

Public and Products Liability

Combined Policy Wording and
Product Disclosure Statement (PDS)

Issued by Agile Underwriting Services Pty Ltd
ABN 48 607 908 243 — AFSL 483374

Ref: GLSAv01.10.2021(PDS)
Prepared on: 21/09/2021



Casualty Cover

Coverholder at **LLOYDS**

POLICY WORDING & PRODUCT DISCLOSURE STATEMENT (PDS)

Prepared on 21st September 2021

Any general advice that may be contained within this Policy Wording and Product Disclosure Statement (PDS) or accompanying material doesn't take into account Your individual objectives, financial situation or needs. You need to decide if the limits, type and level of cover are appropriate for You.

PART A - PRODUCT DISCLOSURE STATEMENT

General Information	2
WHO CAN I CONTACT IF I HAVE QUESTIONS?	2
ABOUT AGILE UNDERWRITING SERVICES	3
ABOUT LLOYD'S	3
ABOUT THIS POLICY	3
IMPORTANT INFORMATION ABOUT THIS POLICY WORDING AND PRODUCT DISCLOSURE STATEMENT	4
YOUR DUTY OF DISCLOSURE	4
WHO CAN PURCHASE THIS POLICY	5
GENERAL CONDITIONS	6
CANCELLATION OF YOUR POLICY	6
CLAIMS	6
COMPLAINTS AND DISPUTE RESOLUTION	8
UPDATING OUR PDS	8
PRIVACY STATEMENT	8
WORDS WITH SPECIAL MEANINGS	9
	10

PART B - POLICY WORDING

Section 1: Definitions	10
Section 2: Insuring clauses	15
Section 3: Exclusions	17
Section 4: Conditions	24

PART A - PRODUCT DISCLOSURE STATEMENT

Section 1: General Information

In this PDS, “We”, “Us”, “Our” means Agile Underwriting Services Pty Ltd (**Agile**) and “You”, “Your” means the **insured**.

1. WHO CAN I CONTACT IF I HAVE QUESTIONS?

We have simplified our contact points so you can easily get in touch with Us.

FOR ENQUIRIES RELATING TO	PLEASE CONTACT
General enquiries, including policy questions and coverage, and policy amendments. Any questions, just call or email.	1300 705 031 help@agileunderwriting.com
Cancelling your policy You can cancel your policy at any time.	1300 705 031 cancel@agileunderwriting.com
Making a claim online You can claim directly through our online portal.	agileunderwriting.com/claims-and-help/
Making a claim Get in touch as soon as possible and we can help.	1300 705 031 claims@agileunderwriting.com
Making a complaint If you are not happy...we want to know.	1300 705 031 complaints@agileunderwriting.com
Family/Domestic Violence For further information please visit https://www.agileunderwriting.com/claims-and-help/family-domestic-violence-policy/	1300 705 031 family@agileunderwriting.com In an emergency or you are not feeling safe, call 000
Support for customers experiencing vulnerability or financial hardship For further information please visit https://www.agileunderwriting.com/claims-and-help/supporting-customers-experiencing-vulnerability-policy/ https://www.agileunderwriting.com/claims-and-help/financial-hardship/	1300 705 031 hardship@agileunderwriting.com

2. ABOUT AGILE UNDERWRITING SERVICES

This insurance is issued by Agile Underwriting Services Pty Ltd (ABN 48 607 908 243, AFS Licence No. 483374) (**Agile**). **Agile** arranges policies for and on behalf of certain Underwriters at Lloyd's (the Insurer).

In all aspects of this policy, **Agile** acts as agent for the Insurer and not for the **insured**.

Our contact details are:

Head Office:	Level 5, 63 York St, SYDNEY NSW 2000
Postal Address:	Level 5, 63 York St, SYDNEY NSW 2000
Telephone:	1300 705 031
E-mail:	service@agileunderwriting.com
Website:	www.agileunderwriting.com

3. ABOUT LLOYD'S

Lloyd's is the world's specialist insurance and reinsurance market. With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress.

Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world – building resilience for businesses and local communities and strengthening economic growth around the world.

4. ABOUT THIS POLICY

We agree to provide You with insurance in accordance with the terms, conditions, and exclusions of the policy based on the information You have provided or that was provided on Your behalf to Us, subject to payment of the **premium** required. The policy consists of this document, the **schedule** and any endorsements affixed (or intended to be affixed) to it and the proposal form. All of them should be read as if they were one document. This policy is subject to Australian law and practice.

Your certificate of insurance

Your certificate of insurance contains important details about your policy such as the **period of insurance**, your **premium**, what cover options and excesses will apply, and any changes to the policy wording.

What makes up your premium

Your **premium** is determined by a number of factors and of course, the higher the risk is, the higher the **premium**. Your **premium** also includes amounts that we are required to pay, such as government charges, taxes or levies (e.g. stamp duty and GST) that apply to your policy. You will find these amounts on your certificate of insurance.

5. IMPORTANT INFORMATION ABOUT THIS POLICY WORDING AND PRODUCT DISCLOSURE STATEMENT

This document is a PDS and is also Our insurance Policy Wording.

This document contains important information required under the *Corporations Act 2001 (Cth)* (the Act) and has been prepared to assist You in understanding Your policy and making an informed choice about Your insurance requirements. It is up to You to choose the cover You need.

It is important that You carefully read and understand this document before making a decision. Other documents may form part of Our Policy Wording and PDS and if they do, We will tell You in the relevant document.

In return for You paying Us a **premium**, We insure You for the events described in the Policy Wording and PDS, subject to the terms, conditions and exclusions of Your policy. Please keep this document, Your **schedule** and any other documents that We tell You form part of Your policy in a safe place in case You need to refer to them in the future. Please check these documents to make sure all the information in them is correct. Please let Us know as soon as possible if any alterations are needed or if You change Your address or payment details. For certain types of cover under the policy, We will require You to provide receipts and other documentary evidence to Us before We pay a claim.

Check Your documents

It's important that You check all the details on the documents We send You. If You notice an error or if You have a question, please contact Us at www.agileunderwriting.com/contact. If You find You need to change the cover for whatever reason, get in contact with Us.

General Insurance Code of Practice

Lloyd's is a signatory to the General Insurance Code of Practice (the Code). The Code sets out minimum standards that We will uphold in respect of the products and services that We provide. Further information about the Code is available at www.codeofpractice.com.au and on request.

6. YOUR DUTY OF DISCLOSURE

What You must tell Us

We will ask You various questions when You apply for cover. When You answer those questions, You must take reasonable care not to make a misrepresentation to Us. We will use the answers in deciding whether to insure You, and anyone else to be insured under the Policy, and on what terms. You have this same duty to disclose those matters to Us before You renew, extend, vary or reinstate Your Policy.

If You do not tell Us

If You do not answer Our questions in this way, We may reduce Our liability under contract in respect of a claim or refuse to pay a claim or cancel the Policy. If You answer Our questions fraudulently, We may refuse to pay a claim and treat the Policy as never having commenced.

7. WHO CAN PURCHASE THIS POLICY

Certain eligibility criteria apply. This policy can only be purchased by customers domiciled in Australia.

8. GENERAL CONDITIONS

Commencement and Period of Your Policy

Your policy begins on the date shown on the **schedule** and continues for the period as shown in the **schedule** after which time it expires, or until it is cancelled. This is Your **period of insurance**.

Renewal of Your Policy

This insurance may be renewed for further consecutive yearly periods upon payment of the **premium**. Payment of Your **premium** is deemed to be acceptance of an offer of renewal for a further yearly period. If You continue to pay Your **premium**, then unless Your policy is cancelled or We advise You prior to the renewal date that We will be updating Your policy or not be renewing, a policy on the same terms and conditions automatically comes in to existence for one (1) year from the renewal date.

Expiry of Your Policy

Your policy expires at the end of the **period of insurance**. We may decide not to renew Your policy. If We decide not to renew Your policy, We will send You an expiry notice at least fourteen (14) days before the expiry of Your policy. If Your policy is cancelled or otherwise terminated, the **period of insurance** will be from the commencement date or renewal date, whichever is the later, up to and including the date of cancellation or termination.

Australian Law

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with Australian law. In the event of any dispute arising under this policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, You and **Agile** will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

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 Australia

who has authority to accept service and to enter an appearance on the Insurers' behalf, and who is directed at Your request to give a written undertaking to You that they will enter an appearance on the Insurers' behalf. If a suit is instituted against any one of the Insurers', all Insurers' hereon will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this insurance notice should be given as soon as possible to:

FOR ENQUIRIES RELATING TO

PLEASE CONTACT

Making a claim

Get in touch as soon as possible and we can help.

1300 705 031

claims@agileunderwriting.com

Australian Currency

All payments by You to Us and Us to You or someone else under Your Policy must be in Australian currency. If a loss under this policy is stated in a currency other than Australian dollars, payment under this policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars as reported in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

Cooling off period

You have fourteen (14) days from the date We confirmed, electronically or in writing, that You are covered under Your policy to decide if the policy meets Your needs. You may cancel Your policy simply by calling Us on 1300 705 031 or advising Us in writing within those fourteen (14) days to cancel it. If You do this, We will refund any **premiums** You have paid during this period. These cooling off rights do not apply if You have made or You are entitled to make a claim during this period.

9. CANCELLATION OF YOUR POLICY

Your Policy may be cancelled in one of two (2) ways:

When You can cancel

You can cancel Your Policy at any time by emailing Us at cancel@agileunderwriting.com or calling 1300 705 031.

If You:

- (a) pay Your **premium** by instalments and wish to cancel, We will cancel on the date to which You have paid Your **premium** in advance.
- (b) do not pay Your **premium** by instalments, the cancellation will take effect at 4pm Local Standard Time on the day We receive Your notice of cancellation. We will refund the **premium** for Your policy, less an amount which covers the period for which You were insured. However, we will not refund any **premium** if We have paid or are obliged to pay a benefit under Your policy.

When We can cancel

We can cancel Your Policy by giving You written notice to the address on file and in accordance with the *Insurance Contracts Act 1984 (Cth)*, including where You have:

- (a) breached the Duty of Disclosure;
- (b) breached a provision of Your policy (including one requiring payment of **premium**);
- (c) made a fraudulent claim under any policy of insurance. If We cancel, We will refund the **premium** for Your policy less an amount to cover the period for which You were insured;
- (d) undertaken deception, fraud or Illegal Use, We may be entitled to void this policy or withdraw from it in the event of intentional misrepresentation or deception. If a fraudulent claim is made, entitlements and benefits will be forfeited, and information may be forwarded to the police and the prosecuting authorities.

10. CLAIMS

In the event of an **occurrence** which may result in a claim under Your policy You must comply with the requirements under Conditions [4.3](#) and [4.4](#).

Claims Documentation

To facilitate the settlement of Your claim, please provide Us with any requested documentation, including the following:

- a written claim detailing the nature and extent of the loss or damage
- copies of all correspondence exchanged with any third party
- repair quotations
- details of any other insurance that may exist on the insured property.

In the event of a claim arising under this insurance notice should be given as soon as possible to:

FOR ENQUIRIES RELATING TO	PLEASE CONTACT
Making a claim Get in touch as soon as possible and we can help.	1300 705 031 claims@agileunderwriting.com

11. COMPLAINTS AND DISPUTE RESOLUTION

Agile takes the concerns of its customers very seriously. **Agile** has detailed complaint handling and dispute resolution procedures that You may access, at no cost to You. To obtain a copy of Our procedures, please contact Us on 1300 705 031 or complaints@agileunderwriting.com. To assist **Agile** with Your enquiries, please provide Us with Your claim or policy number (if applicable) and as much information You can about the reason for Your complaint or dispute. **Agile's** complaints and dispute procedures are as follows:

This insurance is subject to the provision of the Insurance Council of Australia's General Insurance Code of Practice. For more information see www.codeofpractice.com.au

If You have any concerns or wish to make a complaint in relation to this policy, Our services or Your insurance claims, please let Us know and we will attempt to resolve your concerns in accordance with Our Internal Dispute Resolution procedure. Please contact **Agile** in the first instance:

Postal address: The Complaints Officer
 Agile Underwriting Services Pty Ltd
 Level 5, 63 York St, Sydney NSW 2001
Telephone: 1300 705 031
Email: complaints@agileunderwriting.com

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:

Postal address: Lloyd's Australia Limited
 Suite 1603, Level 16, 1 Macquarie Place, Sydney, NSW, 2000
Telephone: (+61 2) 8298 0783
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.

You may refer Your complaint to the Australia Financial Complaints Authority (AFCA) at any time, and if Your complaint is not resolved to Your satisfaction within 30 calendar days of the date on which You first made the complaint:

Postal address: Australian Financial Complaints Authority (AFCA)
GPO Box 3, Melbourne VIC 3001

Telephone: 1800 931 678

Email: info@afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision. If Your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or provided with other options.

12. UPDATING OUR PDS

We may update the information contained in Our PDS when necessary. A paper copy of any updated information is available to You at no cost by calling Us on 1300 705 031.

We will issue You with a new PDS or a supplementary PDS where the update is to rectify a misleading or deceptive statement or when an omission is materially adverse from the point of view of a reasonable person deciding whether to buy this product.

13. PRIVACY STATEMENT

At **Agile**, we are committed to protecting Your privacy in accordance with the *Privacy Act 1988* (Cth).

FOR ENQUIRIES RELATING TO PRIVACY	PLEASE CONTACT
Contact our Privacy Officer at Agile by Email	privacy@agileunderwriting.com
Contact our Privacy Officer at Agile by Phone	1300 705 031
Contact our Privacy Officer at Agile by Mail by writing to	Privacy Officer, Agile Underwriting Services Pty Ltd Level 5, 63 York Street Sydney NSW 2000

Agile collect Your personal information to assess Your application for insurance, administer Your policy and pay Your claims. If You do not provide the information that **Agile** may request, Your insurance application may not be accepted, or **Agile** may not be able to administer Your policy or administer a claim. Also, You may breach Your duty of disclosure, the consequences of which are set out in 6. [Your Duty of Disclosure](#).

Agile may need to share Your information with others to decide whether to accept Your policy, administer Your policy and manage and pay Your claims.

To allow **Agile** to do this and to otherwise operate our business, Your personal information may be given to and used by the following:

1. The Underwriters of this policy are certain Underwriters at Lloyd's and its own employees and agents. The Underwriters are in the United Kingdom. When Your information is disclosed to the Underwriters it will be protected by the *General Data Protection Regulation* which contains similar protection to the Australian Privacy Principles.

2. Claims adjusters, lawyers and other people appointed by **Agile** or the Underwriters, or on **Agile's** behalf or the Underwriters behalf for claims handling purposes.

By submitting Your personal information to **Agile**, You agree to **Agile** using and disclosing Your personal information this way. This consent to the use and disclosure of Your personal information remains valid unless You alter or revoke it by giving **Agile** written notice.

If Your details or personal information changes You should notify **Agile** in writing at the above contact details, so **Agile** can ensure that the information **Agile** hold about You is accurate, complete and up to date.

14. WORDS WITH SPECIAL MEANINGS

Throughout this document, certain words are highlighted in **bold**. These words have special meaning and are included in Definitions (Part B, Section 1) of this Policy Wording and PDS. Please refer to the Definitions for their meaning. Any reference to an Act, legislation or legislative instrument in this document also refers to that Act, legislation or legislative instrument as amended and may be in force from time to time.

Part B – Policy Wording

Section 1: Definitions

When used in **bold** in this policy (including its endorsements) the words below have the following meanings.

- 1.1 **act of terrorism** means any act, or preparation to perform an act, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:
 - (a) involves violence against one or more persons;
 - (b) involves damage to property;
 - (c) endangers life other than that of the person committing the action;
 - (d) creates a risk to health or safety of the public or a section of the public; or
 - (e) is designed to interfere with or to disrupt an electronic system.
- 1.2 **advertising liability** means:
 - (a) infringement of copyright of, or passing off of a title or slogan;
 - (b) unfair competition, piracy or idea misappropriation contrary to an implied contract;
 - (c) invasion of privacy;
 - (d) defamation, libel, slander; or
 - (e) any breach of the misleading or deceptive conduct provisions of the Australian Consumer Law (Commonwealth) or any Fair Trading or similar legislation of any country, state or territory;

committed or alleged to have been committed during the **period of insurance** in any advertisement, publicity article, broadcast or telecast arising out of the **insured's** advertising activities or any advertising activities conducted on the **insured's** behalf, in the course of advertising the **products**, or goods or services related to those **products**.

For the purpose of this definition, advertisement means any manner of communication given to the public including but not limited to any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet, World Wide Web, social media platforms or exhibit.
- 1.3 **Agile** means Agile Underwriting Services Pty Ltd (ABN 48 607 908 243, AFS Licence No. 483374) as agent for certain Underwriters at Lloyd's.
- 1.4 **aircraft** means any vessel, craft or object made, or intended, to travel through air or space but does not include a **drone**.
- 1.5 **acquired business** means any company or companies acquired or established or created by the **insured** provided that:
 - (a) its business is consistent with the **business**;
 - (b) its turnover does not exceed 10% of the turnover that was used to calculate the **premium**; and
 - (c) it is domiciled in Australia.

- 1.6 **business** means all activities and operations specified in the **schedule** and includes the following in connection with the **insured's business**:
- (a) at the **insured's** discretion, private work carried out by an employee for a director or partner or employee of the **insured's**;
 - (b) attendance at or participation in trade fairs, shows and exhibitions by any employee or director in connection with their employment;
 - (c) the ownership, maintenance, repair and occupation of premises or facilities belonging to the **insured**;
 - (d) the provision and management of catering, social, sports, welfare, childcare, theatrical and related facilities including galas for the benefit of employees;
 - (e) the provision of sponsorship; and
 - (f) the provision of fire, first aid, ambulance and security services.
- 1.7 **compensation** means monies paid or agreed to be paid by judgment, award, or settlement, and is only payable in respect of an **occurrence** to which this insurance applies, for:
- (a) **personal injury**;
 - (b) **property damage**; or
 - (c) **advertising liability**.
- 1.8 **computer virus** means any corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a **computer system** or network of any nature whatsoever.
- 1.9 **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 the **insured** or any other party.
- 1.10 **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**.
- 1.11 **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**; or
 - (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**.
- 1.12 **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**.
- 1.13 **deductible** means the first amount of each claim or series of claims arising out of any one **occurrence** for which the **insured** is responsible. The **deductible** applicable to this insurance is specified in the **schedule**. The **deductible** applies to all amounts for which **Agile** will be liable, including indemnity provided by the insuring clause 2.2 [Additional Payments](#).
- 1.14 **drone** means a remotely piloted aircraft (**RPA**) but only to the extent that:
- (a) the **RPA** is being used in strict accordance with all relevant legislation, rules or regulations put in place, administered or enforced by the Australian Government Civil Aviation Safety Authority (whether or not the legislation, rules or regulations have territorial application); and

- (b) any injury, loss, damage, cost or expense under consideration has no connection with invasion or breach of privacy through the use or operation of the **RPA**.
- 1.15 **employment practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment, or discrimination in respect of employment by the **insured**.
- 1.16 **endorsed contracts** means the contract(s) specified in the **schedule**.
- 1.17 **hovercraft** means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.
- 1.18 **limit of liability** means the amounts specified in the **schedule**.
- 1.19 **injury to contractors claim** means any claim in connection with **personal injury** where the **insured's** legal liability is in any way related to any person undertaking work for reward in connection with the **insured's business** as specified in the **schedule**.
- 1.20 **injury to contractors deductible** means the amount specified in the **schedule**.
- 1.21 **inquiry** means any inquest, coronial inquiry, or criminal proceedings:
- (a) regarding **personal injury** or **property damage**; and
 - (b) not connected with the laws of **North America**.
- 1.22 **insured** means the entity(ies) named in the **schedule** and includes:
- (a) any of the **insured's** subsidiary companies (including subsidiaries thereof) and any other entity under the **insured's** control, and over which the **insured** exercises active management;
 - (b) any of the **insured's** directors, officers, employees or partners but only whilst acting within the scope of their duties in such capacity;
 - (c) any student or person undertaking work for the **insured** under a work experience or similar scheme; or
 - (d) any voluntary helper;
 - (e) any **acquired business** but only for 90 days following the takeover or formation of the company or companies at which time the **acquired business** will no longer be included as an **insured**;
 - (f) any social and/or sporting clubs, first aid, fire and ambulance services formed with the **insured's** consent and includes any office bearer or member thereof in their respective capabilities as such; and
 - (g) any of the **insured's** directors or senior executives in respect of private work undertaken by the **insured's** employees for such director or senior executive.
- 1.23 **internet operations** means
- (a) transfer of **data** or programmes by use of electronic mail systems by the **insured** or the **insured's** employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within the **insured's** organisation whether or not such **data** or programmes contain any malicious or damaging code, including but not limited to **computer virus**, worm, logic bomb, or trojan horse;
 - (b) access through the **insured's** network to the world wide web or a public internet site by the **insured** or the **insured's** employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within the **insured's** organisation;
 - (c) access to the **insured's** intranet (meaning internal company information and computing

resources) which is made available through the world wide web for the **insured's** customers or others outside the **insured's** organisation; and

(d) the operation and maintenance of the **insured's** web site.

1.24 **IT network** means any computer hardware (or components thereof), software (or components thereof), communication system networks, **internet operations**, websites wheresoever hosted, online, or offline media libraries, **data**, or any other peripheral devices.

1.25 **motor vehicle** means any type of machine and attachments thereto (including a trailer) which:

- (a) travels on wheels or on self-laid tracks; and
- (b) is propelled by other than manual or animal power.

1.26 **North America** means:

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

1.27 **occurrence** means an event, including continuous or repeated exposure to conditions, that results in **personal injury**, **property damage** or **advertising liability** that is neither expected nor intended (except for the matters set out in clause (f) of the definition of **personal injury**) from the **insured's** standpoint, during the **period of insurance**.

With respect to **personal injury** or **property damage**, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one **occurrence**.

All **advertising liability** arising out of the same injurious material or act (regardless of the frequency or repetition thereof) shall be deemed to be one **occurrence**.

1.28 **period of insurance** means the period specified in the **schedule** and any extension thereof which may be agreed between the **insured** and **Agile** in writing.

1.29 **personal injury** means:

- (a) bodily injury, death, disease, illness, disability, sickness, nervous shock, mental anguish or mental injury or loss of consortium;
- (b) false arrest, false detention, wrongful imprisonment, malicious prosecution or humiliation;
- (c) wrongful entry or wrongful eviction or other invasion of privacy;
- (d) discrimination as a result of race, religion, sex, sexual orientation, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by the **insured** or at the **insured's** direction, but only with respect to liability other than fines and penalties imposed by law;
- (e) defamation, libel or slander; and
- (f) assault and/or battery committed by or at the direction of the **insured** whilst engaged in the **business** and for the purpose of preventing or eliminating danger to persons or property.

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

1.31 **premium** means the amount shown in the **schedule**.

1.32 **products** means any goods or **products** manufactured, grown, extracted, produced, processed,

treated, altered, handled, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by the **insured** (including packaging, containers or any associated instructions) in connection with the **business** in or from the **territorial limits**, and after it has ceased to be the **insured's** property or in the **insured's** custody or legal control.

- 1.33 **products liability** means the **insured's** legal liability in respect of **personal injury** or **property damage** caused by or arising out of any **products** or the reliance upon a representation or warranty made at any time with respect to such **products**; but only where such **personal injury** or **property damage** occurs away from premises owned or leased by or rented to the **insured** and after physical possession of such **products** has been relinquished to others.
- 1.34 **public liability** means the **insured's** legal liability in respect of **personal injury**, **property damage** or **advertising liability** happening in connection with the **business** and caused by or arising out of an **occurrence** other than **products liability**.
- 1.35 **property damage** means:
- (a) physical damage to, or loss of or destruction of tangible property, including the subsequent loss of use of that property;
 - (b) loss of use and/or loss of value of tangible property that has not been physically damaged, physically lost or physically destroyed provided such loss of use and/or loss of value is caused by physical damage to, physical loss of or physical destruction of other tangible property; and includes denial of access to property, premises, services or facilities, interference with or stoppage of vehicular or pedestrian traffic; and
 - (c) trespass, nuisance or interference with right of way or right to light air or water, easement or quasi-easement.
- 1.36 **schedule** means the **schedule** attaching to and forming part of this policy, including any **schedule** substituted for the original **schedule**.
- 1.37 **tool of trade** means a **motor vehicle** that has tools, implements, machinery or plant attached to or towed by the **motor vehicle** and is being used by the **insured** at their premises or any **worksite**. **Tool of trade** does not include any **motor vehicle** whilst travelling to or from a **worksite** or **motor vehicle** that are used to carry goods to or from any premises.
- 1.38 **territorial limits** means:
- (a) anywhere in the World except **North America**.
 - (b) **North America** but only with respect to:
 - (1) overseas business visits by any of the **insured's** directors, partners, officers, executives, or employees, who are non-residents in **North America**, but not where they perform manual work in **North America**;
 - (2) **products** exported to **North America** without the **insured's** knowledge.
- 1.39 **watercraft** means any vessel, craft or thing made, or intended to float on or in, or travel on or through or under water.
- 1.40 **worksite** means any premises or site where any work is performed for or in connection with the **business** together with all areas surrounding such premises or site or all areas in between such premises or site that the **insured** shall use in connection with such work.

Section 2: Insuring clauses

2.1 What Agile cover

Subject to the terms and conditions of this policy, **Agile** will indemnify the **insured** for all amounts which the **insured** becomes legally liable to pay as **compensation**:

- (a) arising out of **personal injury**, **property damage**, or **advertising liability** happening during the **period of insurance**; and
- (b) as a result of an **occurrence** within the **territorial limits** in connection with the **business** or **products**.

2.2 Additional payments

Subject to the terms and conditions of this policy, **Agile** will pay:

- (a) legal costs and expenses incurred by **Agile**, or the **insured** with **Agile's** written consent, in the settlement or defence of any claim for **compensation** in respect of which the **insured** is entitled to indemnity under this policy, or if sustained, would be so entitled.
- (b) the expenses incurred by the **insured** for first aid to others at the time of **personal injury** caused by an **occurrence** (other than medical expenses prohibited by law).
- (c) **compensation** to the **insured** if, at **Agile's** request, an **insured** attends court as a witness in connection with an **occurrence** in respect of which the **insured** is entitled to indemnity under this policy, at the following rates per day for each day on which attendance is required:
 1. any director, officer or partner of the **insured** \$300 per day;
 2. any employee of the **insured** \$200 per day.

The amount of such costs and expenses as described under clause 2.2 (a), (b) and (c) are payable by **Agile** in addition to the **limit of liability** specified in the **schedule**.

However, in respect of any **occurrence** in **North America**, or **occurrences** in respect of which a claim for **compensation** is brought in a court in **North America**, the **limit of liability** specified in the **schedule** shall be inclusive of all additional payments under this clause.

2.3 Representation at inquiry

Upon request from an **insured**, **Agile** will provide the **insured** with legal representation at any **inquiry** where the **inquiry** arises from an **occurrence** likely to give rise to a liability covered clause 2.1 of this policy. **Agile's** liability under this clause will not exceed \$250,000 in respect of any one claim or series of claims arising out of any one **occurrence**.

2.4 Temporary protection

Agile will pay expenses incurred by the **insured** for:

- (a) temporary protection of damaged or undamaged property of any person or part, including temporary repairs, shoring up or underpinning thereof;
- (b) purchasing or hiring or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which the **insured** must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.

This extension of cover does not apply to any **occurrence** in connection with **pollutants**.

2.5 Overseas personal liability

Where the **insured** is not entitled to indemnity under any other policy of insurance, self-insurance or deductible programme effected by or on behalf of the **insured**, subject to the terms and conditions of this policy, **Agile** will indemnify employees and directors (and their spouses whilst accompanying the employee or director) for legal liability to pay **compensation** as a result of an **occurrence** happening:

- (a) during the **period of insurance**
- (b) in connection with the **business**; and
- (c) whilst the employee or director is travelling outside his or her country of domicile in connection with the **business**.

2.6 Claims preparation costs

In addition to the amount of cover provided by this policy, **Agile** will pay up to \$25,000 in respect of each claim or series of claims arising out of any one **occurrence** for professional fees and such other expenses incurred by the **insured** for the preparation of a claim under this policy.

The amount of such costs and expenses as described under clause 2.6 are payable by **Agile** in addition to the applicable **limit of liability**.

Section 3: Exclusions

Agile will not be liable under this policy in respect of:

3.1 Advertising liability

advertising liability in connection with or contributed to by:

- (a) failure of performance of contract, but this shall not relate to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;
- (b) incurred by any **insured** where the principal **business** of that **insured** is advertising, broadcasting, publishing or telecasting;
- (c) resulting from statements made at the **insured's** direction knowing that such statements are false;
- (d) failure of the **insured's products** or services to conform with advertised performance, quality, fitness or durability;
- (e) incorrect description of any **products**, article or commodity; or
- (f) mistake in advertised price of any **products**.

3.2 Aircraft products

any liability whatsoever in connection with or contributed to by any of the **insured's products**, which the **insured** knew, or ought to have known, are intended for incorporation into any **aircraft** or **drone**.

3.3 Aircraft, watercraft, hovercraft

- (a) any liability whatsoever in connection with or contributed to by the ownership, maintenance, possession, use or operation, loading or unloading, of any **aircraft** or **hovercraft**;
- (b) the ownership, operation or use by the **insured** of any **watercraft** on inland or coastal waters, exceeding fifteen (15) metres in length, except **watercraft** owned by others and used by the **insured** for business entertainment. Coastal waters are to be defined as within one (1) kilometre off the coast of the territory from where the **insured** operates.

3.4 Contractual liability

any liability or obligation assumed by the **insured** under any agreement or contract except to the extent that the liability or obligation arises from **endorsed contracts** or a provision in a contract (whether written or oral):

- (a) for lease of real or personal property (save for a provision which obliges the **insured** to effect insurance or provide indemnity in respect of the subject matter of the lease);
- (b) with any public supplier for the supply of water, gas, electricity, fuel, sewerage or waste removal services, telephone and communications services (save for contracts with such suppliers for the performance of work by the **insured**);
- (c) with any railway authority, railway company or other independent carrier for the loading, unloading and/or transport of the **insured's products**;
- (d) where such liability or obligation would otherwise have been implied by law.

3.5 Custody and control

property damage to property owned by, hired to or in the legal custody or control of the **insured** or any employee or any party acting on behalf of the **insured**, other than:

- (a) guests', visitors', directors', officers', employees' or partners' personal effects;
- (b) **motor vehicles** in a car park, unless the car park is owned or operated by the **insured** for reward;
- (c) premises at which the **insured** is undertaking work in connection with the **business**;
- (d) any building (including its fixtures and fittings) leased, hired or rented to the **insured** provided **Agile** shall not be liable in respect of liability assumed by the **insured** under a tenancy or other agreement which would not have been implied by law in the absence of such agreement; or
- (e) notwithstanding clause 3.4 "Contractual liability", any other property (except property owned by the **insured** and not mentioned in 3.5 (a), (b), (c) or (d) above) in the **insured's** legal custody or control (except while undergoing any process or being worked upon) for which the **insured** has not assumed any responsibility to obtain insurance, subject to a limit of \$250,000 for any one **occurrence** during any one **period of insurance**.

3.6 Cyber and Data Total Exclusion

Notwithstanding any provision to the contrary with this policy or any endorsement thereto, this policy does not apply to any loss, damage, liability, claim fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:

- (a) **cyber act** or **cyber incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **cyber act** or **cyber incident**; or
- (b) 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 thereto.

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

This exclusion supersedes any other wording in the policy or any endorsement thereto having a bearing on a **cyber act**, **cyber incident** or **data**, and, if in conflict with such wording, replaces it.

If **Agile** allege that by reason of this exclusion that the loss sustained by the **insured** is not covered by the policy, the burden of proving the contrary shall be upon the **insured**.

3.7 Deliberate acts

any liability whatsoever in connection with or contributed to by any deliberate act or omission of the **insured** or any employee and which could reasonably have been expected, having regard to the nature and circumstances of such an act or omission.

3.8 Injury to employees

any liability to indemnify or pay **compensation** in connection with:

- (a) **personal injury** where any **insured** or employee is indemnified or entitled to be indemnified under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not the **insured** or employee is a party to such contract of insurance;

- (b) any scheme created by legislation to provide **compensation** to persons who sustain **personal injury** arising out of or in the course of their employment; or
- (c) any claim for **employment practices**.

However, if the **insured**:

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

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

3.9 Loss of use

for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:

- (a) a delay in or lack of performance by the **insured** or on behalf of the **insured** of any contract or agreement; or
- (b) failure of any **products** or work performed by the **insured** or on behalf of the **insured** to meet the level of performance, quality fitness or durability expressly or impliedly warranted or represented by the **insured**;

but exclusion 3.9 (b) shall not apply to the **insured's** liability for loss of use of accidental physical loss, destruction of or damage to any **products** or work performed by the **insured** or on behalf of the **insured** after such **products** or work have been put to use by any person or organisation other than the **insured**.

3.10 Motor liability

any liability whatsoever in connection with or contributed to using a **motor vehicle** owned by, or in the physical or legal control of the **insured**:

- (a) which is registered or required by law to be registered; or
- (b) in respect of which insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).

However, exclusion 3.10 (a) and 3.10 (b) shall not apply to:

1. **personal injury** where:
 - a) that insurance does not provide indemnity, and
 - b) the reason or reasons why that insurance or statutory indemnity does not provide indemnity do not involve a breach by the **insured** of legislation relating to **motor vehicles**.
2. any **motor vehicle** whilst being used or operated as a **tool of trade** by the **insured** or on behalf of the **insured** at the **insured's** premises or **worksite**;
3. a **motor vehicle** (other than a **motor vehicle** owned or used by or on behalf of the **insured**) whilst that **motor vehicle** is in a car park owned or operated by the **insured** for no income or reward as a car park operator; or

4. **personal injury** or **property damage** occurring during the loading or unloading of a **motor vehicle** caused by or arising from the collection or delivery of any goods from or to the **motor vehicle** where such **personal injury** or **property damage** occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability.

3.11 North America

any liability in **North America** in connection with or contributed to by the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to existence of, or presence of any:

- (a) fungi or bacteria; or
- (b) substance, vapour or gas produced by or arising out of any fungi or bacteria.

3.12 Other insurance

any liability whatsoever which forms the subject of:

- (a) insurance procured to cover specific work(s), contract(s) or agreement(s).

3.13 Pollution

any liability whatsoever in connection with or contributed to by:

- (a) **personal injury** or **property damage** in connection with or contributed to by the discharge, seepage, migration, dispersal, release or escape of **pollutants** into or upon any property, land the atmosphere or any watercourse or body of water (including ground water);
- (b) **personal injury** or **property damage** in connection with or contributed to by the discharge, seepage, migration, dispersal, release or escape of **pollutants** caused by any **product** that has been discarded, dumped, abandoned or thrown away by others;
- (c) the cost of removing, nullifying or cleaning up **pollutants**; or
- (d) the cost of preventing the escape of **pollutants**.

However, exclusion 3.13 (a) and 3.13 (c) shall not apply where the claim:

1. has no connection with **North America**; and
2. arises from a sudden identifiable, unintended and unexpected event from the **insured's** standpoint which takes place in its entirety at a specific time and place during the **period of insurance**.

3.14 Professional liability

any liability whatsoever in connection with or contributed to by the rendering or failure to render professional advice or service by the **insured**, or any error or omission in connection therewith.

However, this clause shall not apply to:

- (a) the **insured's** liability in respect of **personal injury** or **property damage** resulting from the provision of professional advice or services which is not given for any fee or reward; or
- (b) the rendering or failure to render professional advice by any employee to provide first aid or other medical services at the **insured's** premises. Medical services excludes advice or services provided by a qualified medical practitioner, nurse or first aid attendant.

3.15 Property owned by the insured

for **property damage** to property owned by the **insured**.

3.16 Punitive or liquidated damages

any amount which constitutes:

- (a) fines or penalties; or
- (b) liquidated, punitive, aggravated or exemplary damages or multiplication of awards.

3.17 Radioactive contamination

any liability whatsoever in connection with or contributed to by:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

3.18 Repair and replacement

any liability whatsoever in connection with or contributed to by:

- (a) rectifying defective work carried out by or on behalf of the **insured**;
- (b) the recall, removal, repair, recovery, alteration or replacement of the **insured's products** arising from a defect in or an error in connection with the sale or supply of such **products** or the guaranteed performance of the **insured's products** or the unsuitability thereof for the use for which they are supplied; or
- (c) the failure of the **insured's products** to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by an **insured**.

3.19 Specific products and substances

any liability whatsoever in connection with or contributed to by:

- (a) AIDS, HIV or HIV related illness;
- (b) asbestos or asbestos **products**;
- (c) human biological materials including extracts thereof (e.g. blood, plasma, plasma proteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- (d) polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
- (e) Human implants;
- (f) the manufacture or supply of all pharmaceutical active ingredients including medical implants;
- (g) e-cigarettes and related **products**; or
- (h) tobacco and tobacco related **products**.

3.20 Terrorism

any injury, loss, damage, cost or expense whatsoever in connection with any **act of terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This clause also excludes injury, loss, damage, cost or expense of whatsoever nature in connection with any action taken in controlling, preventing, suppressing or in any way relating to any **act of terrorism**.

If **Agile** alleges that, by reason of this clause, any injury, loss, damage, cost or expense is not covered by this policy the burden of proving the contrary shall be upon the **insured**.

3.21 Toxic Mould Exclusion

This policy shall not apply to:

Any claim for liability, loss, **damage**, cost or expense, or any duty to defend a claim directly or indirectly caused by, arising out of, contributed to by, in connection with, or resulting from exposure to algae, archaea, bacteria, fungi, lichen, plasmids, protozoa, any virus or any similar organism or any actual, or alleged, disease or **personal injury** involving the presence, existence, detection, removal, elimination or avoidance of such organisms or exposure to them.

3.22 Waived or limited rights

any injury, loss, damage, cost or expense whatsoever where the **insured** has waived, limited or reduced its rights to:

- (a) recovery of, or contribution to the injury, loss, damage, cost or expense from any other party; or
- (b) to raise a defence, set off or counter claim in answer to its legally liability for any injury, loss, damage, cost or expense whatsoever.

However, this clause does not apply to **endorsed contracts**.

3.23 War

any liability whatsoever in connection with or contributed to by or arising from any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

3.24 Jurisdiction

Any:

- (a) legal proceedings, wherever brought, in any court of the United States of America (USA), or under the laws of the USA, or brought under the laws outside the USA to enforce a judgment or order made under the laws of the USA;
- (b) coronial inquests, disciplinary hearings, or occupational health and safety proceedings brought outside Australia.

3.25 Communicable Disease Exclusion

Notwithstanding any provision to the contrary within this policy, the policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, 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 purpose of this exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, costs, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a **communicable disease**.

As used herein, a **communicable disease** means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- (a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- (b) the method of transmission, whether 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
- (c) the disease, substance or agent can cause or threatened bodily injury, illness, emotional distress, damage to human health, human welfare or **property damage**.

Section 4: Conditions

4.1 Assignment

No assignment of interest under this policy shall bind **Agile** until our consent is endorsed herein.

4.2 Change in risk

Every change materially affecting the facts or circumstances existing at the commencement of or during the course of this policy, or at any subsequent renewal date, shall be notified to **Agile** as soon as such change comes to the **insured's** notice.

Agile reserves the right to accept or deny coverage at the time of such notification and to establish a separate rate and **premium** for any such coverage.

If any entity becomes an **acquired business** this condition will apply notwithstanding Definition 1.22 **insured**, (e).

4.3 Notice and proof of claim, claims assistance and cooperation

Upon the discovery of any **personal injury**, **property damage**, **advertising liability** or circumstance giving rise, or which may give rise to a claim under this policy (whether or not the **insured** believes the claim amount might fall below the applicable **deductible**) the **insured** shall, as soon as reasonably practicable:

- (a) advise of the cause and the amount of loss and any other proof or information with respect to the claim that may be reasonably required;
- (b) take reasonable steps to prevent further loss; and
- (c) at all reasonable times permit **Agile** to inquire into, investigate and examine the circumstances of any loss.

FOR ENQUIRIES RELATING TO	PLEASE CONTACT
Making a claim Get in touch as soon as possible and we can help.	1300 705 031 claims@agileunderwriting.com

The **insured** must assist and cooperate with **Agile** fully and promptly in relation to a claim, including:

- (a) allowing **Agile** to negotiate, defend or settle the claim or **inquiry**:
 - (i) in the **insured's** name and on the **insured's** behalf; or
 - (ii) in the name of and on behalf of any other party covered by the **insured's** policy;
- (b) as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until **Agile** have had an opportunity of inspection.
- (c) furnish to **Agile** details of any other insurance covering or which may cover the same loss;
- (d) sending to **Agile** any claim, writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest the **insured** receives or becomes aware of; and
- (e) supplying **Agile** with all information and assistance we may reasonably require. **Agile** will only request this information relevant to the claim.

4.4 Claims control

- (a) The **insured** shall not, without **Agile's** written consent, admit or repudiate liability, negotiate or make any offer, promise or payment in connection with any claim.
- (b) **Agile** shall be entitled, but not obliged, to take over and conduct in the **insured's** name, the defence or settlement of any claim or **inquiry** or to prosecute in the name of the **insured** at its own expense and for its own benefit, any claim against any persons, and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.

4.5 Cross liability

Subject to clause 4.10 [Joint responsibility](#), when an **insured** consists of more than one party, the **insured** shall be considered as a separate **insured** as though a separate policy had been issued to each of the said parties, but nothing herein contained shall operate to increase the **limit of liability**.

4.6 Deductible

The **deductible** is the first amount payable by the **insured** for each **occurrence**. **Agile** will never be liable to indemnify the **insured** for the **deductible**. However:

- (a) in relation to any **injury to contractors claim** the **injury to contractors deductible** applies rather than the **deductible**.

4.7 Discharge of any liability

Agile may at any time pay the **limit of liability** (after deduction of sum or sums already paid), or any lesser sums for which any claim or claims can be settled and shall then be under no further liability in respect thereof except for the payment of amounts referred to in clause 2.2 [Additional Payments](#), incurred prior to such payment.

In the event of a claim or series of claims arising from an **occurrence** resulting in liability of the **insured** to pay a sum in excess of the **limit of liability**, **Agile's** liability under clause 2.2 [Additional Payments](#) shall not exceed an amount being in the same proportion as **Agile's** payment bears to the total payment made by or on behalf of or to be made by the **insured** in satisfaction of the claim or claims.

4.8 Fraud

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the **insured** or anyone acting on the **insured's** behalf to obtain any benefit under this policy, or if any loss hereunder be occasioned by the wilful act or with the connivance of the **insured**, then **Agile**, without prejudice to any other rights(s) **Agile** might have under this policy, shall be entitled to refuse to pay such claim.

4.9 Inspection and audit

Agile shall be permitted to inspect the **insured's** property and operations at any reasonable time. Neither **Agile's** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an **insured** or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation.

Agile may examine and audit the **insured's** books and records at any time during the **period of insurance** and within three years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

4.10 Joint responsibility

Where the **insured** is comprised of more than one legal entity, information supplied to **Agile** shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to **Agile** or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such entities.

Any and all **insured's** and any persons deriving benefit under this policy are jointly liable and responsible for any breach of any terms of this policy and/or misrepresentation and/or non-disclosure and/or fraud.

4.11 Limit of liability

Agile's liability shall not exceed the **limit of liability** as specified in the **schedule** for any one **occurrence** or series of claims for **public liability** and for any one **occurrence** and in the aggregate during the **period of insurance** for **products liability**.

4.12 Occurrence series clause

- (a) An **occurrence** or series of **occurrences** which are attributable directly or indirectly or allegedly attributable directly or indirectly to the same event, condition, defect or hazard, or failure to warn shall be added together and treated as one **occurrence**, irrespective of the period of time after the commencement of the **period of insurance** or the number of persons or entities that sustain **property damage** and/or **personal injury**.
- (b) All such **occurrences** shall be deemed to have occurred on the day of the first of such **occurrences**.
- (c) The **limit of liability** is non-cumulative.
- (d) **Agile** shall not indemnify the **insured** for any liability of whatsoever nature in connection with **personal injury** or **property damage** where such **personal injury** or **property damage** is in any way connected with an **occurrence** or events or circumstances, whether of a continuous, intermittent or repeated exposure, which had occurred or commenced or existed prior to the commencement of the **period of insurance**.

4.13 Premium

When shown in the **schedule**, the **premium** is minimum and deposit and is adjustable. The **insured** shall, within 60 days after the expiry of each **period of insurance**, provide such information as **Agile** may require adjusting the **premium**.

Any difference in **premium** shall be paid by or allowed to the **insured**, provided that the adjusted **premium** will not be less than any minimum **premium** specified in the **schedule**. The **insured** shall at all times allow **Agile** to inspect such records.

4.14 Reasonable precautions

It is a condition of this policy to **Agile's** liability under this policy that the **insured** shall, at its own expense:

- (a) take, and cause to be taken, reasonable precautions to prevent **personal injury, property damage** and/or **advertising liability**;
- (b) comply with all statutory or local authority law, obligations and requirements or equivalent;
- (c) prevent the manufacture, sale or supply of defective **products**; and

- (d) withdraw, inspect, repair, replace, trace, recall or modify any of the **products** containing any defect or deficiency of which the **insured** has knowledge or has reason to suspect.

4.15 Bankruptcy or insolvency

If the **insured** becomes bankrupt or insolvent, **Agile** will not be relieved of the payment of any claims under this policy because of such bankruptcy or insolvency.

4.16 Release

Where the **insured** is required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority from liability in respect of loss, destruction or damage or legal liability insured against under this policy, such a release is allowed without prejudice to this insurance.

Notwithstanding Condition 4.18 of this policy, **Agile** agrees to waive all rights of subrogation against any such Authority in the event of any **occurrence** for which a claim for indemnity may be made under this policy.

4.17 Sanctions

Agile shall not make any payments nor provide any benefit to any **insured** or any other party to the extent that such payment, benefit and/or any **business** or activity of the **insured** would violate any applicable trade or economic sanctions, law or regulation.

4.18 Subrogation

Agile waive all rights of subrogation under this policy against any **insured** except if such **insured** is protected from such loss by any other contract or policy of indemnity or insurance. In that event, **Agile's** right of subrogation is not waived to the extent of the indemnity or insurance under such other contract or policy.

4.19 Subrogation and allocation of the proceeds of recoveries

Subject to Condition 4.18 Subrogation, any corporation, organisation or person claiming under this insurance shall, at **Agile's** request and expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may be reasonably be required by **Agile** for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which **Agile** shall be or would become entitled upon **Agile** paying for or indemnifying the **insured** in respect of legal liability under this policy.

Should the **insured** incur any legal liability which is not covered by the policy:

1. due to the application of a **deductible**; or
2. where the amounts of any judgments or settlements exceed the applicable **limit of liability**;

the **insured** will be entitled to the first call on the proceeds of all recoveries made, by either the **insured** or **Agile**, on account of such legal liability until fully reimbursed for such uninsured amounts or amounts (less the actual costs of making such recoveries where those costs are incurred by **Agile**) and any remaining amount(s) will be applied to reimburse **Agile**.

4.20 Interpretation

This policy incorporates the **schedule**, definitions, insuring clauses, exclusions and conditions and any other terms contained or endorsed in or to this policy, which are to be read together. Where any word or expression has been given specific meaning in any part of this policy such word or expression shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which such word or expression appears.

Words importing the singular gender shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender.

Headings have been included for ease of reference and it is understood and agreed that the terms and conditions of this policy are not to be construed or interpreted by reference to such headings.

4.21 Goods and Services Tax (GST)

The **insured** must inform **Agile** of the extent to which the **insured** is entitled to an input tax credit for the **premium** each time that the **insured** makes a claim under this policy. No payment will be made to the **insured** for any GST liability that arises on the settlement of a claim under this policy when the **insured** has not informed **Agile** of their entitlement or correct entitlement to an input tax credit.

Notwithstanding anything contained in this policy (including the **schedule** and any endorsements attached hereto) to the contrary, **Agile's** liability will be calculated after considering:

1. any input tax credit to which the **insured**, or any claimant against the **insured**, is entitled for any acquisition relevant to a claim paid under this policy; and
2. any input tax credit to which the **insured**, or any claim made against the **insured**, would have been entitled were the **insured** or the claimant to have made a relevant acquisition; and
3. the GST exclusive amount of any supply made by the **insured** which is relevant to the **insured's** claim.

If the applicable **limit of liability** is not sufficient to cover the **insured's** claim, **Agile** will only pay GST (less any relevant input tax credit) that relates to **Agile's** proportion of the **insured's** claim.

The terms 'GST', 'input tax credit', 'acquisition' and 'supply' have the meanings ascribed to them in the *A New Tax System (Goods and Services Tax) Act 1999*.

This clause is not intended to vary, alter, waive or extend any terms, conditions, exclusions, or definitions of this policy other than as stated in this clause.

4.22 Severability

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

4.23 Policy Fees

Agile reserves the right charge policy fees for the issuance of any policy documentation, alterations, endorsements, renewals as deemed appropriate by **Agile**.

In the event of cancellation of this policy, by either the **insured** or **Agile**, no cancellation fees will be charged, and the **insured** will be entitled to a pro-rata refund as defined in 9. [Cancellation of your Policy](#).

4.24 Several Liability Notice

The subscribing insurer's obligations under contractors of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

4.25 Australia Terrorism Insurance Act 2003 Notice

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

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

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

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

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

NMA2984

27/01/2004

4.26 Premium Payment

- a. As a condition precedent to the right to be indemnified under any of the policy sections of this policy, the **insured** undertakes that the **premium** will be paid in full to Agile Underwriting Services Pty Ltd within sixty (60) days of inception of the policy (or, in respect of instalment **premiums**, when due).
- b. If the **premium** has not been so paid by the sixtieth (60th) day from the inception of the policy (and, in respect of instalment **premiums**, by the date they are due) Agile Underwriting Services Pty Ltd shall have the right to cancel the policy ab initio by notifying the **insured** in writing or via the **insured's** insurance agent in writing.
- c. In the event of cancellation, **premium** is due to be paid on a pro rata basis for the period that the Insurer is on risk however the full policy **premium** shall be payable to the Insurer in the event that any claim(s) or loss(es) which occur with the **period of insurance** and/or are notified prior to the date of cancellation under any of the policy sections.

4.27 Instalment Policies

Where the **insured** has selected to pay by instalments, special conditions apply to the policy. If the **insured** does not pay the **premium** instalment by the agreed date, **Agile** can do the following:

- In the event of a claim, not pay for any claim settlement if an instalment is more than fourteen (14) days in arrears.
- If an instalment is less than fourteen (14) days overdue, deduct the overdue amount from any claim settlement.
- Cancel the policy if any **premium** instalment is unpaid for one (1) month or more.
- For claims, deduct all remaining unpaid **premium** instalments for the **period of insurance** from the claim settlement amount.

The **insured** is responsible for any bank fees or charges imposed or associated with the lack of sufficient funds in the **insured's** bank account.

If the **insured** is renewing the policy and the **insured** paid the previous policy by instalments, **Agile** will continue to deduct instalments for the renewed policy on the day of the month the insured previously nominated as the payment date, unless **Agile** is told otherwise.