

General Liability

Insurance Policy

Table of Contents

Calliden General Liability Insurance Policy

Introduction & Important Information	2
Definitions	5
1. Insuring Clauses	7
2. Limit of Liability	8
3. Extensions	8
4. Exclusions	9
5. Conditions	13

Introduction

An Introduction to your General Liability Insurance Policy

This is your General Liability Insurance Policy. Please read it carefully to ensure it meets your requirements. If you wish to vary your cover or make further inquiries, please contact your broker. The Policy, policy schedule, and any endorsements are to be read together. The information contained in the policy schedule sets out the cover you have selected and the Policy sums insured and limits of liability.

Your General Liability Insurance Policy has been underwritten by the following underwriter:

Calliden Insurance Limited
Level 7, 100 Arthur Street
North Sydney NSW 2060
Tel: 02 9551 1111
www.calliden.com.au

This product is distributed by Brooklyn Underwriting Pty Ltd trading as an authorised representative of General Security Australia Insurance Brokers Pty Ltd ABN 34 084 437 196, AFSL 238477 (Brooklyn). Brooklyn acts under a binding authority given to it by the insurer to administer and issue policies, alterations and renewals. In all aspects of this policy, Brooklyn acts as an agent for the insurer and not for you.

General Insurance Code of Practice

Calliden is a signatory to the General Insurance Code of Practice (Code). The Code aims to raise standards of service between insurers and their customers. Calliden's service standards are in accordance with the Code.

For any information about the Code, including a copy of the Code, contact us or the Financial Ombudsman Service on 1300 78 08 08 or visit www.codeofpractice.com.au

Important Information

This Policy is a legal contract between you and us. You have paid, or agreed to pay, us the Premium and we provide the cover specified in this Policy and as set out in your Schedule.

The terms, conditions and provisions of the insurance we offer you are set out in this Policy. It is important that you:

- read all of the Policy before you buy it to make sure that it gives you the protection you need
- are aware of the limits on the cover provided and the amounts we will pay you (including any Excess that applies)
- are aware of the definitions in your Policy. You will find definitions throughout your Policy.

You must comply with all provisions of this Policy, otherwise we may be entitled to refuse to pay a claim or reduce the amount you are entitled to receive.

The Policy is in force for the Period of Insurance set out in your Schedule or until cancelled.

For the limits on the cover provided:

- some of these will be stated in the Policy itself (these are our standard policy limits); and
- the remainder will be stated in your Schedule.

In some circumstances the terms and conditions of this Policy may be amended by endorsement. If your Policy is endorsed you will receive notification of the endorsement.

In issuing this Policy to you, we have relied upon the proposal form you have already completed.

Your Duty of Disclosure

This Policy is subject to the Insurance Contracts Act 1984. Under that Act you have a Duty of Disclosure.

Before you take out insurance with us, you have a duty to tell us of everything that you know, or could reasonably be expected to know, that is relevant to our decision to insure you and to the terms of that insurance. If you are not sure whether something is relevant you should inform us anyway.

You have the same duty to inform us of those matters before you renew, extend, vary, or reinstate your contract of insurance.

Your duty however does not require disclosure of matters that:

- reduce the risk
- are common knowledge
- we know or, in the ordinary course of our business, ought to know, or
- we have indicated we do not want to know.

Important Information (cont'd)

If you do not comply with your duty of disclosure, we may be entitled to:

- reduce our liability for any claim
- cancel the contract
- refuse to pay the claim
- avoid the contract from its beginning, if your non-disclosure was fraudulent.

Taxation Information

The amount of cover available under this Policy excludes Goods and Services Tax (GST).

If you are not registered for GST, in the event of a claim we will reimburse you the GST component in addition to the amount that we pay.

The amount that we are liable to pay under this Policy will be reduced by the amount of any input tax credit that you are or may be entitled to claim for the supply of goods or services covered by that payment.

If you are entitled to an input tax credit for the Premium you must inform us of the extent of that entitlement at or before the time you make a claim under this Policy. We will not indemnify you for any GST liability, fines or penalties that arise from or are attributable to your failure to notify us of your entitlement (or correct entitlement) to an input tax credit on the Premium.

If you are liable to pay an Excess under this Policy, the amount payable will be calculated after deduction of any input tax credit that you are or may be entitled to claim on payment of the Excess.

If you are unsure about the taxation implications of this Policy, you should seek advice from your accountant or tax professional.

Privacy

Calliden respects your privacy and operates at all times in accordance with its privacy policy. This privacy notification provides a summary of how Calliden treats your privacy, and it is recommended that you read the policy in conjunction with this notice.

Calliden collects personal information to assess your request for insurance, to administer your policy, provide other insurance services as requested by you, and also to notify you about other Calliden services or promotions from time to time. At the time of collecting your information we will inform you of the purpose for the collection and the consequences if you choose not to provide the information.

In order to provide its insurance services Calliden may need to share your information with third parties including your agent or broker and Calliden's reinsurers and claims providers (for a full list see Calliden's privacy policy).

In accordance with Calliden's privacy policy you may obtain access at any time to information that Calliden or its service providers hold on you. If you would like to contact Calliden about privacy, or would like to obtain a copy of the privacy policy you may do so through one of the following means:

- obtain the privacy policy online a visit www.calliden.com.au
- by phone 02 9551 1111
- by email to privacy@calliden.com.au
- by letter to Privacy Officer, PO Box 348, Milsons Point NSW 1565.

Dispute Resolution Process

How You Can Resolve a Complaint You Have With Us

If you would like to make a complaint, we will do everything we can to try to resolve it as quickly and fairly as possible. The following paragraphs provide details on how you can lodge your complaint and how Calliden will try to resolve it.

You may contact us at any time if you are dissatisfied with any matter relating to your insurance with Calliden, including:

- our decision on your claim;
- our handling of your claim;
- the service of our representatives, assessors, loss adjusters or investigators; and
- your insurance Policy.

Contact Us

- If you have a complaint regarding your claim, please contact your claims consultant.
- If you have a complaint regarding your insurance Policy, please contact us on 02 9551 1111 and we will try to resolve your complaint straight away.
- You can write to us at:
 - Fax: 02 9551 1155
 - Address: PO Box 348, Milsons Point NSW 1565

Important Information (cont'd)

How We Resolve Complaints

- We will address all complaints, except where specific circumstances apply, in accordance with Calliden's Complaints Handling Process. This process is compliant with the Insurance Council of Australia's Code of Practice. Both the Code of Practice and our Complaints Brochure, which contains a guide to our process, are available upon request.
- We will handle all complaints without cost to you.
- A complaints consultant will be assigned to the management of your complaint and will acknowledge your complaint within 2 business days of receipt. If further information is required to consider the complaint, it will be requested at this time.
- The complaints consultant will aim to resolve your complaint within a further 13 business days. In certain circumstances a longer period may be required, and we will request a later response date.
- The outcome of the complaint will be advised to you in writing, stating our reasons and any corrective action that will be undertaken.

If Your Complaint is Still Unresolved

If we cannot resolve your complaint within 15 business days or you are not happy with our response to your complaint, you can seek an external review via our external dispute resolution scheme, administered by the Financial Ombudsman Service (FOS).

This national scheme is for consumers, free of charge and is aimed at resolving disputes between insureds and their insurance companies.

For more information call 1300 78 08 08 or visit www.fos.org.au

If the FOS is unable to address your complaint then Calliden may be able to provide you with details of an alternative external dispute resolution service.

Definitions

The intended meaning of some of the important words used in this **Policy** are shown below:

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

Aircraft

Any craft or object designed to travel through air or space or intended to be propelled on a cushion of air over the surface of land or water, other than model aircraft.

Advertising Injury

Injury arising out of:

- a) libel, slander or defamation;
- b) infringement of any patent, copyright, title, trademark or slogan;
- c) unfair competition, piracy or misappropriation of ideas; or
- d) invasion of privacy;

committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and caused by or arising out of any advertising activities conducted by **you** or on **your** behalf, during the **Period of Insurance**.

Business

The business, trade or profession specified in the **Schedule** including:

- a) the provision and management of canteen, social, sports, welfare and child care facilities by **you** for **your** employees' benefit; and
- b) your ownership or occupation of **your Premises**.

Electronic Data

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

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

Excess

The amount which **you** have to pay towards the cost of any claim under this **Policy**, excluding costs and expenses incurred by **you** in the investigation, settlement or defence of any claim for compensation.

Limit of Liability

The amount specified in the **Schedule** or elsewhere in the **Policy**.

Occurrence

Any:

- a) event or series of events, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** and/or **Property Damage** and/or **Advertising Injury** neither expected nor intended by **you**; or
- b) intentional act, by **you** or at **your** direction, resulting in **Personal Injury** but only if such **Personal Injury** arises solely from the use of reasonable force for the purpose of protecting persons or property.

Period of Insurance

The period specified in the **Schedule**.

Personal Injury

- a) Bodily injury, sickness or disease, including death, shock, fright, mental anguish, mental injury or disability;
- b) unlawful arrest, wrongful detention or false imprisonment;
- c) wrongful entry or eviction or other invasion of privacy; or
- d) a publication of a libel or utterance of a slander or other defamatory material.

Policy

This **Policy** document, its **Schedule** and the endorsements, if any, noted in the **Schedule** or granted by **us** after inception of the **Policy**, and the information given to **us** on behalf of **you** in the **Proposal**.

Pollutants

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

Premises

The **Business** premises specified in the **Schedule**.

Definitions (cont'd)

Premium

The amount payable by **you** for the insurance provided by **us** under this **Policy** including all applicable taxes, duties and imposts.

Product

Any thing or things (including any packaging, containers, directions, markings, instructions, warnings or specifications) manufactured or deemed manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by **you** or on **your** behalf in the course of **your Business** after physical possession has been passed to others.

Products Liability

Liability for **Personal Injury** or **Property Damage** arising out of **your Product** but only if the **Personal Injury** or **Property Damage** occurs away from **your Premises** or **Premises** leased or rented to **you** and after physical possession of **your Product** has been passed to others.

Property Damage

- a) Physical loss, destruction or damage to tangible property, including loss of use of that property at any time resulting therefrom; or
- b) Loss of use of tangible property not physically lost, destroyed or damaged provided that such loss of use is caused by or arises out of an **Occurrence**.

Proposal

The form completed by **you** giving answers, particulars and statements in respect of the insurance required by **you**.

Schedule

The certificate issued by **us** which forms part of this **Policy** and shows **your** policy number, the **Premium**, the insurance cover selected by **you** and any special terms and conditions or endorsements.

Territorial Limit

Anywhere in the world other than the United States of America or Canada or their territories, protectorates or dependencies subject to subsection 4.22.

Vehicle

Any machine on wheels or self-laid tracks, designed to be propelled by other than manual or animal power and any trailer or other attachment designed to be drawn by any such machine but not including an **Aircraft** or **Watercraft**.

Watercraft

Any vessel, craft, device or thing designed to float on or in water or to travel on or through water other than model boats.

We, us or our

Calliden Insurance Limited (Calliden) (ABN 47 004 125 268, AFSL No 234438).

You or your

Each person, company or other entity specified in the **Schedule** as being insured under this **Policy** also includes:

- a) all subsidiary companies incorporated within the **Territorial Limit** and notified to **us**, existing before the inception date of this **Policy** and declared in the **Proposal**;
- b) every past or present or future director, partner, proprietor, officer, executive or employee (including the spouse of any such person while accompanying such person on any commercial trip or function in connection with **your Business**) or volunteer while such persons are acting for or on behalf of **you**;
- c) every person, corporation, organisation, trustee or estate to who or to which **you** are obligated by law to provide insurance such as is afforded by this **Policy**;
- d) every office bearer, member, employee or voluntary helper of **your** canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, welfare and/or child care facilities;
- e) the estates, legal representatives, heirs or assigns of:
 - i. any deceased or insolvent persons; or
 - ii. persons who are unable to manage their own affairs by reason of mental disorder or incapacity;

who would otherwise be indemnified by this **Policy**, but only in respect of liability incurred by such persons as described in clauses e)i. and e)ii. above;

while acting in such capacity.

1. Insuring Clauses

1.1 The Cover

We insure **you** against all sums which **you** become legally liable to pay as compensation in respect of:

- a) **Personal Injury**;
- b) **Property Damage**; and/or
- c) **Advertising Injury**;

first occurring during the **Period of Insurance** within the **Territorial Limit** as the result of an **Occurrence** in connection with **your Business**.

We will not indemnify **you** for the matters excluded by Section 4.

You must comply with the conditions set out in Section 5.

Certain words used in this **Policy** have the meanings given to them in the Definitions section.

Any indemnity provided by **us** to **you** is provided in consideration of payment of the **Premium** by **you** and is subject to the terms and conditions of this **Policy** including the **Limit of Liability** and the **Excess**.

1.2 Costs and Expenses

In addition to the cover provided under subsection 1.1, but subject always to section 2, **we** will:

- a) defend in **your** name and on **your** behalf, any claim or suit against **you** alleging such **Personal Injury**, **Property Damage** or **Advertising Injury** and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent;
- b) pay all charges, expenses and legal costs incurred by **us** and/or by **you** with **our** prior written consent in the investigation, defence or settlement of any claim for compensation for which **you** are entitled to indemnity under this **Policy**, including loss of salaries or wages as a direct result of **your** attendance at hearings or trials at **our** request;
- c) pay all legal costs taxed or assessed against **you** in any claim referred to in paragraph (b) and all interest accruing from the entry of judgment against **you** until **we** have paid, tendered or deposited in court such part of the judgment as does not exceed the **Limit of Liability**;
- d) pay reasonable expenses incurred by **you** for rendering first aid and/or surgical or medical relief to others at the time of any **Personal Injury** (other than any medical expenses, which **we** are prevented from paying by any law).

- e) pay reasonable costs and expenses incurred by **you** as a result of providing any form of temporary protection to prevent **Personal Injury** or **Property Damage** as required by any relevant Government or other Statutory Authority. Provided that the **Limit of Liability** in respect of coverage provided under subsection 1.2 (e) is \$50,000 for any one occurrence and in the aggregate, during the **Period of Insurance**.

2. Limit of Liability

Except as provided in paragraph (a), **our** total liability under this **Policy** to indemnify **you**:

- i. in respect of any one **Occurrence** will not exceed the **Limit of Liability**; and
 - ii. for all claims in respect of **Products Liability** during the **Period of Insurance** is limited in the aggregate to the **Limit of Liability**.
- a) Subject to paragraph (b), **we** will indemnify **you** for up to twenty five percent (25%) of the **Limit of Liability** in addition to the **Limit of Liability** for amounts that **we** pay to **you** or on **your** behalf under subsection 1.2:
- i. in respect of any one **Occurrence**; and
 - ii. shall be limited in aggregate for all claims in respect of **Products Liability** during the **Period of Insurance**;
- b) If a judgment or an amount required to settle a claim exceeds the **Limit of Liability**, **our** liability to pay costs and expenses under subsection 1.2 is limited to the proportion the **Limit of Liability** bears to the amount required to be paid to dispose of the claim and in all cases will not exceed the amount specified in paragraph a);
- c) All **Personal Injury** and **Property Damage** consequent upon or attributable to one source or originating cause shall be deemed one **Occurrence**. Any entitlement to indemnity under this **Policy** for such an **Occurrence** will be determined by reference to the date on which the **Personal Injury** or **Property Damage** from the one source or originating cause first occurred.

3. Extensions

3.1 New Subsidiaries

The cover provided by this **Policy** will extend to any subsidiary company incorporated within the **Territorial Limit** that is incorporated or acquired by **you** during the **Period of Insurance** and relating to **your Business** but only in respect of liability for **Personal Injury** or **Property Damage** occurring in the period commencing on the date of incorporation or acquisition by **you** and ending:

- a) 14 days from the date of incorporation or acquisition by **you**; or
- b) if **you** have notified **us** in writing of the incorporation or acquisition within 60 days and **you** have provided all information that **we** require and **you** have agreed to any additional terms and conditions and **Premium** that **we** may require, on such date as we may in **our** absolute discretion determine,

but in any event no cover is provided by this subsection beyond the end of the **Period of Insurance**.

3.2 Principals

We insure **you** for liability to indemnify any principal with whom **you** have entered into a contract or agreement for the performance of work if the terms of the contract or agreement require that **you** must indemnify the principal but only:

- a) in relation to work carried out by **you**;
- b) if the liability would have been implied by law in the absence of the contract or agreement; and
- c) in respect of claims for which **you** would be entitled to indemnity under this **Policy** if the claim was made against **you**.

4. Exclusions

This insurance does not apply to, and **we** will not indemnify **you** for, any actual or alleged liability:

4.1 Aircraft and Watercraft

caused by or arising directly or indirectly out of or in connection with:

- a) the ownership, possession, use, existence, working, navigation, operation, repair, maintenance, servicing, construction or installation by **you** or on **your** behalf of any **Aircraft**; or
- b) the ownership, possession, use, existence, working, navigation, operation, repair, maintenance, servicing, construction or installation by **you** or on **your** behalf of any **Watercraft** exceeding 8 metres in length, except where such **Watercraft** are owned or operated by others and used by **you** for business entertainment; or
- c) the use of **your Product** with **your** knowledge in the construction, operation, maintenance, servicing or repair of any **Aircraft**; or
- d) the use of **your Product** with **your** knowledge in the construction, operation, maintenance, servicing or repair of any **Watercraft** exceeding 8 metres in length.

4.2 Advertising Liability

for **Advertising Injury**:

- a) resulting from statements made at **your** direction with knowledge that such statements are false;
- b) resulting from incorrect description of **Products** or services; or
- c) incurred by any insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

4.3 Alteration, Additions and Construction

caused by or arising directly or indirectly out of or in connection with the construction, erection, demolition, underpinning, weakening or removal of support, alteration or installation work by **you** or on **your** behalf except to a building owned or occupied by **you** for the purpose of **your Business** where the total cost of all work is less than \$100,000.

4.4 Asbestos

whatsoever for any claim or claims in respect of **Personal Injury** or **Property Damage** directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

4.5 Computers and Technology

- a) for **Property Damage** to **Electronic Data** or caused by or arising directly or indirectly out of the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **Electronic Data** or any error in creating, amending, entering, deleting or using **Electronic Data** or total or partial inability or failure to receive, send, access or use **Electronic Data** for any time at all or any consequential loss resulting therefrom;
- b) caused by or arising directly or indirectly out of or in connection with the use of an intranet or the Internet (including but not limited to the World Wide Web and electronic mail systems) by **you** or on **your** behalf; or
- c) caused by or arising directly or indirectly out of or in connection with computer hardware or software that does not meet Year 2000 Conformity, within the meaning of that term in Miscellaneous Paper SAA/SNZ MP77:1998 "A Definition of Year 2000" published by Standards Australia and as amended or substituted from time to time.

4.6 Contractual Liabilities

assumed by **you** under any contract or agreement except where the liability would have been implied by law in the absence of the contract or agreement.

4.7 Defamation

caused by or arising directly or indirectly out of or in connection with publication of a libel, utterance of a slander or defamation:

- a) first made prior to the **Period of Insurance**;
- b) made by you or with **your** authority, with knowledge of its falsity or defamatory character; or
- c) in any way related to advertising, broadcasting, publishing or telecasting activities conducted by **you** or on **your** behalf, including but not limited to the publication of material on the Internet.

4.8 Design

caused by or arising directly or indirectly out of or in connection with the design, plan, formula or specification of **your Product** or any instructions, warnings, advice or information on the characteristics, use, storage or application of **your Product**.

4. Exclusions (cont'd)1

4.9 Employer's Liability

- a) for **Personal Injury** to any **Worker** in respect of which **you** are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Workers' Compensation or Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected.

Provided that this **Policy** will respond to the extent that **your** liability would not be covered under any such policy, fund, scheme or self insurance arrangement had **you** complied with its obligations pursuant to such law;

- b) imposed by:
- i. the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement;
 - ii. any law relating to Employment Practices.

For the purpose of Exclusion 4.9 the term 'Worker' means any person deemed to be employed by **you** pursuant to any Workers' Compensation Law. Voluntary workers, secondees and work experience students (if any) will not be deemed to be **your** Employees.

4.10 Fines, Penalties, Punitive, Exemplary or Aggravated Damages

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

4.11 Liquidated Damages

arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

4.12 Fraudulent and Intentional Conduct

caused by or arising directly or indirectly out of or in connection with:

- a) dishonest, fraudulent, criminal or malicious conduct;
- b) wilful breach of statute; or
- c) conduct intended to cause **Personal Injury** or **Property Damage** (or conduct with reckless disregard for **Personal Injury** or **Property Damage**)

by **you** or anyone acting on **your** behalf or with **your** knowledge or connivance.

4.13 Loss of Use

for loss of use of tangible property (not physically lost, destroyed or damaged) caused by or arising directly or indirectly out of:

- a) delay or lack of performance by **you** or on **your** behalf under any contract or agreement; or
- b) the failure of **your Product** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by **you**.

4.14 Molestation

caused by or arising directly or indirectly out of or in connection with the molestation of, or physical or psychological interference with, any person.

4.15 Money and Securities

for loss or damage to cash, securities, bullion, gold or negotiable instruments owned by **you** or for which **you** have assumed a responsibility.

4.16 More Specific Insurance

for which **you** are or would be entitled to indemnity under one or more of the specific **Policies** stated in the **Schedule**.

4.17 Pollution

for:

- a) **Personal Injury** or **Property Damage** or financial loss or loss of, damage to, or loss of use of property directly or indirectly arising out of the actual, alleged or threatened discharge, dispersal, release, seep age, migration, emission or escape of **Pollutants**; or
- b) the cost of testing, monitoring, containing, removing, nullifying or cleaning up **Pollutants** except liability otherwise excluded under paragraph (a) or (b) that:
 - i. arises from a sudden identifiable, unintended and unexpected happening, which takes place in its entirety at a specific time and place; and
 - ii. is indemnified in not more than one annual **Period of Insurance**.

4.18 Prior Knowledge

caused by or arising directly or indirectly out of or in connection with a fault, defect, **Occurrence**, **Personal Injury** or **Property Damage** known, or deemed by law to be known, by **you** prior to the **Period of Insurance**.

4. Exclusions (cont'd)

4.19 Product Defect, Product Recall and Faulty Work

- a) for **Property Damage** to **your Product** caused by or arising directly or indirectly out of or in connection with any defect or lack of quality in **your Product**, the harmful nature of **your Product** or unsuitability or ineffectiveness of **your Product**;
- b) caused by or arising directly or indirectly out of or in connection with the withdrawal, inspection, removal, reinstallation, repair, replacement or loss of use of **your Product**, or of any property of which **your Product** forms a part, if **your Product** is recalled from the market or from use because of any known or suspected defect or deficiency in it; or
- c) for the cost of repairing, correcting, performing or improving any work or service undertaken or provided by **you** or on **your** behalf, provided that this exclusion 4.19(c) does not apply to **Personal Injury** or **Property Damage** resulting from such work or service undertaken or provided by **you** or on **your** behalf.

4.20 Professional Liability

caused by or arising directly or indirectly out of or in connection with the rendering of or failure to render professional advice or service by **you** or on **your** behalf or an error or omission in connection therewith, but this exclusion does not apply to:

- a) the rendering of or failure to render professional medical advice by medical persons employed by **you** to provide first aid and other medical services on **your Premises**;
- b) **Personal Injury** or **Property Damage** arising from the rendering of or failure to render professional advice or service, provided such professional advice or service is not given for a fee;
- c) advice given in respect of the use or storage of **your Products**.

4.21 Property in your Physical or Legal Control

for **Property Damage** to property owned, leased or hired by or under hire purchase or on loan to **you** or otherwise in **your** physical or legal care, custody or control, other than:

- a) buildings and their contents at **your Premises**, which are leased or rented to you for **your Business**;
- b) employees' and visitors' clothing and personal effects;

- c) **Vehicles** (not owned or used by **you** or on **your** behalf or liability for **Vehicles** not otherwise excluded by this policy) whilst in a car park owned or operated by **you** other than for reward;
- d) other property not owned by **you**, leased to **you** or rented to **you** but temporarily and legally occupied by **you** or in **your** possession or control, however **we** will not indemnify **you** for damage to that part of such property on which **you** are working or have been working and which arises out of that work.

The **Limit of Liability** in respect of coverage provided under subsection 4.21 (a) to (d) is \$500,000 for any one occurrence and for all claims during the **Period of Insurance** in the aggregate inclusive of all costs, expenses and interest as set out in subsection 1.2 of this **Policy**.

4.22 Territorial Limit

- a) arising out of claims made or actions brought in the United States of America, Canada or their territories, protectorates, or dependencies coming within the jurisdiction of the courts of the United States of America, Canada or their territories, protectorates or dependencies; or
- b) arising out of claims and actions to which the laws of the United States of America, Canada or their territories, protectorates, or dependencies apply.

Provided that:

- c) subsections 4.22 (a) and 4.22 (b) above do not apply to **Personal Injury** or **Property Damage** occurring during business visits to the United States of America, Canada or their territories, protectorates, or dependencies by directors or employees, who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in the United States of America, Canada or their territories, protectorates or dependencies.

The **Limit of Liability** in respect of coverage provided under subsection 4.22 (c) is inclusive of all costs, expenses and interest as set out in subsection 1.2 of this **Policy**.

4.23 Tobacco and Smoking

caused by or arising directly or indirectly out of or in connection with the inhalation or ingestion of, or exposure to, tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

4. Exclusions (cont'd)

4.24 Underground Services

caused by or arising directly or indirectly out of or in connection with **Property Damage** to any underground services except where you have contacted the appropriate authorities to verify the existence and location of underground services and have obtained from them a plan detailing the location of such services prior to commencement of work.

4.25 Vehicles

caused by or arising directly or indirectly out of or in connection with the ownership, possession, maintenance, use or control of any **Vehicle**:

- a) which is registered or required to be registered by any legislation or competent authority, except where such liability is caused by:
 - i. the loading or unloading of any **Vehicle** or the delivery or collection of goods to or from any **Vehicle**, where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare declared as a designated road; or
 - ii. the use of any mechanical tool or plant attached to or forming part of any **Vehicle**, whilst the **Vehicle** is being used at **your Premises** or another work site for the purpose of **your Business** but not whilst the **Vehicle** is in transit or is being used for transport or haulage; or
- b) where such liability is insured or required to be insured by any legislation or competent authority.

4.26 War, Terrorism and Nuclear Material

- a) caused by or arising directly or indirectly out of or in connection with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion, coup, military rising, insurrection, military or usurped power, rebellion, revolution, confiscation, nationalisation, requisition or looting, sacking or pillage, destruction of or damage to property by or under the order of any government or local authority;
- b) for death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

- c) for death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any **Act of Terrorism**;
- d) caused by or arising directly or indirectly out of or in connection with nuclear weapons material or ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste or from the combustion of nuclear fuel or from any other self-sustaining process of nuclear fission.

4.27 Welding and Allied Processes

caused by or arising directly or indirectly out of or in connection with non-compliance by **you** or by others working on **your** behalf with all applicable laws and standards relating to welding and allied processes including, but not limited to, AS 1674.1-1997 "Safety in welding and allied processes – Fire precautions" published by Standards Australia and as amended or substituted from time to time.

As a precondition to **your** entitlement to indemnity under this **Policy**, **you** must comply with these conditions. If **you** do not comply, **we** reserve **our** rights to refuse to pay a claim or to reduce (in some cases to nil) the amount **you** would otherwise be entitled to receive.

5. Conditions

As a precondition to **your** entitlement to indemnity under this **Policy**, **you** must comply with these conditions. If **you** do not comply, **we** reserve **our** rights to refuse to pay a claim or to reduce (in some cases to nil) the amount **you** would otherwise be entitled to receive.

5.1 Claims Procedures

In circumstances that give rise to or may give rise to a claim under this **Policy**:

- a) **you** must notify **us** as soon as possible of all such circumstances and provide all reasonable information and assistance that **we** may require, including details of any other insurance or indemnity to which **you** may be entitled in relation to the **Occurrence** giving rise to the claim;
- b) **you** must not admit liability or settle or attempt to settle any claim without **our** written consent; and
- c) **we** may takeover and conduct, in **your** name, the defence or settlement of any claim and **we** will have full discretion in the conduct of any proceedings in connection with a claim;

5.2 Discharge of Liabilities

- a) **We** may at any time pay to **you**, or on **your** behalf, in respect of any claim:
 - i. the amount of the **Limit of Liability**; or
 - ii. any lesser sum for which the claim can be settled;after deduction of any sum already paid as compensation in respect of the claim.
- b) Upon the payment set out in paragraph (a), **we** will relinquish control of the claim and be under no further liability under this **Policy** in connection with the claim except for costs, charges and expenses:
 - i. recoverable from **you** in respect of the period prior to the date of the payment, whether or not pursuant to an order made subsequently; and
 - ii. incurred by **us** or incurred by **you** with **our** written consent prior to the date of the payment;
- c) **We** will not pay for any claim or judgment or defend any claim after **our Limit of Liability** has been exhausted.

5.3 Premium Adjustment

- a) Unless otherwise indicated, the **Premium** for **your** insurance under this **Policy** is adjustable;
- b) If the first or renewal **Premium** for this **Policy** is calculated on information and estimates furnished by **you**, **you** must:

- i. keep an accurate record containing all relevant particulars and allow us, **our** agents and representatives, to inspect them at all times; and
- ii. within two months of the end of each **Period of Insurance** furnish them to **us**.

5.4 Inspection

If required by **us**, **you** must allow **us** and **our** agents and representatives:

- a) to inspect **your Premises** and operations at any time during normal business hours; and
- b) to examine and audit **your** books and records at any time during the **Period of Insurance** and within three years of the final termination of cover under this **Policy**

but **we** make no representation or warranty that either **your Premises** or **your Business** complies with any law or meets any standard.

5.5 Reasonable Care

You must:

- a) take all reasonable precautions to prevent or minimise loss, damage or liability including preserving, without alteration, damaged property, defective property and property that may provide evidence in relation to any claim, until **we** have had an opportunity to inspect it;
- b) at **your** own expense take all reasonable precautions to prevent **Personal Injury** and **Property Damage** and comply with all statutory obligations for the safety of persons and property including all reasonable steps:
 - i. to trace, recall or modify any **Product** containing any defect or deficiency of which **you** have knowledge or which **you** have reason to suspect contains any defect or deficiency;
 - ii. in the event of an **Occurrence**, to prevent other **Personal Injury** or **Property Damage** from arising out of the same or similar circumstances; and
 - iii. to ensure the safety and sound condition of **your Premises** and **your Product** including complying with all applicable statutory obligations concerning **your Premises** and **your Product**;
- c) only employ competent employees; and
- d) comply with all statutory obligations, laws and regulations imposed by any competent authority in relation to any matter covered by this **Policy**.

5. Conditions (cont'd)

5.6 Maintenance of Product Records

You must keep and maintain, for at least 10 years after the date upon which they are brought into existence or come into **your** possession or control, documents and records:

- a) relating to research and development, specification, design and manufacturing of **your Product**;
- b) showing the source and quality of components of **your Product**;
- c) identifying persons and entities comprising the distribution chain for **your Product**;
- d) comprising sales records, including batch number and destination of **your Product**; and
- e) detailing quality control, inspection, testing, repairs, replacements and recalls of **your Product**.

5.7 Alteration of Risk

You must immediately notify **us** in writing of any alteration to the facts or circumstances relating to **your Business** that existed when **we** agreed to insure **you** under this **Policy**. If **we** agree in writing to insure the altered risk, **you** must pay any additional **Premium** requested by **us**. If **we** do not agree to insure the altered risk or if **you** do not pay the additional **Premium**, **we** will not indemnify **you** for any liability caused by or arising directly or indirectly out of or in connection with such alteration.

5.8 Joint Insureds

Where **you** comprise more than one party:

- a) the **Proposal** is deemed to have been furnished by and on behalf of all parties and any information supplied to **us** or any omission, misrepresentation, or non-disclosure in relation to the **Proposal** or any renewal or extension of this **Policy** is deemed to have been furnished, supplied, omitted, misrepresented or not disclosed on behalf of all parties; and
- b) the conduct (other than conduct referred to in subsection 4.12) of one or more of **you** will not prejudice the rights of the remainder of **you** provided that the remainder of **you**, immediately on becoming aware of any conduct that increases the risk of liability insured by this **Policy**, gives notice in writing to **us** and pays any additional **Premium** that **we** may require.

5.9 Cross Liability

Where **you** comprise more than one party, each of **you** is considered as a separate legal entity and the expressions '**you**' and '**your**' apply to each party as if a separate policy had been issued to each of the parties but **our** aggregate liability is limited to the **Limit of Liability**.

5.10 Subrogation

If **we** make a payment under this **Policy** to **you** or on **your** behalf then, subject to the Insurance Contracts Act 1984 as amended from time to time, **we** will be subrogated to all of **your** rights of recovery against all persons and **you** must, at **our** request and expense, take all reasonable steps and provide all assistance reasonably necessary to assist **us** in the exercise of **our** rights.

5.11 Cancellation

This **Policy** may be cancelled by:

- a) **you** at any time notifying **us** in writing, in which case:
 - i. cancellation takes place when **we** receive the notice; and
 - ii. **we** will retain, or be entitled to, **Premium** for the period during which this **Policy** has been in force based on **our** normal short period rates together with any administration expenses and non-refundable taxes and duties;
- b) **us** on any grounds set out in the Insurance Contracts Act 1984, as amended from time to time, by giving **you** notice in writing, in which case **we** will refund the **Premium** paid for the unexpired part of the **Period of Insurance**.

You must supply **us** with such particulars as **we** may require for the adjustment of the **Premium** following any cancellation.

5.12 Excess

In respect of any liability for which **you** are entitled to indemnity under this **Policy**, **you** will bear the amount of the **Excess** and **we** will only be liable to indemnify **you** for that part of any loss or claim which is greater than the **Excess**.

Costs and expenses incurred by **you** in the investigation, settlement or defence of any claim for compensation for which **you** are entitled to indemnity under this **Policy** are not included in the **Excess** and shall not be applied to erode the **Excess**.

5. Conditions (cont'd)

5.13 Jurisdiction

This **Policy** is governed by the laws of the Commonwealth of Australia and the State or Territory where this **Policy** is issued. The relevant courts of the place where the policy is issued shall have jurisdiction in any dispute concerning or under this **Policy**.

5.14 Severability

A term or condition of this **Policy** that is illegal or unenforceable may be severed from this **Policy** and the remaining terms and conditions of this **Policy**, or parts thereof, continue in force.

5.15 Interpretation

The singular includes the plural and vice versa, unless the context otherwise requires. A reference to a person includes a body corporate, an unincorporated body or other entity. Headings are for convenience only and do not affect interpretation. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

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