

# Information and Communication Technology Liability

Insurance Policy





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# Combined Liability Package

**Policy 1 – Professional Indemnity Insurance Policy**

**Policy 2 – Broadform Public and Products Liability Policy**

## Important Information

### Privacy of your personal information

#### Our Service Commitment to You

We value the privacy of personal information we collect about you. We collect your personal information directly from you or through others including entities listed in our Privacy Policy.

They include our related entities, agents and distributors.

#### How we use your personal information

We and the parties listed in our Privacy policy will use your personal information for the purposes it was collected for. That usually includes to provide you with assistance, a product or service you requested and to deal with claims. Your personal information may also be used for other purposes that are set out in our Privacy Policy. You may choose to not give us your personal information. However, not giving us your personal information may affect our ability to provide you with a product or service, including processing a claim.

#### Further information

We may disclose your personal information to:

- our related entities
- our service providers – which includes some service providers that may be based overseas, and
- other parties as set out in our Privacy policy.

Our Privacy Policy provides more information about how we collect, from whom we collect and how we hold, use and disclose your personal information. Our Privacy Policy also provides information about how you can:

- access your personal information
- ask us to correct your personal information, and
- complain about a breach of the privacy principles set out in the Privacy Act 1988 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation and how we will deal with your complaint.

To get a free copy of our Privacy Policy, please contact us using the Privacy details shown on the back cover of this document.

## General Insurance Code Of Practice & Financial Claims Scheme

### General Insurance Code of Practice

We proudly support the General Insurance Code of Practice (Code). The purpose of the Code is to raise the standards of practice and service in the general insurance industry. The objectives of the Code are:

- to commit us to high standards of service
- to promote better, more-informed relations between us and you
- to maintain and promote trust and confidence in the general insurance industry
- to provide fair and effective mechanisms for resolving complaints you make about us, and
- to promote continuous improvement of the general insurance industry through education and training.

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

#### Our Commitment to you:

We have adopted and support the Code and are committed to complying with it. Please contact us if you would like more information about the Code or the Code Governance Committee.

## Resolving a complaint or dispute

### Our Service Commitment to You

We will always do our best to provide you the highest level of service but if you are not happy or have a complaint or dispute, here is what you can do.

If you experience a problem or are not satisfied with our products, our services or a decision we have made, let us know so we can help.

You can contact us in various ways to make a complaint. Our website and contact information can be found on the back cover of this document.

We will try to resolve complaints at first contact or shortly thereafter.

If we are not able to resolve your complaint when you contact us or you would prefer not to contact the people who provided your initial service, our Customer Relations team can assist:

Free Call: 1800 045 517

Email: [Customer.Relations@iag.com.au](mailto:Customer.Relations@iag.com.au)

Customer Relations will contact you if they require additional information or have reached a decision. Customer Relations will advise you of the progress of your complaint and the timeframe for a decision in relation to your complaint.

We expect our procedures will deal fairly and promptly with your complaint. If you are unhappy with the decision made by Customer Relations you may wish to seek an external review, such as referring the issue to the Australian Financial Complaints Authority (AFCA). AFCA provides fair and independent financial services complaint resolution that is free to customers. AFCA has authority to hear certain complaints. AFCA will confirm if they can assist you:

Free Call: 1800 931 678

Email: info@afca.org.au

Mail: Australian Financial Complaints Authority  
GPO Box 3 Melbourne VIC 3001

Visit: www.afca.org.au

Further information about our complaint and dispute resolution process is available by contacting us.

# Professional Indemnity Insurance – Policy 1

## Section 1 How to Read This Insurance Policy

**1.1** Some of the words in this insurance **Policy** have special meanings. These meanings can be found in Section 12 of the **Policy** ('Words with special meanings'). If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Policy** Schedule.

## Section 2 The Insurance Contract

**2.1** **We** agree to provide the **Cover** described in this **Policy** upon full payment of the premium as stated in the **Policy** Schedule.

**2.2** Before this **Policy** came into effect, **We** were provided with information by or on behalf of the **Insured** (and those referred to in Section 4.2 of this **Policy**) in the **Proposal**, and perhaps in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms.

**2.3** If any of that information referred to in Section 2.2 is wrong or false, it may affect entitlement to **Cover** under this **Policy**.

**2.4** This **Policy** is in force for the Period of Insurance stated in the Schedule.

**2.5** If full payment of the Gross Premium as stated in the Schedule is not made, there is no **Cover**.

**2.6 Responsibilities and notification of change of material risk**

- a) The **Insured** must as soon as reasonably possible advise **Us**, in writing, of any material change in the risk **Covered** by this **Policy**.
- b) When **We** receive notification of a change, **We** may decide to either:

- i. continue **Cover** with no change to the premium payable;
  - ii. reduce the premium payable and return any refund to the **Insured**;
  - iii. charge the **Insured** an additional premium (the **Insured** can cancel the policy if the additional premium is not acceptable); or
  - iv. cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation.
- c) It is important for the **Insured** to know that **We** may make changes to this **Policy** as a result of a change in information. When there is a change, **We** will inform the **Insured**.
- d) If the **Insured** does not notify **Us** of a material change, **We** may refuse to pay a **Claim** or **Covered Claim** or reduce **Cover** under the **Policy**. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation.
- e) The course of action **We** take when the **Insured** fails to notify **Us** of a material change will be considered in each circumstance based on what impact or effect the **Insured's** failure to do so caused or contributed to the **Claim** or **Covered Claim** or changes **Our** liability under the **Policy**.

## Section 3 The Cover We Provide

### 3.1 The Cover We Provide

**We Cover** the **Insured** up to the **Policy Limit** (see Section 5) for any **Civil Liability** to any third party which is incurred by the **Insured** in the performance or provision of **Information Technology** and which **Claims**:

- a) are made against the **Insured** (or, those referred to in Section 4.2 of this **Policy**) while this **Policy** is in force; and
- b) **We** are told about in writing as soon as reasonably possible while this **Policy** is in force; and
- c) arise from an act, error or omission on or after the Retroactive Date as stated in the Schedule.

### 3.2 The types of Claim We Cover

The **Civil Liability We** provide **Cover** for in this **Policy** includes (but is not limited to) the following types of **Civil Liability Claims** arising in the performance or provision of **Information Technology**:

- a) breach of duty (including a duty of confidentiality, a breach of privacy or breach fiduciary duty).
- b) unintentional defamation.
- c) loss of or damage to **Documents/Data** which were in the **Insured's** physical custody or control at the time of loss or damage.

- d) dishonest, fraudulent, criminal or malicious acts or omissions by any person entitled to **Cover** under this **Policy** (but there is no **Cover** to that person for these **Claims**).
- e) unintentional infringement of **Intellectual Property**.
- f) unintentional breaches of the misleading and deceptive conduct provisions the Australian Securities and Investments Commission Act 2001 (Cth), the Competition and Consumer Act 2010 (Cth) and corresponding consumer protection provisions of New Zealand and Australian state or territory Fair Trading legislation (but not for criminal liability in respect of any of these). References to legislation includes any amendment, replacement, re-enactment, successor, equivalent or similar legislation.
- g) breach of warranty of authority committed, by or on behalf of the **Insured**, in good faith and in the belief that appropriate authority was held.
- h) misleading misrepresentation or advertising as to the terms and conditions of employment;
- i) denial of natural justice to an **Employee** in respect of any issue concerning his or her employment.

If no **Specific Cover Limit** is indicated in the Schedule for 'Employment Practices Liability', then no **Cover** is provided by this **Policy** for 'Employment Practices Liability'.

### 3.5 Enquiries

For those **Enquiries** of which the **Insured** first becomes aware and of which **We** are told about in writing as soon as reasonably possible while this **Policy** is in force, **We Cover** the **Insured** and **Employees** of the **Insured** (subject to the terms of Section 4.2 of the **Policy**) for the following (subject to the **Specific Cover Limit** set out in the Schedule for 'Enquiries'):

- a) **Cover** is provided for legal costs and expenses (incurred with **Our** prior written approval and which in **Our** view are reasonable and necessary) for the representation of the **Insured** at any **Enquiry**. This **Cover** does not extend to paying the **Insured's** regular or overtime wages, salaries or fees, or those of the **Insured's Employees**.
- b) If no **Specific Cover Limit** is indicated in the Schedule for 'Enquiries', then no **Cover** is provided by this **Policy** for **Enquiries**.

### 3.6 Continuous Cover

**We Cover** the **Insured**, for any **Claim** otherwise **Covered** by this **Policy**, arising from a **Known Circumstance** (notwithstanding Section 6.1 of this **Policy**) if:

- a) There has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **Known Circumstance**; and
- b) **We** were the professional liability insurer of the **Insured** when the **Insured** first knew of such **Known Circumstance**; and
- c) **We** continued without interruption to be the **Insured's** professional liability insurer up until this **Policy** came into effect; and
- d) Had **We** been notified by the **Insured** of the **Known Circumstance** when the **Insured** first knew of it, the **Insured** would have been covered under the policy in force at that time but is not now entitled to be covered by that policy, and the **Insured** would (but for Section 6.1 of this **Policy**) otherwise be **Covered** under this **Policy**; and
- e) Neither the **Claim** nor **Known Circumstance** have previously been notified to **Us** or to any other insurer.

If the **Insured** was entitled to have given notice under any other policy of insurance and thereby have an entitlement to indemnity, in whole or in part, then this Section 3.6 does not apply to provide **Cover** under this **Policy** to the extent that indemnity is provided to the **Insured** under that other policy of insurance.

**We** may reduce the amount **We** pay out under this Section 3.6 by the amount of any prejudice **We** may suffer in consequence of any delayed notification to **Us**.

The **Policy Limit** of the **Cover We** provide under this Section 3.6 is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (d) above, or under this **Policy**. The terms of this **Policy** otherwise apply.

### 3.3 Claim Investigation Costs

In respect of **Claims** or **Covered Claims**, **We** also pay in addition to the **Policy Limit** (but only up to an amount equal to the **Policy Limit**) **Claim Investigation Costs**.

**We** only pay these, however, if either:

- a) **We** incur them; or
- b) the **Insured** incurs them after first obtaining **Our** agreement in writing and the costs and expenses are in **Our** view reasonable and necessary.

**We** are not obliged to defend, or to continue to defend, any **Claim** (or **Covered Claim**) or pay, or continue to pay, any costs or expenses associated with such defence, once the **Policy Limit** has been exhausted.

### 3.4 Employment Practices Liability Cover

Notwithstanding Section 6.9, **We Cover** the **Insured**, and each **Employee** (subject to the **Specific Cover Limit** set out in the Schedule for 'Employment Practices Liability' and the special provisions in Section 9 of this **Policy**), for **Claims** brought against the **Insured** or an **Employee** (including **Claims** brought by principals, partners, directors, officers and employees, contract or temporary workers of the **Insured**) for that **Loss** which the **Insured** is legally obliged to pay arising from:

- a) discrimination against any **Employee**, former **Employee** or applicant for employment because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise;
- b) wrongful dismissal of any **Employee**;
- c) workplace harassment (whether sexual or otherwise) of an **Employee**;
- d) breach of an implied term of an oral or written employment contract;
- e) wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to an **Employee**;
- f) wrongful refusal to employ a potential **Employee**;
- g) defamation arising from employment related matters;

### 3.7 Court Attendance Costs

For any person described in (a) or (b) below who actually attends court as a witness in connection with a **Claim Covered** by this Policy, it is agreed that **Claims Investigation Costs** will include the following rates per day on which attendance in court is required to give evidence:

- a) Payable to any **Principal** or **Former Principal** of the **Insured**: \$500.
- b) Payable to any person who was or is an **Employee** of the **Insured**: \$250.

No **Excess** shall apply to this Section 3.

### 3.8 Advancement of Claims Investigation Costs

If **We** elect not to take over and conduct the defence or settlement of any **Claim**, **We** will pay all reasonable and necessary **Claims Investigation Costs** provided that:

- a) **We** have not already denied **Cover** under the Policy; and
- b) **Our** written consent is obtained prior to the Insured incurring such Claims Investigation Costs (such consent not to be unreasonably withheld).

**We** reserve the right to recover any **Claims Investigation Costs** paid under this Section 3.8 from the **Insured** or others **Covered** by this **Policy**:

- i. if the **Insured** makes an admission in writing of any fraudulent, dishonest, malicious or intentional conduct; or
- ii. in the event and to the extent that it is subsequently established by judgment or other final adjudication, that the **Insured** was not entitled to **Cover** under this **Policy**.

### 3.9 Compensatory Civil Penalties

Notwithstanding Section 6.10, **We Cover Claims** for compensatory civil penalties incurred in the performance or provision of **Information Technology**. **Our** total liability for the payment of compensatory civil penalties under the **Policy** shall not exceed \$250,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

However, **We** will not be liable to **Cover** the **Insured** for any compensatory civil penalty:

- a) for which **We** are legally prohibited at law from indemnifying the **Insured**;
- b) based upon, attributable to or in consequence of any:
  - i. wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any relevant legislation; or
  - ii. gross negligence or recklessness; or
  - iii. requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

### 3.10 Run-off Cover for Insured until the end of the Policy period

In the event that a **Run-Off Event** occurs to an entity which is **Covered** by this **Policy** either before or during the Period of Insurance stated in the Schedule, the **Cover** provided by this **Policy** with respect to such entity shall

continue until the expiry date of this **Policy** in respect of any **Claim** otherwise **Covered** by this **Policy** arising from any act, error or omission prior to the date of the **Run-Off Event**.

### 3.11 Loss Mitigation and Rectification

**We** will reimburse the **Insured** the direct costs and expenses incurred by the **Insured** with **Our** prior written consent (which will not be unreasonably withheld) in taking reasonable and necessary steps to rectify or to mitigate the effects of any act, error or omission of the **Insured** in the performance or provision of **Information Technology** that would otherwise result in a **Claim Covered** by the **Policy**, provided always that the **Insured** first discovers such act, error or omission during the Period of Insurance and as soon as reasonably possible notifies **Us** of such act, error or omission during the Period of Insurance;

**Our** total liability for the payment of such direct costs and expenses under the **Policy** shall not exceed \$50,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

### 3.12 Contractual Liability Defence Costs

Notwithstanding Section 6.3 (a) to (d) of the **Policy**, **We** will **Cover** the **Insured** for all legal costs and expenses which **We** consider reasonable and necessary and which are incurred with **Our** prior written consent, in defence of the **Insured** against any:

- a) legal proceeding or arbitration, cross claim or counter claim or third party or similar notice; or
- b) written or verbal demand from a third party; claiming compensation and arising out of:
  - i. a liability under a contractual warranty, guarantee or undertaking; or
  - ii. a breach of an indemnity and/or hold harmless term of a written contract;
  - iii. to the extent that such liability or breach resulted from an act, error or omission of the **Insured** in the performance or provision **Information Technology**.

**Our** total liability for the payment of such legal costs and expenses under the **Policy** shall not exceed \$100,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

### 3.13 Public Relations Cover

**We** will pay the reasonable and necessary fees, costs and expenses of a public relations consultant retained by the **Insured** with **Our** prior written consent (which shall not be unreasonably delayed or withheld) to design and implement a **Publicity Campaign** approved by **Us**, to prevent or mitigate damage to the reputation of the **Insured** in consequence of a **Claim** or **Covered Claim** arising from the performance or provision of **Information Technology**.

**Our** total liability for the payment of such fees, costs and expenses of a public relations consultant under the **Policy** shall not exceed \$25,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

Notwithstanding Item 7.2 of the Schedule, the **Excess** applicable to this Section 3.13 is \$1,000 for each and every **Publicity Campaign**.



# Section 4

## Who is Covered

### 4.1 Insured

**We Cover** the **Insured** named in the Schedule (and as defined in Section 12 of the **Policy**) for **Claims** or losses and costs of the type and on the basis specified in Section 3, arising from the performance or provision of **Information Technology** by or on behalf of the **Insured**.

The performance or provision of **Information Technology** by or on behalf of the **Insured** includes, for the purpose of this **Policy**, acts, errors or omissions of agents or consultants of the **Insured** while undertaking work which is reasonably incidental to the performance or provision by the **Insured** of **Information Technology** and for which the **Insured** is liable. Such agents and consultants, however, are not **Covered** by this **Policy**.

### 4.2 Others

In addition, **We Cover** the following for **Claims** or losses and costs of the type and on the basis specified in Section 3 of this **Policy**:

#### a) **Employees (and former Employees)**

**Employees** (and former **Employees**) of the **Insured** in respect of **Civil Liability** arising from the performance or provision of **Information Technology** but not in respect of **Claims** or losses under Section 3.2(d) of this **Policy**, (Dishonest, fraudulent, criminal or malicious acts or omissions).

#### b) **Principal's Incoming**

Notwithstanding Section 6.3(e) **Principals** of the **Insured** in respect of **Civil Liability** arising in their capacity as a principal of a prior information technology practice, disclosed in the **Proposal**, (practicing in the same **Information Technology** discipline as the **Insured**).

#### c) **Prior Corporate Entities**

Corporate entities through which the **Insured** previously traded, in the course of the performance or provision of the **Information Technology**.

This extension of **Cover**, however, is subject to receipt by **Us**, at the time of any such **Claim**, of an express written request from the named **Insured** under the **Policy** to so extend the **Policy Cover**.

#### d) **Mergers and Acquisitions**

Entities (practicing in the same **Information Technology** discipline as the **Insured**) which are merged with or acquired by the **Insured** while this **Policy** is in force. This **Cover** is only for a maximum of thirty days from the date of the merger or acquisition (or until the **Policy** expires if that is sooner). **We** may agree to extend this period (subject to additional premium) after receipt of a satisfactory underwriting submission in respect of the merged or acquired entity. The Retroactive Date for such **Cover** is deemed to be the date of the merger or acquisition by the **Insured** unless **We** otherwise agree in writing.

**We** only provide **Cover** to the persons, firms or incorporated bodies described in Section 4.2 (a) to (d) above if the persons, firms or incorporated bodies claiming the coverage each agree in writing within a reasonable time of notification of the **Claim** or **Covered Claim** to **Us**:

- i. to be bound by this **Policy**; and
- ii. to be liable individually, and together with the **Insured**, for paying the **Excess** (or any other payment due to **Us** under this **Policy**) in respect of any **Cover** provided to them under this **Policy**.

### 4.3 Cover to Estates and Legal Representatives

If an **Insured**, or anyone entitled to **Cover** under this **Policy**, dies or becomes legally incompetent or insolvent, **We Cover** the estate, legal representative or assigns of the **Insured**, or the party entitled to **Cover**, to the same extent as **Cover** would otherwise be available to the **Insured**.

### 4.4 Joint Venture

If the name of a **Joint Venture** is included in the Schedule, under 'Joint Ventures', then **We Cover** the **Insured** for the **Insured's** individual and joint liability in respect of that **Joint Venture** as otherwise **Covered** by this **Policy**. If the name of the **Joint Venture** is not included in the Schedule under 'Joint Ventures', then **We Cover** the **Insured** only for the **Insured's** individual liability as otherwise **Covered** by this **Policy** (and not for the **Insured's** joint liability).

# Section 5

## Limits to the Amount of Cover

### 5.1 The Policy Limit

The **Policy Limit** applies to any one **Claim** and, subject to this Section 5, applies to the total of all **Claims Covered** by this **Policy**.

### 5.2 Reinstatement of the Policy Limit

- a) The **Policy Limit** is the maximum amount **We** will provide **Cover** for in respect of any one **Claim**. Subject to the following limitations, **We** will provide **Cover** to a maximum of twice the **Policy Limit** for all **Claims Covered** by this **Policy**:
  - i. **We** do not, in respect of any one **Claim**, provide **Cover** for an amount in the aggregate more than the **Policy Limit** or the **Specific Cover Limit** as applicable;
  - ii. for any one **Claim**, or **Claims** (including **Covered Claims**) arising from the one act, error or omission or from a series of, or from repeated or related, acts, errors or omissions, the aggregate **Cover** under this **Policy** will not exceed the **Policy Limit** or **Specific Cover Limit** as applicable;
  - iii. if there is extra insurance, held with another insurer in excess of the applicable limit of this **Policy**, then **Cover** in excess of one **Policy Limit** or **Specific Cover Limit** as applicable (up to a maximum of twice the **Policy Limit** or **Specific Cover Limit** as applicable) is only available for so much of the liability (otherwise **Covered** by this **Policy**) which is not covered by the extra insurance.
- b) Where **Cover** is provided under this **Policy** for any **Claim**, then **Claim Investigation Costs** are paid in respect of that **Claim** up to an amount equal to the **Policy Limit** in accordance with Section 3.3 of this **Policy**. The aggregate amount **We** pay in total for **Claim Investigation Costs** for or in respect of all **Claims Covered** by this **Policy** does not exceed an amount equal to twice the **Policy Limit**.

### 5.3 Cover for Claim Investigation Costs if the Policy Limit is exceeded

If the amount that has to be paid to dispose of, settle or finalise a **Claim** exceeds the **Policy Limit**, then **We** only pay for the same proportion of the **Claim Investigation Costs** as the **Policy Limit** bears to the amount to be paid to dispose of, settle or finalise the **Claim**. But **We** never pay more than the **Policy Limit**.

### 5.4 Limit if multiple persons insured

The **Policy Limit** does not increase if there is more than one person, firm or incorporated body **Covered** under this **Policy**, or if more than one insured person, firm or incorporated body causes or contributes to the **Claim**.

### 5.5 Specific Cover Limits

If the Schedule indicates any **Specific Cover Limits** for specific types of **Cover** under this **Policy**, then these **Specific Cover Limits** apply only to **Claims** under that **Specific Cover**. The **Policy Limit** itself still applies to all other **Claims** individually and to the total of all **Claims** added together (including **Claims** for which **Specific Cover Limits** apply, which are included within and not in addition to the **Policy Limit**).

### 5.6 GST Input Tax Credits

- a) Where and to the extent that **We** are entitled to claim an Input Tax Credit for a payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make a payment of this kind, shall be deemed to be net of **Our** entitlement to the Input Tax Credit.
- b) Where and to the extent that the **Insured** is entitled to claim an Input Tax Credit for a payment required to be made by the **Insured** as an **Excess**, then the monetary limit of the **Excess** shall be deemed to be net of the entitlement of the **Insured** to the Input Tax Credit.
- c) Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Insured** is, or will be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation in relation to that acquisition, whether or not that acquisition is made.
- d) Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Insured** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation had the payment been applied to acquire such goods, services or other supply.

# Section 6

## What is Not Covered

**We** do not provide **Cover** for any of the following **Claims**, **Covered Claims** (or losses or liabilities) or any associated costs:

### 6.1 Known Claims and Known Circumstances

- a) known **Claims** (or losses) as at the inception date of this **Policy**; or
- b) **Claims** (or losses) arising from a **Known Circumstance**; or
- c) **Claims** (or losses) directly or indirectly based upon, attributable to, or in consequence of any such **Known Circumstance** or known **Claims** (or losses); or
- d) **Claims** (or losses) disclosed in the **Proposal** or arising from facts or circumstances disclosed in the **Proposal**; or
- e) if the **Policy** is endorsed or amended mid term, for any **Claim** that arose from a **Known Circumstance** (as at the effective date of the amendment/endorsement) to the extent that that **Claim** would not have been **Covered** by the **Policy** before such amendment/endorsement.

### 6.2 Foreign Courts

- a) first brought in a court outside Australia or New Zealand (or outside any country specified in the 'Jurisdictional Limits' in the Schedule); or
- b) brought in a court within Australia or New Zealand to enforce a judgment handed down in a court outside Australia or New Zealand; or
- c) where the proper law of a country other than Australia or New Zealand (or any country specified in the 'Jurisdictional Limits' of the Schedule) is applied to any of the issues in any **Claim** or **Covered Claim**, **Covered** by this **Policy**.

### 6.3 Assumed duty or obligation

- a) alleging a liability under a contractual warranty, guarantee or undertaking (unless liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- b) about circumstances where a right of contribution or indemnity has been given up by an **Insured**, but only to the extent of the prejudice suffered by **Us** in those circumstances; or
- c) about circumstances where someone has done work or provided services under an arrangement or agreement with the **Insured** which limits any potential right for the **Insured** to receive contribution or indemnity from that person, but only to the extent that **We** are prejudiced in those circumstances; or

- d) arising from any **Civil Liability** which the **Insured** agrees to accept which is more onerous than that which the **Insured** would otherwise have in providing at common law in the course of the performance or provision of **Information Technology**; or
- e) arising from any business not conducted for or on behalf of the **Insured** firm or incorporated body.

### 6.4 Related parties

- a) against the **Insured** brought by or on behalf of:
  - i. any of the persons or parties specified in Section 4 of the **Policy**; or
  - ii. any company in respect of which the **Insured** or any person or party specified in (a)(i) above holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or has an executive role; or
  - iii. any trust in respect of which the **Insured** or any person or party specified in (a)(i) above is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or
  - iv. any other person, firm or incorporated body having control of over 10% or more of the voting shares or rights or an executive role in the operation of the **Insured**.
- b) By or on behalf of the **Insured** and / or any person or entity entitled to be **Covered** under this **Policy**, against any person, firm and or incorporated body entitled to be **Covered** by this **Policy**.

### 6.5 Refund of Professional Fees, Charges and Trading Debts

- a) for the refund of professional fees or charges (by way of damages or otherwise); or
- b) for the costs and expenses incurred by or on behalf of the **Insured** in complying with any contractual obligations or making good any faulty **Information Technology**; or
- c) arising directly or indirectly from the provision of cost guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or
- d) arising from a liability to pay trading debts, trade debts or the repayment of any loan.

### 6.6 Profit

for any loss or expense incurred by or on behalf of the **Insured** (other than as **Covered** by Sections 3.3 and 3.5 of this **Policy**) which is not a liability to a third party. In particular, there is no **Cover** under this **Policy** for any component of profit derived or derivable by the **Insured** from the sale or supply of any goods, services or rights by or on behalf of the **Insured**.

### 6.7 Insolvency

directly or indirectly arising out of the **Insured's** insolvency, bankruptcy or liquidation.

## 6.8 Known Defects and Recall

- a) directly or indirectly arising from the sale, supply or distribution of **Computer Equipment** which is known or suspected by the **Insured**, (or a reasonable person in the **Insured's** professional position would have known or suspected) to be defective or ineffective or incapable of substantially fulfilling the essential purpose for which it is intended or to perform as specified, warranted (whether express or implied) or guaranteed; or
- b) for the cost of withdrawal, recall, inspection, repair, modification, replacement and loss of use of **Computer Equipment** (or of any property of which it forms a part) where such **Computer Equipment** is withdrawn from the market or public use because of a known or suspected defect, deficiency or inadequacy in that **Computer Equipment**.

## 6.9 Employers' Liability, Directors' & Officers' Liability, Occupier's Liability, Motor, Marine, etc

- a) directly or indirectly based upon, attributable to or in consequence of the **Insured's** liability as an employer or from bodily injury (including mental anguish or emotional distress), sickness, disease or death of any employee, apprentice, contractor, volunteer or any worker who is under the direction, control and/or supervision of the **Insured** or for whose workplace safety the **Insured** is responsible; or
- b) arising out of or in respect of actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any **Insured** against any **Employee** or employment applicant; or
- c) (if an **Insured** is either an incorporated body or a director or officer of an incorporated body) arising from any act, error or omission of a director or officer of that incorporated body while acting in that capacity; or
- d) arising from occupation (or alleged occupation) of land or buildings by an **Insured**; or
- e) arising from or in respect of an **Insured's** liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

## 6.10 Punitive & Exemplary Damages

for punitive, aggravated or exemplary damages or for fines or penalties. In addition, this **Policy** does not provide **Cover** for any investigation or defence costs associated with such **Claims**.

## 6.11 Intentional Damage

arising from:

- a) acts, errors or omissions by the **Insured** or any person entitled to **Cover** under this **Policy** with the intention of causing a third party loss, damage or injury, or with reckless disregard for the consequences; or
- b) any wilful breach of any statute, contract or duty by an **Insured** or any person entitled to **Cover** under this **Policy**.

## 6.12 Asbestos

which would not have arisen but for the existence of asbestos.

## 6.13 Radioactivity & Nuclear Hazards

arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear material; or
- b) the hazardous properties of any nuclear explosive, assembly or component.

## 6.14 War & Uprisings

arising directly or indirectly from:

- a) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or
- b) property being taken, damaged or destroyed by a government or public or local authority.

## 6.15 Terrorism

directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:

- a) any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or
- b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

## 6.16 Pollution

arising directly or indirectly from the discharge, dispersal, release or escape of **Pollutants** into or upon land, the atmosphere, or any water course or body of water.

## 6.17 Aircraft Technology

directly or indirectly arising out of or in any way connected to computer hardware or software or **Documents/ Data** in any aircraft, aircraft component parts or aircraft maintenance or spacecraft or other aerial device including their control or flight path.

## 6.18 Sanctions

and **We** will not be liable to provide any cover, pay any claim or provide any benefit under this **Policy** (including any refund of premium), to the extent that such cover, claim, benefit or refund may contravene or expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or any trade or economic sanctions, laws or regulations of any country.

# Section 7

## Investigation, Defence and Settlement of Claims

The **Insured** has certain responsibilities that are set out in this section and in the **Policy**. These responsibilities also apply to any person that is **Covered** by the **Policy**.

If the **Insured** does not meet these responsibilities, **We** may refuse to pay a **Claim** or **Covered Claim** or reduce **Cover** under the **Policy**. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation.

The course of action **We** take when the **Insured** fails to do any of these things will be considered in each circumstance based on what impact or effect the **Insured's** failure to do so caused or contributed to the **Claim** or **Covered Claim** or changes **Our** liability under the **Policy**.

### 7.1 We must be told about Claims

The **Insured** must tell **Us** in writing about a **Claim** or loss as soon as reasonably possible and while this **Policy** is in force. If this is not done the **Insured's** right to **Cover** under this **Policy** may be affected.

### 7.2 Claims co-operation

Each **Insured** must:

- a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen the **Insured's** liability in relation to a **Claim** (or **Covered Claim**) or loss otherwise **Covered** by this **Policy**;
- b) as soon as reasonably possible, give **Us** all the help and information that **We** reasonably require to:
  - i. Investigate and defend a **Claim** or loss; and
  - ii. Work out **Our** liability under this **Policy**.

### 7.3 We can protect Our position

When **We** receive a notification of a **Claim**, or of a fact or circumstance which may give rise to a **Claim** which may be **Covered** under this **Policy**, then **We** can take whatever action **We** consider appropriate to protect **Our** position.

This does not, however:

- a) indicate that any **Insured** is entitled to be **Covered** under this **Policy**; or
- b) jeopardise **Our** rights under the **Policy** or at law.

### 7.4 Disclosure of information to Us in respect of the Cover and the Claim (or Covered Claim)

The solicitors instructed by **Us** to act on behalf of the **Insured** for any **Claim** (or **Covered Claim**) are at liberty to disclose to **Us** any information they receive in that capacity, wherever they obtain it from, including from the **Insured**. By claiming under this **Policy**, the **Insured** (and any person entitled to **Cover** under this **Policy**) authorises such solicitors to disclose this information to **Us** and waives all claim to legal professional privilege which might otherwise prevent those solicitors from disclosing this information to **Us**.

### 7.5 We can manage the Claim (or Covered Claim) on the Insured's behalf

**We** can:

- a) take over and defend or settle any **Claim** (or **Covered Claim**) in the **Insured's** name; and
- b) claim in the **Insured's** name, any right the **Insured** may have for contribution or indemnity.

**We** will act reasonably in exercising this right. **We** will keep the **Insured** reasonably informed and updated with the progress of any such matter.

### 7.6 An Insured must not admit liability for or settle any Claim (or Covered Claim)

An **Insured** must not:

- a) admit liability for, or settle any **Claim** (or **Covered Claim**); or
- b) incur any costs or expenses for a **Claim** (or **Covered Claim**) without first obtaining **Our** consent in writing. If **Our** prior consent is not obtained, the **Insured's** right to **Cover** under this **Policy** may be affected.

### 7.7 Insured's right to contest

If an **Insured** elects not to consent to a settlement that **We** recommend and wants to contest or continue the legal proceedings, then **We** only **Cover** the **Insured** (subject to the **Policy Limit**) for:

- a) the amount **We** could have settled the matter for; less
- b) the relevant **Excess** listed in the Schedule; plus
- c) the **Claim Investigation Costs** calculated to the date the **Insured** elected not to consent to the settlement.

### 7.8 Senior Counsel

- a) Unless a Senior Counsel, that **We** and the **Insured** both agree to instruct, advises that the **Claim** proceedings should be contested, then neither **We** nor the **Insured** can require the other to contest any legal proceedings about a **Claim** if the other does not agree to do so.
- b) in formulating his or her advice, Senior Counsel must be instructed to consider:
  - i. the economics of the matter having regard to (including but not limited to):
    1. the damages and costs likely to be recovered; and
    2. the likely costs of defence; and
  - ii. the **Insured's** prospects of successfully defending the **Claim**.
- c) the cost of Senior Counsel's opinion is to be taken as part of the **Claim Investigation Costs**.
- d) if Senior Counsel advises that the matter should be settled and if the terms of settlement which **We** recommend are within limits which are reasonable (in Senior Counsel's opinion and in the light of the matters he/she is required to consider), then:
  - i. the **Insured** cannot (subject to Section 7.7) object to the settlement; and
  - ii. the **Insured** will be required to pay any applicable **Excess** listed in the Schedule as soon as reasonably possible.

## 7.9 Payments to settle potential Claims

Any money **We** pay to settle anything which might give rise to a **Claim**, is taken to be:

- a) a payment to settle a **Claim**; and in addition,
- b) a payment for the purpose of calculating the total of all **Claims** under this **Policy**.

## 7.10 Recovering money from Employees

**We** must not recover any amount paid out as a **Claim** or loss under this **Policy** from any **Employee** or former **Employee** of the **Insured** unless the **Claim** or loss arose from dishonest, fraudulent, criminal or malicious acts or omissions of the **Employee** or former **Employee**.

## 7.11 Offsetting of costs & expenses the Insured owes Us against what We owe the Insured

If **We** incur costs or expenses above **Our** liability under the **Policy** for **Claim Investigation Costs**, then the **Insured** must pay whatever amount is above that liability as soon as reasonably possible after **We** ask for it. **We** can offset that payment due from the **Insured** against (and deduct that amount from) any amount **We** must pay to or for the **Insured** under this **Policy**.

## 7.12 The Excess

- a) **We** only **Cover** the **Insured** (up to the **Policy Limit**) for that part of the **Covered Claim** above the **Excess**.
- b) there are different **Excesses** that may be applicable, depending on the type of **Covered Claim** involved:
  - i. the **Insured** must pay the amount of the **Excess** for Australia and New Zealand jurisdictions specified in the Schedule if the **Covered Claim** arises under the jurisdiction of an Australian or New Zealand court. The **Insured** must also pay this **Excess** when **We** provide **Cover** for the **Claim Investigation Costs** of this **Covered Claim** if the Schedule states 'Costs inclusive'. There is no **Excess** for **Claim Investigation Costs** when **We** **Cover** an **Insured** for this **Covered Claim** if the Schedule states 'Costs exclusive'.
  - ii. the **Insured** must pay the amount of the **Excess** for other jurisdictions specified in the Schedule if the **Covered Claim** arises under the jurisdiction of a court other than of Australia or New Zealand. The **Insured** must also pay this **Excess** when **We** provide **Cover** for **Claim Investigation Costs** for this **Covered Claim**.
  - iii. the **Insured** must pay the amount of **Excess** for costs of **Enquiries** specified in the Schedule when **We** provide **Cover** for legal costs and expenses associated with an **Enquiry** which **We** **Cover** under Section 3.5 of this **Policy**.

- iv. the **Insured** must pay the amount of **Excess** for 'Employment Practices Liability' specified in the Schedule when **We** provide **Cover** for an Employment Practices Liability **Claim** which **We** **Cover** under Section 3.4 of this **Policy**. The **Insured** must also pay this **Excess** when **We** provide **Cover** for **Claim Investigation Costs** for this **Covered Claim**.

- v. the **Insured** must pay only one **Excess** for all **Covered Claims** or losses **Covered** by this **Policy** arising from the same act, error or omission.

- c) in the event of a **Claim**, **Covered Claim** or loss arising from a series of, or from repeated or related, acts, errors or omissions, then an **Excess** shall apply in respect of each such act, error or omission.

- d) where the **Excess** is indicated in the **Policy** Schedule as 'Costs inclusive', the amount of the **Excess** is exclusive (i.e. net) of any GST payable in respect of legal or similar investigation or defence costs.

## 7.13 Loss Prevention

The **Insured** shall, as a condition to **Cover** under this **Policy**, take all reasonable steps to prevent any act, error, omission or circumstance which may cause or contribute to any **Claim** or loss which may be **Covered** under this **Policy**.

## 7.14 Other Insurance Which May Cover The Risk

The **Insured** must, as soon as reasonably possible, advise **Us** in writing of any insurance already effected or which may subsequently be effected covering, in total or in part and whether absolutely or contingently, the risk, or any part of it, **Covered** by this **Policy**.

## 7.15 Material Change in the Risk

The **Insured** must as soon as reasonably possible advise **Us** in writing of any material change in the risk **Covered** by this **Policy**.

# Section 8

## Special Provisions for Dishonesty and Fraud

- 8.1** When the **Claim** under Section 3.2(d), involves theft or misappropriation of money, then **We** only provide **Cover** if:
- the **Insured** kept a separate trust account for that money, and the account was audited at least annually by a qualified independent accountant; and
  - all cheques prepared on that trust account are required to be signed by a **Principal** or two authorised people;
- 8.2** The **Insured** must take all reasonable precautions to prevent any loss and continue to perform all the supervision, controls, checks and audits reasonably practical to avoid or lessen a **Claim Covered** by Section 3.2(d).
- 8.3** **We** deduct from any money **We** pay for a **Claim** or loss under Section 3.2(d):
- the amount of any money which the **Insured** would have paid to the fraudulent, dishonest, criminal or malicious person entitled to **Cover** under this **Policy**, if they had not been fraudulent, dishonest, criminal or malicious; and
  - the amount of any money of the person referred to in paragraph (a) above which the **Insured** holds (if **We** can do so by law).
- 8.4** Notwithstanding Section 3.2(d), there is no **Cover** under this **Policy** to any person entitled to indemnity under this **Policy**, for any **Claim** or loss directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions which the **Insured** or that person had knowledge, or had reason to suspect, at or prior to the time of such acts or omissions, and failed to take any reasonable action to prevent such acts or omissions or any loss arising therefrom.
- 8.5** There is no **Cover** under this **Policy** for any **Claim** or loss arising from or related to any dishonest, fraudulent, criminal, malicious acts, errors or omissions other than pursuant to Section 3.2(d) of this **Policy**.

# Section 9

## Additional Special Provisions for Employment Practices Liability Cover

In relation to Section 3.4, 'Employment Practices Liability Cover' only:

### 9.1 Loss

'**Loss**' means the amount payable in respect of a **Claim** made against the **Insured** and any of its **Employees** under a contract of service and shall include damages, judgments, settlements, interest, costs, defence costs and back pay where reinstatement by a court or tribunal is ordered. **Loss** excludes any amount which the **Insured** is or was required to pay pursuant to a specific obligation imposed under a contract of employment, employment agreement, or pursuant to statute, award or otherwise.

### 9.2 Claim

'**Claim**' means the receipt by the **Insured** of:

- any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against the **Insured**; or
- any written demand from a third party claiming compensation against the **Insured**.

### 9.3 Special Exclusions

**We** do not **Cover** any of the following **Claims** (or losses or liabilities) or legal proceedings or any associated costs:

- Strikes, lock-outs etc.**

**Claims** brought about by, contributed to by, or which involve acts committed during or in connection with any industrial dispute (whether between employer and **Employee** or between **Employees** or their unions or generally), strike, picket, lock-out, go slow or work to rule action;
- Insolvency**

**Claims** brought after the appointment of any liquidator, receiver and manager, official manager, administrator, official trustee in bankruptcy, or trustee administering a compromise or scheme of arrangement of the **Insured** but this exclusion is not to apply to **Claims** notified prior to the appointment;
- Workers Compensation/Occupational Health and Safety Legislation**

**Claims** brought about by, contributed to by or which involve claims arising under, or pursuant to, or in relation to any Workers' Compensation or Occupational Health and Safety Acts or similar legislation;

- d) **Bodily Injury**  
**Claims** arising from bodily injury (except emotional distress or mental anguish), sickness, disease or death of any person;
- e) **Physical Modifications to Premises**  
**Claims** for the cost of physical modifications to premises, plant or equipment owned or occupied by the **Insured**;
- f) **Unfair Contract Claims**  
**Claims** or proceedings for or in respect of a contract of employment alleged to be unfair.

# Section 10

## Other Matters

### 10.1 The Proposal

The **Proposal We** were given by or on behalf of the **Insured** before this **Policy** commenced, is taken to be a separate **Proposal** for each natural person or entity **Covered** under this **Policy**.

If there is any fact or misstatement in the **Proposal** that relates to one natural person who is an **Insured, We** do not attribute it to any other natural person who is an **Insured**, for the purposes of this **Policy**.

### 10.2 Authority to accept notices & to give instructions

The persons listed as the **Insured** in the Schedule are appointed individually and jointly as agent of:

- a) each **Insured**; and
- b) any person who is entitled to a benefit under this **Policy** (when they request **Cover** or suffer a loss under this **Policy**) in all matters relating to this **Policy**, and to **Claims** or losses **Covered** by it.

In particular (but without limitation) the persons listed in the Schedule, as the **Insured**, are agents for the following purposes:

- i. to give and receive notice of **Policy** cancellation, to pay premiums and to receive any return premiums that may become due under this **Policy**; and
- ii. to accept endorsements or other notices provided for in this **Policy**; and
- iii. to give instructions to solicitors or counsel that **We** appoint or agree to, and to receive advice from them and to act on that advice; and
- iv. to consent to any settlement **We** recommend; and
- v. to do anything **We** or **Our** legal advisers think might help with the procedures set out in this **Policy** for settling and defending **Claims** or **Covered Claims**; and
- vi. to give **Us** information relevant to this **Policy**, which **We** can rely on when **We** decide whether to accept the risk, and set the **Policy** terms or the premium.

### 10.3 Singular & Plural

The singular includes the plural and the plural includes the singular, except if the context requires otherwise.

### 10.4 Payment in Australian dollars in Australia

All premiums and **Claims** must be paid in Australian dollars in Australia.

### 10.5 Law of the Policy

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued, which is stated in the Schedule. The courts of that place have jurisdiction in any dispute about or under this **Policy**.



# Section 11

## Cancelling the Policy

### 10.6 Territory Covered by this Policy

**Cover** under this **Policy** is not restricted by where anything giving rise to the **Claim** occurred. However, **Our Cover** is restricted to **Claims** brought under the legal jurisdiction of the courts of Australia and New Zealand (or any country specified in the Schedule, under the heading 'Jurisdictional Limits').

### 10.7 Schedule must be included

This **Policy** is only legally enforceable if it includes a Schedule signed by one of **Our** officers.

### 10.8 Paragraph Headings

The paragraph headings in this **Policy** are included for the purpose of reference only and do not form part of this **Policy** for interpretation purposes.

### 11.1 The Insured Can Cancel the Policy

The **Policyholder** is entitled to cancel this **Policy** from the date **We** receive a written request to cancel the **Policy**, provided that any such cancellation is subject to **Us** retaining premium to reflect **Our** pro-rata 'time on risk' and any applicable statutory charges.

### 11.2 We can cancel the Policy

- a) **We** may cancel this **Policy** at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation, by giving notice in writing to the **Insured** of the date from which cancellation is to take effect.
- b) **We** may deliver this notice to the **Insured** personally, or post it by mail (to the address the **Insured** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that the **Insured** received the notice.
- c) Under Section 60 of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation, **We** may cancel this **Policy** at any time where:
  - i. it is in force by virtue of Section 58 of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation; or
  - ii. it is an interim contract of general insurance.

**11.3** After cancellation pursuant to Section 11.2, **We** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties.

# Section 12

## Words With Special Meanings

**12.1** Whenever the following words are used in this **Policy** in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the **Policy** Schedule.

### 12.2 Civil Liability

Liability for the compensatory damages, costs and expenses which a civil court orders the **Insured** to pay on a **Claim** (as opposed to criminal liability or penalties). It includes the legal costs of the person making the **Claim**, for which the **Insured** becomes liable.

### 12.3 Claim

The receipt by the **Insured** of:

- a) any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against the **Insured**; or
- b) any written or verbal demand from a third party claiming compensation against the **Insured**.

### 12.4 Claim Investigation Costs

The legal costs and expenses of investigating, defending or settling any **Claim** or **Covered Claim**, which would be **Covered** by this **Policy** at the time the legal costs and expenses arise. (Refer Section 3.3, **Claim Investigation Costs**.)

### 12.5 Computer Equipment

Any combination or part of computer data, computer hardware, computer operating system, computer application, computer software and computer chip including microprocessor chip or embedded control logic.

### 12.6 Cover

Reference to '**Cover**' and '**Covered**' under this **Policy** shall mean indemnity and indemnity shall not include any component of profit.

### 12.7 Covered Claim

The **Claims**, liabilities, losses, costs or circumstances which may give rise to a **Claim**, which **We** may agree to **Cover** under this **Policy**.

### 12.8 Documents/Data

Documents or data of any nature including magnetic tape, other ways of recording information for a computer, numbers, text, sounds, electronically processed images, electronic data material; but not including bearer bonds, coupons, stamps, bank notes, currency notes or negotiable instruments.

### 12.9 Employee

A natural person who is not a **Principal**, but who is or was at the time of the relevant act, error or omission giving rise to the **Claim**:

- a) has entered into a contract of service with the **Insured** firm or incorporated body and is or was remunerated by the **Insured** for that service; or
- b) is a party who is neither a party to a contract of service with the **Insured** firm or incorporated body, nor an independent contractor, but a party to a contract for service with the **Insured** firm or incorporated body for the provision of services to the **Insured** for reward;

and in respect of both (a) and (b) above under the **Insured's** direction, control and supervision in the performance or provision of **Information Technology**.

### 12.10 Enquiry (or Enquiries)

Any legal or quasi legal enquiry (into a matter arising directly out of the performance or provision of **Information Technology** and such matter is the subject of and is not excluded from **Cover** under this **Policy**) in respect of which the **Insured** is legally required to participate by reason of the fact that the body conducting the enquiry (including a regulatory, licensing or statutory body) has legal jurisdiction over the **Insured** (either by reason of a statutory power or by reason of the **Insured's** membership of a professional association which has the power to discipline its members).

### 12.11 Excess

The part the **Insured** may be required to pay of each **Covered Claim**. It is described in more detail in Section 7.12, the **Excess**.

### 12.12 Former Principal

A person who has been, but is no longer:

- a) a **Principal** of an **Insured**; or
- b) the **Principal** of any firm or incorporated body declared in the **Proposal**, which previously performed or provided the **Information Technology** business which is now undertaken by the **Insured**.

### 12.13 Information Technology:

- a) In respect of hardware, firmware or software any of the following services, advice, specification or work performed or provided by the **Insured** in the course of the **Insured's** business:
  - i. analysis;
  - ii. design;
  - iii. integration;
  - iv. maintenance;
  - v. programming;
  - vi. data processing;
  - vii. data warehousing;
  - viii. computer facilities management;
  - ix. repair;
  - x. technical support;
  - xi. telecommunication and data communication services; and
  - xii. as specified in the **Policy** Schedule; and

- b) Any **Computer Equipment** manufactured, installed, assembled, repaired, serviced, treated, sold, supplied, distributed, licensed or shared in relation to, or in connection with the performance or provision by the **Insured** of any of the activities specified in part (a) of this Section.

#### 12.14 Insured

Each of the following, individually and jointly:

- a) each person, firm or incorporated body identified in the Schedule as an **Insured** and each current or **Former Principal** of any such firm or incorporated body; and
- b) any entity which performs or provides **Information Technology** and which is created and controlled, while this **Policy** is in force, by anyone identified in the Schedule as an **Insured**; and
- c) anyone who becomes a **Principal** of the **Insured** while this **Policy** is in force (but only in respect of work undertaken for or on behalf of the **Insured** firm or incorporated body).

#### 12.15 Intellectual Property

Copyright, design, patent, trademark or moral right including false attribution of authorship (under the Copyright Act 1968 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation) or circuit layout rights.

#### 12.16 Joint Venture

An undertaking (regardless of what it is called) which the **Insured** carries on together with someone else who is not otherwise **Covered** under this **Policy**.

#### 12.17 Known Circumstance

Any fact, situation or circumstance which:

- a) an **Insured** was aware of at any time before this **Policy** began or before this **Policy** was amended/endorsed; or
- b) a reasonable person in the **Insured's** professional position would have thought, at any time before this **Policy** began or before this **Policy** was amended/endorsed,

might result in someone making an allegation against an **Insured** in respect of a liability, loss or costs, that might be **Covered** by this **Policy** or the amendment/endorsement to this **Policy**.

#### 12.18 Policy

The insurance **Policy** made up of:

- a) this **Policy** document;
- b) the Schedule to this **Policy**;
- c) the endorsements, if any, contained in the Schedule.

#### 12.19 Policy Limit

The limit stated in the Schedule as the 'Total Sum Insured'. See also Section 5 of this **Policy**.

#### 12.20 Pollutants

Shall mean any solid, liquid, gases or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkali, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

#### 12.21 Principal

A sole practitioner, a partner of a firm, or a director of a company, which firm or company is **Covered** by this **Policy**.

#### 12.22 Proposal

The written **Proposal** form (the date of which is stated in the Schedule) together with any supplementary material completed by or on behalf of the **Insured**, that was given to **Us**, and relied on by **Us** to effect this **Policy**.

#### 12.23 Publicity Campaign

Means a publicity and/or public relations campaign designed and implemented by a public relations consultant.

#### 12.24 Run-Off Event

Means an **Insured** entity ceasing to exist or operate, or being disposed of or merged with or acquired by another entity.

#### 12.25 Specific Cover

The **Cover** outlined in Section 3.4 and 3.5 of this **Policy**.

#### 12.26 Specific Cover Limit(s)

The limit of **Our** insurance **Cover** for each of the matters listed in the Schedule under '**Specific Cover Limits**'. See Section 3.4 and 3.5 of this **Policy**.

#### 12.27 Terrorism

Terrorism includes 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; or
- b) involves damage to property; or
- c) endangers life other than that of the person committing the action; or
- 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.

#### 12.28 We or Us or Our

Insurance Australia Limited ABN 11 000 016 722.



# Broadform Public and Products Liability Insurance – Policy 2

## Section 1 How to Read This Insurance Policy

**1.1** Some of the words in this insurance **Policy** have special meanings. These meanings can be found in Section 8 of the **Policy** (“Words with special meanings”). If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Policy Schedule**.

## Section 2 The Insurance Contract

**2.1** **We** agree to provide the cover described in this **Policy** upon full payment of the Gross Premium as stated in the **Policy Schedule**.

**2.2** Before this **Policy** came into effect, **We** were provided with information by or on behalf of the **Insured** in the **Proposal**, and perhaps in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms.

**2.3** If any of that information is wrong or false, it may affect entitlement to cover under this **Policy**.

**2.4** This **Policy** is in force for the **Period of Insurance**.

**2.5** If full payment of the Gross Premium as stated in the **Schedule** is not made, there is no cover.

**2.6 Responsibilities and notification of change of material risk**

- a) The **Named Insured** must as soon as reasonably possible provide **Us** with written notice of:
  - i. every change which materially varies any of the facts or circumstances existing at the commencement of this **Policy** that comes to the **Named Insured's** knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be the **Named Insured's** knowledge; and
  - ii. if the **Named Insured** does not provide such notification before the happening of an **Occurrence** giving rise to a claim under this **Policy** then, subject to the Insurance Contracts Act, 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation, **We** may refuse to pay a claim, either in whole or in part.

- b) When **We** receive notification of a change, **We** may decide to either:
  - i. continue cover with no change to the premium payable;
  - ii. reduce the premium payable and return any refund to the **Named Insured**;
  - iii. charge the **Named Insured** an additional premium (the **Named Insured** can cancel the **policy** if the additional premium is not acceptable); or
  - iv. cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation.
- c) It is important for the **Named Insured** to know that **We** may make changes to this **Policy** as a result of a change in information. When there is a change, **We** will inform the **Named Insured**.
- d) If the **Named Insured** does not notify **Us** of a material change, **We** may refuse to pay a claim or reduce **Cover** under the **Policy**. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation.
- e) The course of action **We** take when the **Named Insured** fails to notify **Us** of a material change will be considered in each circumstance based on what impact or effect the **Named Insured's** failure to do so caused or contributed to a claim or an **Occurrence**.

# Section 3

## The Cover We Provide

### 3.1 The cover We provide

Having paid the Gross Premium stated in the **Schedule** and subject to the terms, conditions and exclusions contained in or endorsed on this **Policy**, **We** will pay to or on behalf of the **Insured** all sums provided by the **Policy** which the **Insured** shall become legally liable to pay as compensation for **Personal Injury**, **Property Damage** or **Advertising Liability** caused by an **Occurrence** during the **Period of Insurance** within the Geographical Limits as stated within Section 5.1 of the **Policy** and happening in connection with the **Insured's Business**.

### 3.2 Limit of Liability

**Our** liability in respect of any one **Occurrence** shall not exceed the **Policy Limit** stated in the **Schedule** for **Public Liability**, **Products Liability** and **Advertising Liability**. All **Personal Injury**, **Property Damage** and **Advertising Liability** arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one **Occurrence**.

**Our** total aggregate limit during any one **Period of Insurance** for all claims arising out of **Products Liability** and **Advertising Liability** shall not exceed the **Policy Limit**.

Provided that the **Policy Limit** in respect of **Occurrences** in the United States of America or Canada or their protectorates or territories will be inclusive of Section 4 Supplementary Payments and will apply in the aggregate to all claims in any one **Period of Insurance**.

# Section 4

## Supplementary Payments

### 4.1 We will pay in addition to the applicable **Policy Limit**:

- a) all expenses incurred by **Us**, all costs taxed against the **Insured** in any suit **We** defend, and all interest on the entire amount of any judgement which occurs after the entry of the judgement and before **We** have paid or tendered or deposited in Court that part of the judgement which does not exceed the limit of **Our** liability thereon;
- b) expenses incurred by the **Insured** for the first aid to others at the time of an **Occurrence** for **Personal Injury** covered by this **Policy**;
- c) reasonable expenses incurred by the **Insured** at **Our** request in assisting **Us** in the investigation or defence of any claim excluding loss of earnings.

### 4.2 We shall have the right and duty to defend any suit against the **Insured** seeking compensation on account of such **Personal Injury** or **Property Damage** even if the allegations of the suit are groundless, false or fraudulent and may make such investigation and settlement of any claim or suit as it deems expedient. **We** shall not be obliged to pay any claim or judgement or to defend any suit after **We** have discharged **Our** liability under this **Policy**.

# Section 5

## Geographical Limits

### 5.1 This **Policy** applies in respect of **Occurrences** anywhere in the world but does not apply to or insure any liability or claims arising from or in respect of:

- a) the **Business** carried on by the **Insured** at or from any premises situated in the United States of America or Canada; or
- b) any contract entered into by the **Insured** under the terms of which work is to be performed in the United States of America or Canada; or
- c) any exports by the **Insured**, it's agents or servants to the United States of America or Canada.

# Section 6

## What is Not Covered

We shall not be liable to indemnify the **Insured** in respect of:

### 6.1 Employer's Liability

- a) Liability for **Personal Injury** to any person arising out of, or sustained in the course of, the employment of such person in the **Insured's** service, or through the breach of any duty owed to that person, where the **Insured**:
  - i. is indemnified or entitled to be indemnified (either in whole or in part) in respect for claims for damages under a policy of insurance (which expression includes arrangements made by the **Insured** to provide accident insurance for the **Insured's** workers under a licence to self insure) arranged (whether required by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
  - ii. would have been indemnified or entitled to be indemnified had the **Insured** arranged a policy of insurance as required by such legislation.
- b) Liability for **Personal Injury** to any person arising out of, or sustained in the course of, the employment of such person in the **Insured's** service in Western Australia, other than a person of whom the **Insured** is deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Injury Management Act 1981 (WA) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation;
- c) Liability for mental anguish suffered by any person arising out of, or in the course of, that persons employment by or service to the **Insured**;
- d) Liability for **Personal Injury** arising out of the harassment, libel, slander, defamation or humiliation of, or discrimination against, any person while in the **Insured's** service or while employed by the **Insured**;
- e) Liability of a type in respect of which indemnity previously would have been provided under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current **Period of Insurance**; and
- f) Any other liability imposed by the provisions of any workers compensation legislation or accident compensation legislation or industrial award, agreement or determination.

This exclusion does not apply to the liability of others assumed by the **Insured** under a written contract where the contractual liability has been notified and specifically accepted by **Us**.

### 6.2 Motor Vehicles

Liability to pay compensation for:

- a) **Personal Injury** arising out of the ownership, operation or use by the **Insured** of any **Vehicle** where such **Personal Injury** occurs in circumstances in which such **Vehicle** is required by law to have compulsory insurance against such **Personal Injury**, or where such insurance cover is in force; or
- b) **Property Damage** arising out of the ownership, operation or use by the **Insured** of any **Vehicle** that is registered.

Provided that Exclusions 6.2 shall not apply to **Vehicles** whilst being operated or used by the **Insured** as a **Tool of Trade**.

### 6.3 Aircraft and Watercraft

Liability to pay compensation for **Personal Injury** or **Property Damage** arising from the ownership, possession, operation, use or legal control by the **Insured** of:

- a) any **Aircraft**; or
- b) any **Watercraft** or vessel exceeding eight (8) metres in length.

### 6.4 Property in Physical or Legal Control

Liability to pay compensation for **Property Damage** to:

- a) property owned by the **Insured**; or
- b) property leased, rented or in the physical or legal control of the **Insured**.

Provided that this Exclusion shall not apply to liability for **Property Damage** to:

- i. premises which are leased or rented by the **Insured** for the purpose of the **Insured's Business**;
- ii. vehicles (not belonging to or used by or on behalf of the **Insured**) in the physical or legal control of the **Insured** where such property damage occurs whilst any such vehicle is in a car park owned or operated by the **Insured**;
- iii. any property not under lease or rental agreement in the **Insured's** physical or legal control up to a limit of \$100,000 (or any other amount if specified in the **Schedule**) for any one **Occurrence**.

### 6.5 Faulty Workmanship

Any liability for the cost of performing, completing, correcting or improving any work done or undertaken by the **Insured**.

### 6.6 Damage to Insured's Products

Liability to pay compensation for:

- a) physical injury to or destruction or loss of the **Insured's Products** or any part of those **Products** arising out of them or any part of them;
- b) loss of use of any tangible property caused by physical injury to or destruction or loss of the **Insured's Products** or any part of those **Products** arising out of them or any part of them.

This Exclusion does not apply to those **Products** repaired, serviced or treated by the **Insured** after such **Products** were originally sold, supplied or distributed by the **Insured**.

## 6.7 Product Recall and Repair

Liability to pay compensation for damages claimed for the withdrawal, inspection, repair, replacement or loss of use of the **Insured's Products**.

## 6.8 Aircraft Products

Any liability arising out of the selling, leasing, hiring or manufacture and/or supply of parts and/or products that are used with the **Insured's** knowledge in **Aircraft** or any aerial device.

## 6.9 Contractual Liability

Liability to pay compensation for **Personal Injury** or **Property Damage** where the liability has been assumed solely under an agreement unless such liability:

- a) would have attached in the absence of such agreement; or
- b) is specifically allowed by **Our** written endorsement; or
- c) is assumed by the **Insured** under a warranty of fitness or quality, or is implied by law, in respect of the **Insured's Products**.

## 6.10 Professional Liability

Liability to pay compensation for the rendering of or failure to render professional advice or services by the **Insured** or any error or omission on the part of the **Insured** connected with the rendering or failure to render professional advice or services. However, this Exclusion does not apply to the rendering or failure to render professional medical advice by **Medical Persons** employed by the **Insured** to provide first aid and other claimed services on the **Insured's** premises.

## 6.11 Defamation

Liability to pay compensation arising out of the publication or utterance of a libel or slander:

- a) made prior to the **Period of Insurance**; or
- b) made at the direction of the **Insured** with the knowledge of the falsity thereof; or
- c) related to advertising, publishing or printing, broadcasting or telecasting activities conducted by or on behalf of the **Insured**.

## 6.12 Fines and Punitive Damages

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

## 6.13 Pollution

a) Liability to pay compensation for **Personal Injury**, **Property Damage** or **Advertising Liability** caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater) but this exclusion does not apply if the actual discharge, dispersal, release or escape:

- i. is neither reasonably expected nor intended by the **Insured**; and,

ii. is the consequence of a sudden and instantaneous cause which takes place at a clearly identifiable point in time during the **Period of Insurance**;

- b) Liability for any costs or expenses incurred in the preventing, removing, nullifying, or cleaning up any discharge, dispersal, release or escape as described in (a) above, unless such costs or expenses are consequent upon an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identifiable point in time during the **Period of Insurance** and results in **Personal Injury**, **Property Damage** or **Advertising Liability** and is not otherwise excluded by this **Policy**; or

Provided that **Our** total aggregate liability during any one **Period of Insurance** in respect of all claims arising out of such **Personal Injury**, **Property Damage** or **Advertising Liability** or such costs or expenses shall not exceed the **Policy Limit** stated in the **Schedule**.

## 6.14 Asbestos

Liability to pay compensation for **Personal Injury**, **Property Damage** or **Advertising Liability** caused by, arising out of, or in connection with, the use or presence of asbestos.

## 6.15 Nuclear

Liability to pay compensation for **Personal Injury** or **Property Damage** of whatsoever nature directly or indirectly caused or contributed to by or arising from ionising radiation, or contamination by radioactivity from nuclear fuel or from any nuclear waste. For the purpose of this Exclusion combustion shall include any self-sustaining process of nuclear fission.

## 6.16 War

Liability to pay compensation for **Personal Injury** or **Property Damage** directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (with or without the declaration of war), civil war, rebellion, insurrection, military or usurped power.

## 6.17 Terrorism

Liability to pay compensation for **Personal Injury** or **Property Damage** directly or indirectly caused by or contributed to, by, or arising from or happening through or in connection with any act of **Terrorism**.

In accordance with the Terrorism and Cyclone Insurance Act 2003 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation, this Exclusion will not apply in respect of an act deemed by the Federal Treasurer to be a declared terrorist incident.

## 6.18 Information Technology

Any liability arising in connection with:

- a) computer virus; or
- b) the design of any computer hardware or software.

## 6.19 Advertising Liability

Liability to pay compensation for **Advertising Liability** arising from:

- a) offences committed prior to the **Period of Insurance**;
- b) offences made at the direction of the **Insured** with knowledge of the illegality or falsity thereof;



- c) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- d) incorrect description of the price of the **Insured's Products**, goods or services;
- e) infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the **Insured's Products**, goods or services sold, offered for sale or advertised, but this Exclusion does not apply to titles or slogans;
- f) failure of the **Insured's Products**, goods or services to conform with advertised performance, quality, fitness or durability;
- g) any **Insured** whose business is advertising, broadcasting, publishing or telecasting.

## 6.20 Sanctions

**We** will not be liable to provide any cover, pay any claim or provide any benefit under this **Policy** (including any refund of premium), to the extent that such cover, claim, benefit or refund may contravene or expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or any trade or economic sanctions, laws or regulations of any country.

# Section 7

## Other Matters

The **Insured** has certain responsibilities that are set out in this section and in the **Policy**. These responsibilities also apply to any person that is covered by the **Policy**.

If the **Insured** does not meet these responsibilities, **We** may refuse to pay a claim or reduce what **We** pay for a claim. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation.

The course of action **We** take when the **Insured** fails to do any of these things will be considered in each circumstance based on what impact or effect the **Insured's** failure to do so caused or contributed to a claim under the **Policy**, an **Occurrence**, or changes **Our** liability under the **Policy**.

### 7.1 Claims Control

Notice in writing shall be given to **Us** as soon as reasonably possible of every **Occurrence**, claim, writ, summons, impending proceedings, impending prosecution and/or inquest in respect of which there may arise a liability under this **Policy**.

- a) The **Insured** shall not without **Our** written consent make any admission, offer, promise or payment in connection with any **Occurrence** or claim and if **We** so desire **We** shall be entitled to take over and conduct in the **Insured's** name the defence or settlement of any claim and **We** may make such investigation, negotiation and settlement of any claim or suit as **We** deem expedient.
- b) The **Insured** shall use the best endeavours to preserve any property, products, appliances, plant or other things, provided it is safe to do so, and which might prove necessary or useful by way of evidence in connection with any claim and so far as may be reasonably practicable no alteration or repair shall be effected without **Our** consent and until **We** have had the opportunity of inspection, if **We** ask, at any reasonable place and time.
- c) **We** shall be entitled to prosecute in the **Insured's** name at **Our** own expense and for **Our** own benefit any claim for indemnity for damages or otherwise.
- d) **We** will act reasonably in exercising **Our** discretion in the conduct of any proceedings in connection with any claim and the **Insured** shall give information and assistance as **We** may reasonably require in the prosecution, defence or settlement of any claim. If **We** make a request for documents and information, **We** will only ask the **Insured** for documents and information that is relevant to the claim, and **We** will explain why it is needed. **We** will keep the **Insured** reasonably informed and updated with the progress of proceedings.
- e) In the event of an **Occurrence**, the **Insured** shall promptly take at the **Insured's** expense all reasonable steps to prevent other **Personal Injury**, **Property Damage** or **Advertising Liability** arising out of the same or similar conditions, but such expense shall not be recoverable under this **Policy**.

- f) **We** shall be entitled to attend any inquest in respect of which there may arise liability under this **Policy**.

successor, equivalent or similar legislation, **We** may refuse to pay a claim, either in whole or in part.

## 7.2 Discharge of Liabilities

**We** may at any time pay to the **Insured** in respect of all claims against the **Insured** arising directly or indirectly from the one source or original cause the amount of the liability or such other amount specified in respect thereof (after deduction of any sum or sums already paid by **Us** which sum or sums would reduce the amount of **Our** unfulfilled liability in respect thereof) or any lesser sum for which the claim or claims can be settled and upon such payment **We** shall relinquish conduct or control and all **Our** liability will be extinguished under the **Policy** in connection with such claim or claims, including Supplementary Payments as described in Section 4, except for costs charges or expenses recoverable from the **Insured** in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently) or incurred by **Us** or by the **Insured** with **Our** written consent prior to the date of such payments.

## 7.3 Reasonable Care

The **Insured** shall:

- a) take all reasonable precautions to:
  - i. prevent **Personal Injury, Property Damage or Advertising Liability**;
  - ii. prevent the manufacture, sale or supply of defective products; and
  - iii. comply and take reasonable steps to ensure that the **Insured's** workers, servants and agents comply with all relevant Statutory Obligations, By-Laws or Regulations imposed by any Public Authority in respect thereof for the safety of persons and property;
- b) at the **Insured's** own expense take reasonable action to trace, recall or modify any products containing any defect or deficiency which defect or deficiency the **Insured** has knowledge of or has reason to suspect.

## 7.4 Cross Liabilities

Where more than one party comprises the **Insured** each of the parties shall be considered as a separate and distinct unit and the word **Insured** shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties provided that nothing in this clause shall result in the increase of **Our** liability under this **Policy** in respect of any **Occurrence** or **Period of Insurance**.

## 7.5 Alteration of Risk

The **Insured** must as soon as reasonably possible provide **Us** with written notice of:

- a) every change which materially varies any of the facts or circumstances existing at the commencement of this **Policy** that comes to the **Insured's** knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be the **Insured's** knowledge; and
- b) if the **Insured** does not provide such notification before the happening of an **Occurrence** giving rise to a claim under this **Policy** then, subject to the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment,

## 7.6 Subrogation

In the event of payment under this **Policy** to or on behalf of the **Insured**, **We** shall be subrogated to all the **Insured's** rights of recovery against all persons and organisations and the **Insured** shall execute and deliver instruments and papers and do all that is reasonably required in connection with the conduct of proceedings. **We** will act reasonably in exercising **Our** discretion in the conduct of any legal proceedings and in the settlement of any claim while **We** conduct any recovery action. **We** will keep the **Insured** reasonably informed and updated with the progress of proceedings. **We** will only request information and assistance where relevant to handling the claim and will explain why the information and assistance is required.

## 7.7 Other Insurances

If the **Insured** makes a claim under this **Policy** in respect of an **Occurrence** recoverable under this **Policy** which **Occurrence** is or may be covered in whole or in part by any other insurance, then the **Insured** must advise **Us** of the full details of such other insurance when making a claim under this **Policy**.

Subject to the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation, **We** reserve the right to seek contribution from the other insurer(s).

## 7.8 Insurance Arranged By Principal

If the **Insured** enters into an agreement with any other party (who for the purpose of this clause is called the "Principal") pursuant to which the Principal has agreed to provide a policy of insurance which is intended to indemnify the **Insured** for any loss or liability arising out of the performance of the said agreement then **We** will (subject to the terms and conditions of this **Policy**) only indemnify the **Insured** for loss or liability not covered by the policy of insurance provided by the Principal.

## 7.9 Cancellation

- a) The **Named Insured** is entitled to cancel this **Policy** from the date **We** receive a written request to cancel the **Policy**, provided that any such cancellation is subject to the following terms: the premium for the period to cancellation shall be adjusted on a pro-rata basis plus applicable statutory charges. (Note stamp duty for a mid term cancellation is not refundable in some states);
- b) **We** may cancel this **Policy** at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation, by giving notice in writing to the **Insured** of the date from which cancellation is to take effect;
- c) **We** may deliver this notice to the **Insured** personally, or post it by mail (to the address the **Insured** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that the **Insured** received the notice;
- d) Under Section 60 of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation, **We** may cancel this **Policy** at any time where:

- i. it is in force by virtue of Section 58 of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation; or
  - ii. it is an interim contract of general insurance.
- e) After cancellation pursuant to Section 7.9, **We** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties.
- f) When the premium is subject to adjustment, cancellation will not affect the **Insured's** obligation to supply such information as **We** may require for the adjustment of the premium. Cancellation will not affect the **Insured's** obligations to pay the amount of adjustment applicable up to the date of cancellation.

#### 7.10 Inspection and Premium Adjustment

**We** shall be permitted but not obligated to inspect the **Insured's** property and operations at any reasonable time and place we choose. 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 the **Insured** or others, to determine or warrant that such property or operations are safe. **We** may examine and audit the **Insured's** books and records at a reasonable time and place we choose during the **Period of Insurance** and extensions thereof and within three (3) years after the final termination of this **Policy**, as far as they relate to the subject matter insured.

If the first or renewal premium for the **Policy** or part thereof shall have been calculated on estimates, for example relating to the activities, turnover and or size of the business furnished by the **Insured**, then the **Insured** shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow **Us** to inspect such records. The **Named Insured** shall within thirty (30) days after the expiry of each **Period of Insurance** furnish to **Us** such particulars and information as **We** may reasonably require. The premium for such period shall thereupon be adjusted and any difference paid or allowed to the **Insured** as the case maybe subject to receipt and retention of any minimum premium charged by **Us**.

#### 7.11 Insurance Contracts Act

Nothing contained in this **Policy** shall be construed to reduce or waive either the **Insured's** or **Our** privileges, rights or remedies available under the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation.

#### 7.12 Agreement Limiting Rights

If the **Insured** has entered into any agreement which excludes or limits a right which the **Insured** may have against any party, then, subject to the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation, **We** will not be liable for any claim under the **Policy** to the extent of such exclusion or limitation.

#### 7.13 Paragraph Headings

The paragraph headings in this **Policy** are included for the purpose of reference only and do not form part of this **Policy** for interpretation purposes.

#### 7.14 Australian Jurisdiction

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued, which is stated in the **Schedule**. The courts of that place have jurisdiction in any dispute about or under this **Policy**.

#### 7.15 Goods and Services Tax

Where **We** make a payment under this **Policy** for the acquisition of goods, services or other supply **We** will reduce the amount of the payment by the amount of any Input Tax Credit the **Insured** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation, in relation to that acquisition, whether or not that acquisition is actually made.

Where **We** make a payment under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of payment by the amount of any Input Tax Credit that the **Insured** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation had the payment been applied to acquire such goods, services or other supply.

# Section 8

## Words With Special Meaning

**8.1** Whenever the following words are used in this **Policy** in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the **Policy Schedule**.

**8.2 Advertising Liability** means:

- a) libel, slander or defamation;
- b) infringement of copyright or of title or slogan;
- c) piracy or unfair competition or idea misappropriation under an implied contract;
- d) invasion of privacy;

committed or alleged to have been committed during the **Period of Insurance** in any advertisement, publicity article, broadcast or telecast and arising out of the **Insured's** advertising activities or any advertising activities conducted on behalf of the **Insured**, in the course of advertising the **Insured's Products**, goods or services.

**8.3 Aircraft** means any vessel, hovercraft, craft or thing designed to transport persons or property in or through the air or space.

**8.4 Business** means the business stated in the **Schedule** and shall include the activities of any canteen, social, sports, welfare, and /or child care organisation or first aid, medical, fire or ambulance services.

**8.5 Excess** means the amount payable by the **Insured** in respect to each **Occurrence** and includes all **Supplementary Payments**.

**8.6 Insured**

Each of the following is insured under this **Policy** to the extent set forth below:

- a) The **Named Insured**;
- b) All subsidiary companies (now or hereafter constituted) of the **Named Insured** whose place of incorporation is within Australia and whose business falls within the definition of the **Named Insured's Business**;
- c) Any director, executive officer, employee, partner or shareholder of the **Named Insured** or of any company designated in paragraph (b) above but only while acting within the scope of their duties in such capacity;
- d) Any party with whom the **Named Insured** (or any company designated in paragraph (b) above) has entered into an agreement for the purpose of the **Business**, but only for **Occurrences** for which the **Named Insured** above would be liable in the absence of the agreement and only to the extent that the agreement requires the **Named Insured** to indemnify that party in relation to the **Occurrence**;

- e) any incorporated or unincorporated association or organisation including their office bearers and members organised by the **Insured** (other than an **Insured** designated in paragraph (d) above) or their employees with the consent of the **Insured** for the purpose of providing canteen, social, sports, welfare and or child care organisations or first aid, medical, fire or ambulance services for such employees.

**8.7 Insured's Products** means anything, including any packaging or container thereof (after it has ceased to be in the possession or control of the **Insured**) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by the **Insured**.

**8.8 Medical Persons** means medical doctors, medical nurses, dentists and first aid attendants.

**8.9 Named Insured** means the entity or natural person specified in the **Schedule**.

**8.10 Occurrence** means an event including continuous or repeated exposure to substantially the same general conditions, which causes **Personal Injury** or **Property Damage** or **Advertising Liability** none of which is expected or intended from the standpoint of the **Insured**.

**8.11 Period of Insurance** means the duration of this **Policy** as stated in the **Schedule**.

**8.12 Personal Injury** means:

- a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury;
- b) false arrest, false imprisonment, malicious prosecution and humiliation;
- c) libel, slander, defamation of character;
- d) wrongful entry or wrongful eviction or other invasion of the right of private occupancy;
- e) assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing or eliminating danger to persons or property,

which occurs during the **Period of Insurance**.

**8.13 Policy Limit** means the amount(s) specified as such in the **Schedule**.

**8.14 Policy** means the insurance **Policy** made up of:

- a) this **Policy** document; and
- b) the **Schedule** to this **Policy**; and
- c) the endorsements, if any, contained in the **Schedule**.

**8.15 Products Liability** means **Personal Injury** or **Property Damage**:

- a) caused by any defect, or the harmful nature of any of the **Insured's Products**;
- b) resulting from any defect or deficiency in any direction or advice given at any time or intended to be given by the **Insured** concerning the use or storage of the **Insured's Products**.

**8.16 Property Damage** means:

- a) physical injury to or destruction or loss of tangible property which occurs during the **Period of Insurance** and any loss of use of that property resulting therefrom; or
- b) loss of use of tangible property which has not been physically injured or destroyed or lost which is caused by physical injury to or destruction or loss of other tangible property which occurs during the **Period of Insurance**.

**8.17 Proposal**

The written **Proposal** form (the date of which is stated in the **Schedule**) together with any supplementary material completed by or on behalf of the **Insured**, that was given to **Us**, and relied on by **Us** to effect this **Policy**.

**8.18 Public Liability** means liability covered by this **Policy** but does not include **Products Liability**.

**8.19 Schedule** means new **Policy** schedule, renewal schedule or endorsement schedule issued by **Us**.

**8.20 Terrorism** means an act, which may include but is not limited to an act involving the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, to fear.

**8.21 Tool of Trade** means any vehicle which has a tool or plant forming part of or attached to or used in connection with it while such tool or plant is engaged on a work site, but does not include:

- a) **Vehicles** whilst in transit to or from any worksite; or
- b) **Vehicles** used for transport or haulage.

**8.22 Vehicle** means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.

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

**8.24 We or Us or Our**

Insurance Australia Limited ABN 11 000 016 722.

# Notes





**Royal Automobile Club  
of Victoria (RACV) Ltd**

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**RACV Member Line**  
Call 13 RACV (13 7228)

**Complaints**  
Call 1800 045 517

**Privacy**  
13 RACV (13 7228)  
[racv.com.au/privacy](http://racv.com.au/privacy)

**[racv.com.au](http://racv.com.au)**