services for employees of the Insured.
- 1.5 **Product** means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured, including any container thereof (other than a vehicle) in the course of the Business.
- 1.6 **Medical Persons** means qualified medical practitioners, dentists, legally qualified registered nurses and first aid attendants.
- 1.7 **Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured.
- 1.8 **Personal Injury** means death, bodily injury, sickness or disease to any person, disability, shock, mental anguish or mental injury, false arrest, wrongful detention, false imprisonment or malicious prosecution, wrongful entry or eviction or other invasion of the right of privacy, libel, slander, defamation of character or invasion of the right of privacy, and assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property. In the event of claims for Personal Injury arising from latent injury, latent disease or latent sickness, such injury, disease or sickness in respect of each claim shall be deemed to have first happened on the day such injury, disease or sickness was first medically diagnosed.
- 1.9 **Pollutants** means 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.
- 1.10 **Property Damage** means physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical injury that caused it. Damage also means loss of use of tangible property that is not physically injured provided such loss of use is caused by Personal Injury or physical injury to some other tangible property which first happens during the Period of Insurance.
- 1.11 **Vehicle** means any type of machine on wheels or on self-laid tracks made or intended to be propelled other than by manual or animal power, including attachments designed to be drawn by any such machine.
- 1.12 **Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through water.
- 1.13 **Period of Insurance** means the period shown in the Schedule.
- 1.14 **Worker** means any person defined as such under any relevant Workers (or Workmen's) Compensation Act or Ordinance.
- 1.15 **We/Us/Our/Insurers** means certain Underwriters at Lloyd's.

## 2. COVER

In consideration of the payment of premium and subject to the terms definitions, conditions, exclusions and Limits of Liability incorporated herein, We will pay to or on behalf of the Insured all amounts which the Insured shall become legally liable to pay for compensation:

- (a) in respect of Personal Injury or Property Damage
- (b) happening during the Period of Insurance
- (c) caused by an Occurrence in connection with the Business.

### 2.1 Limit of Liability

- 2.1.1 Our liability to pay compensation and/or claimant's costs and expenses shall not exceed the Limit of Liability in respect of any one claim or series of claims arising from one Occurrence.
- 2.1.2 Out total aggregate liability for any one Period of Insurance for all claims arising from the Insured's Products shall not exceed the sum in the Schedule.

### 2.2 Additional Payments

In addition to the stated Limit of Liability, We will:

- 2.2.1 defend any suit against the Insured claiming compensation for Personal Injury or Property Damage and seeking damages on account thereof, even if such suit is groundless, false or fraudulent: and We may investigate, negotiate and settle any claim or suit as We deem expedient: but We shall not be obliged to pay any claim or judgement or to defend any suit after Our Limit of Liability has been exhausted by payment of judgements or settlements;

- 2.2.2 pay all expenses incurred by Us, all legal costs recoverable from the Insured in any such suit and all interest accruing after any such judgement as does not exceed Our Limit of Liability thereon;
- 2.2.3 reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred with Our consent;
- 2.2.4 pay expenses incurred by the Insured for first aid to others at the time of any Personal Injury for which the Insured is entitled to compensation.

Provided that if a payment exceeding Our Limit of Liability has to be made to dispose of a claim, Our liability to pay Additional Payments in connection therewith shall be limited to such proportion of the Additional Payments as the Limit of Liability bears to the amount paid to dispose of the claim.

### **2.3 Excess**

Where an Excess is specified in the Schedule the Insured shall bear this amount of each and every claim.

## **3. EXCLUSIONS**

We shall not be liable for claims in respect of:

### **3.1 Employees**

- 3.1.1 Personal Injury as defined by legislation to any person who is, by virtue of legislation deemed to be a Worker of Yours. (For the purposes of this Exclusion, legislation means any legislation relating to Workers Compensation).
- 3.1.2 Personal Injury for which the Insured is entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to compensation for injured Workers, whether or not the Insured is a party to such contract of insurance.
- 3.1.3 liability as imposed by the provisions of any legislation relating to compensation for injured Workers or any industrial award or agreement or determination.

### **3.2 Property in Your Physical or Legal Control**

Property Damage to:

- 3.2.1 Property owned by or leased or rented to the Insured; or
- 3.2.2 Property in the physical or legal control of the Insured.

Exclusion 3.2 shall not apply to liability for Property Damage to:

- (i) Property in the physical or legal control of the Insured up to a maximum of \$50,000 or up to the amount stated in the Policy Schedule, any one Occurrence and in the aggregate during any one Period of Insurance. However We shall not be liable for Property Damage to that part of any property upon which the Insured is or has been working where such Property Damage arises from such work of the Insured.
  - (ii) Premises which are leased or rented to the Insured.
  - (iii) Employees property.
  - (iv) Vehicles (not belonging to or used by or on behalf of the Insured) in the physical or legal control of the Insured where such Property Damage occurs whilst any such vehicle is in a car park owned or operated by the Insured, provided that the Insured as part of his Business does not own or operate a car park for reward.

Provided that where cover is not excluded the Insured shall bear an Excess of \$1,000 in respect of such Property Damage or such other amount as is specified in the Schedule.

### **3.3 Damage to Your Products (Product Defect)**

Property Damage to the Insured's Products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof or inherent vice or inefficiency or ineffectiveness of the Insured's Products.

### **3.4 Loss of Use**

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

- 3.4.1 a delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or
- 3.4.2 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, but 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.

### **3.5 Recall of Products**

Damages, costs or expenses claimed for the withdrawal, inspection, repair, replacement or loss of use of the Insured's Products or of any property of which such products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

### **3.6 Aircraft, Hovercraft and Watercraft**

Personal Injury or Property Damage arising out of the ownership, maintenance operation or use by the Insured of:

- 3.6.1 any Aircraft or Hovercraft; or
- 3.6.2 any Watercraft exceeding 8 metres in length.

### **3.7 Aircraft Parts**

Personal Injury or Property Damage arising out of the Insured's products that are used with the Insured's knowledge in Aircraft or any aerial device.

### **3.8 Vehicles**

Personal Injury or Property Damage arising out of the ownership, maintenance, operation or use by the Insured of any vehicle:

- 3.8.1 which is registered; or
- 3.8.2 in respect of which insurance is required by virtue of any legislation.

Exclusion 3.8 shall not apply to Personal Injury or Property Damage arising from:

- (i) the delivery or collection of goods to or from any Vehicle where such Personal Injury or Property Damage occurs beyond the limits of any carriageway or thoroughfare.
- (ii) the loading or unloading of any vehicle.

### **3.9 War**

Personal Injury or Property Damage arising out of or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, expropriation, confiscation, nationalisation destruction or damage to property by or under the order of any government or public or local authority.

### **3.10 Nuclear Fuel/Weapons**

Personal Injury or Property Damage directly or indirectly caused by or contributed to by or arising from:

- 3.10.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion combustion shall include any self-sustaining process of nuclear fission.
- 3.10.2 nuclear weapons material.

### **3.11 Contractual Liability**

Liability assumed by the Insured under any contract or agreement except to the extent that such liability would have been implied by law. Exclusion 3.11 shall not apply to:

- (i) those written contracts designated in the Schedule
- (ii) liability assumed by the Insured under a warranty of fitness or quality as regards the Insured's products
- (iii) liability assumed by the Insured under any lease of real or personal property.

### **3.12 Professional Advice**

**Personal Injury or Property Damage directly or indirectly caused by or contributed to by or arising from:**

- 3.12.1 the rendering of or failure to render professional advice or service by the Insured or any error or omission connected therewith.
- 3.12.2 advice, design, formula or specification given for a fee.

Provided that this exclusion does not apply to the rendering of first aid on the insured's premises by a legally qualified registered nurse or first aid attendant employed by the Insured.

### **3.13 Pollution**

Personal Injury or Property Damage arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water. We shall also not be liable to pay any costs and expenses incurred in the prevention, removal, or clean-up of such Pollutants.

Exclusion 3.13 shall not apply if such discharge, dispersal, release or escape is caused by a sudden, identifiable, unexpected and unintended happening and takes place in its entirety at a specific time and place during the Period of Insurance.

### **3.14 Libel and Slander**

Liability arising out of the publication or utterance of a libel or slander:

3.14.1 made prior to the commencement date of this Policy; or

3.14.2 made by or at the direction of the Insured with the knowledge of the falsity thereof;

3.14.3 relating to advertising, broadcasting, printing, publishing or telecasting activities by or on behalf of the Insured.

### **3.15 Asbestos**

Any loss, damage, cost, liability, expense, fine or penalty of any kind or nature whatsoever incurred by the Insured, directly or indirectly, resulting from, in consequence of, or with respect to illness or sickness or death in any way relating to direct or indirect exposure to asbestos.

### **3.16 Fines and Penalties**

Punitive, aggravated or exemplary damages, fines or penalties imposed by law.

### **3.17 Faulty Workmanship**

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

### **3.18 Territorial Limits**

Personal Injury or Property Damage:

3.18.1 occurring in the United States of America or Canada. This exclusion shall not apply to claims arising from the presence of any person who is normally resident in Australia or New Zealand and who is not a manual worker or a supervisor of work, however the Limits of Liability for such claims are inclusive of all law costs and expenses as set out in Clause 2.2 of the Policy;

3.18.2 caused by or arising out of the Insured's products knowingly exported by the Insured or his agents to the United States of America or Canada;

3.18.3 where claims are made upon the Insured outside Australia or New Zealand in any country where the Insured is represented by a branch or company or firm or individual holding the Insured's power of attorney;

3.18.4 where such claims arise out of any contract entered into by the Insured under the terms of which work is to be performed outside Australia or New Zealand.

### **3.19 Legal Jurisdiction**

Personal Injury or Property Damage where the action is brought against the Insured in any country outside Australia or New Zealand.

### **3.20 Treatment and Dispensing**

Should the Insured's Business be involved in the treatment of:

3.20.1 humans or animals for any physical or mental deficiency, injury, illness or disease, or the dispensing of drugs, or

3.20.2 the dispensing of drugs, medicines, pharmaceutical supplies or artificial aids;

then We shall not be liable for Property Damage or Personal Injury arising from the treatment of those humans or animals nor for the Insured's liability for Property Damage or Personal Injury caused through the dispensing of drugs, medicines, pharmaceutical supplies, or artificial aids.

### **3.21 Defect in Design**

Any defective design or error in specification or formula in any of the Insured's Products but We will insure the Insured for products the Insured does not manufacture but are sold, supplied or distributed by the Insured where by law the Insured is deemed to be the manufacturer.

### **3.22 Terrorism Exclusion**

Liability for loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this exclusion an act of terrorism means an act including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed to political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

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

If the Underwriters allege that by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

### **3.23 Electronic Date Recognition (“YEAR 2000”/“Y2K”/“MILLENIUM”) Exclusion**

Any loss, damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:

- a) the calculation, comparison, differentiation, sequencing or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, program or software and/or microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not; or
- b) any change, alteration or modification involving the date change to the year 2000, or any other date change, including leap year calculations, to any such computer system, hardware, program or software and/or microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not.

This clause applies regardless of any cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

### **3.24 Electronic Data Exclusion**

#### **1. Electronic Data Exclusion**

- (a) Any loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to “Trojan Horses”, “worms” and “time or “logic bombs”.

- (b) However, in the event that a peril listed below results from any of the matters described in paragraph (a) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Period of Insurance to property insured by this Policy directly caused by such listed peril.

Listed Perils

Fire  
Explosion

## 2. Electronic Data Processing Media Valuation

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs do not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Insured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

## 4. CONDITIONS

### 4.1 Claims

- 4.1.1 Notice in writing shall be given to Us as soon as possible of every Occurrence, claim, writ, summons, proceedings, impending prosecution or inquest an all information in relation thereto in respect of which a claim may result under this Policy;
- 4.1.2 In the event of an Occurrence, the Insured shall at his expense take all reasonable steps to prevent other Personal Injury or Property Damage from arising out of the same or similar conditions, but such expense shall not be recoverable under this Policy.
- 4.1.3 The Insured shall not without Our consent make any admission, offer promise or payment in connection with any Occurrence or claim.
- 4.1.4 The Insured shall use his best endeavours to preserve any Products or property which may assist in the defence or investigation of a claim and so far as may be reasonable practical no alteration or repair shall be made without Our consent or until We shall have had an opportunity of inspection.
- 4.1.5 We shall be entitled to prosecute in the name of the Insured at Our expense and for Our benefit any claim for indemnity or damages or otherwise.
- 4.1.6 The Insured shall give all information and assistance as We may require in the prosecution defence or settlement of any claim, or in any recovery actions.
- 4.1.7 We may at any time pay the Insured in respect of all claims against the Insured arising directly or indirectly from one source or original cause the amount of the Limit of Liability or such other amount specified in respect thereof (after deduction of any amounts already paid as compensation in respect thereof) or any lesser sum for which the claim or claims can be settled. Upon such payment We shall relinquish conduct or control of and be under no further liability under this Policy in connection with such claim or claims except for costs, charges and expenses:
  - 4.1.7.1 recoverable from the Insured in respect of the period prior to the date of such payment;
  - 4.1.7.2 incurred by Us;
  - 4.1.7.3 incurred by the Insured with Our consent prior to the date of such payment.

### 4.2 Subrogation

In the event of a payment under this Policy to or on behalf of the Insured We shall be subrogated to all the Insured's rights of recovery against all persons or organisations.

### 4.3 Reasonable Precautions

The Insured shall take all reasonable precautions to:

- 4.3.1 prevent Personal Injury and Property Damage;
- 4.3.2 prevent manufacture, sale or supply of defective Products;
- 4.3.3 comply and ensure that the Insured's employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by a public authority in respect thereof for the safety of persons or property;
- 4.3.4 at the Insured's own expense, trace or recall or modify any of the Insured's Products containing any defect or deficiency of which the Insured has knowledge or has reason to suspect.

### 4.4 Change of Facts or Circumstances

Notice in writing shall be given to Us as soon as possible of every change materially varying any of the facts or circumstances existing at the commencement of this Policy that shall come to the knowledge of the Insured.

#### **4.5 Inspection of Property**

We shall be permitted but not obligated to inspect the Insured's property and operations at any time. Neither Our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe.

#### **4.6 Joint Insureds**

Where the Insured is comprised of more than one party information supplied to Us shall be deemed to have been furnished by and on behalf of all such parties and any information supplied to us or any omission or non-disclosure in relation to any renewal or extension thereof shall likewise be deemed to have been furnished, omitted or withheld by and on behalf of all such parties.

#### **4.7 Cross Liability**

Where the Insured is comprised of more than one party each of the parties shall be considered as a separate legal entity and the word Insured shall apply to each party as if a separate policy had been issued to each party but nothing contained in this Condition 4.7 shall result in an increase in Our Limit of Liability in respect of any Occurrence or Period of Insurance.

#### **4.8 Adjustment of Premium**

Where premium has been calculated on estimates furnished by the Insured, the Insured shall within 30 days after the expiry of each Period of Insurance furnish to us such information as We may require to adjust the premium for the expired Period of Insurance. Any difference in premium shall be paid by or allowed to the Insured. The Insured shall allow Us to inspect the Insured's records of such information.

#### **4.9 Cancellation**

- 4.9.1 The Insured may cancel this Policy at anytime by forwarding a written request to Us. We will refund 90% of the pro-rata premium calculated for the unexpired Period of Insurance.
- 4.9.2 We may cancel this Policy in any of the circumstances detailed in the Insurance Contracts Act 1984. We will refund the pro-rata premium calculated for the unexpired period of insurance.