

Zurich Combined General Liability Insurance

Policy Wording



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Zurich Combined General Liability Insurance

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507, a subsidiary of Zurich Financial Services Australia Limited (ZFSA). In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZFSA provides wealth protection and wealth creation solutions, offering general insurance for commercial customers, and life risk, investments and superannuation solutions for corporates and personal customers. Zurich's solutions and services are primarily accessible through insurance brokers, financial advisers and other intermediaries.

ZFSA is part of the worldwide Zurich Financial Services Group, an insurance-based financial services provider with a global network of subsidiaries and offices in North America and Europe as well as in Asia Pacific, Latin America and other markets. Founded in 1872, the Group is headquartered in Zurich, Switzerland. It employs approximately 60,000 people serving customers in more than 170 countries.

We sometimes capitalise or italicise terms in this document, to show that words are abbreviations or have a particular defined meaning. *You* should refer to the Definition section of this document on page 5 to obtain the full meaning of such terms.

How to apply for this insurance

Throughout this document when we are referring to your insurance broker or adviser, we simply refer to them as your intermediary.

If you are interested in buying this product or have any inquiries about it, you should contact your intermediary who should be able to provide you with all the information and assistance you require.

If you are not satisfied with the information provided by your intermediary you can contact us at the address or telephone number shown on the back cover of this document. However, we are only able to provide factual information or general advice about the product. We do not give advice on whether the product is appropriate for your personal, objectives, needs or financial situation.

Our contract with you

Your policy is a contract of insurance between you and Zurich and contains all the details of the cover that we provide.

Your policy is made up of:

- the policy wording which tells *you* what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the proposal, which is the information *you* provide to us when applying for insurance cover;
- *your* most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to *you*, which shows the insurance details relevant to *you*. It includes any changes, exclusions, terms and conditions made to suit *your* individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an *endorsement*). These written changes vary or modify the above documents.

Please note, only those covers shown in *your* policy *schedule* are insured.

This document is used for any offer of renewal we may make, unless we tell *you* otherwise. Please keep *your* policy in a safe place.

We reserve the right to change the terms of this product where permitted to do so by law.

Duty of Disclosure

Before you enter into this contract of insurance with us, the Insurance Contract Act 1984 requires *you* to tell us everything which *you* know, or could be reasonably expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms. The duty of disclosure is different depending on whether it is a new policy or not.

New Business

Where you are entering into this policy for the first time (that is, it is new business and is not being renewed, varied, extended or reinstated) *you* must tell us everything *you* know, or could be reasonably expected to know, in answer to the specific questions we ask.

When answering our questions you must be honest.

Who needs to tell us

It is important that *you* understand that *you* are answering our questions in this way for yourself and anyone else whom *you* want to be covered by the policy.

If you do not tell us

If *you* do not answer our questions in this way, we may reduce or refuse to pay a claim, or cancel the policy. If *you* answer our questions fraudulently, we may refuse to pay a claim and treat the policy as never being in force.

Renewals, variations, extensions and reinstatements

Once *your* policy is entered into and is no longer new business then *your* duty of disclosure to us changes. *You* are required before *you* renew, vary, extend or reinstate *your* policy, to tell us everything *you* know, or could be reasonably expected to know, which is relevant to our decision whether to renew, vary, extend or reinstate the contract of insurance and, if so, on what terms.

You do not have to tell us 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 being in force.

Cooling-off period

After *you* apply for one of our products and *you* have received the policy document, *you* have 21 days to check that the policy meets *your* needs. Within this time *you* may cancel the policy and receive a full refund of any premiums paid, unless:

- *you* have made a claim or become entitled to make a claim under *your* policy; or
- *you* have exercised any right or power *you* have in respect of *your* policy or the policy has ended.

Your request will need to be in writing and forwarded to us via *your* intermediary.

You can cancel *your* policy at any time after the cooling-off period. Please refer to Standard Condition 1. 'Cancellation' on page 13.

How to make a claim

If *you* need to make a claim against this policy, please refer to Standard Condition 10. 'Notice and proof of claim' on page 14. If *you* have any queries, please contact *your* intermediary as soon as possible, or call us on 132 687.

Goods and Services Tax

This policy has provision for payment of Goods and Services Tax (GST) by the Insured in relation to the premium payment.

For further information, see 'Payments in respect of Goods and Services Tax' on page 14.

Privacy

The National Privacy Principles, under the Privacy Act 1998, regulate the way in which private sector organisations like Zurich can collect, use, store and disclose your personal information.

We collect personal information about you in order to assess your request for insurance and to administer the policy. You can elect not to provide us with your personal information however we may then not be able to process your application for insurance, we may not be able to process your claim or you may breach your Duty of Disclosure.

In some circumstances, we may collect and/or disclose your personal information (other than sensitive information such as health information) to a third party such as your intermediary, our service providers and our business partners. A list of service providers and business partners that we may disclose your personal information to and for further information on our Privacy Policy, please refer to the Privacy link on our homepage www.zurich.com.au.

By providing us with your personal information, you consent to us disclosing your personal information for these purposes.

In most cases, at your request, we will give you access to the personal information we hold about you. In some circumstances we may charge a fee for giving you access, which will vary but will be based on our costs.

If you would like to find out more, you can contact us by telephone on 132 687 or email at Privacy.Officer@zurich.com.au or in writing to:

The Privacy Officer
Zurich Australian Insurance Limited
PO Box 677
North Sydney NSW 2059

General Insurance Code of Practice

As a member of the Insurance Council of Australia Limited, we subscribe to the General Insurance Code of Practice.

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

- constantly improve claims handling in an efficient, honest and fair manner;
- build and maintain community faith and trust in the financial integrity of the insurance industry; and
- provide helpful community information and education about general insurance.

Complaints and Disputes Resolution process

If you have a complaint about an insurance product we have issued or service you have received from us, please contact your intermediary to initiate the complaint with us. If you are unable to contact your intermediary, you can contact us directly on 132 687.

We will respond to your complaint within 15 working days. If you are not satisfied with our response, you may have the matter reviewed through our internal dispute resolution process, which is free of charge.

If you are not satisfied with the outcome of the dispute resolution process and would like to take the complaint further, you may refer the matter to the Financial Ombudsman Service (FOS), an independent and external dispute resolution scheme.

The FOS is free of charge to you but can only be accessed after you have gone through our internal disputes resolution process.

FOS contact details are:

The Financial Ombudsman Service
Freecall: 1300 78 08 08
Post: GPO Box 3, Melbourne, Victoria 3001
Website: www.fos.org.au
Email: info@fos.org.au

Headings

Headings have been included for ease of reference, but do not form part of the policy.

Definitions

When used in this policy, its *schedule* and its endorsements the following definitions shall apply:

Act of terrorism

act of terrorism means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- (a) involves violence against one or more persons;
- (b) involves damage to property;
- (c) endangers life other than that of the person committing the action;
- (d) creates a risk to health or safety of the public or a section of the public; or
- (e) is designed to interfere with or to disrupt an electronic system.

Advertising liability

advertising liability means:

- (a) infringement of copyright or passing off of a title or slogan;
- (b) unfair competition, piracy or idea misappropriation contrary to an implied contract; or
- (c) invasion of privacy,

committed or alleged to have been committed during the *period of insurance* in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities conducted by or on behalf of *you*, in the course of advertising the *products*.

Aircraft

aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

Business

business means all *your* activities and operations stated in the *schedule* including the ownership and tenancy of premises, private work carried out with *your* consent by *your* employees for any director or senior executive officer of *you*, and the provision or management of canteen, social or sports organisations for *your* employees and internal first aid, fire and ambulance services.

Computer virus

computer virus means an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host, program or other computer code or data, causing undesired program or computer system operation.

Deductible

deductible means 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 additional payments.

Hovercraft

hovercraft means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

Insured person

insured person means *you* and the parties described under the heading 'Cover for Others'.

Internet operations

internet operations means:

- (a) transfer of computer data or programmes by use of electronic mail systems by *you* or *your* employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within *your* organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to *computer virus*, worm, logic bomb, or trojan horse;
- (b) access through *your* network to the world wide web or a public internet site by *you* or *your* employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within *your* organisation;
- (c) access to *your* intranet (meaning internal company information and computing resources) which is made available through the world wide web for *your* customers or others outside *your* organisation; and
- (d) the operation and maintenance of *your* web site.

Limit of Liability

limit of liability means the Limits of Liability stated in the *schedule*.

New Zealand

New Zealand means and includes transit between any of the islands of New Zealand.

North America

North America means:

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

Occurrence

occurrence means an event or series of events including continuous or repeated exposure to substantially the same general conditions which results, unexpectedly and unintentionally from *your* standpoint, in *personal injury* or *property damage* or *advertising liability* during the *period of insurance*.

All *personal injury* or *property damage* happening during the *period of insurance* attributable to one source or to a common cause or to the same general conditions shall be deemed to be one *occurrence*.

With respect to *advertising liability* all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants shall be deemed to arise out of one *occurrence*.

Period of insurance

period of insurance means the Period of Insurance stated in the *schedule*.

Personal injury

personal injury means:

- (a) bodily injury, death, sickness, disease, shock, fright, mental anguish or mental injury or loss of consortium;
- (b) false arrest, false detention, wrongful imprisonment, malicious prosecution or humiliation;
- (c) wrongful entry or wrongful eviction or other invasion of privacy;
- (d) defamation, libel and slander; and
- (e) assault and/or battery committed by an *insured person* whilst engaged in *your business* activities and for the purpose of preventing or eliminating danger to persons or property.

Pollutants

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

Products

products means anything which is or is deemed to have been manufactured, grown, extracted, produced, processed, treated, altered, handled, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by *you* (including packaging or containers) in the course of the *business* and after it has ceased to be in *your* physical or legal control.

Property damage

property damage means:

- (a) physical damage to, or loss of or destruction of tangible property including subsequent loss of use of that property; and/or
- (b) loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible property.

Schedule

schedule means the Schedule attaching to and forming part of the policy, including any *schedule* substituted for the original *schedule*.

Territorial limits

territorial limits means anywhere in the world (subject to the limitations set out in Exclusions 1, 14 and 19).

Tool of trade

tool of trade means the use or operation of a *vehicle* and/or equipment, tool or apparatus which forms part of the *vehicle*, but only whilst engaged in and undertaking its designed purpose of digging, scraping, shovelling, grading, boring, drilling, compacting, harvesting, ploughing, shredding, lifting, clearing, levelling, hosing, pumping, spraying, vacuuming or suction activities.

Vehicle

vehicle means any machine and attachments thereto including a trailer designed to travel on wheels or on self-laid tracks and to be propelled by other than manual or animal power.

Watercraft

watercraft means any vessel, craft or thing made to or intended to float on or in or travel on or through or under water.

You, Your

you, your means:

- (a) the Insured named in the *schedule*;
- (b) subsidiary companies of the Insured named in the *schedule* now or subsequently formed or constituted and incorporated in the Commonwealth of Australia; and
- (c) any new entity acquired by the Insured named in the *schedule* during the *period of insurance* through consolidation, merger, purchase of assets or assumption of control and active management or creation, provided that:
 - (i) such acquisition is notified to Zurich in writing within 90 days;
 - (ii) Zurich gives notice in writing to *you* that the new entity shall be covered under this policy; and
 - (iii) the Insured named in the *schedule* pays any additional premium that may be required by Zurich.

Our Agreement

Subject to the prior payment of or *your* agreement to pay the premium set out in the *schedule*, we agree with *you* to provide insurance as set out in this policy.

In issuing this policy, we have relied on the information contained in the proposal form and or any other information given by or on *your* behalf.

Insuring Clause

Subject to the *limit of liability* and the terms and conditions of this policy, we will pay all sums which the *insured person* shall become legally liable to pay for compensation in respect of:

- *personal injury*;
- *property damage*; and/or
- *advertising liability*;

in connection with *your business* or *products* as a result of an *occurrence* happening during the *period of insurance* within the *territorial limits*.

Extensions of Cover

Additional Payments

In addition to the *limit of liability* we will pay as additional payments all:

- (a) reasonable legal costs and expenses incurred by the *insured person* with our written consent in the defence of any claim;
- (b) expenses incurred by the *insured person* for first aid to others;
- (c) reasonable expenses incurred by *you* for the temporary repair or shoring up or preservation of property which has been damaged; and
- (d) interest accruing after entry of judgment against the *insured person* until we have paid, tendered or deposited in court such part of the judgment as does not exceed the *limit of liability*,

resulting from an *occurrence* which is otherwise covered by this policy, provided that:

- (i) if a payment exceeding the *limit of liability* has to be made to dispose of a claim, our liability to pay any additional payments shall be limited to that proportion of those amounts as the *limit of liability* bears to the amount paid to dispose of the claim;
- (ii) in the event of a claim covered by this policy, being made against an *insured person* in any court or before any other legally instituted body in *North America*, the *limit of liability* shall apply to such claim inclusive of all additional payments;
- (iii) we shall not be obligated to pay any compensation or additional payments, or judgment or to defend any suit after our *limit of liability* has been exhausted by payment of claims, judgments and/or settlements.

In the event the *insured person* is a party to claim, legal proceedings, inquiry or hearing which is covered only in part by this policy, the *insured person* and Zurich will endeavour to allocate the costs and/or expenses in a fair and proper way. However if agreement cannot be reached, Senior Counsel (to be mutually agreed upon by both parties) shall determine a fair and proper allocation. At its discretion, Zurich may continue to pay such costs and/or expenses as it considers appropriate, until such time as Senior Counsel makes a determination.

Cover for Others

The cover under this policy is extended to the following:

- (a) any of *your* directors, executive officers or employees but only whilst acting within the scope of their duties in such capacity;
- (b) any office bearer, voluntary unpaid worker or member of the canteen, social, or sports organisations for *your* employees and internal first aid, fire or ambulance services formed with *your* consent, but only whilst acting within the scope of their activities in such capacity;
- (c) any of *your* directors or senior executives in respect of private work undertaken by *your* employees for such directors or senior executives;
- (d) any other entity incorporated in the Commonwealth of Australia under the control of the Insured named in the *schedule* and over which it is exercising active management;
- (e) any principal but only for its liability for *personal injury* or *property damage* that is directly caused by *your* performance of the work for that principal and only to the extent that we would cover *you* under this policy for *your* liability to that principal had the principal made a claim against *you* in respect of the circumstances giving rise to the principal's liability,

Provided that:

- (i) the work was carried out by *you* in an attempt to comply with a contract to perform work, that was made between *you* and the principal; and
- (ii) our liability shall not exceed the lesser of the minimum amount of liability insurance cover required by the contract to perform the work and the *limit of liability*; and

for avoidance of doubt it is further provided that where a principal makes a claim under this clause, the 'Employer's liability' Exclusion shall apply so that we will not pay for that principal's liability for *personal injury* to any person in the service of either:

- (1) *you*; or
- (2) that principal.

Limit of Liability

Our liability to pay compensation as a result of an *occurrence* shall not exceed the *limit of liability*.

Our total aggregate liability to pay compensation in respect of or in any way related to *products* shall not exceed the *limit of liability*.

Exclusions

We will not pay anything in respect of:

1. Advertising liability

- (a) for statements made at the direction of an *insured person* with the knowledge of the illegality or falsity thereof;
- (b) for breach of contract, other than misappropriation of advertising ideas contrary to an implied contract;
- (c) for infringement or passing off of a trade mark, service mark or trade name on any *products*, goods or services sold, offered for sale or advertised. This does not apply to infringement of titles or slogans;
- (d) arising from the export of the *products* to, or business visits by executives or salespersons to *North America*, notwithstanding the terms of sub paragraphs (i) and (ii) of Exclusion 19;
- (e) for any *insured person* whose *business* is advertising, broadcasting, publishing or telecasting;
- (f) for incorrect description of the price of *products*, goods or services;
- (g) for failure of *products*, goods or services to conform with advertised performance, quality, fitness or durability; or
- (h) acts, errors or omissions committed prior to the inception date of this policy.

2. Aggravated, punitive or exemplary damages, fines or penalties

any fines, penalties, exemplary, punitive, liquidated or aggravated damages.

3. Asbestos

any liability of whatsoever nature in connection with, directly or indirectly caused by or contributed to by or arising from asbestos or asbestos *products* or asbestos contained in any *products*.

4. Assault and battery

personal injury or *property damage* arising directly or indirectly out of assault and battery committed by an *insured person*.

However this Exclusion will not apply when such assault and battery is committed for the purpose of preventing or eliminating danger to persons or property.

5. Contractual liability

any liability or obligation assumed by an *insured person* under any agreement or contract except to the extent that:

- (a) the liability or obligation would otherwise have been otherwise implied by law;
- (b) the liability or obligation arises from a provision in a contract for lease of real or personal property other than a provision which obliges *you* to effect insurance or provide indemnity in respect of the subject matter of contract;
- (c) the liability or obligation is assumed by an *insured person* under any warranty under the requirement of Federal or State legislation in respect to product safety;
- (d) the liability or obligation is assumed under those agreements specified in the *schedule*.

6. Damage to products

property damage to *products* if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

7. Defamation, libel, slander

the publication or utterance of a defamation, libel or slander, prior to the inception date of this policy or made at the direction of an *insured person* with knowledge of the falsity thereof.

8. Design, specification, formula

any design, plan, specification, formula or pattern provided by an *insured person* or any error or omission connected therewith.

However this Exclusion shall not apply in respect of any design, plan, specification, formula or pattern about any *products*, which is not given for a fee.

9. Employer's liability

- (a) *personal injury* to any person arising out of, or sustained in the course of, the employment of such person in the service of any *insured person*, or through the breach of any duty owed to that person, where any *insured person*:
 - (i) is indemnified or entitled to be indemnified (either in whole or in part and/or whether such insurance is limited in amount or not) in respect of claims for damages under a policy of insurance (which expression includes arrangements made by any *insured person* to provide accident insurance for any *insured person's* workers under a licence to self insure) arranged (whether by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
 - (ii) would have been indemnified or entitled to be indemnified (either in whole or in part and/or whether such insurance is limited in amount or not) had any *insured person* arranged a policy of insurance as required by such legislation.
- (b) *personal injury* to any person arising out of, or sustained in the course of, the employment of such person in any *insured person's* service in Western Australia, other than a person of whom any *insured person* is deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Injury Management Act 1981 (WA).
- (c) mental anguish, shock or fright suffered by any person arising out of, or in the course of, that person's employment by, or service to, any *insured person*.
- (d) *personal injury* arising out of the wrongful or unfair dismissal, denial of natural justice, harassment, libel, slander, defamation, misleading representation, misleading advertising or humiliation of, or discrimination against, any person while in any *insured person's* service, prospective employment or while employed by any *insured person*.

- (e) which indemnity previously would have been provided in whole or in part under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current *period of insurance* of this policy.
- (f) the imposition of any liability by the provisions of any workers' compensation legislation or accident compensation legislation or any industrial award, agreement or determination.

10. Faulty workmanship

the cost of performing, completing, correcting or improving any work done or undertaken by an *insured person*.

11. Information technology hazards

- (a) any liability arising out of *your internet operations*; or
- (b) *property damage* to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
 - (i) the use of any computer hardware or software;
 - (ii) the provision of computer or telecommunication services by *you* or on *your* behalf; or
 - (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any *computer virus*.

However this Exclusion does not apply to:

- (i) *personal injury*, *property damage* or *advertising liability* arising out of any material which is already in print by the manufacturer in support of any of its *products*, including by not limited to *product* use and safety instructions or warnings, and which is also reproduced on its site; or
- (ii) liability which arises irrespective of the involvement of *your internet operations*.

12. Intentional conduct

any alleged or actual fraudulent, dishonest, malicious, intentional or criminal act or omission of an *insured person*.

13. Loss of use

loss of use of tangible property which has not been damaged, lost or destroyed as a result of:

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

However Exclusion 13. (b) above does not apply to loss of use of other tangible property resulting from the sudden and accidental damage to or destruction of the *products* after such *products* have been put to use by any person or organisation other than *you*.

14. Pollution

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

However Exclusion 14. (a) and (c) above shall not apply where the claim arises from a sudden identifiable, unintended and unexpected event from *your* standpoint which takes place in its entirety at a specific time and place during the *period of insurance* and occurs outside of *North America*, however the total aggregate *limit of liability* during any one *period of insurance* shall not exceed the *limit of liability*.

15. Products guarantee

any *products* warranty or guarantee given by *you* or on *your* behalf.

However this Exclusion shall not apply to the requirements of any Federal or State legislation as to product safety.

16. Professional liability

the rendering of or failure to render professional advice or service provided by an *insured person* or any error or omission connected therewith.

However this Exclusion shall not apply in respect of:

- (i) professional advice or service about any *products*, which is not given for a fee; or
- (ii) first aid treatment rendered by or on behalf of the *insured person*.

17. Property in the physical or legal control

property damage to property owned by or in the physical or legal control of an *insured person*, other than premises leased or rented to *you in connection with your business*.

However this Exclusion does not apply to *property damage* to:

- (a) *your* employees' personal effects;
- (b) property, other than a *vehicle*, an *aircraft*, *watercraft* or *hovercraft*, not owned by, but in *your* physical or legal control subject to a maximum of \$500,000 for any one *occurrence* and in the aggregate during any one *period of insurance*; or
- (c) *vehicles* in a car park unless:
 - (i) the *vehicles* are used by or on behalf of the *insured person*; or
 - (ii) the car park is occupied or operated by the *insured* for reward.

18. Recall of products

the withdrawal, recall, inspection, repair, adjustment, replacement, removal, disposal or loss of use of the *products* and/or the withdrawal or recall of any property of which such *products* form a part.

19. Territorial limits

any liability:

- (a) occurring in *North America*;
- (b) caused by or arising out of the *products* knowingly exported by an *insured person* or its agents to *North America*;
- (c) where claims are made upon an *insured person* outside the Commonwealth of Australia or *New Zealand* where the *insured person* is represented by a branch or company or firm or individual holding *your* power of attorney; or

- (d) where claims arise out of any contract entered into by an *insured person* under the terms of which work is to be performed outside the Commonwealth of Australia or *New Zealand*.

However this Exclusion will not apply to:

- (i) *products* exported to *North America* without the knowledge of *you, your* agents or employees; or
- (ii) *business* visits by executives and salespersons normally resident in the Commonwealth of Australia or *New Zealand*.

20. Tobacco and tobacco smoke

the inhalation or ingestion of, or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

21. Vehicles

personal injury or *property damage* caused by or arising out of the ownership, use, possession, or control by any *insured person* of any *vehicle*:

- (a) which is registered; or
- (b) in respect of which registration is required by virtue of any legislation relating to vehicles; or
- (c) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not insurance is effected).

However this Exclusion does not apply to claims for:

- (i) *personal injury* arising out of an *occurrence* which is partially (to the extent of that part) or totally outside the indemnity afforded under such compulsory liability insurance or other legislation relating to *vehicles* and where the reason the *occurrence* is outside the indemnity afforded by compulsory liability insurance or statutory indemnity does not involve a breach by *you* of legislation relating to *vehicles*;
- (ii) *property damage* arising out of and during loading and unloading of goods to or from any *vehicle*;
- (iii) *property damage* caused by any *tool of trade* other than whilst in transit or whilst being used for transport or haulage.

22. War, act of terrorism, radioactivity

for loss, damage, destruction, death, personal injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss resulting from:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike 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;
- (b) any *act of terrorism*;
- (c) any order of any Government, Public or Local Authority involving the confiscation, nationalisation, requisition, damage or destruction of any property unless such destruction was undertaken to reduce the spread of fire; or
- (d) radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

However this 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.

This policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to the above.

23. Watercraft, aircraft, hovercraft

personal injury or property damage caused by or arising directly or indirectly out of or in connection with:

- (a) the ownership, use, maintenance, possession, operation, legal control, loading or unloading by an *insured person* or on behalf of an *insured person* of:
 - (i) any *watercraft* or *hovercraft* exceeding 15 metres in length, except where such *watercraft* or *hovercraft* are owned and operated by others and used by an *insured person* for business entertainment;
 - (ii) any *aircraft*; or
 - (iii) any property used for the purpose of an airport or any *aircraft* landing strip; or
- (b) *your products* which an *insured person* knew or had reasonable cause to believe would be, or are installed in any *aircraft* or any other aerial device.

Standard Conditions

1. Cancellation

- (a) *You* may cancel this policy at any time by giving notice in writing to us;
- (b) We may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984, such cancellation to take effect within 30 days from the time of notification received by *you*;
- (c) Upon cancellation by *you* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*;
- (d) Upon cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

2. Change of risk

You must notify us in writing of all changes occurring during the *period of insurance*:

- (a) relating to the nature of the *business*;
- (b) materially affecting the facts or circumstances existing at the commencement of this policy, or at any subsequent renewal date, as soon as such change comes to *your* notice, where the change is known to an *insured person*, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of *personal injury, property damage* or *advertising liability* for which indemnity is provided under this policy.

Any additional premium as a result of the change must be paid by *you*.

Where the *insured person* is a corporate entity, the knowledge of any of director or officer shall be deemed to be the knowledge of the *insured person*.

3. Claims assistance and cooperation

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

- (a) supplying us with all information and assistance we may reasonably require;
- (b) allowing us to negotiate, defend or settle the claim:
 - (i) in *your* name and on *your* behalf; or
 - (ii) in the name of and on behalf of any other party covered by *your* policy.
- (c) sending to us any claim, writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest *you* receive or become aware of; and
- (d) as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until we have had an opportunity of inspection.

4. Cross liability

Subject to Standard Condition 7. 'Joint insured' for the purpose of this policy, when an *insured person* consists of more than one party, the *insured person* shall be considered as a separate *insured person* as though a separate policy had been issued to each of the said parties but nothing herein contained shall operate to increase our *limits of liability*.

5. Fraudulent claim

If an *insured person* or anyone acting upon the *insured person's* behalf is in any way fraudulent in obtaining any benefit under this policy, we may deny liability in respect of such claim and cancel the policy pursuant to Standard Condition 1. 'Cancellation'.

6. Inspection and audit

We shall be permitted but not obligated to inspect the *insured person's* property and operations at any reasonable time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an *insured person* or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation. We may examine and audit *your* books and records at any time during the policy period and within three years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

7. Joint insured

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

8. Liability not to be admitted

The *insured persons* shall not admit liability for or offer to or agree to settle any claim without our written consent. We shall be entitled to take over and defend, any claim with full discretion in the conduct of that claim.

9. Notice

Every notice or communication to us shall be in writing and sent to our office where the policy was issued.

10. Notice and proof of claim

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

- (a) give notice in writing to us as soon as practicable after the *insured person* becomes aware of such loss or circumstance and within 30 days thereafter provide, at the *insured person's* own expense, a written statement detailing or relevant information;
- (b) advise of the cause and the amount of loss and any other proof or information with respect to the claim that may be reasonably required;

- (c) furnish to us details of any other insurance covering or which may cover the same loss;
- (d) take reasonable steps to prevent further loss; and
- (e) at all reasonable times permit us or its agents to inquire into, investigate and examine the circumstances of any loss.

11. Payments in respect to Goods and Services Tax

When we make a payment to *you* or on *your* behalf, under *your* policy for the acquisition of goods, services or other supply, we will reduce the amount of the payment by the amount of any input tax credit that *you* are, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

When we make a payment to *you* or on *your* behalf, under *your* policy as compensation instead of payment for the acquisition of goods, services or other supply, we will reduce the amount of the payment by the amount of any input tax credit that *you* are, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

12. Premium

Unless otherwise stated, the premium is adjustable. *You* shall, within 30 days after the expiry of each *period of insurance*, provide such information as we may require to adjust the premium. Any difference in premium shall be paid by or allowed to *you*, provided that the adjusted premium will not be less than any minimum premium specified in the *schedule*. *You* shall at all times allow us to inspect such records.

13. Proper law and jurisdiction

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

14. Reasonable care and precautions

- (a) *You* must exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition.
- (b) The *insured persons* shall take all reasonable care and precautions:
 - (i) to prevent *personal injury, property damage or advertising liability losses*;
 - (ii) to prevent the manufacture, sale or supply of defective *products*; and
 - (iii) to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.
- (c) *You* shall at *your* own expense withdraw, inspect, repair, replace, trace, recall or modify any of the *products* containing any defect or deficiency of which *you* have knowledge or have reason to suspect.

15. Subrogation

Any *insured person* shall at any time, at the request and expense of us, permit all reasonable steps required to enforce any rights to which we would be entitled.

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