

commercial liability

broadform insurance policy



This is an important document. If you cannot read and understand English, please use an interpreter to explain it to you before entering into this contract of insurance.

Questo è un documento importante. Se non avete una buona conoscenza dell'Inglese, per favore fatevelo spiegare da un interprete prima di concludere un contratto di assicurazione.

Αυτό είναι πολύ σπουδαίο έγγραφο. Αν έχετε δυσκολία με τα Αγγλικά, παρακαλείστε να μεταχειρισθείτε διερμηνέα να σας το εξηγήσει προτού συνάψετε μια ασφαλιστική συμφωνία.

這是一份重要文件。如你不諳英語，在投保前，請先用傳譯員為你解釋保險合約。

ان هذه الوثيقة هامة. إذا كنت لا تجيد الإنكليزية، يرجى استعمال مترجم كي يشرحها لك قبل أن تدخل طرفاً في عقد تأمين.

Dies ist ein wichtiges Dokument. Falls Sie die englische Sprache nicht beherrschen, lassen Sie es sich von einem Dolmetscher erklären, bevor Sie einen Versicherungsvertrag eingehen.

Đây là một văn kiện quan trọng. Nếu quý vị không thông thạo tiếng Anh, xin vui lòng nhờ thông dịch viên giải thích để quý vị hiểu rõ trước khi ký tên vào hợp đồng bảo hiểm.

Este es un documento importante. Si Ud. No tiene conocimientos sólidos de inglés, pida a un intérprete que le explique el documento antes de contratar el seguro.

នេះគឺជាឯកសារមួយដែលមានសារៈសំខាន់ ។ ប្រសិនបើអ្នកពុំសូវចេះភាសាអង់គេសច្បាស់លាស់ទេ សូមស្នើសុំអ្នកបកប្រែភាសាឲ្យពន្យល់ប្រាប់អ្នកមុនពេលអ្នកយល់ព្រមចុះកិច្ចព្រមព្រៀងធានារ៉ាប់រងណាមួយ ។

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About CGU

CGU Insurance Limited is the underwriter of this insurance policy. Our Australian Business Number is 27 004 478 371. Our Australian Financial Services Licence Number is 238291.

CGU Insurance Limited pays remuneration to insurance intermediaries when we issue, renew or vary a policy the intermediary has arranged or referred to us. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration we may pay your intermediary, you should ask your intermediary.

Privacy

We will collect personal information from you for the purpose of providing you with insurance products and services, and processing and assessing claims. You can choose not to provide this information, however, we may not be able to process your requests.

We treat your personal information with care. We will not release your personal information to anyone other than another insurer or an insurance reference service or as permitted or required by law. In the event of a claim, we may disclose information to and/or collect additional information about you from investigators or legal advisers.

If you wish to update the information we hold about you, please contact your insurance advisor.

General Insurance Code Of Practice

CGU Insurance proudly supports the General Insurance Code of Practice.

The purpose of the Code is to raise standards of practice and service in the general insurance industry.

The objectives of the Code are:

- ◆ to promote better, more informed relations between insurers and their customers;
- ◆ to improve consumer confidence in the general insurance industry;
- ◆ to provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- ◆ to commit insurers and the professionals they rely upon to higher standards of customer service.

Brochures on the Code are available from your nearest CGU office.

Our Service Commitment

CGU Insurance is proud of its service standards and supports the General Insurance Code of Practice. In an unlikely event that you are not satisfied with the way in which we have dealt with you, as part of our commitment to customer service, we have an internal dispute resolution process in place to deal with any complaint you may have.

Please contact your nearest CGU Insurance office if you have a complaint, including if you are not satisfied with any of the following:

- ◆ one of our products;
- ◆ our service;
- ◆ the service of our authorised representatives, loss adjusters or investigators; or
- ◆ our decision on your claim.

Our staff will help you in any way they can. If they are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to our Internal Dispute Resolution Department.

Brochures outlining our internal dispute resolution process are available from your nearest CGU Insurance office.

Brochures on the Code are available from your nearest CGU office.

Extract from the Insurance Contracts Act 1984

Under the terms of the Act, We must advise You about the following:

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 its business, ought to know,
- ◆ as to which compliance with your duty is waived by the insurer.

Non-Disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

Important notices

1. Claims

This Policy only provides cover in relation to Personal Injury or Damage to Property that occurs during the Period of Insurance.

2. Excess

An excess is an amount of money We will not pay in respect of a claim. The Schedule, Policy and endorsements will detail the excesses which may be applicable.

3. Liability Assumed Under Agreement

This Policy does not cover liability which You have agreed to accept unless You would have been so liable in the absence of such agreement.

4. Acceptance of the Application

This insurance will not be in force until the completed Application has been received and the risk accepted by Us. We reserve the right to decline any Application.

5. Alterations to your Business

It is important that You advise Us immediately of any changes to Your Business, that may result in an increased chance of liability to third parties. Some examples of changes of which You should notify Us are:

- (a) changes in Your name or directors or partners;
- (b) change of address or location of Your Business;
- (c) changes in the nature of Your Business or trade or occupation;
- (d) alterations in construction of the premises;
- (e) new Products not previously disclosed to us.

When We receive notification of a change, We may decide to adjust the premium or terms of the Policy, or to cancel the Policy in accordance with the provisions of the Insurance Contracts Act 1984.

Liability Insurance

The Agreement

The Policy, Schedule (which expression includes any Schedule substituted for the original Schedule), Application and endorsements (if any) together form the agreement.

In return for You having paid or agreed to pay the premium to Us, subject to the terms, conditions, exclusions and limitations contained in, or endorsed on or otherwise expressed in this Policy or the Schedule, We will indemnify You in the manner and to the extent described in this Policy.

Cover

We will indemnify You against:

1. Public Liability; or
2. Products Liability;

if shown in the Schedule as an insured item.

Definitions

In this Policy:

You, Your, Insured means the person(s) or entity named in the Schedule as the Insured.

We, Us, Our, Company means the insurance company named in the Schedule.

Schedule means the Schedule to this Policy.

Period of Insurance means the Period of Insurance shown in the Schedule.

Products Liability means:

Your legal liability to pay damages for an Occurrence caused by an Unknown Defect in Your Products, but excludes Public Liability.

Public Liability means:

Your legal liability to pay damages for an Occurrence in the course of Your Business, but excludes Products Liability.

If Products Liability is not insured, Public Liability includes liability to pay damages for an Occurrence caused by a defect, unknown to You, in food or drink sold or supplied from Your staff canteen.

Business means:

The Business as described in the Schedule and is extended to include:

1. a canteen, social or sporting club or first aid, fire or ambulance service, provided by You and incidental to Your Business; and
2. private work undertaken by Your employees for any of Your directors or senior executives.

Managed Organisations means any organisation other than subsidiary companies (or their subsidiaries) whose daily activities and daily decision making You directly control and manage.

Personal Injury means:

1. Bodily injury, death, sickness, disease, disability.
2. Shock, fright, mental anguish.
3. Unlawful arrest, unlawful imprisonment, wrongful detention, malicious prosecution.
4. Libel, slander or defamation.
5. Wrongful eviction, wrongful entry or other invasion of privacy.

Damage to Property means:

1. physical damage to Property;
2. physical destruction of Property; or
3. loss of use of Property as a result of physical damage to, or physical destruction of, Property.

Property means:

1. Tangible property not in Your possession or control.
2. Premises that You occupy for the purpose of the Business.
3. Vehicles not owned by You, but in Your possession or control, while in a car park, where the car park:
 - (a) is owned, occupied, or leased by You;
 - (b) does not form part of a building construction or work site; and
 - (c) for the use of which You do not charge a fee.

Products means:

Any thing (after it has passed from Your possession and control), including its packaging, that was manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, re-supplied or distributed by You in the course of Your Business.

Unknown Defect in Your Products means:

1. a defect in, or the harmful nature of, Products;
2. a defect or deficiency in any direction or advice provided by You concerning the use or storage of Products; or
3. a failure by You to provide direction or advice concerning the use or storage of Products;

that was not known to, and which should not reasonably have been suspected by, You or Your directors, partners or senior executives, before Your Products left Your possession or control.

Pollutants means:

Any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

Occurrence means:

Personal Injury or Damage to Property that:

1. is neither intended nor expected by You and would not be expected by a reasonable person in Your position;
2. is caused by an Event; and
3. occurs:
 - (a) within the Geographical Limits; and
 - (b) during the Period of Insurance.

Event means:

1. a single incident;
2. a series or number of incidents either having the same original cause or attributable to the one source; or
3. continuous or repeated exposure to substantially the same general conditions.

Geographical Limits means:

1. anywhere in the world;
2. but excludes North America for Occurrences in connection with:
 - (a) The performance of manual work.
 - (b) The ownership, occupancy or tenancy of any building, land or structure.
 - (c) An Unknown Defect in Your Products, exported to, sold in or supplied in North America, by You or on Your behalf.

North America means:

1. the United States of America and Canada; and
2. any state or territory incorporated in, or administered by, or from, either the United States of America or Canada.

Aircraft means:

Any vessel, craft or thing designed to transport people or goods in, or through, the air or space.

Hovercraft means:

Any vessel, craft or thing designed to transport people or goods over land or water, supported on a cushion of air.

Watercraft means:

Any vessel, craft or thing designed to float on or in, or travel on or through, water.

Vehicle means:

Any type of machine on wheels, on skis or on self-laid tracks, designed to be moved other than by manual or animal power, and includes any trailer whilst attached to a vehicle.

Use as a Working Tool means:

Use for excavating, digging, grading, drilling, lifting, pumping, spraying, vacuuming and the like.

It does not include use for:

1. Loading or Unloading goods onto or from a Vehicle, by use of a crane mounted on the Vehicle; or
2. transit to or from or within a work site; or
3. transport or haulage.

Loading or Unloading goods onto or from a Vehicle means:

The single action of transferring the weight of the goods (or a portion of a consignment of goods) onto or from the Vehicle.

Excess means the sum shown in the Schedule, this Policy, or an endorsement to this Policy (if any) which any loss or claim must exceed before We will be liable under this Policy and which We will not be liable to pay in respect of each claim.

Where a claim is made in respect of more than one Occurrence, the excess will apply as though a claim was made for each individual Occurrence.

The excess applies to all amounts for which we will be liable, including the indemnity provided by Additional Benefit 1 (Your Legal Costs), or any investigation costs associated with the claim.

Limitations

1. The maximum amount that We will pay for Public Liability:
 - (a) For one Occurrence (other than an Occurrence in connection with Pollutants), shall be the Limit of Indemnity for Public Liability shown in the Schedule.
 - (b) For one Occurrence in connection with Pollutants, shall be the Limit of Indemnity for Public Liability shown in the Schedule, less the amounts We have already paid for Public Liability claims in connection with Pollutants, that arose during the Period of Insurance.
2. The maximum amount that We will pay for Products Liability for one Occurrence shall be the Limit of Indemnity for Products Liability shown in the Schedule, less the amounts We have already paid for Products Liability claims that arose during the Period of Insurance.
3. Where an Occurrence is caused repeatedly, progressively or continuously by one Event, all of the Personal Injury or Damage to Property caused by that Event shall be deemed to be a single Occurrence.
4. Personal Injury or Damage to Property that is discovered before the Period of Insurance shall not be an Occurrence.
5. Where We are indemnifying more than one legal entity for Public Liability or Products Liability in respect of the one Occurrence, the maximum amount We will pay in total for all the legal entities We are indemnifying shall be the relevant Limit of Indemnity for Public Liability or Products Liability.

Excess

The Excess shall apply to each Occurrence.

Additional benefits

1. **Your Legal Costs**
 - (a) In the case of:
 - (1) Public Liability or Products Liability; or
 - (2) a claim of Public Liability or Products Liability being made against You;for which indemnity is available under this Policy, or would be available under this policy if such claim were to succeed, We will pay Your Legal Costs.
 - (b) Your Legal Costs means:
 - (1) the legal costs and expenses, that You incur with Our written agreement, in defending a claim of Public Liability or Products Liability made against You;
 - (2) the legal costs and expenses of any claimant claiming against You for Public Liability or Products Liability that You are liable to pay; and
 - (3) the costs reasonably incurred for representing You at any Coroner's inquest or any court of summary jurisdiction.
 - (c) In relation to Public Liability or Products Liability subject to or determined by:
 - (1) The law outside North America, the indemnity for Your Legal Costs shall not be limited by any Limit of Indemnity.
 - (2) The law in North America, the indemnity for Your Legal Costs shall be limited to the amount by which the applicable Limit of Indemnity is not exhausted by the indemnity for the Public Liability or Products Liability.
2. **Cover for Others**

Provided that they observe, fulfil and are subject to the definitions, terms, conditions and exclusions of this Policy, We will also indemnify, as though they were You, the following that are not named in the Schedule.

 - (a) Any party with whom You have entered into an agreement for the purpose of Your Business, but only for Occurrences for which You would be liable in the absence of the agreement and only to the extent that the agreement requires You to indemnify that party in relation to that Occurrence.
 - (b) Any of Your directors, partners, officers or employees, but only for liability incurred by them while acting within the scope of their duties in such capacity.

- (c) Any canteen, or social or sporting club, or first aid, fire or ambulance service provided by You and incidental to the Business.
- (d) (1) All Your subsidiary companies (and their subsidiaries) and all Your Managed Organisations, existing at the commencement of the Period of Insurance, for the whole Period of Insurance or until they cease to be Yours before the end of the Period of Insurance.

- (2) All Your subsidiary companies (and their subsidiaries) and all Your Managed Organisations, that became Yours after the commencement of the Period of Insurance, for 90 days from becoming Yours (unless the Period of Insurance ends sooner or they cease to be Yours, whichever shall first occur);

but in each case cover is limited:

- (3) to the Business described in the Schedule;
- (4) to business operations carried out within Australia;
- (5) for Public Liability, to Occurrences within Australia.

During the Period of Insurance, You may request Our agreement to insure Your subsidiary companies and Your Managed Organisations that have become Yours after the commencement of the Period of Insurance. In doing so, the duty of disclosure explained on page 1 of this Policy will apply in relation to such new companies and organisations. If We agree to provide continuing cover for such companies and organisations, We may first require You to pay an additional premium.

3. Cross Liabilities

Where more than one legal entity is insured under this Policy, We shall indemnify You against Public Liability or Products Liability to another Insured as if that other Insured were not a party to the Policy.

4. Loss of Goods in Your Possession or Legal Control

- (a) We will also indemnify You against Public Liability for physical loss of, or loss of use of, goods that are not owned by You, but are in Your possession or legal control, as though it were Damage to Property, if the loss was not caused by physical damage or destruction.
- (b) The maximum amount that We will pay under this Additional Benefit for all the Public Liability, of all of the parties We are indemnifying, arising during the Period of Insurance, shall be \$100,000.

5. Damage to Goods in Your Possession or Legal Control

- (a) We will also indemnify You against Public Liability for:
 - (1) physical damage to; or
 - (2) physical destruction of;goods that are not owned by You, but are in Your possession or legal control, as though it were Damage to Property.
- (b) The maximum amount We will pay under this Additional Benefit for all the Public Liability, of all of the parties We are indemnifying, arising during the Period of Insurance, shall be \$100,000.

6. First Aid Expenses

Where We are indemnifying You, or would indemnify You if a claim were made against You for Personal Injury, We will also pay the expenses reasonably incurred by You for first aid given to others at the time of an injury.

Exclusions

Where an exclusion nominates a cause of an Occurrence, the Exclusion shall apply and We will not indemnify You against the Public Liability or Products Liability for the Occurrence, whether or not that cause is the proximate or effective cause of the Occurrence.

We will not indemnify You against the following:

1. Employer's liability (Workers' Compensation)

- (a) Liability for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in Your service, or through a breach of any duty owed to that person, where You:
 - (1) are indemnified or entitled to be indemnified (either in whole or in part) in respect of claims for damages under a policy of insurance (which expression includes arrangements made by You to provide accident insurance for Your workers under a licence to self insure) arranged (whether required by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
 - (2) would have been indemnified or entitled to be indemnified had You arranged a policy of insurance as required by such legislation.
- (b) Liability for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in Your service in Western Australia, other than a person of whom You are deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Rehabilitation Act 1981 (WA).
- (c) Liability for mental anguish suffered by any person arising out of, or in the course of, that person's employment by, or service to, You.
- (d) Liability for Personal Injury arising out of the harassment, libel, slander, defamation or humiliation of, or discrimination against, any person while in Your service or while employed by You.
- (e) Liability of a type in respect of which indemnity previously would have been provided under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms,

provisions, or requirements of such legislation made after the commencement of the current Period of Insurance of this Policy.

- (f) Any other liability imposed by the provisions of any workers' compensation legislation or accident compensation legislation or any industrial award, agreement or determination.

2. Discrimination and harassment

Liability for discrimination or harassment in violation of statute.

3. Assault or battery

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

4. Waiver of rights

Liability in respect of all or part of which You, by an agreement, have released or waived Your right to recover indemnity or contribution from another.

5. Contractual liability

Liability assumed by You under an agreement, unless such liability would have attached to You in the absence of that agreement.

6. Intentionally or recklessly caused Personal Injury or Damage to Property

Liability in connection with Personal Injury or Damage to Property intentionally or recklessly caused by You or the risk of which You deliberately courted.

7. Faulty workmanship

Liability to perform, complete or rectify any work undertaken by You or on your behalf, or to pay the cost of performing, completing or rectifying such work.

8. Product recall and repair

Liability to pay:

- (a) for the cost of recall, withdrawal from sale, inspection, repair or replacement of Your Products;
- (b) for the cost of investigation into the cause of any defect; or
- (c) in connection with the loss of use of Your Products.

9. Reinstatement, repair or replacement of Your Products

Liability:

- (a) to reinstate, repair or replace Products; or
- (b) to pay the cost of reinstating, repairing or replacing Products;

where the damage was caused by those Products.

10. Loss of use of Property

Liability for loss of use of Property that has not been physically damaged or destroyed, caused by or arising out of:

- (a) a delay in, or lack of, performance, by You or on Your behalf, of any contract or agreement; or
- (b) the failure of Your Products to meet warranties or representations as to performance, fitness, quality or durability.

11. Aircraft Products

Liability in connection with Products that:

- (a) are incorporated into the structure, machinery or controls of Aircraft; and
- (b) You know are used in Aircraft.

12. Aircraft and Hovercraft

Liability in connection with Your ownership or physical or legal control of, or use by You or on Your behalf of, any:

- (a) Aircraft.
- (b) Land, building or structures in an area where Aircraft land or take off, or are housed, maintained or operated.
- (c) Hovercraft.

13. Vehicles

- (a) Liability for Personal Injury:
 - (1) where such liability arises out of, is caused by, or is in connection with Your ownership, operation or use of a Vehicle; and
 - (2) where the Event that causes the Occurrence happens in circumstances in which that Vehicle is required by law to have compulsory insurance against that Occurrence, or when such insurance cover is in force; or
- (b) Liability for Damage to Property, where such liability arises out of, is caused by, or is in connection with Your ownership, possession, operation, maintenance or use of a Vehicle that is registered.

Exclusions 13(a) and 13(b) will not apply where the liability arises from:

- (c) the delivery of goods to the Vehicle before the Loading of the goods onto the Vehicle, or arises from the collection of goods from the Vehicle after the Unloading of the Vehicle; or
- (d) the Use of the Vehicle, or plant or attachment to the Vehicle, as a Working Tool.

14. Watercraft

Liability:

- (a) in connection with Your ownership, or use by You or on Your behalf, of any Watercraft greater than eight metres in length, except whilst stored on land; or
- (b) arising from damage to Watercraft in Your possession or legal control, where the Watercraft is greater than eight metres in length, except whilst stored on land. The maximum amount we will pay for all of the Public Liability of all the parties we are indemnifying, arising during the Period of Insurance, from damage to Watercraft in Your possession or legal control, shall be \$100,000.

15. Pollution

Liability:

- (a) in connection with pollution occurring in North America or subject to jurisdiction of North America;
 - (b) to pay the cost of preventing the discharge, dispersal, release or escape of Pollutants; or
 - (c) for:
 - (1) an Occurrence in connection with the discharge, dispersal, release or escape of Pollutants; or
 - (2) the cost of testing, monitoring, containing, removing, cleaning up or neutralising Pollutants.
- Exclusions 15(c)(1) and 15(c)(2) shall not apply where discharge, dispersal, release or escape of Pollutants:
- (3) is caused by a single incident;
 - (4) is instantaneous;
 - (5) is clearly identifiable; and
 - (6) is confined to one specific location.

16. Asbestos

Liability caused by, arising out of, or in connection with, the use or presence of asbestos.

17. Building and demolition

Claims arising directly or indirectly out of, or caused by, or in connection with:

- (a) The erection of any new buildings or demolition of any buildings;
- (b) The alteration of or addition to existing buildings that are not owned or occupied by You; or
- (c) The alteration of or addition to existing buildings that are owned or occupied by You where the total cost of the alteration or addition exceeds \$500,000.

18. Vibration and removal of support

Liability for Damage to Property in connection with:

- (a) vibration; or
- (b) removal or weakening of, or interference with, support to land, buildings or any other property.

19. Treatment, design and professional risks

Liability caused by or arising out of Your performance or failure to perform the following:

- (a) The rendering of professional advice or service.
- (b) The prescription or administration of treatment of, or to, persons, (including, but not limited to, grooming, beauty, cosmetic, pharmaceutical and therapeutic treatment) other than first aid.
- (c) Making or formulating a design or specification within the domain of the architectural, engineering, scientific, chemical, actuarial, statistical, economic, financial or medical profession.

20. Libel and slander

Liability in connection with the publication or utterance of a libel or slander:

- (a) made before the commencement of the Period of Insurance;
- (b) made by You, or at Your direction, with knowledge of its falsity; or
- (c) related to publishing, advertising, broadcasting or telecasting activities conducted by You, or on Your behalf.

21. Fines and punitive damages

Liability for fines or penalties, or punitive, exemplary or aggravated damages.

22. Foreign non-admitted cover

Liability under the law of any country, state or territory (outside the Commonwealth of Australia) that requires such liability to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance or security.

23. Cranes

Liability in connection with the operation of a crane that is in an unsafe condition, or where all laws, bylaws, regulations and recognised standards for the operation of the crane or for the safety of persons or property, in the state or territory in which the Event occurred, have not been observed.

24. War, Invasion, Act of Foreign Enemy

Any consequence of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.

25. Radioactivity

Liability of any nature, directly or indirectly caused by, contributed to by, or arising from, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste.

26. Nuclear Weapons or Nuclear Material

Liability directly or indirectly caused by or contributed to by, or arising from, nuclear weapons or nuclear material.

27. Date Recognition Special Exclusion

There is no insurance under this Policy in respect of any claim of whatsoever nature which consists of, or arises directly or indirectly out of, or in connection with the failure or inability of any:

- (a) electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device; or
- (b) media or systems used in connection with any of the foregoing;

whether the property of the Insured or not, at any time to achieve fully and successfully, any, or all, of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date, including, but without being limited to, any failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:

- (i) anything referred to in (a) or (b) recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time; or
- (ii) the operation of any command or logic which has been programmed or incorporated into anything referred to in (a) or (b) above.

28. Advice for a Fee

Liability caused by or arising out of Your rendering or failure to render advice (other than advice in respect of the use or storage of Your Products), for a fee, but only where that fee, or a discrete part of that fee, is directly payable for the advice (whether written or oral).

29. Terrorism

Liability directly or indirectly caused by or contributed to by, or arising from or happening through or in connection with any act of terrorism. Terrorism is defined as an act, which may include but is not limited to an act involving the use of force or violence and/or 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), which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

30. Electronic Data and Software

There is no insurance under this Policy in respect of any claim of whatsoever nature which consists of or arises directly or indirectly out of or in connection with:

- (a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data and/or Software;
- (b) error in creating, amending, entering, deleting or using electronic Data and/or Software;
- (c) total or partial inability or failure to receive, send, access or use Electronic Data and/or Software for any time or at all;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation, or, processing by electronic or electromechanical data processing or electronically controlled equipment.

Software means programs, procedures and routines associated with the operation of electronic or electromechanical data processing or electronically controlled equipment, including any operating system.

Conditions

1. Your Duty

Our liability is conditional upon:

(a) Payment of the premium.

We **will not** pay any claim until You have paid the premium.

(b) Notification of Changes

Notification as soon as possible by You to Us of any change materially varying any of the facts or circumstances existing at the commencement of this Policy or following any renewal of this Policy.

(c) Observance of Policy Terms

The observance of the terms of the Policy by You and by any other person entitled to indemnity under this Policy.

2. Reasonable care

You must:

- (a) Take all reasonable precautions to prevent:
 - (1) Public Liability and Products Liability.
 - (2) Personal Injury and Damage to Property.
 - (3) The manufacture, sale or supply of defective Products.
- (b) Comply with, and ensure that Your employees, servants and agents comply with, all laws, bylaws, regulations and recognised standards for the safety of persons or property.
- (c) Ensure that only competent employees use, operate, maintain and service plant and equipment.
- (d) Maintain all premises, fittings, plant and equipment in sound condition.
- (e) Take immediate action to trace, recall or modify all Products that You know or have reason to suspect contain a defect or deficiency.

3. Welding, Flame Cutting, Application of Heat

You must ensure that all welding and flame cutting complies with the Australian Standard "AS1674.1 - 1997 and AS1674.2 - 2003 Safety and Welding in Allied Processes" and its amendments.

(It is a detailed Code, designed to protect persons and property from injury by fire or explosion in the course of cutting, heating or welding operations).

4. Our Rights of Conduct and Recovery

- (a) We shall have full discretion in the conduct, defence or settlement of any claim. This includes the right to instruct lawyers to provide advice as to Your liability and to represent You.
- (b) Subject to the provisions of the Insurance Contracts Act 1984, We have the right to recover or obtain contribution from any person against whom You may be able to claim and the right to take action in Your name.

You and any other person entitled to benefit under this Policy must not hinder these rights and must give all such information and co-operation as We may require.

5. Payment of Limit of Indemnity

We may at any time pay to you the appropriate Limit of Indemnity (after deducting from it any amounts already paid) or any lesser amount for which a claim or claims may be settled. In doing so, We will relinquish the conduct of, and shall be under no further liability in connection with, such claim or claims except for costs and expenses incurred before We made such payment.

6. Adjustment of Premium

If the premium for the Policy is calculated on estimates furnished by You, then You must keep an accurate record containing all particulars relative thereto and must at any time allow Us to inspect such record. You must, within 30 days after the expiry of each Period of Insurance, furnish to Us such particulars and information as We may require and the premium for such period will then be adjusted and any difference paid by or allowed to You as the case may be, subject to receipt and retention of the minimum premium charged by Us.

Notwithstanding the termination or cancellation of the Policy, You must furnish such particulars as We may require for the adjustment of the premium.

7. Jurisdiction

Any dispute arising from this Policy will be determined by Australian courts, and in accordance with the laws of the state or territory of Australia in which the Policy was issued.

8. Cancellation

- (a) Under Section 60 of the Insurance Contracts Act 1984, We may cancel this Policy at any time, by giving notice in writing to You of the date from which cancellation is to take effect, where You have:
 - (1) failed to comply with Your duty of utmost good faith; or

- (2) failed to comply with Your duty of disclosure at the time when this Policy was entered into, varied, altered, or renewed; or
- (3) made a misrepresentation to Us during the negotiations for this Policy, but before We agreed to issue this Policy; or
- (4) failed to comply with a provision of the Policy; or
- (5) failed to pay the premium for this Policy; or
- (6) made a fraudulent claim under this Policy, or any other contract of insurance (whether with Us or another insurer) that provided cover during any part of the Period of Insurance of this Policy; or
- (7) failed to comply with a requirement in this Policy that You notify Us of an act or omission which occurred after this Policy was entered into; or
- (8) failed to notify Us of any specific act or omission or such a notification as is required under the terms of this insurance Policy.

We may deliver such notice to You personally or by post at Your address last notified to Us.

- (b) Under Section 60 of the Insurance Contracts Act 1984, We may cancel this Policy at any time where:
 - (1) it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or
 - (2) it is an interim contract of general insurance.
- (c) You may cancel this Policy at any time by notifying Us in writing.
- (d) After cancellation, We will refund the premium for the time remaining on the Policy, less any non-refundable duties, unless You have made a fraudulent claim.

9. Inspections

We (or agents appointed by Us) have the right to inspect and examine, by mutual appointment, any property.

10. Joint Insurance

A claim made by any one of the people or entities named as the Insured in the Schedule is a claim made by all of the people or entities named as the Insured. Similarly, any statement, act or omission made by any person or entity named as the Insured in the Schedule is assumed to be made by all people or entities named as the Insured.

11. Transfer of Interest

No interest in this Policy can be transferred without Our written consent.

12. Goods and Services Tax

Where We make a payment under this Policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that You are, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

Where We make a payment under this Policy as compensation instead of payment for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that You 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.

Claims procedure

1. As soon as possible after the happening of any Occurrence, accident or Event which may give rise to a claim against Us, You or Your legal representative must:
 - (a) Advise details to Us and send written confirmation within 30 days.
 - (b) Take all reasonable steps to minimise the loss, damage or liability and to prevent any further loss, damage or liability.
 - (c) Use best endeavours to preserve any damaged or defective appliances, plant or things which might prove necessary or useful by way of evidence in connection with any claim and so far as possible, with due regard for safety, no alteration or repair shall be made without Our consent.
 - (d) Retain, where possible, all damaged property for inspection by Us.
 - (e) Advise Us of any impending prosecution or inquest.
 - (f) Forward to Us every communication, Writ or Summons within 72 hours of receipt by You or service upon You.

Note:

Failure to forward to Us any Writ or Summons served upon You within the time stipulated may result in Us refusing to indemnify You.

2. Where a claim arises You must not authorise repairs to, or arrange replacement of, any property relevant to the claim without Our consent other than as provided for under 1(c) above.
3. Subject to the provisions of the Insurance Contracts Act 1984, You or any person making a claim under this Policy, must not make any admission of liability or payment or promise or offer of payment in connection with any such claim, without Our written consent.
4. You, or any other person entitled to claim under this Policy, must furnish Us with a statement giving details of other insurances which may also provide cover on any liability hereby insured.

contact details

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ABN 27 004 478 371

Your insurance adviser is