



# Liability

## Vertex Policy Wording

Aon Risk Services Australia Limited  
ABN 17 000 434 720 AFSL No. 241141



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# General and Products Liability Insurance

## 1. The Indemnity

Coverage: In consideration of the Named Insured having paid or agreed to pay the Premium and subject to the terms, Definitions, Exclusions, Conditions, provisions and Limits of Liability set out in this Policy, the Insurer will indemnify the Insured against the legal liability of the Insured to pay:

1.1 Compensation in respect of:

- 1.1.1 Injury to any person;
- 1.1.2 Property Damage;
- 1.1.3 Advertising Injury;

occurring within the Geographical Limits during the Period of Insurance as a result of an Occurrence happening in connection with the Insured's Business or Products.

1.2 Defence Costs and Supplementary Payments: With respect to the indemnity provided by this Policy, the Insurer will pay the following costs and expenses in addition to the Limit of Liability:

- 1.2.1 all legal costs and other expenses incurred with the written consent of the Insurer;
- 1.2.2 all costs and expenses incurred by the Insured with the written consent of the Insurer for legal representation at any appeal, coroner's inquest, royal commission, fatal accident inquiry or court of summary jurisdiction or an indictment in a higher court;
- 1.2.3 all expenses incurred by the Insured for first aid rendered for Injury to others at the time of an Occurrence, except any medical expenses which the Insurer is prohibited by law from paying;
- 1.2.4 all expenses incurred by the Insured for temporary repairs, shoring up or protection of property of others that has been damaged as a result of an Occurrence which may be the subject of indemnity under this Policy;
- 1.2.5 all post-judgement interest that accrues on the Insurer's portion of any judgement after entry of judgement until the Insurer has paid, tendered or deposited in court such part of the judgement as does not exceed the Limit of Liability;
- 1.2.6 all premiums on appeal bonds and security for costs required in any suit and pay premiums on bonds to release attachments in any suit for an amount not in excess of the applicable Limit of Liability of this Policy, but the Insurer shall have no obligation to apply for or furnish any such bonds or security for costs.

Even if the allegations of a suit are groundless, false or fraudulent, the Insurer will defend any suit against the Insured for compensation or damages to which indemnity under this Policy applies (or would apply if the claim was sustained) and the Insurer may make such investigations and settlement of any claim as the Insurer deems expedient.

If a payment exceeding the Limit of Liability has to be made to dispose of a claim, the Insurer's liability to pay Defence Costs and Supplementary Payments under this Clause 1.2 will be limited to that proportion of Defence Costs and Supplementary Payments as the Limit of Liability bears to the amount paid to dispose of the claim.

## 2. Excess

When specified in the Schedule, each claim (or series of claims arising out of continuous or repeated exposure to substantially the same general conditions) arising under Clauses 1.1 and/or 1.2 is subject to the Excess shown. Should more than one Excess apply under this Policy for any claim (or series of claims arising out of continuous or repeated exposure to substantially the same general conditions) such Excesses shall not be aggregated and only the highest single level of Excess shall apply.

## 3. Limit of Liability

- 3.1 The limit of the Insurer's liability in respect of any one Occurrence shall not exceed the Limit of Liability stated in the Schedule. All Injury to any person, Property Damage or Advertising Injury arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence. The Limit of Liability shall be payable in excess of any amount specified as an Excess.
- 3.2 The total aggregate liability of the Insurer during any one Period of Insurance for all claims arising out of the Products shall not exceed the Limit of Liability stated in the Schedule.
- 3.3 The total aggregate liability of the Insurer during any one Period of Insurance for all claims arising out of Pollution shall not exceed the Limit of Liability stated in the Schedule.

## 4. Definitions

For the purpose of this Policy, the following definitions apply:

- 4.1 Act of Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons with the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 4.2 Advertising Injury means:
- 4.2.1 libel, slander or defamation;
  - 4.2.2 infringement of copyright or of title or of slogan;
  - 4.2.3 piracy or unfair competition or idea misappropriation under an implied contract;
  - 4.2.4 invasion of privacy;
- committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of the Insured's advertising activities or any advertising activities conducted on behalf of the Insured, in the course of advertising the Products, goods or services.
- 4.3 Aircraft means any vessel, craft or thing made or intended to transport persons and/or property through the air, atmosphere or space.
- 4.4 The Business means:
- 4.4.1 the Business specified in the Schedule;
  - 4.4.2 the provision and management of canteens, social, sports and welfare organisations, educational and child care facilities primarily for the benefit of the Insured's Employees;
  - 4.4.3 first aid, medical, fire and ambulance services;
  - 4.4.4 the maintenance of the Insured's premises or property for which such responsibility exists;
  - 4.4.5 private work undertaken by the Insured's Employees for any director, partner or senior executive of the Insured;
  - 4.4.6 any prior activities which have ceased or have been disposed of but for which the Insured may retain a legal liability;
  - 4.4.7 participation in exhibitions;
  - 4.4.8 hire or loan of plant to other parties;
  - 4.4.9 conducted tours of the Insured's premises;
  - 4.4.10 any other occupation ancillary or incidental to the Business stated in the Schedule.
- 4.5 Compensation means any amount paid or payable at law (including but not limited to amounts owing or liability incurred in respect of or arising out of a claim for recovery or contributions made pursuant to any legislation) by the Insured in respect of any claim for:
- 4.5.1 Injury;
  - 4.5.2 Property Damage;
  - 4.5.3 Advertising Injury.
- Provided that Compensation is only payable in respect of an Occurrence to which this Policy applies.
- 4.6 Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.
- 4.7 Employee means any person under a contract of service or apprenticeship with the Insured.
- 4.8 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.

4.9 Geographical Limits means anywhere in the World except the United States of America and Canada.

Provided that:

4.9.1 the Geographical Limits shall include the United States of America and Canada but only in respect to:

4.9.1.1 Products sent to the United States of America and/or Canada without the knowledge of the Insured;

4.9.1.2 Business visits by directors, officers and Employees normally resident outside the United States of America and/or Canada, other than Employees who are engaged in manual labour during such visits;

4.9.2 the indemnity granted by this Policy in respect of any judgement, award or settlement made within the United States of America and/or Canada (or any Order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part) is subject to the following additional terms and Exclusions in respect of such judgement, award or settlement:

4.9.2.1 the Limit of Liability is inclusive of the other costs and expenses as described in Clause 1.2 of this Policy;

4.9.2.2 liability for Injury to any person and/or Property Damage arising out of Pollution is hereby excluded. It is further agreed that the cost of preventing, removing, nullifying or cleaning up any seeping, contaminating or polluting substances shall also form part of this Exclusion and shall not be recoverable under this Policy;

4.10 Injury means:

4.10.1 bodily injury, death, illness, disease, disability, shock, fright, mental anguish and mental injury including loss of consortium or services;

4.10.2 false or wrongful arrest, detention or imprisonment and malicious prosecution, wrongful entry upon, wrongful eviction from or other invasion of right to private occupancy of property and humiliation;

4.10.3 libel, slander or defamation, except where:

4.10.3.1 the first publication or utterance happened prior to the commencement of this Policy; or

4.10.3.2 the Injury arises out of Advertising Injury as defined herein;

4.10.4 assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Injury or Property Damage or eliminating or preventing danger to persons or property;

4.10.5 discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by or at the intentional direction of the Insured, but only in respect to liability other than for fines and penalties imposed by law.

4.11 Insured means:

4.11.1 the Named Insured stated in the Schedule;

4.11.2 any subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management;

4.11.3 any new organisation acquired during the Period of Insurance by the Insured described in 4.11.1 and 4.11.2 above, through consolidation, merger, purchase, or assumption of control and active management, provided that such acquisition or assumption is:

4.11.3.1 reported to the Insurer within ninety (90) days after it is acquired;

4.11.3.2 endorsed on this Policy;

4.11.3.3 in a business similar to the Business stated in the Schedule;

4.11.4 any director, officer, Employee, partner or shareholder of the Named Insured or of a company designated in 4.11.2 and 4.11.3 above, but only whilst acting within the scope of their duties in such capacity;

4.11.5 any voluntary worker and any person whilst working for an insured party for the purpose of gaining work experience;

4.11.6 if a party named in the Schedule as an insured party is an individual, the spouse and family of that individual but only in respect of the conduct of the Business;

4.11.7 any person or principal in respect of their liability arising out of the performance by the Insured designated in 4.11.1 and 4.11.2 and 4.11.3 above, of any contract or agreement, but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as provided in this Policy;

- 4.11.8 any office bearer or member or voluntary helper of the Insured's social and/or sporting clubs, canteen, security, first aid, fire and ambulance services, educational, welfare or child care facilities formed with the consent of the Insured (other than an Insured designated in 4.11.7 above) in respect of claims arising from duties connected with activities of any such club or facility;
- 4.11.9 any director or executive officer of the Named Insured or of a company designated in 4.11.2 and 4.11.3 above in respect of private work undertaken by the Insured's Employees for such persons;
- 4.11.10 any Employee of the Insured whilst undertaking private work for any director or senior executive of the Insured or of any partner designated in paragraph 4.11.11 of this Definition;
- 4.11.11 if the Insured is declared in the Schedule as a partnership or joint venture, any partner or member thereof but only with respect to their liability as a partner or member of such partnership or joint venture;
- 4.11.12 the personal representatives of the Insured in respect of liability incurred by the Insured whilst acting on behalf of the Insured;

Provided that:

- 4.11.13 such person(s) shall comply with and be subject to the terms, Definitions, Exclusions, Conditions and provisions of this Policy insofar as they can apply;
- 4.11.14 nothing contained in this Definition or in Proviso 4.11.13 above shall operate to increase the Insurer's Limit of Liability.

- 4.12 The Insurer means the company named in the Schedule.
- 4.13 Limit of Liability means the amount(s) specified as such in the Schedule.
- 4.14 Medical Persons means legally qualified medical practitioners, legally qualified registered nurses, dentists and first aid attendants.
- 4.15 Occurrence means an event including continuous or repeated exposure to substantially the same general conditions which results in Injury to any person, Property Damage or Advertising Injury where such Injury, Property Damage or Advertising Injury is neither expected nor intended from the standpoint of the Insured.  
Occurrence extends to include any intentional act by or at the direction of the Insured which results in Injury if such Injury arises solely from the use of reasonable force for the purpose of protecting persons or property.
- 4.16 Period of Insurance means the period of insurance shown in the Schedule or any renewal period, during which the insurance by this Policy is in force. The term "Local Time" means the time at the Insured's principal place of business.
- 4.17 Pollution means the discharge, dispersal, seepage, release or escape of smoke, vapours, fumes, acids, alkalis, chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or water.
- 4.18 Product means anything which was, or is deemed by law to have been, manufactured, grown, extracted, treated, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, renovated, installed, assembled, erected or constructed in the course of the Business by or on behalf of the Insured, including labels, packaging or containers (other than a Vehicle), and directions, instructions, or advice given or omitted to be given in connection with such Product, after ceasing to be in the possession or under the control of the Insured.
- 4.19 Property Damage means:
  - 4.19.1 physical injury or damage to or physical loss of or destruction of tangible property including loss of use at any time resulting therefrom;
  - 4.19.2 loss of use of tangible property which has not been physically injured, damaged or destroyed provided such loss of use is caused by an Occurrence.
- 4.20 Schedule means any document so designated and issued to the Insured, whether for the first Period of Insurance or on any renewal of the contract or variation by way of Endorsement, that specifies the Policy number, the party or parties named as insured parties, Limits of Liability and other details of the insurance by this Policy.
- 4.21 Tool of Trade means a Vehicle which has a tool or plant forming part of, attached to or used in connection with it while such tool or plant is engaged on a work site, but does not include a Vehicle whilst in transit to or from any work site.
- 4.22 Vehicle means any type of machine on wheels or on self laid tracks made or intended to be propelled other than by manual or animal power and any trailer or other attachment whilst attached thereto.
- 4.23 Watercraft means any vessel, craft or thing made or intended to float on or travel on or through water.

## 5. References

- 5.1 Headings: Clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this Policy.
- 5.2 Parties: references to parties are reference to parties to this Policy.
- 5.3 Persons: references to persons shall be deemed to include references to individuals, companies, corporation, firms, partnerships, joint ventures, associations, organisation, trusts, States or agencies of State Government departments and local and municipal authorities.
- 5.4 Plural and Singular: words importing the singular number shall include the plural and vice versa.

## 6. Exclusions

The liability of the Insurer to indemnify the Insured pursuant to Clause 1.1 and to pay other costs and expenses pursuant to Clause 1.2 shall not extend to any of the following:

### 6.1 Advertising Injury

Liability arising out of Advertising Injury for:

- 6.1.1 offences committed prior to the inception date of this Policy;
- 6.1.2 offences made at the direction of the Insured with knowledge of the illegality or falsity thereof;
- 6.1.3 breach of contract, other than misappropriation of advertising ideas under an implied contract;
- 6.1.4 incorrect description of the price of the Products, goods or services;
- 6.1.5 infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the Products, goods or services sold, offered for sale or advertised, but this Exclusion 6.1.5 does not apply to titles or slogans;
- 6.1.6 failure of the Products, goods or services to conform with advertised performance, quality, fitness or durability;
- 6.1.7 any Insured whose business is advertising, broadcasting, publishing or telecasting.

### 6.2 Aggravated, Punitive or Exemplary Damages

Aggravated, punitive or exemplary damages.

### 6.3 Aircraft and Watercraft

Liability arising from:

- 6.3.1 the ownership, possession or use by the Insured of any Aircraft;
- 6.3.2 construction, repairs, maintenance or installation work on Aircraft;
- 6.3.3 the ownership, possession or use by the Insured of any Watercraft in excess of 8 metres in length, but this Exclusion 6.3.3 shall not apply to Watercraft which are not owned by the Insured when such craft are:
  - 6.3.3.1 operated by independent contractors provided that the Insured has not entered into a Charter Party Agreement with such contractors; or
  - 6.3.3.2 used by the Insured for Business entertainment.

### 6.4 Aircraft Products

Liability arising out of or in connection with the Products which the Insured knew or had reasonable cause to believe would be incorporated into the structure, machinery, controls or construction of any Aircraft.

### 6.5 Asbestos

Liability arising out of, caused by or in connection with asbestos or materials containing asbestos.

### 6.6 Contractual Liability

Liability assumed by the Insured under any contract or agreement in connection with the Products but this Exclusion 6.6 does not apply to:

- 6.6.1 the extent that such liability would have been implied by law;
- 6.6.2 liability assumed by the Insured under a warranty of fitness or quality.



6.7 Electronic Data

Liability arising out of:

- 6.7.1 communication, display, distribution or publication of Electronic Data however, this Exclusion 6.7.1 does not apply to Injury or Advertising Injury resulting from any of them;
  - 6.7.2 total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
  - 6.7.3 error in creating, amending, entering, deleting or using Electronic Data; or
  - 6.7.4 total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;
- from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

6.8 Employers' Liability

Liability for Injury:

- 6.8.1 for which insurance against such liability (whether the insurance is limited in amount or not) is or would have been provided to the Insured through licensed self-insurance or under a policy in a form prescribed or approved under or issued in pursuance of any Workers' Compensation or Accident Compensation legislation applicable to the Insured or any extension of such policy granted on request as a matter of usual practice by entities authorised to issue such policies; or
- 6.8.2 relating to Employment Practices;

Provided that:

- 6.8.3 Exclusions 6.8.1 and 6.8.2 shall not apply with respect to:
  - 6.8.3.1 liability of others assumed by the Insured under written contract;
  - 6.8.3.2 claims for loss of consortium from the spouse of an Employee.

6.9 Fines, Penalties and/or Liquidated Damages

Fines, penalties and/or liquidated damages imposed by law or assumed by the Insured under any contract, warranty or agreement.

6.10 Industrial Awards

Liability to or of any Employee of the Insured imposed by the provisions of any industrial award or agreement or determination where such liability would not otherwise have attached.

6.11 Loss of Use

The loss of use of tangible property which has not been physically injured, damaged or destroyed which results from:

- 6.11.1 delay in or lack of performance by or on behalf of the Insured of any contract or agreement;
- 6.11.2 the failure of the Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured. However this does not apply to loss of use of other tangible property resulting from the sudden, unexpected and unintended physical injury to or destruction of the Products after such products have been put to use by any person or organisation other than the Insured.

6.12 Nuclear

Any legal liability of whatsoever nature directly or indirectly caused by or contributed to, by, or arising from, ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion or fission of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

6.13 Pollution

- 6.13.1 Liability arising out of Pollution, but this Exclusion 6.13.1 does not apply where the liability arises from a sudden identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place.
- 6.13.2 Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such Pollution, but this Exclusion 6.13.2 does not apply where clean-up, removal or nullifying expenses are incurred consequent upon a sudden identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place.
- 6.13.3 Notwithstanding the foregoing it is specifically declared and agreed that Exclusions 6.13.1 and 6.13.2 shall not apply to any liability arising out of the discharge, dispersal, release or escape of legionella bacteria.

6.14 Products and Work Performed

Liability for:

- 6.14.1 the cost of making good, replacing or reinstating workmanship performed by the Insured which is or is alleged to be or was faulty;  
but this Exclusion 6.14.1 does not apply to Property Damage resulting from but not within the scope of the foregoing paragraph;
- 6.14.2 the cost of making any refund of the price paid for any Products;
- 6.14.3 the cost of or damages claimed in relation to the withdrawal, recall, inspection, repair, replacement or loss of use of the Products or any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- 6.14.4 Property Damage to the Products if such damage is attributable to any defect in them or to their harmful nature or unsuitability, other than those Products repaired, serviced or treated by the Insured after such Products were originally sold, supplied or distributed, however this Exclusion 6.14.4 shall be restricted to the defective or harmful or unsuitable part of the Product and shall not apply to Property Damage to the remainder of such Product or Products.

6.15 Property Owned By or in the Care, Custody or Control of the Insured

Property Damage to property owned by the Insured or held in trust or in the custody or control of the Insured but this Exclusion 6.15 does not apply to:

- 6.15.1 personal property of directors, Employees and visitors of the Insured;
- 6.15.2 premises (including fixtures and fittings) not owned by the Insured;
  - 6.15.2.1 at which the Insured is undertaking work in connection with the Business but no indemnity is granted for Property Damage to that part of the property on which the Insured is working and which arises out of such work;
  - 6.15.2.2 which are leased, rented or loaned to the Insured;
- 6.15.3 Vehicles (including trailers whilst in use by the Insured, spare parts and accessories thereon) not owned or used by the Insured in connection with the Business whilst within a car park belonging to or under the control of the Insured provided that the Insured, as a principal part of the Business, does not operate the car park for reward;
- 6.15.4 any other property (except property owned by the Insured and property described in 6.15.1, 6.15.2 and 6.15.3 above) but the Insurer's liability in respect of this clause 6.15.4 shall not exceed \$250,000 or the Sub-Limit of Liability stated in the Schedule applying to Clause 6.15.

6.16 Professional Liability

Liability arising out of the rendering of or failure to render professional advice or service by the Insured, but this Exclusion 6.16 does not apply to:

- 6.16.1 Injury to any person or Property Damage arising therefrom, providing such professional advice or service is not given for a specific fee; or
- 6.16.2 the rendering of or failure to render professional medical advice by Medical Persons employed by the Insured to provide first aid and other medical services on the Insured's premises.

6.17 Requirement to Insure

Property Damage to property rented to, leased to, occupied by, or used by, or in the care, custody or control of the Insured to the extent the Insured is under contract to provide insurance thereof.

6.18 Terrorism

Injury to any person or Property Damage directly or indirectly caused by, resulting from or in connection with any:

- 6.18.1 Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to such Injury or Property Damage;
- 6.18.2 action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

## 6.19 Vehicles

Injury to any person or Property Damage arising from the ownership, possession or use by the Insured of any Vehicle whilst used in circumstances where such Vehicle is required by law to be registered.

Provided that:

This Exclusion 6.19 shall not apply:

- 6.19.1 to Injury where compulsory liability insurance or a statutory scheme does not provide indemnity for reasons that do not involve a breach by the Insured of legislation relating to Vehicles;
- 6.19.2 where such Injury and/or Property Damage:
  - 6.19.2.1 is caused by or arises from the loading or unloading of or the delivery or collection of goods to or from any Vehicle where such Injury or Property Damage occurs beyond the limits of any carriageway or thoroughfare;
  - 6.19.2.2 arises out of the loading or unloading of or the delivery or collection of goods to or from any Vehicle used in work undertaken by or on behalf of the Insured but not in the physical or legal control of the Insured;
  - 6.19.2.3 is caused by or arises out of or in connection with any Vehicle working as a Tool of Trade.

## 6.20 War

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.

# 7. General Conditions

## 7.1 Notification

On the Insured becoming aware of any Occurrence giving rise or likely to give rise to a claim under this Policy or upon receipt by the Insured of notice of any claim or subsequent proceeding, the Insured shall as soon as practicable thereafter:

- 7.1.1 give notice thereof in writing to the Insurer;
- 7.1.2 preserve any property or things which might prove necessary or useful by way of evidence in connection with any claim and, so far as may be reasonably practicable, with due regard to safety, no alteration or repairs shall, without the consent of the Insurer, be made after the Occurrence until the Insurer shall have had an opportunity of inspection;
- 7.1.3 forward to the Insurer every letter of demand, writ, summons or process as soon as practicable after receipt thereof and give notice to the Insurer in writing as soon as practicable after the Insured shall have knowledge of an impending prosecution or inquest in connection with any Occurrence;
- 7.1.4 when called upon to do so, furnish to the Insurer in writing all details of the Occurrence together with such evidence and explanations as the Insurer may reasonably require.

Notwithstanding the provisions of this Condition 7.1, this insurance will not be prejudiced by any inadvertent delay, error or omission in notifying the Insurer of any Occurrence that may give rise to a claim or claims under the Policy.

## 7.2 Subrogation and Settlement of Claims

- 7.2.1 No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of the Insurer who shall have the right and duty to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for the Insurer's own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the Insured shall give all such information and assistance as the Insurer may reasonably require.

Any amount so recovered shall be applied in the following order of priority:

- first to the uninsured proportion of the loss,
- second to reimburse the Insurer to the extent of its actual payment in respect of the claim,
- third, to reimburse the Insured for any Excess borne by the Insured,
- fourth, any balance recovered which exceeds the loss shall be payable to the Insured.

The expenses of such recovery proceedings shall be apportioned as agreed between the Insured and the Insurer. Should the parties be unable to agree on an appropriate apportionment then such expenses shall be paid by each party in the same proportion as their percentage share of all amounts recovered. If there is no such recovery by the Insurer, the expenses shall be borne by the Insurer.

7.2.2 The Insurer may pay to the Insured the amount of the applicable Limit of Liability of the Insurer, or such lesser sum for which the claim can be settled, subject in either case to deduction of any sum or sums already paid as damages or compensation in respect of such claim and the Insurer shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which the Insurer is liable hereunder incurred prior to the date of such payment, whether or not pursuant to an order made subsequently.

### 7.3 Precautions by the Insured

The Insured shall:

7.3.1 take reasonable precautions to prevent or minimise liability and take reasonable measures to maintain efficient ways, works, machinery, fencing and plant and shall make reasonable endeavours to comply with all statutory obligations and regulations imposed by any authority for the safety of persons or property;

7.3.2 at its own expense, take reasonable action to trace recall or modify any of the Products containing any defect or deficiency of which the Insured has knowledge or has reason to suspect, including (but not limited to) any Products subject to Government or statutory ban.

### 7.4 Cross Liability, Severability and Waiver of Subrogation

This Policy, including any amendment, renewal or variation or endorsement of it, shall be construed as if each insured party had made a proposal, application or request for the Policy, amendment, renewal, variation or endorsement in respect of their interest only. Further, any information or knowledge possessed by one insured party, whether possessed before or after the contract was entered into, shall not be imputed to any other such party. The Insurer will not seek any relief whatsoever (including cancellation of the Policy) for non-disclosure and/or misrepresentation against an insured party unless the Insurer would have been entitled to that relief had that party been the only party covered by this Policy.

Further, neither the inclusion of more than one Insured under this Policy nor any act, omission, breach or default by any Insured shall in any way affect the rights of any other Insured, it being intended that this Policy shall be construed as if a separate contract of insurance has been entered into by each Insured; but not so as to increase the Insurer's Limit of Liability.

All right of subrogation is waived under this Policy against every company, organisation and person defined as an Insured under this Policy to which or to whom protection is afforded under the Policy.

Provided that:

with respect to any person who is an Insured by way of Definition 4.11.7 of the Policy, such waiver of subrogation shall only apply to claims which arise by virtue of Definition 4.11.7.

### 7.5 Insolvency or Bankruptcy

The insolvency or bankruptcy of any party comprising the Insured shall not release the Insurer from any of its obligations hereunder.

### 7.6 Adjustment of Premium

Where the Premium for this Policy is arranged on an adjustable basis, the Insured shall keep accurate records and make declarations to the Insurer in respect of the Period of Insurance so that the necessary adjustment of Premium may be made subject to the application of any minimum Premium required.

### 7.7 Cancellation

This Policy may be cancelled at any time at the request of the Insured in which case the Insurer shall retain Premium commensurate with the risk attaching for the period the Policy was in force.

The Insurer may also cancel this Policy on any grounds subject to the Insurance Contracts Act where the Insurer has given the Insured written notice of such cancellation in accordance with the Act.

The Insurer's notice of cancellation takes effect at the earlier of the following times:

7.7.1 the time when another policy of insurance between the Insured and the Insurer or some other insurer, being a policy that is intended by the Insured to replace this Policy, is entered into; or

7.7.2 4:00pm on the thirtieth business day after the day on which notice was given to the Insured.

In the event that the Insurer cancels this Policy the Insurer will repay on demand a rateable proportion of the Premium for the unexpired Period of Insurance from the date of cancellation.

## 7.8 Goods and Services Tax (GST)

GST, Input Tax Credit, Acquisition and Supply have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is the Insured's entitlement to an Input Tax Credit on the Premium as a percentage of the total GST on that Premium.

7.8.1 Where the Insurer makes a payment under this Policy for the Acquisition of goods, services or other Supply, the amount of the payment will be reduced by the amount of any Input Tax Credit that the Insured is, or will be, entitled to in relation to that Acquisition, whether or not the Insured makes that Acquisition.

7.8.2 Where the Insurer makes a payment under this Policy as compensation instead of payment for the Acquisition of goods, services or other Supply, the Insurer will reduce the amount of the payment by the amount of any Input Tax Credit that the Insured would have been entitled to had the payment been applied to acquire such goods, services or other Supply.

Any GST amount paid by the Insurer shall be in addition to the Limit(s) of Liability specified in the Schedule.

No payment shall be made to the Insured for any GST liability that they may acquire upon settlement of a claim if the Insured has not informed the Insurer of its correct Taxable Percentage.

## 7.9 Notices and Service of Legal Process

The Insured may effect notice, advice or service of any legal process in connection with this Policy upon the Insurer by delivering that notice, advice or process by hand or by post to the address of the Insurer stated in the Schedule.

## 7.10 Proper Law

The Insurer and the Insured hereby submit to the jurisdiction of all Australian Courts in relation to all matters arising under this Policy.

## 7.11 Other Insurance

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

This Policy shall apply in excess of and shall not contribute to any policy arranged by any other party which has been endorsed to name the Insured as a beneficiary of cover under that policy and where the Insured is a non-contracting party to that policy.

# 8. Endorsements to the Policy

The following Endorsements to the standard cover will be deemed to be incorporated in this Policy only when specified in the Schedule by the appropriate number and title.

## 8.1 Products sent to the United States of America or Canada

Proviso 4.9.1.1 appearing in the Definition of Geographical Limits is amended to read;

“Products sent to the United States of America and/or Canada”.

## 8.2 Errors & Omissions

Notwithstanding the provisions of Exclusion 6.16 of this Policy, the Insurer will indemnify the Insured against the legal liability of the Insured to pay compensation in respect of Financial Loss occurring during the Period of Insurance provided that such Financial Loss arises out of any negligent act, error or omission committed or alleged to have been committed by or on behalf of the Insured in the course of the Business.

The total aggregate liability of the Insurer during any one Period of Insurance for all claims arising out of Financial Loss shall not exceed the Sub-Limit of Liability stated in the Schedule, inclusive of costs and expenses as specified under the Indemnity Clause 1.2 Defence Costs and Supplementary Payments.

The indemnity provided under this Endorsement is subject to the Excess specified in the Schedule.

### 8.2.1 DEFINITION APPLICABLE TO THIS ENDORSEMENT

“Financial Loss” means any loss which is economic in nature and not consequent upon Injury or Property Damage otherwise insured by this Policy.

8.2.2 EXCLUSIONS APPLICABLE TO THIS ENDORSEMENT

The liability of the Insurer to indemnify the Insured pursuant to this Endorsement shall not extend to liability:

- 8.2.2.1 for the cost of recalling, withdrawing, replacing or repairing Products or of making any refund on the price paid for Products;
- 8.2.2.2 assumed under contract or agreement unless such liability would have attached in the absence of such contract or agreement;
- 8.2.2.3 arising from facts or circumstances which are inevitable having regard to:
  - (a) the circumstances and nature of the work undertaken, or
  - (b) the Products;
- 8.2.2.4 arising directly or indirectly out of any delay in the performance of services or out of the sale or supply of Products;
- 8.2.2.5 incurred by or caused by a director or executive officer of the Insured whilst acting within the scope of their duties in such capacity;
- 8.2.2.6 incurred by or caused by a director or executive officer of the Insured's staff superannuation fund or funds whilst acting within the scope of their duties in such capacity;
- 8.2.2.7 arising out of conspiracy, conversion, deceit, inducement, breach of contract or injurious falsehood;
- 8.2.2.8 arising out of or in connection with any dishonest, fraudulent, intentional, criminal or malicious act, error or omission by the Insured or by an employee of the Insured;
- 8.2.2.9 arising in the USA and/or Canada or in respect of any claim which would be subject to the jurisdiction of the Courts of the USA and/or Canada.

Subject otherwise to the terms, Conditions and Exclusions of the Policy.



