

Specialist Occupations

Public & Products Liability Policy

Insurance delivered differently

Driven by small business

AUZO[®]

I n s u r a n c e

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1 Important Notices

1.1 About Us

This insurance is underwritten by certain Underwriters at Lloyd's led by MS Amlin Underwriting Limited, Syndicate 2001.

MS Amlin Underwriting Limited is authorised by the Prudential Regulation Authority and is regulated by the Financial Conduct Authority and the Prudential Regulation Authority under reference number 204918. MS Amlin Underwriting Limited is registered in England No. 2323018. Registered office: The Leadenhall Building, 122 Leadenhall Street, London, EC3V 4AG.

1.2 Duty of Disclosure

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

You have the same duty to disclose any such matters to **Us** before renewing, extending, varying or reinstating a contract of general insurance.

However, that duty does not require **You** to disclose any matter:

- a. that diminishes the risk to be undertaken by **Us**;
- b. that is common knowledge;
- c. that **We** know or, in the ordinary course of **Our** business, ought to know;
- d. in respect of which **We** have provided a waiver.

Non-disclosure

If **You** fail to comply with **Your** duty of disclosure, **We** may be entitled to reduce **Our** liability under the contract in respect of a claim, or **We** may cancel the contract.

If **Your** non-disclosure is fraudulent, **We** may avoid the contract from its inception.

1.3 Renewing the Policy

This **Policy** will terminate at the end of the **Policy Period**. If **You** wish to renew the insurance for a subsequent **Policy Period**, a renewal declaration will need to be completed before the end of the **Policy Period**.

1.4 Preservation of the Insurer's Rights of Recovery / Subrogation

The **Policy** contains provisions to the effect that **You** shall not surrender any right of recovery that **You** may have against another party without **Our** written consent. Failure to comply with this provision may permit **Us** to reduce **Our** liability in respect of a payment under the **Policy**.

1.5 Losses Occurring coverage

The cover provided by this **Policy** applies on a 'losses occurring' basis. This means that the **Policy** responds to **Personal Injury** and **Property Damage** which first occurs during the **Policy Period**.

1.6 Limit of Liability and Excess

All **Claims** are subject to the applicable **Limit of Liability** and the applicable **Excess**.

1.7 Policy Interpretation

Words shown in bold have a particular defined meaning. **You** should refer to the 'Definitions' section to obtain the full meaning of such terms. In addition to the Definitions, where the context requires:

- a. Words in the singular will include the plural and vice versa;
- b. Words expressed in one gender shall include all genders;
- c. References to 'a person' shall include any individual, company, partnership or any other legal entity;
- d. Any phrase introduced by the term 'include', 'including', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding that term;
- e. References to a statute, regulation or trade terms of contract will be construed to include all its amendments or replacements.

Please note that all headings within the **Policy** are included for convenience only and will not form part of this **Policy**.

1.8 Several Liability

The liability of an Insurer under this contract is several and not joint with other Insurers party to this contract. An Insurer is liable only for the proportion of liability it has underwritten. An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer, nor is an Insurer otherwise responsible for any liability of any other Insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an Insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an Insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion.

A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other Insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA.

The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Proportion of Liability

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together).

A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred. Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

1.9 Dispute Resolution

About Lloyd's

Lloyd's is the world's specialist insurance and reinsurance market, bringing together an outstanding concentration of underwriting expertise and talent.

In Australia, Lloyd's is proud to be a member of the Insurance Council of Australia. Lloyd's has adopted the General Insurance Code of Practice subject to certain specific qualifications. You can obtain a copy of the code at www.codeofpractice.com.au

Our aim is to provide the highest service to our Australian policyholders, and, to this end, we have developed the following procedures for the fair handling of complaints from Lloyd's policyholders.

Stage 1

Any enquiry or complaint relating to a Lloyd's Policy or claim should be addressed to either your insurance intermediary or to the administrator handling your claim in the first instance – in most cases this will resolve your grievance.

They will respond to your complaint within 10 business days provided they have all necessary information and have completed any investigation required. Where further information, assessment or investigation is required, they will agree to reasonable alternative timeframes with you. You will also be kept informed of the progress of your complaint.

Stage 2

Depending on the outcome of our review, if we are unable to resolve the matter to your satisfaction, we may refer your complaint to Lloyd's Australia. If you are not satisfied with the way your complaint has been dealt with, you can contact Lloyd's:

Lloyd's Australia Limited
Suite 1603 Level 16, 1 Macquarie Place, **Sydney NSW 2000**
Telephone: +61(2)82980783 | Email: ldraustralia@lloyds.com

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

External Dispute Resolution

You may refer your complaint to AFCA at any time. If your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint, AFCA may review it, subject to its Rules.

AFCA can be contacted by:

Post: GPO Box 3, Melbourne VIC 3001
Phone: 1800 931 678 | Email: info@afca.org.au
More information can be found on their website www.afca.org.au

AFCA is an independent body that operates nationally in Australia and aims to resolve disputes between you and your insurer. AFCA provides fair and independent financial services complaint resolution that is free to consumers. Your dispute must be referred to AFCA within 2 years of the date of our final decision, unless AFCA considers special circumstances apply. Determinations made by AFCA are binding upon us.

Customers not eligible for referral to AFCA, may be eligible for referral to the UK Financial Ombudsman Service. Such referral must occur within 6 months of the final decision by the Complaints team at Lloyd's. Further details will be provided with their final decision to you.

This service is free of charge to policyholders.

In addition to your rights under this section, we agree that:

- a. any summons notice or process to be served upon us may be served upon:

Lloyd's Underwriters' General Representative in Australia
Suite 1603
Level 16
1 Macquarie Place, Sydney NSW 2000

who has authority to accept service on our behalf;

- b. if a suit is instituted against any of us, all parties participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

1.10 Data Protection

Your information has been, or will be, collected or received by MS Amlin. We will manage personal data in accordance with data protection law and data protection principles. We require personal data in order to provide good-quality insurance and ancillary services and will collect the personal data required to do this.

This may be personal information such as name, address, contact details, identification details, financial information and risk details. The full Data Privacy Notice can be found on www.msamlin.com/en/site-services/data-privacy-notice.html

A paper copy of the Data Privacy Notice can be obtained by contacting the Data Protection Officer by email (dataprotectionofficer@msamlin.com) or at the below address:

Data Protection Officer
MS Amlin Corporate Services,
The Leadenhall Building,
122 Leadenhall Street,
London,
EC3V 4AG

2 General Definitions

2.1 Abuse

Means:

- a. Any act of hurting or injuring mentally or physically by maltreatment or ill use;
- b. Repeated or continuing contemptuous, coarse or insulting words and/or behaviour;
- c. Physical abuse, molestation, mistreatment or maltreatment of an intimate or sexual nature, including, but not limited to, any sexual involvement, sexual conduct or sexual contact, regardless of consent;
- d. The sharing, transmission, distribution or dissemination, as **Data** or by other means, of:
 - i. explicit or pornographic material;
 - ii. intimate or personal images of any person without that person's prior consent, irrespective of whether the person consented to the creation of such images.

2.2 Act of Terrorism

Means any act, including, but not limited to, the use of force or violence or the threat thereof of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, committed for 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.

2.3 Advertising Activities

Means only those activities undertaken by **You** or on **Your** behalf to advertise **Products** and services offered by **You** and does not include any publications or comments on social media platforms that concern matters of general interest that are not directly related to such sale of **Products** and services.

2.4 Advertising Injury

Means any actual or alleged:

- a. libel, slander or defamation;
- b. breach of the misleading or deceptive conduct provisions of the Competition and Consumer Act 2010 (Cth) or any Fair-Trading Legislation;
- c. infringement of any copyright of, or passing-off of a title or slogan;
- d. unfair competition, piracy or misappropriation of ideas;
- e. invasion of privacy,

committed in any advertisement, publicity article, broadcast or telecast and caused by or arising out of any **Advertising Activities** conducted by **You** or on **Your** behalf during the **Policy Period**.

2.5 Aircraft

Means any craft or object designed to transport persons or property through air or space.

2.6 Bodily Injury

Means bodily injury, death, disease and illness which shall include mental anguish, mental injury and shock.

2.7 Business

Means the 'Business Activity' described in the **Schedule** and shall include the following activities where incidental to **Your** business:

- a. the provision and management of catering, social, sports, educational, medical, dental and welfare services for the benefit of the **Named Insured's Employees**; and
- b. fire, security, first aid and ambulance services provided by **You** for the benefit of the **Named Insured's Employees**; and
- c. the ownership, repair, maintenance and decoration of the **Named Insured's** premises; and
- d. private work carried out by any **Employee** (with the consent of the **Named Insured**) for any director, partner or senior official of the **Named Insured**.

2.8 Change of Control

Means when any person or entity, or group of persons or entities, acquires greater than 50% of the equity of the **Named Insured** and/or the right to elect or appoint the majority of the board of directors of the **Named Insured** or persons to an equivalent management function.

2.9 Claim

Means any written demand or legal proceedings for **Compensation** first made or brought against any **You** which may result in the payment of any amount under this **Policy**.

All **Claims** that arise out of, are connected with, consequent upon or attributable to the same act, error, omission, fact, incident or circumstance, or a series of related, repeated or continuing acts, errors, omissions, facts, incidents or circumstances will be considered a single **Claim**, irrespective of the number of claimants or the number of **Insureds** involved. All such **Claims** are deemed to have been made at the date on which the first **Claim** was made.

2.10 Communicable Disease

Means any disease, virus, bacterium, organism or parasite which can be transmitted from any organism to another organism, whether living or not, including, but not limited to, where:

- a. the method of transmission is direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and
- b. the disease, substance or agent can cause or threaten **Bodily Injury**, illness, emotional distress, damage to human health, human welfare or **Property Damage**.

2.11 Compensation

Means a monetary settlement, judgment or award of monetary compensation that **You** are legally obligated to pay, including pre-judgment interest, post judgment interest and claimant's costs.

2.12 Computer System

Means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, **Data** storage device, networking equipment or back up facility, owned or operated by **You** or any other party.

2.13 Cyber Act

Means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.

2.14 Cyber Incident

Means:

- a. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**;
- b. any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.

2.15 Data

Means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.

2.16 Data Protection Law

Means all applicable data protection and privacy legislation, regulations in any country, province, state, territory or jurisdiction which governs the use, confidentiality, integrity, security and protection of personal data, and any guidance or codes of practice issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

2.17 Defence Costs

Means all reasonable and necessary fees, costs, expenses and disbursements incurred by **Us** or by **You** with **Our** prior written consent (such consent not to be unreasonably withheld) in the investigation, adjustment, defence and/or appeal of a **Claim** covered under this **Policy**.

Defence Costs does not include the salaries, wages or any additional remuneration of any employee, general business expenses or overheads. **We** have no obligation to pay any salaries, wages, overheads and other expenses incurred by **You** in the course of cooperating in the investigation and defence of any **Claim**.

2.18 Denial of Service Attack

Means any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability of any network, network service, network connectivity or **Computer System**. Denial of Service Attacks include, but are not limited to, the generation of excess traffic into network addresses, the exploitation of system or network weaknesses and the generation of excess or non-genuine traffic between and amongst networks.

2.19 Employee

Means any person who is under a contract of service or apprenticeship with the **Named Insured** or any **Subsidiary**.

2.20 Excess

Means the amount stated as the 'Excess' in the **Schedule**.

2.21 Limit of Liability

Means the amount stated in the **Schedule** as the 'Limit of Liability' which is the maximum amount **We** will pay under this **Policy**.

2.22 Named Insured

Means the person or entity stated as the 'Named Insured' in the **Schedule**.

2.23 Occurrence

Means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** or **Advertising Injury** neither expected nor intended from **Your** standpoint.

A series or number of events having the same original cause or attributable to the one source shall constitute one occurrence.

2.24 Other Insurance

Means:

- a. the policy stated in the **Schedule** as 'Other Insurance'; and
- b. any renewal or replacement of the policy stated in the **Schedule** as 'Other Insurance'; and
- c. any policy of which the policy stated as 'Other Insurance' in the **Schedule** is a renewal or replacement.

2.25 Personal Injury

Means:

- a. **Bodily Injury**;
- b. False arrest, false imprisonment, wrongful detention or malicious prosecution;
- c. Wrongful entry, wrongful eviction;
- d. Assault and battery committed for the purpose of protecting persons and/or property.

2.26 PFC/PFAS

Means perfluorinated compounds (PFC) or per- and polyfluoroalkyl substances (PFAS) including, but not limited to, perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorononanoic acid (PFNA), perfluorobutyric acid (PFBA), perfluorobutane sulfonic acid (PFBS), perfluoropentanoic acid (PFPeA), perfluorohexane sulfonic acid (PFHxS), GenX, ca (perfluorinated carboxylic acid), ADONA, perfluorohexanoic acid (PFHxA), perfluoroheptanoic acid (PFHpA), perfluorooctane sulfonamide (PFOSA), perfluorodecanoic acid, (PFDA), perfluorodecane sulfonate (PFDS), perfluoroundecanoic acid (PFUnA), perfluorododecanoic acid (PFDoA), perfluorotridecanoic acid (PFTrDA), perfluorotetradecanoic acid (PFTeDA), or 6:2 fluorotelomer sulfonate (6:2 FTS) or any associated by-products, salts, isomers, esters, compounds, derivatives, acids, alcohols, precursor chemicals or related higher homologue chemicals.

2.27 Policy

Means this policy wording, any endorsements to it and the **Schedule**.

2.28 Policy Period

Means the period of time stated as the 'Policy Period' in the **Schedule**.

2.29 Pollution

Means discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste into or upon land or any structure on land, the atmosphere or any ground water, surface water or coastal waters.

2.30 Pollution Incident

Means **Pollution** which arises from a sudden, unexpected and unintended event from **Your** standpoint, and which takes place in its entirety at a specific time and place during the **Policy Period**. All **Pollution**, which arises out of any one **Pollution Incident** is deemed to have occurred at the time such incident takes place.

2.31 Products

Means any physical property after it has left **Your** custody or control, which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by **You** or on **Your** behalf.

2.32 Property Damage

Means physical damage to or destruction of tangible property, including the loss of use thereof.

2.33 Schedule

Means the schedule attaching to and forming part of this **Policy**.

2.34 Submission

Means all application forms, supplemental application forms, questions or question sets, any attachments thereto and all other materials submitted to **Us** by **You** or on **Your** behalf in connection with the underwriting of this **Policy**, any endorsement thereto or a policy for which this **Policy** is a renewal or replacement.

2.35 Subsidiary

Means a subsidiary, as defined in the Corporations Act 2001 (Cth), of the **Named Insured** which is or was a subsidiary at the commencement date of the **Policy Period**.

2.36 Territorial Limits

Means the territory stated in the **Schedule**.

2.37 Vehicle

Means any machine on wheels or self-laid tracks, designed to be propelled by other than manual or animal power.

2.38 We/Us/Our

Means the underwriters stated in the **Schedule**.

2.39 You/Your

Means:

- a. The **Named Insured**;
- b. Any **Subsidiaries**;
- c. Any past, present or future **Employee** but only in relation to the conduct of the **Business** for or on behalf of the **Named Insured** or a **Subsidiary** whilst they are an **Employee** of that **Named Insured** or **Subsidiary**.

3 Liability Coverage

In consideration of the payment of the premium and in reliance upon the statements made and information provided to **Us** in the **Submission** and subject to all terms, conditions and exclusions of this **Policy**, **We** agree with the **Named Insured** to provide the following coverage:

3.1 Public and Products Liability

We will indemnify **You** up to the **Limit of Liability** for **Compensation** which **You** are legally liable to pay for **Personal Injury**, **Property Damage** or **Advertising Injury** first happening during the **Policy Period** as a result of an **Occurrence** within the **Territorial Limits** in connection with **Your Business**.

3.2 Advancement of Defence Costs

We will also pay **Defence Costs** in respect of any **Occurrence** for which cover is provided under Insuring Clause 3.1 'Public and Products Liability' above, or where applicable under any extension.

We will not pay **Defence Costs** for any part of a **Claim** or loss not covered under Insuring Clause 3.1 'Public and Products Liability' above or otherwise under any extension.

AUTOMATIC EXTENSIONS OF COVERAGE

3.3 Claims Preparation Costs

We will indemnify **You** in respect of reasonable and necessary costs and expenses incurred with **Our** prior written consent (not to be unreasonably withheld) for the preparation of any **Claim** for which cover is provided under this **Policy**. However, no cover is provided under this extension for **Defence Costs**.

The sub-limit for 'Claims Preparation Costs' stated in the **Schedule** is the maximum amount **We** will pay under this extension during the **Policy Period**.

3.4 Court Attendance Costs

We will pay for the reasonable costs and expenses incurred by **You** with **Our** prior written consent (such consent will not be unreasonably withheld or delayed), where any **Employee** is required attend a court, arbitration or an adjudication hearing as a witness in connection with a **Claim** for which cover is provided under this **Policy**. The maximum amount **We** will pay under this extension is AUD 500 per day, per person, up to the sub-limit for 'Court Attendance Costs' stated in the **Schedule**.

3.5 Cross Liabilities

If the **Named Insured** comprises more than one party, **We** will provide coverage in the same manner and to the same extent as if a separate **Policy** had been issued to each of them, However, the **Limit of Liability** is the maximum amount **We** will pay under this extension regardless of the number of persons claiming to be indemnified.

3.6 Indemnity to Others

We will also indemnify the following persons as if a separate **Policy** had been issued to each of them:

- a. **Your** legal personal representatives, but only in respect of liability incurred by **You**;
- b. any owner of plant hired to **You** but only to the extent required by the conditions of any written contract or agreement of hire;
- c. any officer or member of **Your** catering, social, sports, educational, medical, dental and welfare organisations, fire, security, first aid and ambulance services in their respective capacity as such but not any medical or dental practitioner in respect of medical or dental services.

However,

- i. any persons specified above are subject to the terms, conditions and exclusions of this **Policy** (insofar as they can apply) as though they were **You**; and
- ii. the **Limit of Liability** is the maximum amount **We** will pay under this extension regardless of the number of persons claiming to be indemnified.

3.7 Care, Custody and Control

We will indemnify **You** in respect of:

- a. **Property Damage** to the personal property, tools and effects of any **Employee**, or the clothing and personal effects of any of **Your** visitors;
- b. **Property Damage** to premises or parts of premises (including their contents) leased or rented to or temporarily occupied by **You** for the purpose of the **Business**. However, no coverage is provided under this extension if **You** have assumed the responsibility to insure such premises;
- c. **Property Damage** to any other property temporarily in **Your** possession for the purpose of being worked upon. However, no coverage is provided under this extension for **Property Damage** to that part of any property upon which **You** are or have been working. The sub-limit for 'Care, Custody and Control' stated in the **Schedule** is the maximum amount **We** will pay under this extension.

3.8 Overseas Personal Liability

We will indemnify:

- a. Where the **Named Insured** is a natural person, the **Named Insured**;
- b. Any director, officer or partner of the **Named Insured**;
- c. At the request of the **Named Insured**:
 - i. any other **Employee** normally resident in the Commonwealth of Australia;
 - ii. any spouse of the persons in a. b. or c. i. above who are normally resident in the Commonwealth of Australia and accompanying such persons in a personal capacity;

in connection with any **Occurrence** which takes place in a country outside of the **Territorial Limits** whilst on a temporary visit to such country in connection with the **Business** provided that any such person is not entitled to indemnity under any other policy of insurance, self-insurance or deductible programme effected in **Your** name.

However:

- a. Any person entitled to indemnity under this extension is subject to the terms, conditions and exclusions of this **Policy** (insofar as they can apply) as though they were **You**; and
- b. the **Limit of Liability** is the maximum amount **We** will pay under this extension regardless of the number of persons claiming to be indemnified; and
- c. **We** will not make any payment under this extension in respect of **Compensation, Defence Costs** or any other amount arising out of, resulting from, or in any way attributable to:
 - i. **Property Damage** to property belonging to, or in the care, custody or control of any person entitled to indemnity under this extension.
 - ii. **Personal Injury** to any person entitled to indemnity under this extension.

3.9 Sudden and Accidental Pollution

We will indemnify **You** for **Compensation** which **You** are legally liable to pay for **Personal Injury** or **Property Damage** caused solely by a **Pollution Incident**. However, no coverage is provided under this extension for **Compensation, Defence Costs** or any other amount arising out of, resulting from, or attributable to **Pollution** happening anywhere in United States of America or Canada or any territory or protectorate within their jurisdictions.

4 Policy Exclusions

We will not make any payment under this **Policy** in respect of **Compensation, Defence Costs** or any other amount arising out of, resulting from, or in any way attributable to:

4.1 Abuse

Any actual or alleged **Abuse**.

4.2 Advertising Injury

Advertising Injury caused by, arising out of or resulting from:

- a. the failure of performance of any contract. However, this exclusion does not apply to any **Claim** for unauthorised appropriation of ideas based upon breach of an implied contract;
- b. any infringement of trademark, service mark or trade name. However, this exclusion does not apply to infringement of or passing off of titles or slogans;
- c. any incorrect description of any good or **Product**;
- d. any mistake in advertised price;
- e. the failure of **Your Products** or services to conform with advertised performance, quality, fitness or durability.

4.3 Assault and Battery

Assault or battery committed by **You** or at **You** direction, unless it was committed for the purpose of preventing or eliminating danger to persons or property.

4.4 Aircraft Products

Any **Products** which are used in the construction, operation, maintenance, servicing or repair of any **Aircraft**.

4.5 Anticompetitive Practices

Any actual or alleged breach of any law or regulation with respect to any of the following activities: restrictive trade practices, anti-trust, price fixing, predatory pricing, restraint of trade, unfair competition or tortious interference in another's business or contractual relationships. This includes but is not limited to any such conduct in contravention of the Competition and Consumer Act 2010 (Cth), any Fair Trading Acts enacted by the States or Territories of Australia, Federal Trade Commission Act (USA), Sherman Anti-Trust Act (USA), Clayton Act (USA) or amendments thereto, or similar law or regulation, or such replacement, anywhere else in the world.

4.6 Asbestos

Asbestos, or any material containing asbestos.

4.7 Assumed Liability

Any breach of a written or oral contract, warranty, guarantee, promise or agreement, whether express or implied, or the liability of others assumed under any written or oral contract, warranty, guarantee, promise or agreement, whether express or implied. However, this exclusion does not apply if **You** would have been liable in the absence of such contract, warranty, guarantee, promise or agreement; or

4.8 Care, Custody and Control

Property Damage to property which is owned or leased by, hired or held in trust by **You** or on loan to **You**, or which is otherwise in **Your** care, custody or control.

However, this exclusion does not apply to Automatic Extension of Cover 3.7'Care, Custody and Control'.

4.9 Communicable Disease

- a. Any **Communicable Disease**, or the fear or threat (whether actual or perceived) of a **Communicable Disease** including, but not limited to, any cost to clean-up, detoxify, remove, monitor or test for a **Communicable Disease**;
- b. Any disease, or the fear or threat of any disease, which:
 - i. is notifiable to the government or a local authority under any law, order, act or statute;
 - ii. is declared a Public Health Emergency of International Concern (PHEIC) by the World Health Organization.

4.10 Cyber Liability

- a. A **Cyber Incident**;
- b. A **Cyber Act**;
- c. A **Denial of Service Attack**;
- d. A breach of **Data Protection Law** by **You**, or parties acting for **You**, involving access to, processing of, use of or operation of any **Computer System** or **Data**, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services.

4.11 Deliberate Acts

Any deliberate, intentional, criminal or dishonest act or omission which **You** commit, condone or ignore.

4.12 Employer's Liability

- a. **Personal Injury** to any **Employee** or person arising out of and in the course of employment by **You** where **You** are indemnified or would be entitled to be indemnified (either in whole or in part) in accordance with insurance arranged or required to be arranged in respect of any workers' compensation law;
- b. **Personal Injury** to any **Employee** for mental anguish, harassment, libel, slander, defamation, humiliation or discrimination whilst in **Your** service or while employed by **You**;
- c. Liability imposed by the provisions of any workers' compensation law or accident compensation legislation or industrial award, agreement or determination.

4.13 Faulty Workmanship

The cost of re-performing, correcting or improving any work undertaken by **You** or on **Your** behalf.

4.14 Management Liability

Any actual or alleged breach of duty by any director or officer acting in their capacity as such.

4.15 Fines and Penalties

- a. Any fine or other penalty;
- b. Any exemplary, aggravated, multiple or punitive damages.

4.16 Jurisdictional Limitation

- a. Any legal proceeding brought against **You** in the courts of the United States of America or any territory that operates under the jurisdiction of the United States of America
- b. Any judgment or order wherever obtained for the enforcement of any judgment of the courts of the United States of America or any territory that operates under the jurisdiction of the United States of America
- c. Any **Products**, which to your knowledge, are exported, either directly or indirectly to the United States of America, or any territory that operates under the jurisdiction of the United States of America;
- d. Any entity based in, operating in or domiciled in United States of America or any territory that operates under the jurisdiction of the United States of America.

4.17 Motor Vehicles

The ownership, possession, operation or use of any **Vehicle**:

- a. for which compulsory insurance or security is required under any legislation governing the use of the vehicle; or
- b. where indemnity is provided by any other insurance effected by **You** or on **Your** behalf.

However, this exclusion does not apply to **Personal Injury** or **Property Damage**:

- i. caused by the use of any tool, plant or equipment forming part of, or attached to and used in connection with the **Vehicle** at **Your** premises or any site at which **You** are working,
- ii. occurring during the loading or unloading of any **Vehicle** or the bringing to or taking away of a load from any **Vehicle** operated by **You** or on **Your** behalf.

4.18 Nuclear Risks

- a. Ionising radiation or contamination by radioactivity from any nuclear fuel or any waste from the combustion of nuclear fuel;
- b. The radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear weapon, installation, reactor or other nuclear assembly or nuclear component thereof.

4.19 PFAS

- a. The actual, alleged, threatened, or suspected inhalation of, absorption of, ingestion of, contact with, exposure to, existence of, or presence of **PFC/PFAS**;
- b. Any request, demand, injunction, order, or statutory or regulatory requirement that **You** or others, test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, remediate, destroy, dispose of, or in any way respond to or assess the effects of **PFC/PFAS**;

This exclusion applies whether the substances listed above acted alone, or were combined with any other substances or factors, or whether the substances were included as a component part of a product or otherwise.

4.20 Pollution

Any actual or alleged **Pollution**. However, this exclusion does not apply to Automatic Extension 3.9 'Sudden and Accidental Pollution'.

4.21 Professional Liability

Professional services, including but not limited to advice, design, plans, specifications, formulae, surveys or directions prepared or given by **You** for a fee or where a fee would ordinarily be charged.

4.22 Property Owners, Occupiers and Transport Liability

The ownership, possession, maintenance or use by **You** or on **Your** behalf of any building, land, aircraft or other aerial device, hovercraft or watercraft.

4.23 Recall Costs

The costs of recalling, removing, repairing, reconditioning or replacing any **Product** or any of its parts.

4.24 The Product Itself

- a. **Property Damage** to any **Product** caused by any defect or suspected defect therein;
- b. The unsuitability of any **Product** for its intended purpose;
- c. Any warranty or guarantee in respect of the performance of any **Product**.

4.25 War and Terrorism

- a. War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, insurrection, rebellion, revolution, mutiny, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law, riots, strikes, civil commotion;
- b. Any **Act of Terrorism**.

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

5 Claims Conditions

You must comply with the following conditions – failure to do so may result in a **Claim** not being covered or a reduction in the amount payable under this **Policy**. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation.

5.1 Notification of Claims

- a. **You** must give written notice to **Us** at the address stated in the **Schedule** as soon as reasonably practicable of any **Occurrence**, loss or event which may give rise to a **Claim**. All notifications must include a specific description of the **Occurrence**, loss or event including the date when and manner in which **You** first became aware of the matter.
- b. An **Occurrence**, loss or event will only be considered as reported to **Us** when written notice is first received.
- c. **You** must forward to **Us** every legal document or other communication received (including letters, demands, writs, summons and legal processes) relating to such **Occurrence**, loss or event as soon as reasonably possible after receipt.

5.2 Assistance and Cooperation

Following an **Occurrence** or loss:

- a. **You** must not admit liability for what has happened or make any offer, deal or payment without **Our** prior written consent.
- b. **You** must take all reasonable measures as are appropriate to avoid or minimise any **Personal Injury, Property Damage, Advertising Injury**, loss or payment under this **Policy**.
- c. **You** must retain all evidence and supporting documents and not dispose of or destroy any property or information relating to the circumstances that gave rise to the **Occurrence** or loss.
- d. **You** must co-operate fully with **Us** or anyone acting on **Our** behalf in the investigation, adjustment and settlement of the claim or loss.

5.3 Defence and Settlement

- a. **We** are entitled, but not obliged, to take over and conduct in **Your** name, the defence or settlement of any **Claim** and shall have full discretion in the conduct of any proceedings and in the settlement of any such **Claim**.
- b. **We** may at any time in connection with any **Claim** or loss, pay to **You** the **Limit of Liability** (or any applicable sub-limit) after deduction of any sums already paid. **We** will then have no further liability for that **Claim** or loss nor for any **Defence Costs** associated therewith.
- c. The selection of legal representation to defend a **Claim** shall be made by mutual consent between the **Named Insured** and **Us**, but in the absence of agreement, **Our** decision will be final.
- d. **We** will seek **Your** consent for any settlement that is acceptable to **Us** and to the claimant, but if such consent is withheld and **You** elect to contest the **Claim**, then the maximum amount **We** will pay in respect of such **Claim** will be the lesser of:
 - i. the amount for which the **Claim** could have been settled, plus the **Defence Costs** incurred up to the first date on which **Your** consent to settle was withheld, less the **Excess**; or
 - ii. the remaining portion of the applicable **Limit of Liability** (or other applicable sub-limit of liability).

6 General Conditions

6.1 Alteration To Risk

- a. **You** must give **Us** written notice as soon reasonably possible of any change in the details shown in the **Schedule**, the **Business** or the subject matter of this insurance.
- b. **We** will not provide cover for any changes unless such changes have been accepted by **Us** and confirmed by an alteration to this **Policy**, an endorsement or other form of written confirmation. Notice to any agent or knowledge possessed by any agent, or by any other person, will not effect a waiver or a change in any part of this **Policy** or stop **Us** from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by an endorsement signed by **Us**.
- c. Furthermore, **You** must give **Us** immediate notice of:
 - i. any person or entity within the definition of **You** going into voluntary bankruptcy, receivership, liquidation or any other form of external administration;
 - ii. **Your** failure to pay debts or breach of any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings;

Where such notice is given and/or where there is any material alteration to the risk, **We** will be entitled to cancel this **Policy** in accordance with General Condition 6.4 'Cancellation'.

6.2 Allocation

- a. In the event that **You** are party to a **Claim** which is covered only in part by this **Policy**, **We** and **You** will use best endeavours to agree upon a reasonable allocation of **Compensation, Defence Costs** or any other amount covered by this **Policy** on the basis of the relative legal and financial exposures attributable to indemnified matters and matters not indemnified under this **Policy**.
- b. In the event that agreement cannot be reached, Senior Counsel (agreed upon by the **Named Insured** and **Us** or, failing such agreement, to be nominated by the Chairman of the New South Wales Bar Association or where appropriate by a similar official of any similar body in any other State or Territory) will determine, as an expert but not an arbitrator, a fair and reasonable allocation of **Compensation, Defence Costs** or any other amount covered by this **Policy** on the basis of the relative legal and financial exposures attributable to indemnified matters and matters not indemnified under this **Policy**.
- c. Until such a determination has been made, **We** may, at **Our** absolute discretion and without any admission in relation to coverage, indemnify **You** under this **Policy** as **We** consider reasonable.
- d. The cost of Senior Counsel's advice shall be regarded as part of the **Defence Costs**.

6.3 Assignment

The interest hereunder is not assignable by You without Our prior written consent.

6.4 Cancellation

- a. **We** may cancel this **Policy** in accordance with the provisions of the Insurance Contracts Act 1984 (Cth). If the **Policy** is cancelled, the **Named Insured** shall be entitled to a rebate equal to the proportionate part of the premium corresponding to the unexpired portion of the **Policy Period**, provided always that no **Claim** has been made against **You** and no act, error, omission, fact, information or circumstance or **Occurrence** which could reasonably be foreseen to give rise to a **Claim** or other payment under this **Policy** has been notified prior to such cancellation. Otherwise, the premium shall not be returnable and shall be deemed fully earned at cancellation.
- b. This **Policy** may be cancelled by the **Named Insured** at any time by giving written notice to Us. In such case, if no **Claim** has been made prior to such cancellation, **We** will be entitled to retain the premium for the period during which the **Policy** has been in-force, and You shall be entitled to a refund of the unexpired premium. Otherwise, in the event that the **You** notify **Us** of a **Claim** or **Occurrence** triggering coverage under the **Policy** then the premium shall be deemed fully earned at cancellation and there will be no return of premium by Us to You. In the event that a **Claim** is made after cancellation of the **Policy** then **We** shall retain the right to offset the unexpired premium amount against the agreed **Claim** amount.

6.5 Change Of Control

If, during the **Policy Period**, the **Named Insured** is subject to a **Change Of Control** then this **Policy** will terminate effective from the date of the **Change Of Control**.

6.6 Complaints

We strive to provide an excellent service to all **Our** customers but occasionally things can go wrong. **We** take all complaints seriously and endeavour to resolve all customers' problems promptly. Any questions or concerns about this **Policy** or the handling of a **Claim** should, in the first instance, be addressed to the intermediary that arranged it for **You**.

In the event that **You** remain dissatisfied and wish to make a complaint, please refer to 'Dispute Resolution' within the 'Important Notices' section of this **Policy**.

6.7 Currency

All premium, limit, sublimit and other amounts under this **Policy** are payable in Australian Dollars unless otherwise specified in the **Schedule**.

6.8 Entire Agreement

By acceptance of this **Policy**, **You** agree that this **Policy** embodies all agreements existing between **Us** and **You** relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on **Our** behalf shall not effect a waiver or a change in any part of this **Policy** or stop **Us** from asserting any right under the terms of this **Policy**, nor shall the terms be waived or changed except by written endorsement or rider issued by **Us** to form a part of this **Policy**.

6.9 Governing Law

The meaning, validity and effect of this **Policy** will be interpreted in accordance with the law of the Commonwealth of Australia and the State or Territory in which it is issued, and the Courts of the Commonwealth of Australia will have exclusive jurisdiction in any dispute hereunder.

6.10 Limit of Liability

- a. The **Limit of Liability** for Public Liability is the maximum amount **We** will pay under this **Policy** in respect of any one **Occurrence**.
- b. The **Limit of Liability** for Products Liability is the maximum amount **We** will pay under this **Policy** in total for all **Occurrences** in connection with **Your Products**.
- c. **Defence Costs** are payable in addition to the **Limit of Liability**. However, if the total amount of **Compensation** required to dispose of a **Claim** exceeds the **Limit of Liability**, then **We** will pay only the proportion of any **Defence Costs** that the amount of indemnity available under this **Policy** bears to that total **Compensation**.

6.11 Excess

- a. **We** will only indemnify **You** for that portion of any **Claim, Defence Costs** or other amount payable under this **Policy** which is above the **Excess**.
- b. The **Excess** will be the first amount borne by **You** and, except with respect to the **Other Insurance**, will remain uninsured.
- c. **We** have the right, but not the obligation, at **Our** option to pay any part or all of the **Excess** to effect settlement of a **Claim**. In such circumstances, **You** must promptly reimburse **Us** for such part of the **Excess** amount which has been paid.

6.12 Notice and Authority

The **Named Insured** is considered the agent for all insured parties and will act on their behalf for the purpose of receiving or providing notices under this **Policy**, the acceptance of any endorsement to this **Policy**, the payment of premiums or **Excess** amounts and receipt of any return premiums that may be due. By acceptance of this **Policy** the **You** agree that the **Named Insured** is instructed to act as their agent as stated in this clause.

6.13 Other Insurance

The insurance under this **Policy** will apply in excess of any other valid and collectible insurance available to the **Insured**, including:

- a. any **Other Insurance**;
- b. any self-insured retention, excess or deductible portion thereof,

unless such other insurance is written only as specific excess insurance over the **Limit of Liability** or any other applicable sub-limit of this **Policy**.

6.14 Sanctions

The provision of any cover, the payment of any **Claim** and the provision of any benefit hereunder shall be suspended, to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit by **Us** would expose **Us** to any sanction, prohibition or restriction under any:

- a. United Nations' resolution;
- b. the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or Commonwealth of Australia.

Such suspension shall continue until such time as **We** would no longer be exposed to any such sanction, prohibition or restriction.

6.15 Severability and Non-Imputation

Where **Named Insured** comprises more than one party:

- a. any failure by any insured party to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth); or
- b. any misrepresentation by an insured party to **Us**

shall not prejudice the right of the any other insured party under this **Policy**, provided that such other party:

- i. is entirely innocent of, had no prior knowledge of and did not consent to or condone such failure or misrepresentation; and
- ii. notifies **Us** in writing as soon as reasonably possible after becoming aware of such failure or misrepresentation; and
- iii. takes all reasonable and necessary action to remedy such failure or misrepresentation and co-operates with **Us** to mitigate any prejudice suffered by **Us** by reason of such failure or misrepresentation.

6.16 Subrogation

If payment is made or liability admitted under this **Policy**, **We** will be subrogated to all rights of recovery available to **You** against any third party in connection with that payment or such liability. **You** will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. **You** will do nothing after the **Occurrence** that gave rise to a claim to prejudice such rights. Any recoveries will be applied first to subrogation expenses, second to **Defence Costs** and any other amounts paid **Us**, and lastly to the **Excess**. Any additional amounts recovered will be paid to the **Named Insured**.

6.17 Territorial limits

This insurance applies to claims that are made anywhere in the world unless otherwise stated in the **Schedule**.