

Allianz

Public & Products Liability

Policy Wording

Allianz Global Corporate & Specialty



General Information

The General Information set out below is provided for your (the **Insured's**) information only. It does not form part of the insurance contract with you, and is not part of the **Policy**. Nothing contained in the General Information imposes contractual obligations on you, or creates contractual rights. These are contained in the **Policy** which includes the Schedule and any endorsements.

Your Duty of Disclosure

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

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate the contract.

This duty of disclosure applies until the contract is entered into (or renewed, extended, varied or reinstated as applicable).

Your duty however does not require disclosure of any matter:

- that diminishes the risk to be undertaken by us; or
- that is of common knowledge; or
- that we know or, in the ordinary course of our business as an insurer, ought to know; or
- as to which compliance with your duty is waived by us.

Non-disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the contract in respect of a claim to the extent our interests are prejudiced by your failure to comply

with the duty of disclosure, cancel the contract, or both.

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

Sanctions/Embargo provision

The **Policy** contains a provision that we (the **Insurer**) will not be deemed to provide cover and will not be liable to pay any

amounts or provide any benefit under the **Policy** to the extent that the provision of such cover, payment of such amount or provision of such benefit would expose us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United States of America and/or any other applicable national economic or trade sanction law or regulations.

General Insurance Code of Practice

The General Insurance Code of Practice was developed by the Insurance Council of Australia to further raise standards of practice and service across the insurance industry.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code.

You can obtain more information on the Code of Practice and how it assists you by contacting us. Our Contact details are provided in this policy wording.

For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au.

Complaints

If you are dissatisfied with our service in any way, please contact us and we will attempt to resolve the matter in accordance with our internal dispute resolution procedures.

If we do not make a decision within the period that we tell you we will respond, we will tell you about your right to lodge a complaint with an external dispute resolution scheme.

If you are not happy with our response, you can refer your complaint to AFCA subject to its terms of reference. AFCA provides a free and independent dispute resolution service for consumers who have general insurance disputes falling within its terms.

AFCA's contact details are:

The Australian Financial Complaints Authority

Online: www.afca.org.au

Phone: 1800 931 678

Email: info@afca.org.au

Mail: GPO Box 3 Melbourne VIC 3001

For more information on how we handle complaints you can request a copy of our procedures, using our contact details in this policy wording.

Privacy Notice

At Allianz we give priority to protecting the privacy of your personal information. We do this by handling personal information in a responsible manner and in accordance with the Privacy Act 1988 (Cth).

How We Collect Your Personal Information

We usually collect your personal information from you or your agents. We may also collect it from our agents and service providers; other insurers and

insurance reference bureaus; people who are involved in a claim or assist us in investigating or processing claims, including third parties claiming under your policy, witnesses and medical practitioners; third parties who may be arranging insurance cover for a group that you are a part of; law enforcement, dispute resolution, statutory and regulatory bodies; marketing lists and industry databases; and publicly available sources.

Why We Collect Your Personal Information

We collect your personal information to enable us to provide our products and services, including to process and settle claims; make offers of products and services provided by us, our related companies, brokers, intermediaries, business partners and others that we have an association with that may interest you; and conduct market or customer research to determine those products or services that may suit you. You can choose not to receive product or service offerings from us (including product or service offerings from us on behalf of our brokers, intermediaries and/or our business partners) or our related companies by calling the Allianz Direct Marketing Privacy Service Line on 1300 360 529, EST 8am to 6pm Monday to Friday, or going to our website's Privacy section at www.allianz.com.au.

If you do not provide your personal information we require, we may not be able to provide you with our services, including settlement of claims.

Who We Disclose Your Personal Information To

We may disclose your personal information to others with whom we have business arrangements for the purposes listed in the paragraph above or to enable them to offer their products and services to you. These parties may include insurers, intermediaries, reinsurers, insurance reference bureaus, related companies, our advisers, persons involved in claims, external claims data collectors and verifiers, parties that we have an insurance scheme in place with under which you purchased your policy (such as a financier or motor vehicle

manufacturer and/or dealer). Disclosure may also be made to government, law enforcement, dispute resolution, statutory or regulatory bodies, or as required by law.

Disclosure Overseas

Your personal information may be disclosed to other companies in the Allianz Group, business partners, reinsurers and service providers that may be located in Australia or overseas. The countries this information may be disclosed to will vary from time to time, but may include Canada, Germany, New Zealand, United Kingdom, United States of America and other countries where the Allianz Group has a presence or engages subcontractors. We regularly review the security of our systems used for sending personal information overseas. Any information disclosed may only be used for the purposes of collection detailed above and system administration.

Access to Your Personal Information and Complaints

You may ask for access to the personal information we hold about you and seek correction by calling 1300 360 529 EST 8am 6pm, Monday to Friday. Our Privacy Policy contains details about how you may make a complaint about a breach of the privacy principles contained in the Privacy Act 1988 (Cth) and how we deal with complaints. Our Privacy Policy is available at www.allianz.com.au.

Telephone Call Recording

We may record incoming and/or outgoing telephone calls for training or verification purposes. Where we have recorded a telephone call, we can provide you with a copy at your request, where it is reasonable to do so.

Your Consent

By providing us with personal information you and any other person you provide personal information for, consent to these uses and disclosures until you tell us otherwise. If you wish to withdraw your consent, including for things such as receiving

information on products and offers by us or persons we have an association with, please contact us.

Liability assumed by You under an agreement

The Policy only provides cover in respect of Personal Injury, Property Damage or Advertising Injury that happens during the Period of Insurance.

We (the **Insurer**) do not cover the entire spectrum of legal liabilities which You may be compelled to bear under the terms which are frequently inserted into commercial business contracts by principals, lessors or other parties.

Liability assumed by you under an agreement is covered only to the extent described in the Policy.

Prior to accepting legal liability for loss, destruction, damage or injury, which would not otherwise have attached to you at law, you should contact either your broker or the **Insurer** to enquire whether the **Policy** covers such liability or, if not, whether it may be so extended.

Introduction

The Company will provide insurance in accordance with the terms of the Policy.

The Policy, endorsements and the Schedule shall be read together as one contract.

Any word or expression which has been defined shall bear that specific meaning wherever it may appear. The singular shall include the plural and vice versa.

Where headings are used in this Policy, they are only for the purpose of description and are not intended to be used for interpretative purposes.

1 Insuring Clause

1.1 Cover

Subject to the application of the Policy's terms, definitions, exclusions, conditions and any endorsements attaching to the Policy (unless otherwise stated), the Company agrees to pay all sums which You become legally liable to pay as Compensation in respect of:

- 1.1.1 Personal Injury, or
- 1.1.2 Property Damage, or
- 1.1.3 Advertising Injury

happening during the Period of Insurance as a result of an Occurrence within the Policy Territory in connection with Your Business or Your Products.

In order to be sure that **You** are covered under this Policy **You** should always contact the **Company** for approval before **You** incur costs **You** wish to claim. If **You** do not, the **Company** will pay for costs incurred up to the amount the **Company** would have authorised had **You** asked the **Company** first.

1.2 Limit of Liability

Unless otherwise stated in the Policy:

- 1.2.1 the Company's maximum liability in respect of any one Occurrence will not exceed the Limit of Liability, and,
- 1.2.2 the Company's maximum liability for all claims arising from Your Products during

the Period of Insurance will not exceed the Limit of Liability.

1.3 Supplementary Payments

With respect to claims for which indemnity is granted under part 1.1 of the Policy in addition to the Limit of Liability, the Company will pay:

- 1.3.1 all reasonable legal defence costs and expenses and claim preparation expenses incurred by the Company, or by You with the written agreement of the Company,
- 1.3.2 all interest accruing on the Company's portion of any judgment until the Company has paid, tendered or deposited in court that part of such judgment which does not exceed the Limit of Liability,
- 1.3.3 legal costs and expenses for representation at any coronial inquest or accident enquiry, incurred by You with the written agreement of the Company,
- 1.3.4 premium on appeal bonds or security for costs, but the Company will have no obligation to apply for or furnish any such bond or security,
- 1.3.5 premium on bonds to release attachments for amounts not exceeding the Limit of Liability, but the Company will have no obligation to apply for or furnish any such bond or security,
- 1.3.6 all reasonable expenses incurred by You for rendering of first aid or other medical service to others at the time of a Personal Injury (other than the payment of any medical expense which the Company is prevented by law from paying), and
- 1.3.7 costs incurred for the temporary protection of property, including temporary repairs or protection of property of others that has been damaged as a result of an Occurrence which is the subject of indemnity under the Policy.

Supplementary payments are payable subject to the following:

- 1 The Company may, in its absolute discretion, choose to pay You the Limit of Liability where the Company considers that the Limit of Liability is likely to be exhausted by payment of Compensation. If the Company chooses to do this, the Company shall have no further obligation to pay any supplementary payments or to defend any suit on your behalf.
- 2 If a payment exceeding the Limit of Liability has to be made to dispose of a claim, the liability of the Company for any supplementary payments it is obliged to pay is limited to the proportion that the Limit of Liability bears to that payment.
- 3 In the event that indemnity is granted under the Policy in respect of an action against You in any Court or before any other legally constituted body in the United States of America, Canada or their respective protectorates and Territories, the total amount payable by the Company under this Policy (Clauses 1.2 & 1.3 inclusive) shall be an amount no greater than the Limit of Liability, inclusive of all supplementary payments incurred by the claimants and any defence costs incurred by You or on Your behalf.
- 4 In jurisdictions where the Company may not legally be permitted to, or cannot for any other reason, defend any claim or suit against You, the Company shall pay any defence costs incurred with the Company's written consent (which consent shall not be unreasonably withheld or delayed).
- 5 The Company will not be liable for any amounts payable under any Underlying Policy.

2 Definitions

2.1 Acts of Terrorism

Any act, including but not limited to the alleged, actual or intended 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 similar purposes or reasons, including the intention to influence any government or government body and/or to put the public, or any section of the public in fear.

2.2 Advertising Injury

Any unintentional:

- 2.2.1 defamation;
- 2.2.2 infringement of copyright, title or slogan;
- 2.2.3 piracy;
- 2.2.4 unfair competition;
- 2.2.5 idea misappropriation;
- 2.2.6 invasion of rights of privacy; or
- 2.2.7 breach of misleading or deceptive conduct provisions of any consumer protection legislation or similar legislation of any country, state or territory; and

committed or alleged to have been committed during the Period of Insurance in any communication given to the public in any form of print media, publication, telecommunication, radio, television, internet or other forms of electronic communication and arising out of Your advertising activities in connection with Your Business or Your Products.

2.3 Aircraft

Any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space, other than model aircraft or unmanned inflatable balloons used for advertising or promotional purposes.

2.4 Business

The activities and operations stated in the Schedule including:

- 2.4.1 the ownership and occupation of premises, including repair and maintenance of property owned or for which You are responsible;
- 2.4.2 any prior business activities which have ceased or have been disposed of but for which You have retained legal liability;

- 2.4.3 participation in exhibitions;
- 2.4.4 the provision or management of canteen, social, sports, welfare or child care services or activities for Your employees and internal first aid, fire, security and ambulance services;
- 2.4.5 construction of or alteration, not exceeding a cost of \$500,000, to buildings owned by You;
- 2.4.6 private work undertaken by Your employees for any of Your directors or executives provided they are appropriately qualified to undertake such work; and
- 2.4.7 hire or loan of plant, equipment or goods.

2.5 Company/Insurer/We/Us/Our

Allianz Australia Insurance Limited (ABN 15 000 122 850) trading as Allianz Global Corporate & Specialty. Contact address GPO Box 9870, Melbourne VIC 3000

2.6 Compensation

Monies paid or payable by judgment or settlement together with any liability on Your behalf to pay legal costs and expenses (other than those amounts referred to in 'Supplementary Payments') for:

- 2.6.1 Personal Injury; or
- 2.6.2 Property Damage; or
- 2.6.3 Advertising Injury

in respect of which this insurance applies.

2.7 Deductible

The amount stated in the Schedule payable by You as a contribution to Your claim. If the Company settles Your claim by cash settlement the Company will deduct the Deductible from the amount the Company pays You. In other circumstances, You may need to pay the Deductible as a contribution.

If more than one Deductible is payable under this Policy for any one claim or series of claims arising from one Occurrence, the highest Deductible is the only Deductible payable.

2.8 Electronic Data

Facts, concepts and information converted to a form usable for communications, display, distribution, interpretation or processing by electronic and

electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.

2.9 Employment Practices

Any act which is considered wrongful or unfair dismissal, denial of natural justice, defamatory or misleading representation or advertising, and sexual harassment or discrimination but only as it applies with respect to employment or prospective employment by You of a person as an employee or prospective employee whether full, part time or casual including any person engaged as a volunteer or for work experience.

2.10 Incidental Contracts

- 2.10.1 Any written rental agreement or lease of real property,
- 2.10.2 any written contract with any authority for the supply of water, gas, electricity or telephone services, waste or sewerage removal services, except those contracts in connection with work done for such authorities;
- 2.10.3 any written contract with any railway authority or other independent carrier for the loading, unloading and/or transport of any Product, including contracts relating to the operation of railway sidings.

2.11 Limit of Liability

The amount stated in the Schedule.

2.12 Loss of Consortium

Loss of companionship, comfort, spouse society or sexual relations, claimed by the husband, wife or de facto partner of any person who sustains Personal Injury; but not including claims for emotional distress suffered by, or loss of domestic or household support services provided to, any relative of the person who sustains the Personal Injury.

2.13 Medical Persons

Qualified medical practitioners, dentists, nurses and first aid attendants.

2.14 Occurrence

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

With respect to Personal Injury or Property Damage, all events of a series, consequent on or attributable to one source or original cause, are deemed one Occurrence under the Policy.

All Advertising Injury arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

2.15 Personal Injury

- 2.15.1 Bodily injury, death, illness, disability, Loss of Consortium, shock, fright, mental anguish or mental injury;
- 2.15.2 false arrest, detention, false imprisonment, malicious prosecution or humiliation;
- 2.15.3 the publication or utterance of a statement that is libellous or slanderous, or of other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:
 - 2.15.3.1 when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy; or
 - 2.15.3.2 when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by You or on Your behalf;
- 2.15.4 wrongful entry or wrongful eviction or other invasion of the right to private occupancy;
- 2.15.5 assault and battery not committed by You or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property;
- 2.15.6 discrimination as a result of race, religion,

sex, age, marital status, or intellectual or physical impairment or disability.

2.16 Policy

The contract of insurance between You and the Company which comprises this Policy wording, the Schedule issued by the Company (including any schedule substituted for the original Schedule and/or endorsements) and any other documents issued by the Company before entry into the Policy or where required or permitted by law that vary the coverage.

2.17 Period of Insurance

The period stated in the Schedule and any extension thereof agreed in writing by the Company.

2.18 Policy Territory

- 2.18.1 Anywhere in the world except the United States of America, Canada and their respective protectorates and territories; and
- 2.18.2 the United States of America, Canada and their respective protectorates and territories if the Personal Injury or Property Damage arises from:
 - 2.18.2.1 Products exported into such countries, or
 - 2.18.2.2 the activities of travelling executives and salesmen on business who are non-resident in such countries, or
 - 2.18.2.3 the ownership or occupancy of premises as sales offices and/or warehouse used by You in relation to the export of Products from Australia and where You or Your representatives do not undertake the repair, service, testing, treatment, processing, assembling, modification or manufacture of Products.

2.19 Pollutants

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

2.20 Product

Any goods or product(s) (after they have ceased to be in Your possession or under Your control) which is or is deemed to have been manufactured, constructed, erected, installed, repaired, serviced, renovated, treated, grown, extracted, produced, processed, assembled, imported, exported, sold, supplied or distributed by You (including any labelling, packing materials, instructions and directions associated therewith) and any container thereof other than a Vehicle associated with such container.

2.21 Product Recall Expense

Expenses incurred by You with the written agreement of the Company, in relation to effecting a Recall of Your Product for:

- 2.21.1 preparation of (including obtaining external advice) and communication to Your clients or customers and to the general public for the purpose of warning them with regard to possible harm;
- 2.21.2 transportation of the Product to a place designated by You;
- 2.21.3 additional employee costs associated with the performance of duties associated with the Recall;
- 2.21.4 acquiring additional temporary storage facilities if required; or
- 2.21.5 disposal of the Product and non re-usable packaging, subject to the Company's maximum liability for all such expenses as stated in the Schedule.

2.22 Property Damage

- 2.22.1 Physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; or
- 2.22.2 loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by physical damage of other tangible property.

2.23 Recall

A voluntary, legally or legislatively compelled process to regain possession or control of Products through the issuance of a public notice that outlines a potential injurious or harmful nature of a Product or other goods manufactured, sold or supplied by You and which:

- 2.23.1 requests the return of the Product to You; or
- 2.23.2 recommends or instructs cessation of use and/or disposal of the Product.

2.24 Schedule

The Schedule issued with this Policy wording.

2.25 Underlying policy

Any policy listed in the Schedule as an Underlying Policy or any other underlying insurance notified to the Company and which the Company has confirmed by written agreement.

2.26 Vehicle

Any type of machine on wheels or on caterpillar tracks made or intended to be self-propelled by mechanical power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

2.27 Watercraft

Any vessel, craft or thing made or intended to float on or in or travel on, through or under the water.

2.28 You, Your

- 2.28.1. The entity named in the Schedule as Insured and;
- 2.28.2. any subsidiary company (including subsidiaries thereof);
- 2.28.3. any other organisation over which the parties referred to in 2.28.1 or 2.28.2, exercise active management control;
- 2.28.4 any new organisation acquired by the parties referred to in 2.28.1 and 2.28.2 during the Period of Insurance through consolidation, merger, purchase of the assets of or assumption of control and active management or creation, provided that:

- 2.28.4.1 such acquisition is notified to the Company in writing within a reasonable time but not greater than 90 days after the acquisition;
- 2.28.4.2 the Company gives notice in writing to You that such new organisation shall be covered by the Policy; and
- 2.28.4.3 any applicable additional premium that may be required in respect of the inclusion of such new organisation, is paid to the Company;
- 2.28.5 any past, present or future director, officer, employee, voluntary worker, work experience person (including the personal representative of any director, officer, employee, voluntary worker, work experience person), partner or shareholder of the parties referred to in 2.28.1 or 2.28.2, but only whilst acting within the scope of their duties in such capacity. With respect to any director or executive officer of the parties referred to in 2.28.1 or 2.28.2, cover will also extend to private work undertaken by employees or voluntary workers, for or on behalf of the directors or executives;
- 2.28.6 any person or company where parties referred to in 2.28.1 or 2.28.2, are obligated by virtue of a written contract to provide insurance as is afforded by this Policy, but only to the extent required by such contract and subject to the terms and conditions of this Policy;
- 2.28.7 any social and/or sporting clubs, first aid, fire and ambulance services formed with Your consent in connection with Your Business including any office bearer or member thereof in their capacity as a representative of the club or services facility.

2.29 Workplace Injury Deductible

The amount stated in the Schedule which is payable by You in respect to Personal Injury to any person whilst working for or in Your Business and who is or was engaged as a contractor or subcontractor or

supplied through a labour hire agency, group training company or similar.

3 Exclusions

This Policy does not provide indemnity in respect of claims directly or indirectly arising from:

3.1 Act of Terrorism

Any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss or any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

3.2 Advertising Injury

Advertising Injury caused by or resulting from:

- 3.2.1 failure of performance of any contract, but this exclusion does not apply to claims for unauthorised appropriation of ideas based upon breach of an implied contract; or
- 3.2.2 infringement of trade mark, service mark or trade name, but this shall not relate to titles or slogans; or
- 3.2.3 incorrect description of any good or product; or
- 3.2.4 mistake in advertised price; or
- 3.2.5 any publication, utterance or testimonial used or made at Your direction and with Your knowledge of the inaccuracy or falsity of the publication, utterance or testimonial; or
- 3.2.6 the failure of Your Products or services to conform with advertised performance, quality, fitness or durability; or
- 3.2.7 Your business, if Your principal business or occupation is advertising, broadcasting, publishing or telecasting.

3.3 Aircraft and Hovercraft

The ownership, maintenance, operation or navigation of any Aircraft or hovercraft.

But this exclusion does not apply to non owned Aircraft or hovercraft insured under an Underlying Policy, and where cover is provided by such policy.

3.4 Aircraft Products

Any Product designed or manufactured for the purpose of controlling, guiding, propelling or other capabilities or attributes related to the mobility or direction of an Aircraft or other products which are actually incorporated, with Your knowledge, into an Aircraft for such purposes.

3.5 Asbestos

Asbestos or any asbestos contained in other materials regardless of the form and quantity of asbestos.

3.6 Contractual Liability

Any liability assumed under a contract that requires You (as referred to in 2.28.1 or 2.28.2 or 2.28.3), to effect insurance over property or to be liable for Personal Injury or Property Damage regardless of fault, except where:

- 3.6.1 that liability would otherwise exist at law in the absence of the contract; or
- 3.6.2 the contract is an Incidental Contract and the liability does not arise by reason of an obligation to insure a leased property or an obligation to indemnify a landlord irrespective of fault.

3.7 Damage to Product or Defective Work

Property Damage to:

- 3.7.1 any Product resulting from or attributable to any defect therein or the harmful nature or unsuitability thereof. Provided that the application of 3.7.1 shall be limited to only that part of the Product which is considered defective, harmful or unsuitable.
- 3.7.2 any part of any property that must be repaired, reconditioned or replaced by reason of incorrect work performed by You or on Your behalf, or by reason of materials or equipment which are or are proved to be defective or inadequate in connection with such work. But this exclusion does not apply to Property Damage resulting from such work.

3.8 Electronic Data

- 3.8.1 The communication, display, distribution or publication of Electronic Data. But this exclusion does not apply to Personal Injury or Advertising Injury;
- 3.8.2 the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of Electronic Data;
- 3.8.4 an error in creating, amending, entering, deleting or using Electronic Data;
- 3.8.5 the total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all.

3.9 Employers Liability

Any liability:

- 3.9.1 in respect of which You are or would be entitled to indemnity under any fund, scheme, policy of insurance or self-insurance pursuant to or required by any legislation relating to workers' compensation whether or not such insurance has been effected; or
- 3.9.2 imposed by the provisions of any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or
- 3.9.3 relating to Employment Practices unless otherwise stated in the Schedule.

3.10 Fines and Penalties

Fines or financial penalties, punitive, exemplary, liquidated, aggravated or multiple damages whether imposed through a court of law, legislation or under a contractual arrangement or otherwise.

3.11 Loss of Use

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

- 3.11.1 a delay in or lack of performance by You or on Your behalf of any contract; or
- 3.11.2 the failure of a Product or any work performed by You or on Your behalf, to

meet the level of performance, quality, fitness or durability warranted or represented by You. But this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the Product or work performed by You or on Your behalf after the Product or work has been put to its intended use by any person or organisation other than You.

3.12 Pollution

The discharge, dispersal, release, seepage, migration or escape of Pollutants, including the cost of testing, monitoring, treating, detoxifying, removing, neutralising or cleaning up Pollutants or preventing the escape of Pollutants from any premises owned or operated by You or on which You have property or conduct Your Business.

However, other than in respect of preventing the escape of Pollutants from any premises owned or operated by You or on which You have property or conduct Your Business, the Company will cover liability for Personal Injury or Property Damage otherwise excluded under this exclusion which arises from an event which is:

- 3.12.1 sudden, accidental, unintended and unexpected from Your standpoint; and
- 3.12.2 which has been identified to have taken place in its entirety at a specific time and place; and
- 3.12.3 which occurs outside of the United States of America, Canada and their respective protectorates and territories.

3.13 Product Guarantee or Warranty

Any product guarantee or warranty given by You or on Your behalf. But this exclusion does not apply to legislative requirements concerning product safety and information.

3.14 Professional Advice or Service

The rendering of or failure to render professional advice or service by You. But this exclusion does not apply to:

- 3.14.1 the rendering of or failure to render medical advice or service by Medical Persons employed by You to provide first aid and other medical services on Your premises to employees or to persons other than employees in the event of an emergency; or
- 3.14.2 Personal Injury or Property Damage arising from advice or service given gratuitously.
- 3.14.3 Personal Injury or Property Damage arising from advice given in respect of the use or storage of Your Products.
- 3.14.4 Coverage provided under 1.4.2 Errors and Omissions coverage, where You have effected this additional coverage.

3.15 Property in Your Care, Custody or Control

Property Damage to property in Your care custody or control other than:

- 3.15.1 premises tenanted, leased or hired by You;
- 3.15.2 Vehicles (other than Vehicles owned or used by You or on Your behalf) in Your care custody or control but only whilst such Vehicles are in a car park owned or operated by You other than for income or reward as a car park operator; or
- 3.15.3 Your directors', employees' and visitors' clothing and personal effects; or
- 3.15.4 other property (other than Vehicles) temporarily in Your care, custody or control, provided that:
 - 3.15.4.1 no indemnity is granted for liability in respect of physical damage to, destruction of or loss of that part of any property upon which You are working and the loss arises directly from the performance of such work; and
 - 3.15.4.2 the Company's maximum liability arising out of the cover afforded by clause 3.15.4 shall be limited to \$250,000 each and every Occurrence and in the aggregate for the Period of Insurance, or as otherwise stated in the Schedule.

3.16 Property Owned by You

Property Damage to property owned by You.

3.17 Radioactivity

Ionising radiation or contamination by radioactivity from any nuclear fuel, weapon or waste whether occurring naturally or otherwise; the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or the storage, transport, assembly, disassembly, maintenance or operation of any nuclear weapon or nuclear component thereof.

This exclusion does not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are used or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

3.18 Recall

The Recall, inspection, repair, adjustment, removal, replacement or loss of use of any Product or work completed by You or on Your behalf.

3.19 Underlying Policy Sub-limits

Any indemnity, liability, loss or damage which is the subject of a sub-limit under any Underlying Policy.

3.20 Vehicles

The use of a Vehicle owned by You or in Your physical or legal control:

- 3.20.1 which is required under any legislation to be registered; or
- 3.20.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation.

But this exclusion does not apply to:

- 3.20.2.1 a Vehicle (other than a Vehicle owned or used by or on Your behalf) whilst that Vehicle is in a car park owned or operated by You other than for income or reward as a car park operator; or
- 3.20.2.2 Personal Injury or Property Damage occurring during the loading or unloading of a Vehicle caused by or arising from the

collection or delivery of any goods from or to the 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; or

3.20.2.3 Personal Injury or Property Damage caused by the use of any tool, plant or equipment forming part of or attached to or used in connection with any Vehicle and where applicable legislation does not require insurance against such liability; or

3.20.2.4 Personal Injury where the insurance required by virtue of any legislation does not provide indemnity, and the lack of indemnity is not due to a breach of legislation relating to Vehicles.

3.20.2.5 accidental or erroneous failure to maintain such statutory insurance and knowledge of such accidental or erroneous failure to maintain was not known prior to the Occurrence; or

3.20.2.6 the amount of Property Damage in excess of the limit of indemnity provided under a policy of insurance that indemnifies You in respect of Third Party Property Damage for vehicles owned or operated by You other than as a tool of trade, plant or equipment. However, the Limit of Liability shall apply in the annual aggregate, unless otherwise stated in the Schedule or by endorsement.

But this exclusion does not apply to Vehicles insured under an Underlying Policy, and where cover is provided by such policy.

3.21 War

War, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

3.22 Watercraft

The ownership, operation or navigation of any Watercraft exceeding 20 metres in length while on, in or under the water. But this exclusion will not apply to Watercraft:

- 3.22.1 which You do not own or operate; and
- 3.22.2 is under the control of a licensed and qualified person for the vessel; and
- 3.22.3 has been hired or otherwise engaged by You for business entertainment purposes. But this exclusion does not apply to Watercraft insured under any Underlying Policy, and where cover is provided by such policy.

4 Conditions

In order to be sure that **You** are covered under this Policy **You** should always contact the **Company** for approval before **You** incur costs **You** wish to claim. If **You** do not, the **Company** will pay for costs incurred up to the amount the **Company** would have authorised had **You** asked the **Company** first.

4.1 Changes

You shall give the Company written notice as soon as reasonably practicable of any change materially affecting the risk underwritten by this Policy or any Underlying Insurance that You know or ought reasonably to have known is relevant to the Company's decision to insure You and the terms on which the Company will insure You. This includes but is not limited to the termination of coverage, alteration of any of the terms of coverage, or reduction or exhaustion of the aggregate limit(s) of liability applying to the Underlying Insurance.

4.2 Your duties in the event of an Occurrence, Claim or Suit

- 4.2.1 In the event of an Occurrence or demand or the likelihood of an Occurrence or demand, You must immediately take at Your own expense all reasonable steps to prevent or minimise injury, loss or damage arising out of the Occurrence.
- 4.2.2 You must give notice in writing to the Company as soon as reasonably possible after every Occurrence likely to give rise to a claim under this Policy and must, as soon as reasonably possible, forward to the Company all reasonable documents and information relevant to each such Occurrence including but not limited to every demand, writ, summons, proceedings, notice of prosecution, inquest or inquiry and all reasonable associated information. If You do not give such notice as soon as reasonably possible, the Company may reduce or deny Your claim to the extent the Company is prejudiced by Your delay.
- 4.2.3 Where Optional Additional Coverage 1.4.3, Excess Liability coverage has been included, You must give notice in writing to the Company as soon as reasonably possible after every occurrence involving serious injury (including but not limited to quadriplegia, paraplegia, brain damage, loss of limb) or substantial property damage (including but not limited to where more than 25% of a building, other structure or equipment is damaged) or as soon as reasonably possible after any Occurrence where the amount of the claim is likely to exceed 25% of the limit(s) of liability of any Underlying Policy and You must, as soon as reasonably possible, forward to the Company all reasonable information held by You or of which You have knowledge, relevant to the Occurrence.

4.2.4 You must not, without the Company's written consent, make any admission, offer, promise or payment in connection with any Occurrence or demand. . If You do, the Company may reduce or refuse Your claim to the extent the Company is prejudiced by Your admission, offer, promise or payment.

4.2.5 You must take reasonable steps to preserve all property, any product, appliance and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair is to be effected without the consent of the Company and the Company has had an opportunity of inspection. To ensure You are covered, please contact the Company before any alteration, repairs or disposal.

4.3 Right to participate in claim conduct and Your co-operation

4.3.1 The Company has the right, but is not obliged, to assume conduct of the defence or settlement of any claim brought against You (having regard to Your interests and acting reasonably). If the Company does not assume conduct of the defence or settlement of any claim brought against You, the Company shall have the right and be given the opportunity to participate with You in the defence or settlement of any such claim.

4.3.2 You shall take reasonable steps to cooperate and assist with the defence of such claim and prosecute any recovery or contribution action.

4.4 Assignment

Assignment of an interest under this Policy does not bind the Company until its consent is endorsed on the Policy. The Company will not unreasonably withhold such consent. If You die or are adjudged bankrupt or insolvent, this insurance will cover:

- 4.4.1 Your legal representative acting on behalf of Your estate;
- 4.4.2 any person or corporation having lawful

temporary custody of property which is or was before Your death owned or possessed by You until the appointment of a legal representative.

4.5 Statutory Requirements

You must take reasonable measures to comply with all statutory obligations and regulations imposed by any statutory or governmental authority.

4.6 Applicable Law

This Policy is governed by the laws of the State in Australia in which it was issued. Any dispute about its provisions will be determined in accordance with that law and all parties agree to submit to the jurisdiction of any competent court in that State.

4.7 Cancellation

4.7.1 You may cancel this Policy by giving notice in writing to the Company. If such notice is given, the cancellation will take effect on the day the notice is received by the Company.

4.7.2 The Company may cancel this Policy in any of the circumstances set out in the Insurance Contracts Act 1984. Such cancellation is to take effect 30 days from the time notification is received by You.

4.7.3 Upon cancellation by You or the Company You will receive a pro rata refund of premium for the unexpired period of insurance subject to You complying with 4.7.4.

4.7.4 When the premium is subject to adjustment, cancellation will not affect the obligation You have to supply to the Company such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

4.8 Insurance Contracts Act 1984

Nothing contained in this Policy is to be construed to reduce or waive Your or the Company's privileges, rights or remedies available under the Insurance Contracts Act 1984 (including amendments thereto).

4.9 Subrogation rights

In the event of any payment under this Policy, the Company will be subrogated to all Your rights of recovery against any person or organisation and You shall take reasonable steps to execute and deliver any appropriate instruments and papers and take reasonable steps to do whatever else is necessary to secure such rights. Any amount so recovered shall be applied in accordance with the provisions of s.67 of the Insurance Contracts Act 1984 (including amendments thereto).

The Company agrees to waive all rights of subrogation under this Policy against each of the parties defined as You. However, where a party included in the definition of 'You' is protected from liability insured under this Policy by any other policy of insurance or indemnity, the Company's subrogation right is not waived to the extent and up to the amount of cover provided by such other policy of insurance or indemnity.

4.10 Cross Liability

Each of the parties comprising You is considered a separate legal entity and the word You applies to each party as if a separate policy had been issued to each of the said parties, provided always that:

- 4.10.1 each of such parties shall be separately subject to the terms, conditions, exclusions and definitions of this Policy; and
- 4.10.2 nothing contained in this clause will operate to increase the Company's liability under this Policy.

4.11 Reasonable care

You will take all reasonable measures and care to:

- 4.11.1 maintain premises and plant in satisfactory condition;
- 4.11.2 employ only competent employees;
- 4.11.3 comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
- 4.11.4 prevent Personal Injury, Property Damage and/or Advertising Injury and/or any other loss, damage or expense; and

- 4.11.5 prevent the manufacture, sale or distribution of defective Products.

4.12 Goods and Services Tax

GST Notice

This Policy has a GST provision in relation to premium and the Company's payment to You for claims. It may have an impact on how You determine the amount of insurance You need. Please read it carefully. Seek professional advice if You have any queries about GST and Your insurance.

Limit of Liability

All monetary limits in this Policy may be increased or GST in some circumstances (see below).

Claim settlements – Where the Company agrees to pay

When the Company calculates the amount the Company will pay You, the Company will have regard to the items below:

- Where You are liable to pay an amount for GST in respect of an acquisition relevant to Your claim (such as services to repair a damaged item insured under the Policy) the Company will pay for the GST amount.

The Company will pay the GST amount in addition to the Limit of Liability or other limits shown in the Policy or in the Schedule.

If Your Limit of Liability is not sufficient to cover Your loss, the Company will only pay the GST amount that relates to the Company's settlement of Your claim.

The Company will reduce the GST amount the Company pays for by the amount of any input tax credits to which You are or would be entitled.

- Where the Company makes a payment under this Policy as Compensation instead of payment for a relevant acquisition, the Company will reduce the amount of the payment by the amount of any input tax credit that You would have been entitled to had the payment been applied to a relevant acquisition.

Disclosure – Input tax credit entitlement

If You register, or are registered, for GST You are required to tell the Company Your entitlement to an input tax credit on Your premium. If You fail to disclose or understate Your entitlement, You may be liable for GST on a claim the Company may pay. This Policy does not cover You for this GST liability, or for any fine, penalty or charge for which You may be liable.

**4.13 Excess Liability coverage –
Maintenance of Underlying
Insurance**

Where cover has been included in respect of 1.4.3 Excess Liability, You shall maintain the Underlying Insurance in full effect during the Period of Insurance, except for any reduction or exhaustion of the aggregate limit(s) contained in such policies solely by payment of claims arising out of occurrences covered thereunder.

Failure to comply with this condition or the bankruptcy or insolvency of any of the underlying insurer(s) shall not invalidate this Policy but in the event of such circumstances, the Company shall be liable only to the extent that it would have been liable had such circumstances not existed during the Period of Insurance.