



XL Insurance
Casualty

Australian Public & Products Liability Insurance (Retail Customers)



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1. DEFINITIONS

Definitions are set out below. Any word or phrase, other than titles or paragraph headings, which has a definition is printed throughout this Policy, **Current Schedule** and any **Endorsement** relating to this Policy in bold type (for example, **Period of Insurance**). A defined word or phrase will mean the same wherever it appears unless specially stated otherwise.

Marginal notes and headings used in this Policy are purely descriptive in nature, are used only for the purpose of identification and should not be construed as forming part of the wording for the purpose of interpreting this Policy, except for cross-referencing where applicable.

Any defined word or phrase in the singular is deemed to include the plural and those in the plural are deemed to include the singular.

“Advertising Injury” means:

- (a) unintentional libel, slander or defamation,
- (b) piracy or any act, error or omission in the use of advertising or merchandising ideas, under an implied contract,
- (c) infringement of copyright, title or slogan,
- (d) invasion of the right of privacy,

first published or broadcasted in connection with the **Insured’s** advertising activities during the **Period of Insurance**.

“Aggregate” means the maximum total liability of the **Insurer** for all claims payable in respect of the **Period of Insurance**, for which an “Aggregate” **Limit of Liability** is stated in the **Current Schedule** or in an applicable **Endorsement** to this Policy.

“Aircraft” means any vessel, craft or device made or intended to fly or move in or through the atmosphere or space.

“Airside Location” means any area of an airport, aerodrome, airfield, runway or landing strip:

- (i) to which **Aircraft** have access; or
- (ii) designated by the operators for use by **Aircraft**.

“Communicable Disease” means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- (i) the substance or agent includes a virus, bacterium, parasite or other organism or any variation of these, whether deemed living or not, and
- (ii) the method of transmission, whether direct or indirect, including airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
- (iii) the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to



human health, human welfare or property damage.

“Computer System” means any computer, hardware, software, communications system, electronic device (including 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 the Insured or any other party.

“Coverholder” means The Coverholder whose details are stated in the **Schedule**.

“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**.

“Cyber Incident” means:

- (i) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
- (ii) 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**.

“Current Schedule” means the Schedule or certificate approved by **Us** and attached or intended to be attached to this Public and Products Liability Insurance Policy, or any schedule or certificate which replaces it.

“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**.

“Employee” means any person employed under a contract of service or apprenticeship by the **Insured** during the **Period of Insurance**.

“Endorsement” means any Endorsement issued and applying to this Policy. An Endorsement amends and/or applies additional terms, conditions, limitations or exclusions and may restrict cover.

“Excess” means the amount specified in the **Current Schedule** which is the amount (inclusive of supplementary payments) per **Occurrence** that must be paid by the **Insured**.

“Fungus/Fungi” means any plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including moulds, rusts, mildews, smuts and mushrooms.

“Hovercraft” means any vessel, craft or device made and intended to float on or in or travel on or through the atmosphere or water.



“Indemnity/Indemnify/Indemnified” means the principle according to which the **Insured**, having received a claim against them for legal liability, is reimbursed (restored, as far as is possible, to the same financial position that they were in immediately prior to the claim being made against them), in accordance with this Policy and subject to the limitations, terms, conditions and exclusions of this Policy.

“Insured” means:

- (a) companies as listed in the **Current Schedule** and their subsidiary companies.
- (b) any principal in respect of the liability of such principal arising out of the performance by a company referred to in (a) above of any contract or agreement for the performance of work for such principal, but limited always to the extent of cover and the **Limit of Liability** provided in this Policy.
- (c) any director, executive officer, **Employee** or partner of a company referred to in (a) above, but only whilst acting within the scope of their duties in such capacity.
- (d) any office bearer or member of a social and/or sporting club formed with the consent of the **Insured**, in respect of claims covered by this Policy arising from or connected with the activities of any such club.

“Insured’s Business” means the business conducted by the **Insured** only as specified in the **Current Schedule** and includes only commercial activities related to that business.

“Insured’s Products” means anything manufactured or deemed manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied (including services) or distributed by the **Insured** including any container (other than a **Vehicle**) (after it has ceased to be in the physical possession or under the control of the **Insured**).

“Insurer” means Certain Underwriters at Lloyd’s in respect of Syndicate 2003.

“Limit of Liability” means:

- (a) The limit of the **Insurer’s** liability in respect of any **Occurrence**, which shall not exceed the Limit of Liability stated in the **Current Schedule** or in an applicable **Endorsement** to this Policy;
- (b) The total **Aggregate** liability of the **Insurer** for all **Pollution Liability Occurrences** during the **Period of Insurance** shall not exceed the **Pollution Liability** Limit of Liability stated in the **Current Schedule** or in an applicable **Endorsement** to this Policy;
- (c) The total combined **Aggregate** liability of the **Insurer** during the **Period of Insurance**, for all **Personal Injury** and/or **Property Damage** and/or **Advertising Injury Occurrences** during the **Period of Insurance**, which arise out of a **Products Hazard**, shall not exceed the Products Liability Limit of Liability stated in the **Current Schedule** or in an applicable **Endorsement** to this Policy.

“Medical Persons” means qualified medical practitioners, ancillary medical workers and dentists.



“**Mould**” means any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produced moulds.

“**Occurrence**” means:

- (a) with respect to **Personal Injury** and **Property Damage**, an event, including continuous or repeated exposure to the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended from the **Insured’s** standpoint. All Occurrences of a series consequent upon or attributable to one source or original cause shall be deemed one Occurrence and the total amount of **Indemnity** payable by the **Insurer** in respect of such Occurrence shall be accounted to the period of insurance in which the first **Personal Injury** and / or **Property Damage** from the one source or originating cause occurred;
- (b) With respect to **Advertising Injury**, the publishing or broadcasting of the injurious material or act which results in **Advertising Injury** neither expected nor intended from the **Insured’s** standpoint. All liability involving the same injurious material or act, regardless of the frequency of repetition thereof or the number and kind of media used or the number of claimants, shall be deemed as arising out of one Occurrence.

“**Period of Insurance**” means the period commencing on the effective date and ending on the expiry date specified in the **Current Schedule**.

“**Personal Injury**” means:

- (a) bodily injury, death, sickness, disease, disability;
- (b) false arrest, wrongful detention or imprisonment, malicious prosecution;
- (c) wrongful entry or eviction;
- (d) assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing **Bodily Injury** and/or **Property Damage** or eliminating danger;
- (e) libel, slander, defamation of character or invasion of right of privacy (other than arising out of **advertising injury**);
- (f) shock, fright, mental anguish and mental injury which results from any of (a) to (e) above;

which first occurs during the **Period of Insurance**, but excluding:

- (i) harassment;
- (ii) humiliation;
- (iii) discrimination; and
- (iv) mental anguish and mental injury caused by or arising from, harassment, humiliation or discrimination.

“**PFAS**” means any and all per- fluoroalkyl, poly-fluoroalkyl, per- fluorinated or poly-fluorinated substance



“**Pollutants**” means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned, or reclaimed.

“**Pollution Liability**” means all amounts which the **Insured’s** legal liability to pay compensation for **Personal Injury** and/or **Property Damage** which arises out of the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** that is sudden, identifiable, unintended, unexpected and which takes place in its entirety at a specific time and place. Pollution Liability excludes all legal liability in respect of premises (including land or water within or below the boundaries of such land or premises) that are presently or were at any time previously owned, leased, hired or tenanted by the **Insured** or otherwise in the **Insured’s** care, custody or control.

“**Products**” means the **Insured’s Products**. For clarification purposes, “products” (lowercase, not bold) means any products whether or not the **Insured’s Products**.

“**Products Hazard**” means **Personal Injury** or **Property Damage** arising out of the **Insured’s Products** but only if the **Personal Injury** or **Property Damage** occurs after the physical possession of such **Products** has been relinquished to others.

“**Professional Services**” means advice (other than in connection with the supply or intended supply of the **Insured’s Products**), designs, specifications, plans, maps, surveys, inspections, computer programs, formulae, supervision, instructions, directions or opinions prepared or given by or on behalf of any **Insured** in a professional capacity to others, whether or not a fee is charged for these Professional Services.

“**Property Damage**” means:

- (a) physical damage to or destruction of tangible physical property which first occurs during the **Period of Insurance** including any resultant loss of use; or
- (b) loss of use of tangible physical property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible physical property which first occurs during the **Period of Insurance**.

Tangible physical property does not include **Data** nor any amount pertaining to the value of such **Data**.

“**Spores**” means any dormant or reproductive body produced by or arising or emanating out of any **Fungus/Fungi, Mould(s)**, mildew, plants, organisms or micro-organisms.

“**Sub-Limit of Liability**” means the Sub-Limit of Liability stated in the **Current Schedule** or applicable **Endorsement**.

“**Territorial Limits**” means as listed in the **Current Schedule**.



“(act of)**Terrorism**” means an act, including 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 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.

“**USA and Canada**” means the United States of America (USA) and Canada and/or any countries, territories, possessions, dependencies or protectorates which operate under the laws of or which come within the jurisdiction of the courts of the United States of America or Canada.

“**Use of any Vehicle as a Tool of Trade**” means the use of a **Vehicle** on a work site, but does not include:

- (a) **Vehicles** whilst in transit to or from or within any work site; or
- (b) **Vehicles** used for transport or haulage.

“**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 and any trailer or other attachment made or intended to be drawn by any such machine.

“**Watercraft**” means any vessel, craft or device made and intended to float on or in or travel on or through water.

The following words are used in notices and information clauses. While they are defined here their meaning is for general clarification and identification purposes and not intended to convey any contractual meaning beyond the context of the clause in which the word is used.

“**We/Us/Our**” means the **Coverholder** on behalf of the **Insurer**.

“**You/Your**” means **the Insured** or anyone reading this Policy, the **Current Schedule** or an **Endorsement** to this Policy, who may be eligible to be **Indemnified** under this Policy.



2. INTRODUCTION

This Policy consists of the Definitions, Exclusions and Conditions and **Current Schedule**, if any, all of which are a single document and are to be read as one contract. In deciding to accept this Policy and in setting the terms and premium **We** have relied on the information which **You** have provided to **Us**.

The **Insurer** will, in consideration of the payment of the premium, insure **You**, subject to the terms and conditions of this Policy, against the events set out in the operative clauses of this Policy and occurring in connection with the **Business** during the **Period of Insurance** or any subsequent period for which **We** agree to accept payment of premium.

Please read this Policy carefully and make sure that it meets **Your** needs. If any corrections are necessary, **You** should contact **Your** broker through whom this Policy was arranged.

Please keep this Policy in a safe place – **You** may need to refer to it if **You** have to make a claim.

Type of cover and insurance

This insurance product has been designed for Public and Products Liability Insurance. **We** intend the language and layout to be clear to help **You** to understand the cover the **Insurer** provides and **Your** obligations.

2.1 THE AGREEMENT

In consideration of the payment of the Premium set out in the **Current Schedule**, the **Insurer** provides **Indemnity** to the **Insured** in accordance with this Policy, subject to the limitations, terms and conditions of this Policy for the period set out in the **Current Schedule**.

This Policy is limited to the term specified in the **Period of Insurance** in the **Current Schedule**.

Any word or expression given a specific meaning in the DEFINITIONS on page 3 of this Policy will mean the same wherever else it appears unless specially stated otherwise. Marginal notes and headings are used only for the purpose of identification and should not be construed as forming part of the wording for the purpose of interpreting this Policy.

2.2 THE COVER

The **Insurer** agrees to **Indemnify** the **Insured** up to the **Limit of Liability** and subject to all terms, conditions and exclusions of this Policy for:

- (a) all amounts which the **Insured** becomes legally liable to pay as compensation (excluding punitive, exemplary, aggravated and liquidated damages) for **Personal Injury, Property Damage, Pollution Liability** and/or **Advertising Injury** occurring within the **Territorial Limits** as a result of an **Occurrence** during the **Period of Insurance** in connection with the **Insured's Business**;
- (b) all third party claimants' legal costs taxed/assessed against the **Insured** arising out of **Personal Injury, Property Damage, Pollution Liability** or **Advertising Injury** for which **Indemnity** is available under clause 2.2(a); and



- (c) all interest accruing after entry of judgment against the **Insured** arising out of **Personal Injury, Property Damage, Pollution Liability or Advertising Injury** for which **Indemnity** is available under clause 2.2(a) until the **Insurer** has paid, tendered or deposited in court such part of such judgment as does not exceed the **Limit of Liability**.

The total **Indemnity** available under this clause in respect of the combined amounts in 2.2(a), 2.2(b) and 2.2(c) is restricted to the **Limit of Liability**.

2.3 SUPPLEMENTARY PAYMENTS

Except as stated in clause 2.4 UNITED STATES OF AMERICA AND CANADA – JUDGMENTS, In relation to claims made and/or actions instituted against the **Insured** the **Insurer** shall **Indemnify** the **Insured** in respect of expenses, including investigation and legal costs as set out in (a) and (b) below,:

- (a) all expenses, including investigation and legal costs incurred by the **Insurer** and/or by the **Insured** with the written consent of the **Insurer** (consent not to be unreasonably withheld), in the settlement or defence of any claim or suit for compensation in respect of which the **Insured** is entitled to **Indemnity** under clause 2.2 above or if sustained would be so entitled; and
- (b) all expenses incurred by the **Insured** for first aid to others for **Personal Injury** to which clause 2.2 above applies (other than medical expenses prohibited by law).

The **Indemnity** available under this clause is in addition to the **Limit of Liability**.

2.4 UNITED STATES OF AMERICA AND CANADA – JUDGMENTS

This clause is only operative if stated to be “Applicable” in the in the **Current Schedule**

In respect of any cover under this Policy for or relating to or involving any judgment, award or settlement made against the **Insured** within the **USA and Canada** (or any order made anywhere in the world to enforce such a judgment, award or settlement either in whole or in part) the **Insured** agrees to accept the following additional terms and exclusions in respect of that judgment, award or settlement:

- (a) the total **Indemnity** available under clauses 2.2 THE COVER and 2.3 SUPPLEMENTARY PAYMENTS is restricted to the **Limit of Liability**.
- (b) This Policy does not cover any liability arising out of or connected directly or indirectly with claims made and/or actions instituted against the Insured for:
- (1) the actual, alleged or threatened discharge, dispersal, release, escape, seepage or migration of **Pollutants**; or
 - (2) any:
 - (i) governmental direction or request that the Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise Pollutants; or
 - (ii) claim or action instituted against the Insured by or on behalf of any governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising Pollutants.



2.5 CROSS LIABILITY

Where the **Insured** comprises more than one entity the term **Insured** shall be considered as applying to each entity in the same manner as though a separate Policy had been issued to each entity, provided nothing contained in this Clause shall operate to increase the **Insurer's Limit of Liability** as specified in the **Current Schedule**.

2.6 WORKER to WORKER LIABILITY

Despite Exclusions 3.14 - Employer's Liability, but subject otherwise to all terms, conditions, limitations and exclusions of this Policy, to the Public Liability Limit of Liability and to the Worker to Worker Liability **Excess** stated in the **Current Schedule**, the **Insurer** agrees to **Indemnify** the **Insured** in respect of:

- 2.6.1 claims for recoveries of any payment made by any compulsory workers or accident compensation insured under the provisions of any compulsory workers or accident compensation legislation or policy, but only where the claim is being made against an **Insured** who is:
 - (a) not the direct employer of the worker in respect of whom the recovery is being sought;
 - (b) not the deemed employer of the worker in respect of whom the recovery is being sought.
- 2.6.2 claims made by an injured worker (as defined by applicable workers or accident compensation legislation) against any **Insured** other than the workers' direct employer or deemed employer.

However, nothing in this clause shall cause the **Insurer** to be liable where the **Insured** is entitled to indemnity under any policy pursuant to any Workers Compensation legislation.



3. EXCLUSIONS

3.1 Abuse

This Policy does not cover any liability arising out of or connected directly or indirectly with:

- 3.1.1 the actual, alleged, attempted, threatened or proposed sexual or physical abuse or molestation, harassment or any other form of physical or mental abuse of any person; or any other act of a sexual nature or any act undertaken with a sexual motive;
- 3.1.2 negligent or intentional **Employee** hiring, investigation, acceptance of volunteer workers, supervision, reporting to the proper authorities or failure to so report, or retention of a person by the **Insured** whose conduct would be excluded by clause 3.1.1, or may have contributed to the injuries set forth in clause 3.1.1.

3.2 Advertising Liability

This Policy does not cover any liability arising out of or connected directly or indirectly with **Advertising Injury** resulting from:

- (a) failure of performance of contract or breach of contract; or
- (b) infringement of trade-mark or trade name; or
- (c) incorrect description of any article or commodity; or
- (d) mistake in advertised price;

first committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the **Insured's** advertising activity.

3.3 Aircraft, Hovercraft, Watercraft and Registered Vehicles

This Policy does not cover any liability arising out of or connected directly or indirectly with the ownership, possession, maintenance, operation, use or legal control by or on behalf of the **Insured** of any:

- (a) **Aircraft**, (also claims arising out of the **Insured's Products** that are used with the **Insured's** knowledge in **Aircraft** or aerial devices); or
- (b) **Hovercraft**; or
- (c) **Watercraft** or vessels exceeding 10 metres in length.

Exclusion 3.3(c) does not apply where the **Watercraft** or vessel is:

- (i) let out on hire or on charter to the **Insured** and is wholly crewed/manned by a professional crew; and
- (ii) the **Insured** is not in the business of letting for hire or charter any **Watercraft** or vessels; and
- (iii) the hiring or chartering of the **Watercraft** or vessel by the **Insured** is not undertaken in the normal course of the **Insured's Business**.

- (d) **Vehicle** which is registered or is required under any legislation to be registered; or



(e) **Vehicle** in respect of which compulsory insurance is required to be effected by virtue of any legislation.

Exclusions 3.3(d) and 3.3(e) do not apply to **Personal Injury** and/or **Property Damage** arising from:

- (i) the delivery or collection of goods to or from any **Vehicle** where such **Personal Injury** and/or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare; or
- (ii) the loading or unloading of any **Vehicle**; or
- (iii) the **Use of any Vehicle as a Tool of Trade**.

3.4 Aircraft Products

This Policy does not cover any liability arising out of or connected directly or indirectly with the selling, leasing, hiring or manufacture and/or supply of parts and/or **Products** that are used with the **Insured's** knowledge in **Aircraft** or any aerial device.

3.5 Airside Locations

This Policy does not cover any liability arising out of or connected directly or indirectly with work carried out by or on behalf of the Insured at or on any **Airside Location(s)**.

3.6 Alterations/Additions, Construction of Buildings

This Policy does not cover any liability arising out of or connected directly or indirectly with the erection, construction, demolition, alteration of and/or addition to a building(s) by or on behalf of the **Insured**, except alteration of or addition not exceeding in cost the sum of A\$250,000 to a building(s) owned and/or occupied by the **Insured**.

3.7 Asbestos

This Policy does not cover any liability arising out of or connected directly or indirectly with any **Occurrence** to which a link has been or is established to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos whether or not there is another cause of loss which may have contributed concurrently or been operative in the sequence of events resulting in any loss.

3.8 Communicable Diseases

This Policy does not cover any liability arising out of or connected directly or indirectly with any **Communicable Disease**, whether or not the disease is notifiable to a public body.

Despite any provision to the contrary within this Policy, this Policy does not cover actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost any other costs, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a **Communicable Disease** or the fear or threat (whether actual or perceived) of a **Communicable Disease**.



For the purposes of this exclusion 3.8, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes any cost to clean-up, detoxify, remove, monitor or test for a **Communicable Disease**.

3.9 Contractual Liability

This Policy does not cover any liability arising out of or connected directly or indirectly with liability assumed under any contract or agreement, except that this Exclusion 3.9 does not apply to:

- (a) liability which would have been imposed by law in the absence of such contract or agreement; or
- (b) those contracts or agreements specified in the **Current Schedule**.

3.10 Cyber and Data Total Exclusion

3.10.1 Despite any provision to the contrary within this Policy or any **Endorsement** to this Policy, this Policy does not cover any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature caused by, contributed to by, resulting from, arising out of or in connection with any:

3.10.1.1 **Cyber Act** or **Cyber Incident** including any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**; or

3.10.1.2 loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any **Data**, including any amount pertaining to the value of such **Data**;

regardless of any other cause or event contributing concurrently or in any other sequence to such loss, damage, liability, claim, fines, penalties, cost or expense.

3.10.2 In the event any portion of this exclusion 3.10 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

3.10.3 This exclusion 3.10 supersedes any other wording in the Policy having a bearing on a **Cyber Act**, **Cyber Incident** or **Data**, and, if in conflict with such wording, replaces it.

3.11 Data Breach

This Policy does not cover any liability for:

3.11.1 damages, costs or expenses;

3.11.2 penalties or fines;

3.11.3 costs of replacing, reinstating rectifying or erasing any **Data**, including personal data;

3.11.4 costs of any investigations, notifications to the relevant Data Commissioner (or equivalent) or data subject notifications;

arising out of or connected directly or indirectly with any breach or alleged breach of:

3.11.5 the Privacy Act 1988 or any amending or subsequent law or legislation in Australia relating to data privacy;

3.11.6 any data privacy laws or regulations elsewhere in the world.



3.12 Deliberate or Intentional Acts

This Policy does not cover any liability for the deliberate or intentional acts the **Insured** or on the **Insured's** behalf.

This exclusion 3.12 does not apply to **Personal Injury** or **Property Damage** resulting from the use of reasonable force to protect persons or property or to any individual person or company if the **Personal Injury** or **Property Damage** resulting from the act or event was not expected or intended by the person taking that action.

3.13 Electro Transmissions, Biological, Chemical and Nuclear/Radioactive Contamination

This Policy does not cover any liability arising out of or connected directly or indirectly with:

- (a) electromagnetic fields, extremely low frequency electric fields and/or magnetic fields, microwave emissions or radio emissions;
- (b) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this Exclusion only, combustion shall include any self-sustaining process of nuclear fission;
- (c) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component of that installation, reactor or assembly;
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
- (e) any chemical, biological, bio-chemical, or electromagnetic weapon.

3.14 Employer's Liability

This Policy does not cover any liability arising out of or connected directly or indirectly with:

- (a) **Personal Injury** to any person arising out of or in the course of the employment of such person in the service of the **Insured**;
- (b) **Personal Injury** to any person who is deemed to be the **Employee** of the **Insured** pursuant to any legislation relating to worker's compensation;
- (c) **Personal Injury** for which the **Insured** is entitled to seek **Indemnity** under any statutory fund, statutory scheme, self-insurance or any policy of insurance required to be taken out pursuant to any legislation relating to Workers' Compensation, whether or not the **Insured** is a party to such contract of insurance;
- (d) claims made against the **Insured** under the provisions of any Workers' Compensation legislation, any industrial award, agreement of determination;
- (e) any claim by any person arising out of or in the course of the employment of such person in the service of the **Insured** for harassment, discrimination or unfair dismissal.



3.15 Fines and Penalties

This Policy does not cover any liability for fines or penalties imposed by law, punitive, exemplary, aggravated and liquidated damages.

3.16 Lead

This Policy does not cover any liability arising out of or connected directly or indirectly with any **Occurrence** to which a link has been or is established to the existence of lead.

3.17 Legionnaires' Disease and other Pathogens

This Policy does not cover any liability arising out of or connected directly or indirectly with any **Occurrence** to which a link has been or is established to the existence of legionella bacteria.

- (a) legionella bacteria; or
- (b) any other pathogenic organism, material or substance;

whether man-made or naturally occurring and whether or not there is another cause of loss which may have contributed concurrently or been operative in the sequence of events resulting in any loss.

3.18 Libel, Slander and Defamation

This Policy does not cover any liability arising out of or connected directly or indirectly with the publication of any defamatory material:

- (a) made prior to the commencement of the **Period of Insurance**; or
- (b) made at the **Insured's** direction or with the **Insured's** authority or with knowledge of its falsity; or
- (c) related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the **Insured**.

3.19 Loss of Use

This Policy does not cover any liability arising out of or connected directly or indirectly with loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- (a) a delay in or lack of performance by or on behalf of the **Insured** in relation to any contract or agreement; or
- (b) the failure of the **Insured's Products** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the **Insured**.

This Exclusion 3.19(b) does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the **Insured's Products** after the **Insured's Products** have been put to use by any person or organisation other than the **Insured**.



3.20 Mould

This Policy does not cover any actual or alleged liability, loss, damage, compensation, injury, sickness, disease, death, medical payment, defence cost or any other costs, fees or expense of whatsoever nature caused by or arising out of, contributed to by, resulting from, originating from, or otherwise in connection with the clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part to the existence of (whether actual or alleged):

- (a) **Mould, Fungus / Fungi**, mildew(s) or yeast(s);
- (b) **Spore(s)** or toxins created or produced by or emanating from such **Fungus/Fungi, Mould(s)**, mildew or yeast;
- (c) bacteria;
- (d) algae;
- (e) mycotoxins;
- (f) mushroom(s);
- (g) bio-contaminant(s)
- (h) any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures or acts as a medium for any **Fungus/Fungi, Mould(s)**, mildew, yeast, or **Spore(s)** or toxins emanating from them;
- (i) any substance, vapour, gas, or other emission or organic or inorganic body or substance produced by or arising out of any **Fungus/Fungi, Mould(s)**, mildew or yeast.

3.21 Occupational Illness or Disease

This Policy does not cover any liability arising out of or connected directly or indirectly with any illness or disease (including subsequent disablement or death) sustained during and which arises out of a person's employment.

3.22 PFAS

This Policy (including under any extension) does not cover any liability or pay any amounts of whatsoever nature caused by, contributed to by, arising from or in connection with any **PFAS** or any materials or substances containing **PFAS**.

3.23 Pollution

3.23.1 This Policy does not cover any liability arising out of or connected with claims made and/or actions instituted against the **Insured** for:

- (a) the actual, alleged or threatened discharge, dispersal, release, escape, seepage or migration of **Pollutants**; or
- (b) any:
 - (i) governmental direction or request that the **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**; or



- (ii) claim or action instituted against the **Insured** by or on behalf of any governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising **Pollutants**.

This Exclusion 3.23.1 does not apply to **Pollution Liability**.

3.24 Product Defect/Faulty Workmanship

This Policy does not cover any liability arising out of or connected directly or indirectly with:

- (a) **Property Damage** to the **Insured's Products** if such damage is attributable to any defect in or the harmful nature of the **Insured's Products** or unsuitability for the purpose for which they were intended; or
- (b) performing, completing, repairing, replacing, correcting or improving any work or service undertaken or provided by or on behalf of the **Insured**.

3.25 Product Recall

This Policy does not cover any liability arising out of or connected directly or indirectly with the withdrawal, recall, inspection, repair, replacement or loss of use of the **Insured's Products** or any property of which the **Insured's Products** form a part.

3.26 Professional Services

This Policy does not cover any liability arising out of or connected directly or indirectly with the rendering of or failure to render **Professional Services** by or on behalf of the **Insured** or any error or omission connected with those **Professional Services**.

This Exclusion 3.26 does not apply to liability arising out of the rendering or failure to render medical advice at the **Insured's** Premises by **Medical Persons** employed by the **Insured** to provide first aid and ancillary medical services.

3.27 Property in the Insured's Physical or Legal Control

This Policy does not cover any liability arising out of or connected directly or indirectly with **Property Damage** to:

- (a) property owned by or leased or rented or hired or under hire purchase or on loan to the **Insured** or under the course of construction by the **Insured**; or
- (b) property in the physical or legal control of the **Insured**.

However, if a **Sub-Limit of Liability** and **Excess** are shown in the **Current Schedule** in respect of Property in the Insured's Physical or Legal Control this Exclusion will not apply to amounts which the **Insured** becomes legally liable to pay as compensation (excluding punitive, exemplary, aggravated and liquidated damages) for **Property Damage** to:



- (i) premises (or the contents thereof) not under the course of construction by the Insured, but temporarily occupied by the Insured for work therein (but no indemnity is granted for **Property Damage** to that part of the property on which the **Insured** is working and which arises out of such work);
- (ii) clothing and personal effects belonging to employees and visitors of the **Insured**;
- (iii) premises tenanted by the **Insured** for the purpose of the **Insured's Business** to the extent that the **Insured** would be held liable in the absence of any specific agreement;
- (iv) any property not owned by the **Insured** or under the course of construction by the **Insured** but in the physical or legal control of the **Insured** and not otherwise covered under this Policy.

3.28 Silica

This Policy does not cover any liability arising out of or connected directly or indirectly with the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form, or to any obligation of the **Insured** to pay damages to any party because of **Personal Injury** or **Property Damage** arising out of the presence, ingestion, inhalation or absorption of or exposure to silica fibres, silica dust or silica in any form.

3.29 Terrorism

Despite any provision to the contrary within this Policy or any **Endorsement** to this Policy, this Policy does not cover any liability, loss, damage, cost or expense of whatsoever nature caused by, resulting from or in connection with any:

- (a) act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any act of **Terrorism**.

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

3.30 Tobacco/Tobacco Products

This Policy does not cover any liability arising out of or connected directly or indirectly with death or the contraction, aggravation or exacerbation of any disease, sickness, injury, or disorder of the human body or mind as a result of the use or consumption (including passive smoking) of tobacco or tobacco products.

3.31 Toxic Substances

This Policy does not cover any liability arising out of or connected directly or indirectly with any actual or alleged liability, whatsoever for any claim in respect of loss or losses (exclusively or partially) arising out of, resulting from, or in consequence of, or in any way involving:

- (a) refractory ceramic fibres, or any materials containing refractory ceramic fibres in whatever form or quantity;
- (b) polychlorinated biphenyls (PCBs).



3.32 Underground Services

This Policy does not cover any liability arising out of or connected directly or indirectly with **Property Damage** to:

- (a) underground services (including water, gas, sewerage, sewage, fuel pipes, electric and telephone cables); or
- (b) any underground property or structure for the purpose of storing, conveying, transporting, transmitting, delivering of electricity, water, gas, fuel, telecommunications media, signals, radio and other waves;

unless:

- (i) before the start of any work, the **Insured** has inquired with the relevant authorities or owners of such services, property or structures as to the exact location of such services, property or structures and takes all reasonable precautions to avoid such services, property or structures; and
- (ii) any indemnity provided by clause 3.32(i) above will be limited to the cost of repair, replacement or reinstatement of such damaged services, property or structures and will not extend to any loss due to interruption of or interference with the services, property or structures stated in clause 3.32(a) or 3.32(b) or loss of use resulting from them.

3.33 War etc

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

- (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
- (b) piracy or hijack; or
- (c) any other civil disturbance or civil unrest, including strike, protest and civil commotion.



4. STANDARD CONDITIONS

4.1 Cancellation

(a) Your Right to Cancel during the Cooling-Off Period

You have the right to cancel this Policy by notifying **Us** in writing within fourteen (14) days of the date this Policy was issued to **You** (Cooling-Off Period). **You** are entitled, during the Cooling-Off Period, to a complete refund of the amount **You** have paid for this Policy. If **You** choose to cancel this Policy during the Cooling-Off Period, **We** and the **Insurer** will treat this Policy as never having existed.

You are not entitled to a refund if, during the Cooling-Off Period, this Policy has already expired or if **You** have made a claim under this Policy.

(b) Your Right to Cancel after the Cooling-Off Period

You may cancel this Policy after the Cooling-Off Period by notifying **Us** in writing. The cancellation will take effect on the day **We** receive such notice in writing. **We** will refund the premium for the unexpired **Period of Insurance**. If more than one person, company or firm is named on the policy as an **Insured Person(s)**, **We** will only cancel this Policy if a written agreement to cancel this Policy is received by **Us** from all parties named as an **Insured Person(s)**. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long this Policy has been in force unless **You** have made a claim in which case the full annual premium is due.

(c) Our Right to Cancel

We are entitled to cancel this Policy, by giving **You** (14) fourteen days' notice, if there is a valid reason to do so, including for example:

- i) **You** breach **Your** duty of utmost good faith.
- ii) **You** breach **Your** disclosure obligations, **You** misrepresent the facts to **Us** or **You** fail to take reasonable care in disclosing information to **Us** in the case of consumer contracts.
- iii) **You** do not do what the policy requires **You** to do.
- iv) **You** make a fraudulent claim.

This Policy can also be cancelled, by giving **You** (14) fourteen days' notice, if an act or omission occurs after this Policy has been issued in the following circumstances:

- v) this Policy includes a provision that requires **You** to notify **Us** of a specified act or omission by **You**;
- vi) the effect of this Policy is to authorise **Us** to refuse to pay a claim, either in whole or in part, by reason of an act or omission by **You** or of some other person.

We will advise **You** in writing if this Policy is cancelled by **Us**. If **We** cancel this Policy **We** will refund the premium for the unexpired **Period of Insurance**. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long this Policy has been in force unless **You** have made a claim in which case the full annual premium is due.



4.2 Claims Procedure

- (a) Notice should be given as soon as reasonably practicable to the **Insurer** via the claims nominee, stated in clause 6.3.2, of every **Occurrence**, event, claim, writ, summons, proceedings, impending prosecution and/or inquest in respect of which there may arise a liability under this Policy.
- (b) The **Insured** must not without the **Insurer's** consent (not to be unreasonably withheld) make any admission, offer, promise or payment in connection with any **Occurrence**, event, claim, writ, summons, proceedings, impending prosecution and/or inquest.
- (c) Every impending prosecution, inquest or fatal accident enquiry, claim, summons or process and all documents relating to these should be forwarded to the **Insurer** via the claims nominee, stated in clause 6.3.2, unanswered if a claim for liability is made against the **Insured**, no later than fourteen (14) days after receipt by the **Insured** or as soon as reasonably practicable.
- (d) The **Insurer** will be entitled, if it so desires and taking into account the reasonable interests of the **Insured**, to take over and conduct in the **Insured's** name the defence or settlement of any claim and the **Insurer** may make such investigation, negotiation and settlement of any claim or suit.
- (e) The **Insured** should use its best endeavours to preserve any property, products, appliances, plant and other objects which may be required in connection with the investigation of or the defending of any claim made against the **Insured** and shall not, except to prevent further **Personal Injury** and/or **Property Damage**, without the **Insurer's** consent (not to be unreasonably withheld) and until the **Insurer** has had an opportunity of inspection, make any alteration or repair to or dispose of such items.
- (f) The **Insurer** will have full control, taking into accounts the reasonable interests of the **Insured**, in the conduct of any proceedings in connection with any claim and the **Insured** shall give all information and assistance as the **Insurer** may reasonably require in the prosecution, defence or settlement of any claim.
- (g) In the event of an **Occurrence**, the **Insured** shall as soon as reasonably practicable take reasonable steps at its own expense to prevent further **Personal Injury** and/or **Property Damage** from arising out of the same or similar conditions, but such expense will not be recoverable under this Policy.
- (h) The **Insurer** will be entitled to attend any inquest in respect of which there may arise liability under this Policy.
- (i) In respect of claims for amounts less than the applicable **Excess** the **Insured** should at all times observe and duly comply with clause 4.2 Claims Procedure.
- (j) Any person or organisation for which the **Insurer** makes a payment under this Policy must transfer to the **Insurer** their right to recovery against any other party in accordance with clause 4.15- Subrogation on page 26 of this Policy. After a loss the **Insured** must do everything reasonably necessary or reasonably required by the **Insurer** to secure and do nothing to impair these rights.



4.3 Goods and Services Tax

Where the **Insurer** makes a payment under this Policy:

- (a) for the acquisition of goods, services or other supply the **Insurer** will reduce the amount of the payment by the amount of any input tax credit the **Insured** is, or will be, or would have been entitled to under a New System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is actually made;
- (b) as compensation instead of payment for the acquisition of goods, services or other supply the **Insurer** will reduce the amount of payment by the amount of any input tax credit that the **Insured** would have been entitled to under a New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

4.4 Discharge of Liabilities

The **Insurer** may at any time pay to the **Insured** the applicable **Limit of Liability** (after deducting all amounts already paid by or on behalf of the **Insurer**) or any lesser amount for which a claim or series of claims may be settled.

Upon payment, the **Insurer**:

- (a) will not be under any further liability to the **Insured** in respect of the applicable claim(s); and
- (b) will be released from all liability in respect of the applicable claim(s), except for expenses including investigation and legal costs incurred by the **Insured** with the **Insurer's** consent prior to the date of such payment, unless those costs and expenses re stated as included with the applicable **Limit of Liability**.

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

4.5 Inspection of Property

The **Insured** will permit the **Insurer**, if required and on reasonable notice, to inspect the **Insured's** property and operations at any time, but the **Insurer** will not be obliged to undertake an inspection. Neither the **Insurer's** right to make inspections nor the making of an inspection nor any report of an inspection constitutes 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 Interpretation

In this Policy:

- (a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this Policy;
- (b) if any term, condition, exclusion or **Endorsement** or part them is found to be invalid or unenforceable the remainder shall be in full force and effect.



4.7 Law and Jurisdiction

This insurance shall be governed by the laws of the Commonwealth of Australia and subject to the exclusive jurisdiction of the courts of Australia.

The language of this Policy and all communications relating to it will be in English.

4.8 Marginal Notes and Headings

Where marginal notes and headings are used in this Policy are purely descriptive in nature, are used only for the purpose of identification and should not be construed as forming part of the wording for the purpose of interpreting this Policy except for cross-referencing where applicable.

4.9 Notice of Change

The **Insured** shall give notice in writing as soon as practicable of any change in facts or circumstances that comes to the **Insured's** knowledge which increases the risk of loss, damage or liability which is the subject of this Insurance, at any time during the **Period of Insurance**. If the **Insured** is unsure whether any change in facts or circumstances increase the risk they should contact their insurance broker through whom this Policy was arranged.

4.10 Other Insurance

If the **Insured** makes a claim under this Policy in respect of which the **Insured** is or may be **Indemnified** in whole or part under any other Insurance(s), then the **Insured** must advise the **Insurer** via the claims nominee, stated in clause 6.3.2, of the full details of such other Insurance(s) when making the claim under this Policy. Subject to the provisions of the Insurance Contracts Act 1984, the **Insurer** reserves its rights to seek contribution from such other insurer(s).

4.11 Reasonable Care

The **Insured** shall:

- (a) exercise reasonable care that only competent workers are employed and take reasonable measures to maintain all premises (including fittings and plant) owned or occupied by it, in sound condition; and
- (b) take reasonable precautions to:
 - (i) prevent **Personal Injury** and/or **Property Damage**; and
 - (ii) prevent the manufacture, sale or supply of defective **Products**; and
 - (iii) comply and ensure that the Workers, servants and agents of the **Insured** comply with all statutory obligations, by-laws or regulations which provide for the safety of persons and property; and
- (c) at the **Insured's** own expense take reasonable action to trace, recall or modify any **Products** containing any defect or deficiency which defect or deficiency the **Insured** has knowledge of or has reason to suspect.



4.12 Rights of Third Parties

A person who is not a party to this contract has no right under the Insurance Contracts Act 1984 (Cth), to enforce any term of this agreement but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

4.13 Sanctions

We will not provide cover and **We** will not be liable to pay any claim or provide any benefit under this Policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

4.14 Several Liability

(LMA3333 21 June 2007)

(a) **Insurers' liability several not joint**

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 (re)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.

(b) **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.

4.15 Subrogation

In the event of a payment under this Policy to or on behalf of the **Insured**:

- (a) the **Insurer** shall, subject to the *Insurance Contracts Act 1984*, be subrogated to all the **Insured’s** rights of recovery against all persons and organisations, taking into accounts the reasonable interests of the **Insured**; and
- (b) the **Insured** shall execute and deliver instruments and papers and do all that is reasonably necessary or reasonably required to assist the **Insurer**, giving consideration to the **Insured’s** interests, in the exercise of such rights.



5. IMPORTANT NOTICES TO THE INSURED

5.1 Your duty of disclosure

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

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

Your duty however does not require disclosure of a matter:

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

5.1.1 Non-disclosure (if you do not tell us)

If **You** do not tell **Us** anything **You** are required to, **We** may cancel **Your** contract or reduce the amount **We** will pay **You** if **You** make a claim, or both.

If **Your** failure to tell **Us** is fraudulent, the **Insurer** may refuse to pay a claim and treat the contract as if it never existed.

5.1.2 Utmost Good Faith

Every insurance contract is subject to the doctrine of utmost good faith which requires that parties to the contract should act toward each other with the utmost good faith. Failure to do so on **Your** part may prejudice any claim and/or the continuation of the insurance contract.

5.2 Change in Circumstances

You must tell **Us** as soon as practicably possible of any change in the information **You** have provided to **Us** which happens before or during any **Period of Insurance**. For example, **You** must tell **Us** if:

- if **You** change or expand **Your Business** activities; or
- if **You** purchase another company, or just part of it, and want or intend the activities of that company to be covered under his Policy.

When **We** are notified of a change **We** will tell **You** if this affects **Your** policy. For example, **We** may cancel **Your** policy in accordance with the Cancellation and Cooling-Off Provisions, amend the terms of **Your** policy or require **You** to pay more for **Your** insurance. If **You** do not inform **Us** about a change it may affect any claim **You** make or could result in **Your** insurance being invalid.



5.3 Privacy

For the purpose of Privacy 5.3 “**We/Us/Our**” means the **Coverholder** and the **Insurer** together.

We are committed to safeguarding and protecting **Your** privacy. **We** are bound by the provisions of the Privacy Act 1988 (Cth) which sets out the standards to meet in the collection, use and disclosure of personal information. **We** will only collect personal information from **You** to allow **Us** to quote on and insure **Your** risks and matters incidental thereto, including investigating, processing and managing claims.

We may provide **Your** personal information to others, such as **Our** related bodies corporate, other insurers or **Our** reinsurers, claims investigators, lawyers and other professionals, and government bodies. Some of these recipients may be outside of Australia, such as to Europe, the United Kingdom, India, Poland and the United States. Any disclosure outside Australia will be in compliance with the Privacy Act. **We** will not under any circumstances trade, rent or sell **Your** information.

If **You** do not provide **Us** with complete, accurate and up-to-date information, **We** cannot properly quote for **Your** insurance and **We** cannot insure **You**. If **You** provide **Us** with personal information about anyone else, **We** will 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.

If **You** wish to access or correct **Your** personal information, or wish to raise any concerns as to how **We** handle **Your** personal information, please go to <https://www.lloyds.com/>.

For more information about how **Your** insurer uses **Your** personal information please see their full privacy notice, which is available in the Privacy section of their website <https://www.lloyds.com/> or in other formats on request.

5.4 General Insurance Code of Practice

The General Insurance Code of Practice (the Code) was developed by the Insurance Council of Australia to further raise standards of practice and service across the insurance industry. The **Insurer** is a signatory to the Code. Further information about the Code and **Your** rights under it can be found at www.codeofpractice.com.au and upon request.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers’ compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

5.5 Fraud

If any claim is in any respect fraudulent or if any fraudulent means or devices are used by **You** or anyone acting on **Your** behalf to obtain any benefit under this Policy, or if any loss under this Policy be the wilful act occasioned by **You** or with **Your** connivance, the **Insurer**, without prejudice to any other right(s) **You** might have under this Policy, shall be entitled to refuse to pay such claim.



6. OTHER IMPORTANT INFORMATION

6.1 Accessibility

Upon request **We** can provide Braille, audio or large print versions of the policy and the associated documentation. If **You** require an alternative format **You** should contact **Your** broker through whom this Policy was arranged.

6.2 Regulatory Information / About the Insurer

(a) **Syndicate 2003**

AXA XL Underwriting Agencies Limited is the managing agent of Syndicate 2003.

AXA XL Underwriting Agencies Limited is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (Firm Reference No. 204848).

Registered Office 20 Gracechurch Street, London, EC3V 0BG, United Kingdom.

Registered in England Number 1815126

You can check this out on the FCA's website at www.fca.org.uk which includes a register of all the firms they regulate or by calling the FCA on 0800 111 6768.

(b) **XL Catlin Services SE**

XL Catlin Services SE acts as an agent of AXA XL Underwriting Agencies Limited in connection with this Policy. XL Catlin Services SE is a registered insurance intermediary authorised and regulated by the Central Bank of Ireland.

Registered Office 8 St. Stephen's Green, Dublin 2 D02 VK30, Ireland.

Registered in Ireland Number 659610.

You can check this information on the Central Bank of Ireland's website at www.centralbank.ie which includes a register of all the firms they regulate.

(c) **XL Insurance Company SE – Australian Branch**

XL Insurance Company SE, Australian Branch (ABN 36 083 570 441), part of the AXA XL division of the AXA Group.

Registered Office Level 28, 123 Pitt Street Sydney NSW 2000 Australia.

You can check this out on the APRA's website at www.apra.gov.au which includes a register of all the firms they regulate or by calling their hotline on 1300 55 88 49.



6.3 Notification to the Insurer

For the purpose of any notification to the **Insurer** the following details should be used:

6.3.1 If there should be a dispute between you and the Insurer

Please refer to clause 6.5 - How to Make a Complaint;

6.3.2 If a claim is made against **You** or **You** need to notify circumstances which could result in a claim being made against you

Please refer to clause 4.2 - Claims Procedure and notify the claims nominee

JUA Underwriting Agency Pty Limited

Claims Manager – Liability

Phone: 02 8272 4806

Email: Claims@jua.com.au

Mail: PO BOX Q1205 Queen Victoria Building, NSW 1230

6.3.3 In all other circumstances please notify

XL Catlin Services SE, UK Branch

20 Gracechurch Street, London EC3V 0BG, United Kingdom

Telephone Number: +44 (0) 20 7743 8487

XL Catlin Services SE acts on behalf of AXA XL Underwriting Agencies Limited in the administration of certain aspects of this Policy.

This does not alter any provision within this Policy requiring the **Insured** to notify any person(s) or entity other than the **Insurer**.

6.4 Financial Claims Scheme

This policy may be a protected Policy under Federal Government's Financial Claims Scheme (FCS), which is administered by the Australian Prudential Regulation Authority (APRA). The FCS may apply in the event that a general insurance company becomes insolvent. If the FCS applies a person who is entitled to make a claim under this Policy may be entitled to a payment under the FCS. Access to the FCS is subject to eligibility criteria. **You** may obtain further information about the FCS from www.fcs.gov.au and the APRA hotline on 1300 55 88 49.

6.5 How to Make a Complaint

6.5.1 Complaints and disputes

We are dedicated to providing a high quality service and **We** want to ensure that **We** maintain this at all times.

If **You** have any concerns or wish to make a complaint in relation to this Policy, **Our** services or **Your** insurance claim, please let **Us** know and **We** will attempt to resolve **Your** concerns in accordance with **Our** Internal Dispute Resolution procedure. Please contact the **Coverholder**, whose details are stated in the schedule, in the first instance.



Australian Public & Products Liability Insurance



We will acknowledge receipt of **Your** complaint and do **Our** utmost to resolve the complaint to **Your** satisfaction within 10 business days.

If **We** cannot resolve your complaint to your satisfaction, **We** will escalate **Your** matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited

Email: ldraustralia@lloyds.com

Telephone: (02) 8298 0783

Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

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.

You may refer **Your** complaint to the Australian Financial Complaints Authority (AFCA), if **Your** complaint is not resolved to **Your** satisfaction within 30 calendar days of the date on which **You** first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678

Email: info@afca.org.au

Post: GPO Box 3 Melbourne VIC 3001

Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If **Your** complaint is not eligible for consideration by AFCA, **You** may be referred to the Financial Ombudsman Service (UK) or **You** can seek independent legal advice. **You** can also access any other external dispute resolution or other options that may be available to **You**.

The **Insurer** accepting this Insurance agree that:

- i. if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the **Insurer** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- ii. any summons notice or process to be served upon the **Insurer** 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 the **Insurer's** behalf;

- iii. if a suit is instituted against the **Insurer**, the **Insurer** will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance immediate notice should be given as soon as possible in accordance with 4.2 Claims Procedure.



axaxl.com

AXA XL Underwriting Agencies Limited
20 Gracechurch Street, London, EC3V 0BG, United Kingdom

Telephone: +44 (0) 20 7933 7000 | Fax: +44 (0)20 7623 9101 | axaxl.com

AXA XL Underwriting Agencies Limited | Registered Office 20 Gracechurch Street, London, EC3V 0BG, United Kingdom | Registered in England Number 1815126

AXA XL Underwriting Agencies Limited is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

PROFESSIONAL INDEMNITY EXTENSION

In consideration of the payment of the Premium set out in the **Current Schedule** and despite Exclusion 3.26 Professional Services of this Policy, but subject otherwise to all terms, conditions, limitations and exclusions of this Policy, the **Insurer** agrees to **Indemnify** the **Insured** in respect of:

1. all amounts which the **Insured** shall become legally liable to pay as compensation in respect of **Personal Injury** or **Property Damage** occurring within the **Territorial Limits** as a result of an **Occurrence** during the **Period of Insurance** arising from **Professional Services** in the conduct of the **Insured's Business**;
2. all interest accruing after any such judgment.

Limit of Liability

The total **Indemnity** available under this Extension in respect of paragraphs 1 and 2 above for the amount by which any one claim or series of claims arising from one **Occurrence** and in the **Aggregate**, exceeds the **Excess** stated below, will not exceed the **Limits** in the **Schedule**.

Any applicable Supplementary Payments as stated below are payable in addition to this **Limit of Liability**.

Supplementary Payments

For the purpose of this Extension, clause 2.3 (Supplementary Payments) of this Policy is replaced with the following:

Except as stated in clause 2.4 (United States of America and Canada – Judgments) of this Policy, in relation to claims made and/or actions instituted against the **Insured** the **Insurer** shall **Indemnify** the **Insured** in respect of expenses as set out in (a) and (b) below:

- (a) all expenses, including investigation and legal costs incurred by the **Insurer** and/or by the **Insured** with the written consent of the **Insurer** (consent not to be unreasonably withheld), in the settlement or defence of any claim or suit for compensation in respect of which the **Insured** is entitled to **Indemnity** under this Extension or if sustained would be so entitled; and
- (b) all expenses incurred by the **Insured** for first aid to others for **Personal Injury** to which this Extension applies (other than medical expenses prohibited by law).

The **Indemnity** available under this clause is in addition to the applicable **Limit of Liability** stated in this Extension.

The total **Indemnity** available under this Extension in respect of Supplementary Payments, payable in connection with paragraphs 1 and 2 above, will not exceed the **Limits** in the **Schedule** for any one claim or series of claims arising from one **Occurrence** and in the **Aggregate**.

Excess

The **Insured** shall bear the **Excess** in the **Schedule** in respect of each and every claim. For the purpose of this clause the term claim includes all applicable Supplementary Payments.

All other terms, conditions limitations and exclusions remain unchanged.