

Austbrokers Broadform Liability

Liability Insurance Policy

POLICY

This Policy is underwritten by QBE Insurance (Australia) Limited
ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney

QM2316



BROADFORM LIABILITY INSURANCE POLICY

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About this Booklet

This booklet contains two separate parts: General Information and the Policy Terms and Conditions.

General Information

This part of the booklet contains information you need to know before you take out a Policy. Please read it carefully before taking out this insurance.

Policy Terms and Conditions

The Policy part of this booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to the Policy. It forms part of your legal contract with us.

If we issue you with an insurance Policy, you will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule we send to you form your legal contract with us so please keep them in a safe place for future reference.

If you require further information about this product, please contact your Financial Services Provider.

About QBE Australia

QBE Insurance (Australia) Limited is a member of the QBE Insurance Group (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the top 25 insurers and re-insurers worldwide. The company has been operating in Australia since 1886 and continues to provide industry-leading insurance solutions that are focused on the needs of intermediaries and their clients.

QBE is a household name in Australian insurance, backed by sizeable assets, and well known as a strong and financially secure organisation.

About Austbrokers

This Insurance Policy is distributed by insurance brokers who are licensed members of Austbrokers Holding Limited ABN 60 000 000 715.

The Austbrokers Network was established in 1985 to give individual general insurance brokers the opportunity to enjoy the benefits of a larger group, yet still maintain that all import feel of independence. With a total turnover of over 1 billion dollars in general insurance premiums, the Austbrokers Network ranks with the top general insurance broking groups in Australia.

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Austbrokers Holding Limited (“Austbrokers”) has entered into an arrangement with QBE to develop financial products and services that are distributed by Austbrokers members.

For further information about Austbrokers Network please visit www.austbrokers.com.au

Important information about Austbrokers’ advice

Any advice Austbrokers gives about this policy does not take into account any of your particular objectives, financial situation or needs. For this reason, before you act on Austbrokers advice, you should consider the appropriateness of the advice taking into account your own objectives, financial situation and needs. Before you make any decisions about whether to acquire this policy we recommend you should read this insurance policy.

GENERAL INFORMATION FOR BROADFORM LIABILITY POLICY

The information contained in this part is general information only and does not form part of your contract with us. The Policy Terms and Conditions in the rest of this booklet contain details of your contract.

Duty of Disclosure – What you must tell us

Under the Insurance Contracts Act 1984 (the Act), you have a Duty of Disclosure. You are required before you enter into, renew, vary, extend or reinstate your Policy, to tell us everything you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be insured under the Policy, and if so, on what terms.

- **You do not have to tell about any matter:**
 - that diminishes the risk;
 - that is of common knowledge;
 - that we know or should know in the ordinary course of our business as an insurer; or
 - which we indicate we do not want to know.
- **If you do not tell us**

If you do not comply with your Duty of Disclosure we may reduce or refuse to pay a claim or cancel your Policy. If your non-disclosure is fraudulent we may treat this Policy as never having worked.

Privacy

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. We are bound by the Privacy Act 1988 (Cth.), when collecting and handling your personal information. QBE has developed a privacy policy which explains what sort of personal information we hold about you and what we do with it.

We will only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including any claims you make or claims made against you. We will only use and disclose your personal information for a purpose you would reasonably expect.

We may need to disclose personal information to our reinsurers (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, our advisers and those involved in the claims handling process (including assessors, investigators and other insurers), for the purposes of assisting us and them in providing relevant services and products, or for the purposes of recovery or litigation. We may disclose personal information to people listed as co-insured on your policy and to family members or agents authorised by you. Computer systems and support services may be provided to us by related companies within the QBE Group that may be located overseas. We may also disclose information to organisations which conduct customer service surveys on our behalf. We will request your consent to any other purpose.

By providing your personal information to us, you consent to us making these disclosures. Without your personal information we may not be able to issue insurance cover to you or process your claim.

You also have the opportunity to find out what personal information we hold about you and, when necessary, correct any errors in this information. Generally we will do this without restriction or charge. For further information about our Privacy Policy or to access or correct your personal information, please contact The Compliance Manager, QBE Insurance (Australia) Limited, GPO Box 82 Sydney NSW 2001. Telephone: (02) 9375-4656 or email: compliance.manager@qbe.com.

The General Insurance Code of Practice

QBE Insurance (Australia) Limited is a signatory to the General Insurance Code of Practice. The Code aims to:

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

Dispute Resolution

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to your complaint within 15 working days.

If you would like to make a complaint or access our internal dispute resolution service please contact your nearest QBE office and ask to speak to a dispute resolution specialist.

Your Policy

Your Broadform Liability Policy consists of the policy terms and conditions in this booklet and the Policy Schedule we give you. Please read your Policy carefully, and satisfy yourself that it provides the cover you require.

If you want more information about any part of your Policy, please ask us, or your Financial Services Provider. The address and telephone number of your QBE branch are on your Policy Schedule.

You should keep your Policy Booklet and Policy Schedule together in a safe and convenient place for future reference.

POLICY TERMS AND CONDITIONS FOR BROADFORM LIABILITY POLICY

Insurer

The Policy is underwritten by QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545, of 82 Pitt Street, Sydney.

Our Agreement with You

This Policy is a legal contract between You and Us. You pay Us the premium, and We provide You with the cover You have chosen as set out in the Policy, occurring during the Period of Insurance shown on Your Policy Schedule or any renewal period.

Words importing persons shall include corporations and other legal entities. The singular includes references to the plural and vice versa. Headings, wherever appearing in this Policy, have been included for ease of reference and shall not be used for interpretation purposes.

You (being the insured party named first in the Policy Schedule) having submitted a Proposal containing particulars for the purpose of obtaining this insurance and having paid or agreed to pay the premium specified in the Policy Schedule, We agree, subject to the terms, provisions, limitations, exclusions, and conditions contained in or endorsed on or otherwise expressed in the Policy, to provide insurance in the manner and to the extent hereinafter provided.

The amount of any Deductible that applies to Your Policy will be shown on Your Policy Schedule.

The exclusions in the section(s) headed 'When you are not covered' and conditions in the section headed 'General Conditions' apply to all sections of this Policy.

Other Party's Interests

You must tell Us of the interests of all parties (e.g. financiers, owners, lessors) who will be covered by this insurance. We will protect their interests only if You have told us about them and We have noted them on Your Policy Schedule.

Paying your Premium

You must pay Your premium by the due date. If We do not receive Your premium by this date or Your payment is dishonoured this Policy will not operate and there will be no cover.

Preventing our Right of Recovery

If You have agreed not to seek compensation from another person who is liable to compensate You for any loss, damage or liability which is covered by this Policy, We will not cover You under this Policy for that loss, damage or liability except where we agree otherwise under the Contractual Liability Exclusion (clause 5.4), including Incidental Contracts (clause 4.11), or under the Subrogation Waiver (clause 6.9) or in writing.

How Goods and Services Tax affects any Payments we make

The amount of premium payable by You for this Policy includes an amount on account of the GST on the premium.

When We pay a claim, Your GST status will determine the amount We pay. When You are:

- not registered for GST, the amount We pay is the Limit of Liability or the other limits of insurance cover including GST.
- registered for GST, We will pay the Limit of Liability or the other limits of insurance and where You are liable to pay an amount for GST in respect of an acquisition relevant to Your claim, We will pay for the GST amount.

We will reduce the GST amount We pay for by the amount of any input tax credits to which You are or would be entitled if You made a relevant acquisition. In these circumstances, the input tax credit may be claimable through Your business activity statement (BAS). You must advise Us of Your correct Australian business number and taxable percentage.

Any GST liability arising from Your incorrect advice is payable by You. Where the settlement of Your claim is less than the Limit of Liability or the other limits of insurance cover, We will only pay an amount for GST (less Your entitlement for input tax credit) applicable to the settlement. This means that if these amounts are not sufficient to cover Your loss, We will only pay the GST relating to Our settlement of the claim.

We will (where relevant) pay You on Your claim by reference to the GST-exclusive amount of any supply made by any Business of Yours which is relevant to Your claim.

GST, input tax credit (ITC), business activity statement (BAS) and acquisition 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 Your entitlement to an input tax credit on Your premium as a percentage of the total GST on that premium.

1. What you are insured against

1.1 Liability

We will cover You for Your legal liability to pay all sums by way of compensation, and all costs awarded against You in respect of:

- Personal Injury
- Property Damage
- Advertising Liability

happening during the Period of Insurance and caused by an Occurrence within the Territorial Limits in connection with Your Business or Products.

1.2 Defence of Claims

If We agree to cover You We will:

- (a) defend in Your name and on Your behalf any claim or legal action against You seeking damages for Personal Injury, Property Damage or Advertising Liability even if the action is groundless, false or fraudulent, and We will investigate, negotiate and settle any claim or legal action as We see fit;
- (b) pay all legal costs and expenses incurred by Us and all interest accruing after entry of judgement until We have paid, tendered or deposited in court such part of the judgement as does not exceed the Limit of Liability;
- (c) reimburse You for all reasonable expenses, other than loss of earnings, incurred by You with Our consent which shall not be unreasonably withheld in connection with the defence of a claim or legal action;
- (d) pay reasonable expenses incurred by You for first aid to others at the time of Personal Injury caused by an Occurrence (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973);
- (e) pay all legal costs incurred by you with our consent for Your representation:
 - (i) at any coroner's inquest or other fatal accident inquiry; or
 - (ii) in a court of summary jurisdiction or an indictment in a higher court, arising out of any alleged breach of a statutory duty resulting in Personal Injury or Property Damage which may be the subject of indemnity under this Policy;
- (f) all costs incurred by You 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.

We will do this, provided that:

- (g) We will not be obliged to pay any claim or judgment or to defend any claim or legal action after the Limit of Liability has been exhausted by payment of judgments or settlements;

- (h) if a payment exceeding the Limit of Liability has to be made to dispose of a claim, Our liability to pay any costs, expenses and interest under (a) to (f) in 'Defence of Claims' above will be limited to that proportion of those costs, expenses and interest as the Limit of Liability bears to the amount paid to dispose of the claim.

Any amount We pay, other than payments in settlement of claims, suits and all costs awarded against You, are payable by Us over and above the Limit of Liability set out in the Policy Schedule.

2. What we will pay

2.1 Limit of Liability

- (a) Our maximum liability in respect of any claim or any series of claims for Personal Injury, Property Damage or Advertising Liability caused by or arising out of one event will not exceed the Limit of Liability shown on Your Policy Schedule.
- (b) Our total aggregate liability during any one Period of Insurance for all claims arising out of Your Products will not exceed the Limit of Liability shown on Your Policy Schedule.

The applicable Limit of Liability will not be reduced by the amount of any Deductible paid by You.

3. What you must pay if you make a claim

3.1 Deductible

For claims You make on this Policy, You will have to pay the Deductible which is shown on Your Policy Schedule. If more than one Deductible is payable under this Policy for any claim or series of claims arising from the one Occurrence You must pay the highest Deductible, but You pay only one Deductible.

4. Definitions

Some key words and terms used in this Policy have a special meaning. Wherever the following words or terms are used in the Policy, they mean what is set out below:

Word or Term	Meaning
4.1 Act of Terrorism	an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

Word or Term	Meaning
4.2 Advertising Liability or Advertisement	liability arising out of one or more of the following in advertising Your Products or services: (a) defamation; (b) infringement of copyright, title or slogan; (c) unfair competition, misappropriation of advertising ideas or style of doing Business; (d) invasion of privacy; committed or alleged to have been committed in any Advertisement and arising out of any advertising activities conducted by You or on Your behalf, in the course of carrying out Your Business. For the purposes of this Definition, Advertisement means any manner of communication given to the public including by way of any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet, world wide web or exhibit.
4.3 Aircraft	any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space other than model aircraft.
4.4 Business	the business described in the Policy Schedule including: (a) ownership or occupation of premises and the repair or maintenance of property owned or for which such responsibilities exist, the installation and maintenance of plant and equipment and all other activities incidental to the conduct of Your occupation or trade; (b) participation in exhibitions; (c) construction, erection, demolition, alteration or addition, not exceeding in cost the sum of \$500,000, of or to buildings owned by You; (d) the provision and management of canteens, social, sports and welfare organisations primarily for the benefit of Your Employees, first aid, fire and ambulance services; (e) private work undertaken by any Employee of Yours, for any of Your directors or senior executives; (f) hire or loan of plant, equipment or goods to other parties; (g) conducted tours of Your Premises; and

Word or Term	Meaning
4.4 Business (continued)	(h) the erection, use and/or maintenance by You or on Your behalf of advertising and directional signs, their frames, supports and appurtenances.
4.5 Deductible	the amount You first bear in relation to each Occurrence. The Deductible applies to all amounts payable under this Policy including the indemnity provided under 'Defence of Claims'.
4.6 Electronic Data	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	any person engaged under a contract of service or apprenticeship with You, but does not include any person employed under such contract who is excluded from the definition of 'worker' under any workers' compensation legislation while working for You in connection with the Business.
4.8 Employment Practices	any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to or in respect of employment or prospective employment of any person or persons by You.
4.9 Endorsement	any document so designated and issued to You, that amends the Policy wording or any details specified in the Policy Schedule.
4.10 Hovercraft	any vessel, craft or thing made or intended to float on water and travel over water or land supported on a cushion of air.
4.11 Incidental Contracts	(a) any written agreement for the lease of real property which does not impose upon You as lessee: (i) an obligation to insure such property; or (ii) any liability regardless of fault; (b) any written contract with any public supplier for the supply of water, gas or electricity, sewerage or waste removal services, telephone, telex or other communications services, except contracts with such suppliers for the performance of work by You; and

Word or Term	Meaning
4.11 Incidental Contracts (continued)	(c) any written contract with any railway authority, railway company or other independent carrier for the loading, unloading and/or transport of Your Products, including any such contracts relating to the operation of railway sidings.
4.12 Limit of Liability	the applicable limit of liability specified in the Policy Schedule.
4.13 Medical Persons	qualified medical practitioners, nurses, dentists and first aid attendants.
4.14 Occurrence	an event which results in Personal Injury, Property Damage or Advertising Liability, neither expected nor intended from Your standpoint. All Personal Injury or Property Damage arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence. All Advertising Liability 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"
4.15 Period of Insurance	the period shown in the Policy Schedule or any renewal period, during which the insurance by this Policy is in force.
4.16 Personal Injury	(a) bodily injury (and this expression includes death, disease and illness), disability, shock, fright, mental anguish or mental injury; (b) the effects of false arrest, wrongful detention, false imprisonment, malicious prosecution or humiliation; (c) the effects of wrongful entry upon, wrongful eviction from or other invasion of right to private occupancy of property; (d) the effects of a publication or utterance of defamatory or disparaging material; and (e) the effects of assault and battery not committed by You or at Your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property. Personal Injury, if relating to a latent injury, a latent illness, a latent disease or a latent disability, shall be deemed to have happened at the time when such injury, illness, disease or disability was first medically diagnosed.

Word or Term	Meaning
4.17 Policy	this Policy wording, Your Proposal, the Policy Schedule and any Endorsements We issue to You which amend this Policy wording or the Policy Schedule.
4.18 Policy Schedule	the document so designated that We issue to You, 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 and other details of the cover provided by this Policy.
4.19 Pollutants	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.
4.20 Property Damage	(a) physical damage to or loss or destruction of tangible property including any resulting loss of use at any time of that property; or (b) loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an Occurrence.
4.21 Proposal	the signed proposal form and other information supplied by You or on Your behalf when applying for this insurance upon which We relied when agreeing to grant this insurance cover.
4.22 Subsidiary	(a) any entity which by virtue of any applicable legislation or law is deemed to be Your Subsidiary (where You are a company); (b) any entity over which You (where You are a company) are in a position to exercise effective direction or control
4.23 Territorial Limits	anywhere in the world subject to Exclusion 5.18 (Territorial Limits).
4.24 Vehicle	any type of machine on wheels or self laid tracks or on skis, made or intended to be propelled by other than manual or animal power and any trailers or other attachment made or intended to be drawn by any such machine.
4.25 Watercraft	any vessel, craft or thing made or intended to float on or in, or travel on or through, or under water.
4.26 We, Our, Us	QBE Insurance (Australia) Limited, ABN 78 003 191 035.
4.27 Worksite	any premises or site where work is performed by You in connection with the Business and includes any surrounding area or premises used by you to undertake such work.

Word or Term	Meaning
4.28 You, Your, Yours, Insured	(a) the person(s), companies or firms named on the current Policy Schedule as the Insured (b) all the Subsidiary companies (including subsidiaries thereof), now or subsequently constituted, of the named Insured specified in the Policy Schedule provided their places of incorporation are within Australia or any Territory of Australia; (c) every director, executive officer, Employee, partner, shareholder or voluntary worker of parties shown in paragraph 4.28(a) and 4.28(b) above, but only while acting within the scope of their duties in such capacity; (d) every principal, in respect of that principal's vicarious liability for the acts or omissions of the parties shown in paragraph 4.28(a) and 4.28(b) in the performance by them of work for that principal, but subject always to the extent of coverage and the Limit of Liability provided by this Policy; (e) each partner, joint venturer, co-venturer or joint lessee of the Insured named in the Policy Schedule but only if We agree to insure them and the Insured named in the Policy Schedule agrees to pay the premium We require; (f) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with Your consent (other than one of the parties shown in paragraphs 4.28(c) or 4.28(d) above) in respect of claims arising from their duties connected with the activities of any such club, organisation or service; (g) any director or senior executive or partner of the parties shown in paragraph 4.28(a) and 4.28(b) above in respect of private work undertaken by an Employee of those parties for such director or senior executive; (h) if a party named in the Policy Schedule as an insured party is an individual, the personal representative of that individual in the event of the death of that individual, but only in respect of liability incurred by that individual; (i) any person whilst working for a party any organisation or entity designated in paragraph 4.28(a) and 4.28(b) of this definition, for the purpose of gaining work experience.

Word or Term	Meaning
4.28 You, Your, Yours, Insured (continued)	However, You/Your does not include the interest of any other person other than as described in this definition.
4.29 Your Product	anything (after it has ceased to be in Your possession or under Your control), which is or is deemed to have been manufactured, grown, extracted, produced, processed, imported, exported, constructed, assembled, erected, installed, repaired, serviced, renovated, treated, sold, supplied or distributed by You or on Your behalf including labels, packaging or any container thereof the design, specification or formula of the products and directions, instructions or advice given or omitted to be given in connection with such products.

5. When you are not covered

The following Exclusions will apply to this policy.

This policy does not cover liability in respect of:

5.1 Advertising Liability or Advertisement

Claims for Advertising Liability caused by or resulting from

- (a) circumstances where the acts committed or alleged to have been committed prior to the inception date of this Policy,
- (b) statements made at Your direction with knowledge that such statements are false;
- (c) failure of performance of contract. However this Exclusion 5.1(c) shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
- (d) any incorrect description of Products or services;
- (e) any mistake in advertised price of Products or services;
- (f) the failure of Your Products or services to conform with advertised performance, quality, fitness or durability;
- (g) liability incurred by You if Your Business is Advertising, broadcasting, publishing or telecasting.

5.2 Aircraft, Aircraft products, Watercraft and Hovercraft:

Claims arising out of:

- (a) the ownership, maintenance, operation, possession or use by You or on Your behalf of any Aircraft;
- (b) the ownership, operation or use by You of:
 - (i) any Watercraft, exceeding 10 metres in length, while afloat except where such Watercraft are owned or operated by others and used by You for Business entertainment; or

(ii) Hovercraft.

- (c) Your Products that are Aircraft component parts used for maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery, which to Your knowledge are incorporated in an Aircraft.

5.3 Asbestos:

Claims directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

5.4 Contractual liability:

Any liability expressly assumed by You under a contract, warranty or unless such liability would have attached to You notwithstanding such contract, warranty or agreement.

This exclusion does not apply to:

- (a) liability under any warranty of goods implied by law, liability assumed by You under a warranty of fitness or quality as regards Your Products;
- (b) liabilities assumed by You under Incidental Contracts;
- (c) liabilities assumed by You under those written contracts specified in the Schedule.

5.5 Defamation:

The publication or utterance of defamatory or disparaging material:

- (a) made prior to the effective date of this Policy; or
- (b) made by You or at Your direction with knowledge of its falsity; or
- (c) related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf.

5.6 Electronic Data Exclusion

Claims arising out of:

- (a) communication, display, distribution or publication of Electronic Data; however this Exclusion 5.9(a) does not apply to:
 - (i). Personal Injury or Advertising Liability resulting from any of them; or
 - (ii). Property Damage arising out of any material already in print by the manufacturer in support of its Product which is reproduced on its site or liability for Property Damage which arises independently of Your internet operations;
- (b) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data
- (c) error in creating, amending, entering, deleting or using Electronic Data; or
- (d) 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 contributing cause or event whenever it may occur.

5.7 Employment liability:

- (a) Personal Injury to any of Your Employees arising out of, or in the course of their employment in Your Business;
- (b) Personal Injury to any person who is deemed to be Your Employee pursuant to any legislation relating to workers' compensation;
- (c) claims which You are entitled to seek indemnity under any Policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not You are a party to such Policy of insurance;
- (d) liability imposed by the provisions of any workers' compensation legislation or any industrial award or agreement or determination;
- (e) any liability howsoever or whatsoever for claims related to or arising from Employment Practices.

5.8 Faulty workmanship:

The cost of re-performing, correcting or improving any work undertaken by You.

5.9 Fines and penalties:

Fines, penalties or liquidated damages.

5.10 Loss of use:

Loss of use of tangible property which has not been physically injured or lost or destroyed, resulting from:

- (a) a delay in or lack of performance by You or on Your behalf of any contract or agreement,
- (b) the failure of Your Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You, but this Exclusion 5.10(b) does not apply to the loss of use of other tangible property resulting from the sudden, unexpected and unintended physical damage to or loss or destruction of Your Products or work performed by You or on Your behalf after such Products or work have been put to use by any person or organisation other than You as defined under the definition of 'You', 'Your' or 'Insured'.

5.11 Pollution:

- (a) Personal Injury or Property Damage caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water, but this exclusion does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.
- (b) Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this exclusion does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury and/or Property Damage.

- (c) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others.
- (d) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants in the United States of America or Canada or in any country to which the laws of the United States of America or Canada apply.

5.12 Product defect:

Property Damage to Your Products if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

This exclusion 5.12 is restricted to the defective or harmful or unsuitable part of a damaged Product and does not apply to any resultant damage caused to the remainder of the Product.

5.13 Product recall:

Claims arising out of or resulting from any loss, cost or expense incurred by You for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of Your Products or of any property of which they form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

5.14 Professional liability:

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

- (a) the rendering of or the failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises;
- (b) Personal Injury or Property Damage arising from the rendering of or failure to render professional advice or service;
- (c) free advice provided by You in the course of the Business; or
- (d) advice given in respect of the use or storage of Your Products.

5.15 Property in custody or control:

Property Damage to property owned by or leased or rented to You, or property in Your physical or legal control but this exclusion 5.15 does not apply to liability for Property Damage to:

- (a) premises or part of premises (including landlord's fixtures and fittings) which are leased, rented or loaned to You for the purposes of the Business;
- (b) premises (or their contents) not owned or leased by or rented to You but temporarily occupied by You for the purpose of carrying out work, and other property temporarily in Your possession for work thereon;

- (c) Vehicles (not belonging to or used by You) in Your physical or legal control where the Property Damage occurs while the Vehicles are in a car park owned or operated by You, unless You own or operate the car park for reward;
- (d) the property of an Employee of the parties shown in paragraph 4.28(a) and 4.28(b) of Definitions of 'You', 'Your' or 'Insured';
- (e) other property temporarily in Your physical or legal control provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which You are or have been working and Our limit under this clause 5.15(e) does not exceed \$100,000 (unless a different amount is stated in the Policy Schedule) for any one Occurrence and in the aggregate for any one Period of Insurance.

5.16 Punitive damages:

Punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

5.17 Radioactivity

Claims arising directly or indirectly caused by, contributing to or arising from:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the Combustion of nuclear fuel. For the purpose of this Exclusion 5.17 only, "Combustion" shall include any self-sustaining process of nuclear fission;
- (b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof

This Exclusion 5.17 shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

5.18 Territorial Limits:

- (a) Claims made or actions instituted within any country, state or territory (outside Australia) that require insurance to be arranged or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance.
- (b) Claims made and actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the courts of the United States of America or Canada.
- (c) Claims and actions to which the laws of the United States of America or Canada apply.

Provided that:

- (d) exclusions 5.18(b) and 5.18(c) above do not apply to claims and actions arising from:
 - (i) the presence outside Australia of any of Your Employees and/or directors, partners

or proprietors who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in the United States of America or Canada.

- (ii) Products exported to the United States of America or Canada without Your knowledge.

The Limit of Liability in respect of coverage provided under paragraph 5.18(d) is inclusive of all costs, expenses and interest as set out in 'Defence of claims' of this Policy.

5.19 Terrorism

Loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion 5.19 also excludes loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism

5.20 Vehicle:

Personal Injury or Property Damage arising out of the ownership, possession, or use by You of any Vehicle:

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

Exclusions 5.20(a) and 5.20(b) above do not apply to claims:

- (c) for Personal Injury where:
 - (i) that compulsory liability insurance or statutory indemnity does not provide indemnity; and
 - (ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles;
- (d) arising out of and during the loading or unloading of goods to or from any Vehicle;
- (e) caused by or arising from the operation or use of any Vehicle which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by You or on Your behalf within the confines of Your premises;
- (f) caused by or arising out of the use of:
 - (i) any Vehicle whilst being used as a tool; or
 - (ii) plant forming part of any Vehicle being used as a tool within the confines of Your premises or at any worksite; or
- (g) for Property Damage arising out of the movement by You or by any Employee(s) of Yours of any Vehicle or trailer not belonging to You which is interfering with access to or from Your premises or any site where You are carrying out work.

5.21 War

Invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.

6. General Conditions

6.1 Observance of Terms and Conditions

Any failure by any of You to observe obligations of disclosure, good faith and/or compliance with the terms and conditions of the Policy shall not prejudice the rights of any other of You under the Policy.

6.2 Changing Your Policy

If You want to make a change to this Policy, the change becomes effective when We agree to it in writing.

6.3 Other Interests

You cannot transfer any interests in this Policy without Our written consent.

Any person whose interests You have told Us about and whom We have noted on Your Policy Schedule is bound by the terms of this Policy.

6.4 Cancelling Your Policy

How You may cancel this Policy:

- (a) You may cancel this Policy at any time by telling Us in writing that You want to cancel it.
- (b) Where 'You' involves more than one person, We will only cancel the Policy when a written agreement to cancel the Policy is received from all persons named as the Insured.

How We may cancel this Policy:

- (c) We may cancel this Policy in any of the circumstances permitted by law by informing You in writing.
- (d) We will give You this notice in person or send it to Your address last known to Us.

The premium

We will refund to You the proportion of the premium for the remaining Period of Insurance, provided We shall be entitled to retain the agreed minimum premium. When the premium is subject to adjustment, cancellation will not affect Your obligation to supply to Us 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.

Premium Funders

If the premium has been funded by a premium funding company which holds a legal right over the Policy by virtue of a notice of assignment and irrevocable power of attorney, a refund of any return premium due on

cancellation of this Policy, will be made to the premium funding company but only to the extent of any remaining financial interest in the Policy held by that party.

6.5 Notices

Any notice We give You will be in writing, and it will be effective:

- (a) if it is delivered to You personally; or
- (b) if it is delivered or posted to Your address last known to Us.

It is important for You to tell Us of any change of address as soon as possible.

6.6 Changes to Information Previously Advised

- (a) You must tell Us as soon as possible if circumstances occur, or if changes or alterations are intended or made which increase the risk of loss, damage or injury.
- (b) You must tell Us immediately in writing of:
 - (i) every Occurrence, claim, writ, summons, proceeding, impending prosecution, and inquest together with all relevant information which may result in a claim under this Policy, whether or not You believe any claim amount might fall below the Deductible; and
 - (ii) every change that comes to Your knowledge which materially varies any of the facts or circumstances existing at the commencement of this Policy.

6.7 Jurisdiction

All disputes arising out of or under this Policy will be subject to determination by any Court of competent jurisdiction within Australia.

6.8 Joint Insureds/Cross Liability

Where more than one party comprises the Insured each of the parties will be considered as a separate and distinct unit and the words 'You', 'Your', Yours or 'Insured' will be considered as applying to each party in the same manner as if a separate Policy had been issued to each of them, provided that nothing in this clause will result in an increase of Our Limit of Liability in respect of any Occurrence or Period of Insurance.

6.9 Subrogation Waiver

We hereby agree to waive all Our rights of subrogation under this Policy against:

- (a) each of the parties described under the Definition of You, Your, Yours, Insured; and
- (b) any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this Policy.

Where such corporation, organisation or person is protected from liability insured against hereunder by any other Policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other Policy.

6.10 Discharge of Liabilities

At any time We can pay to You or on Your behalf, for all claims made against You for any one Occurrence:

- (a) the Limit of Liability, after deducting any amounts already paid; or
- (b) any lower sum for which the claim can be settled.

If We do so:

- (c) the conduct of any outstanding claim(s) will become Your responsibility; and
- (d) We will not be liable to pay any further amounts other than costs, charges, or expenses that We agreed to pay before We made the payment referred to above.

6.11 Reasonable Care

You must:

- (a) exercise reasonable care that only competent Employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- (b) take all reasonable precautions to prevent Personal Injury and Property Damage, to prevent the manufacture, sale or supply of defective Products, and to comply with and to ensure that Your Employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:
 - (i) safety of persons or property;
 - (ii) disposal of waste products; and
 - (iii) handling, storage or use of flammable liquids or substances, gases or toxic chemicals; and
- (c) at Your own expense take reasonable action to trace, recall or modify any of Your Products containing any defect or deficiency of which You have knowledge or have reason to suspect, including (but not limited to) any of Your Products subject to governmental or statutory ban.

6.12 Inspection of Property

- (a) We will be permitted but not obligated to inspect Your property and operations at any reasonable time.
- (b) Neither Our right to inspect nor Our failure to inspect nor the making of any inspection nor any report of an inspection may be used by You or others in any action or proceeding involving Us.
- (c) We may examine and audit Your books and records at any time during the Period of Insurance and within one year thereafter but that examination and audit will be restricted to matters which in Our opinion are relevant to the Policy.

6.13 Adjustment of Premium

Where the Policy Schedule shows premium for the Policy has wholly or partly been calculated on estimates You must, within sixty (60) days after the expiry of each Period of Insurance, provide to Us such matters, particulars and information relevant to the Policy as We may reasonably require. The premium for the Period of Insurance will then be adjusted and any difference paid by or allowed to You, as the case may be, provided that the adjusted premium will not be less than any minimum premium specified in the Policy Schedule.

You must keep a record of all matters, particulars and information requested by Us and must on reasonable notice allow Us or Our nominee to inspect and make copies of those records.

6.14 Additions and/or Alterations to Buildings and Plant

Where additions and/or alterations to buildings or plant are being performed at the location by any contractor employed by You, notwithstanding the definition of Business (clause 4.4), this Policy extends to indemnify You against any claim for Your legal liability to pay compensation for Personal Injury or Property Damage arising from an Occurrence happening in connection with the conduct of the Business during the period of the contract works, that is independent of the contractor's performance.

Provided also that nothing in this clause will result in an increase in Our Limit of Liability in respect of any Occurrence or Period of Insurance.

7. Claims

7.1 What you must do

If an event happens which may give rise to a claim under this Policy You must:

- (a) tell Us or Your Financial Services Provider as soon as possible. You will be provided with advice on the procedure to follow;
- (b) supply Us with all information We require to settle the claim;
- (c) send us the details of any verbal or written claims made upon You without delay for Our attention;
- (d) take all reasonable precautions to prevent further loss or damage;
- (e) not negotiate, admit, repudiate or pay any claim by any person;
- (f) co-operate with Us fully in any action We take if We have a right to recover any money payable under this Policy from any other person.

If in doubt at any time, contact Us or Your Financial Services Provider for advice Your failure to notify Us promptly of personal injuries or damage to the property of others could affect the amount of Your claim.

7.2 What You must NOT do

You must not:

- (a) admit liability if an incident occurs which is likely to result in someone claiming against You; or
- (b) make any admission of guilt or promise or offer of payment in connection with any such claim, unless We first agree in writing. This applies to You or any other person making a claim under this Policy.

7.3 What We do

We may take over and conduct the defence or settlement of any claim or issue legal proceedings for damages. If We do this We will do it in Your name. We have full discretion in the conduct of any legal proceedings and in the settlement of any claim. You must co-operate by giving Us any statements, documents or assistance We require. This may include giving evidence in any legal proceedings.

Any amount recovered by Us from a third party shall be applied in the following order of priority:

- (a) first to the uninsured proportion of the loss;
- (b) second to reimburse Us to the extent of Our actual payment in respect of the claim, and
- (c) third, to reimburse You for any Deductible borne by You.

The expenses of such recovery proceedings shall be apportioned between You and Us proportionately in accordance with the apportionment formula set out above. If there is no such recovery by Us, the expenses shall be borne by Us.

7.4 What can affect a claim

We will reduce the amount of a claim by the Deductible shown in the Policy Terms and Conditions or on the Policy Schedule. We may refuse to pay a claim if You are in breach of Your duty of disclosure or any of the conditions of this Policy, including any Endorsements noted on or attached to the Policy Schedule. We pay only once for loss or damage from the same event covered by this Policy even if it is covered under more than one section of the Policy. We may be entitled to refuse to pay or to reduce the amount of a claim if:

- (a) it is in any way fraudulent; or
- (b) any fraudulent means or devices are used by You or anyone acting on Your behalf to obtain any benefits under this Policy.

If any liability insured under this Policy arises from a contract or agreement between You and a third party and if the contract or agreement provides for the appointment of an arbitrator, We will be entitled to exercise all of Your rights in the choice of arbitrator and in the conduct of any arbitration proceedings.

An Insured's insolvency or bankruptcy or the insolvency or bankruptcy of an Insured's estate will not relieve Us of any of Our obligations under this Policy.