



**AURORA**  
UNDERWRITING AGENCY  
PTY LTD

# General Products Liability Insurance Policy

2009

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## IMPORTANT NOTICES

A copy of these notices should be given to You prior to the conclusion of the contract.

### **Non-Standard Policy**

The policy wording has been designed specially for You, based on Our standard form. It may contain provisions which are unusual or different from any other liability policies and You should read the entire policy carefully prior to entering into any contract.

### **Short Period Policy**

Where this policy is in respect of a specific event or events, this is a short period policy and will not automatically renew.

### **Insured's Duty of Disclosure**

You have a duty to disclose to Us, before the contract of insurance is entered into, every matter that is known to You, being a matter that:

- (a) You know to be a matter relevant to Our decision whether to accept the risk and if so, on what terms; or
- (b) a reasonable person in the circumstances could be expected to know to be a matter so relevant.

This duty of disclosure also applies to any renewal, extension, variation or reinstatement of the Policy.

We are entitled to refuse to cover the additional exposure or charge a reasonable additional premium or, if the nature of the change in circumstances entails a substantially different risk, whether in type or degree, from that previously envisaged, to avoid the contract.

If the person or entity who became the Insured under the Policy upon the contract being entered into:

- (c) failed to comply with the duty of disclosure; or
- (d) made a misrepresentation to Us before the contract was entered into;  
(but not where the We would have entered into the contract, for the same premium and on the same terms and conditions, even if You had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into) then;
- (e) if the failure was fraudulent or the misrepresentation was made fraudulently, We may avoid the contract;
- (f) if We are not entitled to avoid the contract or, being entitled to avoid the contract have not done so, Our liability in respect of a claim is reduced to the amount that would place Us in a position in which We would have been if the failure had not occurred or the misrepresentation had not been made.

You shall throughout the Period of Insurance give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the Proposal. In the event that at any time We are entitled to void the Policy by reason of You failing to give notice in accordance with this Condition, We may at Our election, instead of voiding the Policy, give notice in writing to You that there shall be excluded from the indemnity any claim which has arisen or may arise which is related to such facts, activities or circumstances.

### **Waived Recourse Rights**

Please note that the Policy excludes any claim or claims where and to the extent We have or would have rights of recourse in respect of such claim but You have granted without Our prior consent a waiver of such recourse rights to others whether by express term or by reason of an assumption of liability under contract.

### **Code of Practice**

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside of Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this Insurance should be referred to the Coverholder shown above in the first instance. If this does not resolve the matter or You are not satisfied with the way a complaint has been dealt with, You should write to:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
SYDNEY NSW 2000  
Tel: 02 9223 1433 Fax: 02 9223 1466

who will refer Your dispute to Policyholder & Market Assistance at Lloyd's.

Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

### **Australia Terrorism Insurance Act 2003 Notice**

The Underwriters have treated this Insurance (or part of it) as an Insurance to which the Australia Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provided that the Terrorism exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

If any or all of the Underwriters have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

## GENERAL PRODUCTS LIABILITY INSURANCE

Effected through **Aurora Underwriting Agency Pty Ltd** A.C.N. 106 909 737 (hereinafter called the Coverholder)

THIS IS TO CERTIFY that in accordance with the authorisation granted under Contract No XB024090g to the undersigned by certain Underwriters at Lloyds, whose definitive numbers and the proportions underwritten by them, which will be supplied on application, can be ascertained by reference to the said Contract, and in consideration of the premium specified herein, the said Underwriters are hereby bound, severally and not jointly, each for his own part and not for one another, their Executors and Administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon.

## OPERATIVE CLAUSE

Whereas the Insured stated in the Schedule has made to the Underwriters a Proposal, whose particulars and statements, including any ancillary information provided therewith, are hereby agreed to be the basis of this Policy.

We, the Underwriters, in consideration of payment of the Premium stated in the Schedule, agree, subject to all the terms and provisions of this Policy, to indemnify the Insured as is set out in each insured Coverage Section of this Policy in respect of the Insured's Business as stated in the Schedule but not in respect of any liability of the Insured where the action is brought in a court of law in or any judgment, award, payment, settlement or proceedings are made within territories which operate under the laws of the United States of America or where any order or proceedings are made anywhere in the world to enforce such judgement, award, payment or settlement either in whole or in part.

## INSURING CLAUSES

### 1. What We Cover

We agree (subject to the terms, Claims Conditions, General Conditions, Exclusions, Definitions and Limits of Liability incorporated herein) to pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation in respect of:

- 1.1. Personal Injury, and/or
- 1.2. Property Damage; and/or
- 1.3. Advertising Injury; happening during the Period of Insurance within the Geographical Limits and caused by or arising out of an Occurrence in connection with the Business.

### 2. Defence Costs and Supplementary Payments

With respect to the indemnity provided by this Policy, We will:

- 2.1 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.
- 2.2 pay all charges, expenses and legal costs incurred by Us and/or by You with Our written consent:
  - 2.2.1 in the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of Your attendance at hearings or trials at Our request, or
  - 2.2.2 in bringing or defending appeals in connection with such claim or suit.
- 2.3 pay all charges, expenses and legal costs recoverable from or awarded against You in any such claim or suit and all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability thereon.

- 2.4 pay expenses incurred by You for:
- 2.4.1 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).
  - 2.4.2 temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or unpinning thereof.
  - 2.4.3 purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.
- 2.5 pay all legal costs incurred by You with Our consent for representation of You at:
- 2.5.1 any Coronial Inquest or Inquiry
  - 2.5.2 any proceedings in any court or tribunal in connection with liability insured against by this Policy.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by Us in addition to the applicable Limit of Liability of this Policy. However, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all Defence Costs and Supplementary Payments. Where We are prevented by law or otherwise from making payments on Your behalf, We will indemnify You for legal liability incurred to the extent that such liability is covered by this Policy. In jurisdictions where We may not legally be permitted to, or cannot for any other reason, defend any claim or suit against You, We will reimburse You for the expense of such defence incurred with Our written consent.

### 3. Limits of Liability and Excess

Subject to clause 2. above and clauses 4. and 5. below:

- 2.1 The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims for General Liability arising out of any one Occurrence.
- 2.2 The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one Period of Insurance, for Products Liability. The applicable Limit of Liability will not be reduced by the amount of any Excess payable by You.

### 4. Additional Benefit - Claims Preparation Costs

In addition to the amount of cover provided by this Policy, We will pay up to **\$20,000** for reasonable professional fees and such other expenses incurred by You for the preparation of a claim under this Policy.

The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under clause 2. (Defence Costs and Summary Payments) of this Policy.

### 5. Optional Additional Benefit - Products Exported to North America

(Applicable only where this Additional Benefit is confirmed in the Schedule)

The cover provided by this Policy is extended to include any judgment, award or settlement made within North America or any order made anywhere in the World to enforce such judgment, award or settlement either in whole or in part, subject to the following additional terms and exclusions in respect of any such judgment, award or settlement:-

- 5.1 cover only applies in respect of Your legal liability for Personal Injury or Property Damage that arises out of any Products exported to North America.
- 5.2 cover is not provided for:
  - 5.2.1 Personal Injury or Property Damage arising out of the discharge, dispersal, emission, release or escape of Pollutants,
  - 5.2.2 the cost of removing, nullifying or clean up of Pollutants;

- 5.2.3 the cost of preventing the escape of Pollutants;
- 5.2.4 Personal Injury or Property Damage arising directly or indirectly from the existence of asbestos;
- 5.2.5 any claim for Compensation if in North America You have:
  - 5.2.5.1 any assets other than Products,
  - 5.2.5.2 a related or subsidiary company;
  - 5.2.5.3 any person or entity with power of attorney;
  - 5.2.5.4 any franchisor.

## DEFINITIONS (words with special meaning)

For the purpose of determining the cover provided by this Policy:

### 1. Advertising Injury

means Injury arising out of:

- 1.1 libel, slander or defamation; or
- 1.2 any infringement of copyright or passing off of title or slogan; or
- 1.3 unfair competition, piracy, idea misappropriation contrary to an implied contract; or
- 1.4 invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of Your advertising activities.

### 2. Aircraft

means any craft or object designed to travel through air or space, other than model aircraft.

### 3. Business

means the business as described in the Schedule (and, where applicable, as further described in any more specific underwriting information provided to Us at the time when this insurance was negotiated) and shall include:

- 3.1 the ownership of premises and/or the tenancy thereof by You.
- 3.2 the provision of any sponsorships, charities, galas, first aid, medical, ambulance or fire fighting services by You or on Your behalf.
- 3.3 private work undertaken by Your employees for any of Your directors, partners, proprietors, officers or executives.
- 3.4 the provision of any canteen, social and/or sporting clubs or welfare and/or child care facilities by You or on Your behalf, which are primarily for the benefit of Your employees.

### 4. Compensation

means monies paid or agreed to be paid by judgment, award or settlement for Personal Injury and/or Property Damage and/or Advertising Injury. Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies.

### 5. Employment Practices

means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of Your employees.

**6. Excess**

means the first amount of each claim or series of claims, arising out of any one Occurrence, for which You are responsible. The Excess applicable to this insurance appears in the Schedule. The Excess applies to all amounts for which We will be liable, including the indemnity provided by Insuring Clause 2. (Defence Costs and Supplementary Payments).

**7. General Liability**

means Your legal liability for Personal Injury, Property Damage or Advertising Injury caused by or arising out of an Occurrence happening in connection with the Business other than Products Liability.

**8. Geographical Limits**

means:

8.1 anywhere in the Commonwealth of Australia and its external territories;

8.2 elsewhere in the World, but only with respect to:

8.2.1 overseas business visits by any of Your directors, partners, officers, executives or employees but not where they perform manual work in North America.

8.2.2 Products supplied from the Commonwealth of Australia, but the indemnity granted in relation to such products shall not apply to claims in respect of Personal Injury and/or Property Damage happening in North America where such products have been exported to North America with Your knowledge.

**9. Hovercraft**

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

**10. Internet Operations**

means:

10.1 transfer of computer data or programmes by use of electronic mail systems by You or Your employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within Your organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or Trojan horse,

10.2 access through Your network to the world wide web or a public internet site by You or Your employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within Your organisation;

10.3 access to Your intranet (meaning internal company information and computing resources) which is made available through the world wide web for Your customers or others outside Your organisation; and

10.4 the operation and maintenance of Your web site.

**11. Medical Persons**

Includes but is not limited to medical practitioners, medical nurses, dentists and first aid attendants.

**12. Named Insured**

means:

12.1 the person(s), corporations and/or other organisations specified in the Schedule,

12.2 all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured incorporated in the Commonwealth of Australia and/or any other organisations under the control of the Named Insured;

12.3 all subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Insured after the commencement of the Period of Insurance.

12.4 every subsidiary and/or controlled corporation and/or other organisation of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary, related or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to the divestment.

**13. North America**

means:

13.1 the United States of America and the Dominion of Canada,

13.2 any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and

13.3 any country or territory subject to the laws of the United States of America or the Dominion of Canada.

**14. Occurrence**

means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended (except for the matters set out in Definition 16.5 (Personal Injury)) from Your standpoint. With respect to Personal Injury or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

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

**15. Period of Insurance**

means the Period of Insurance specified in the Schedule and any extension thereof which may be agreed in writing between You and Us.

**16. Personal Injury**

means:

16.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom;

16.2 the effects of false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;

16.3 wrongful entry or wrongful eviction or other invasion of privacy or trespass to land;

16.4 libel, slander or defamation of character, unless arising out of Advertising Injury;

16.5 assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability: such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

**17. Pollutants**

means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material. Waste material includes materials that are intended to be recycled, reconditioned or reclaimed.

**18. Products**

means anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by You or on Your behalf (including Your predecessors in the Business), including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which, by law or otherwise, You are deemed to have manufactured in the course of the Business including discontinued products. Provided always that for the purpose of this insurance the term, Products shall not be deemed to include:

- 18.1 food and beverages supplied by You or on Your behalf primarily to Your employees as a staff benefit,
- 18.2 any vending machine or any other property rented to or located for use of others but not sold by You;
- 18.3 and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection therewith shall be regarded as General Liability claims hereunder.

**19. Products Liability**

means Your legal liability for Personal Injury and/or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such products; but only where such Personal Injury and/or Property Damage occurs away from premises owned or leased by or rented to You and after physical possession of such products has been relinquished to others.

**20. Property Damage**

means:

- 20.1 physical loss, destruction of or damage to tangible property, including the loss of use thereof at any time resulting therefrom; and/or
- 20.2 loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence and includes:
  - 20.2.1 loss of value of property resulting from the application or attachment to or the incorporation into such property of any product manufactured, sold, handled or distributed by the Insured.
  - 20.2.2 loss resulting from any defect or deficiency in any magnetic tape, duplicating, copying, recording or photographic equipment, or film or related product manufactured, sold, processed, handled or distributed by the Insured.
  - 20.2.3 denial of access to property, premises, services or facilities; interference with or stoppage of vehicular or pedestrian traffic.

**21. the Schedule**

means the most current schedule issued by Us in connection with this Policy.

**22. Vehicle**

means any form of mobile, mechanically-powered conveyance which may be used for the transportation of goods or persons by land, sea, air or under the ground. It includes all such machines which are intended wholly or partially for recreational purposes, but does not include any plant or equipment while it is being used such and is neither being used for haulage nor is in transit to or from or within any work site.

**23. Watercraft**

means any vessel, craft or thing made or intended to float on or in or travel on or through water, other than model boats and whilst on or in or travelling through the water.

**24. We, Us, Our, Ourselves**

means the Insurer named in the Schedule.

**25. You, Your, Insured.**

means Each of the following is an Insured to the extent specified below:-

- 25.1 the Named Insured,
- 25.2 every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee of the Named Insured (including the spouse of any such person while accompanying such person on any commercial trip or function in connection with the Business) or volunteer while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities.
- 25.3 any employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any such employee superannuation fund or pension scheme which is not administered by corporate fund managers.
- 25.4 every principal in respect of the principal's liability arising out of:
  - 25.4.1 the performance by or on behalf of the Named Insured of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this Policy.
  - 25.4.2 any Products sold or supplied by the Named Insured, but only in respect of the Named Insureds own acts or omissions in connection with such products and in any event only for such coverage and Limits of Liability as are provided by this Policy.
- 25.5 every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of law (whether written or implied) to provide insurance such as is afforded by this Policy, but only to the extent required by such law and in any event only for such coverage and Limits of Liability as are provided by this Policy.
- 25.6 every officer, member, employee or voluntary helper of the Named Insureds canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, welfare and/or child care facilities, while acting in their respective capacities as such.
- 25.7 any director, partner, proprietor, officer or executive of the Named Insured in respect of private work undertaken by the Named Insureds' employees for such person and any employee whilst actually undertaking such work.
- 25.8 the estates, legal representatives, heirs or assigns of:
  - 25.8.1 any deceased or insolvent persons, or
  - 25.8.2 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 Definitions 25.8.1 and 25.8.2 above.
- 25.9 every party including joint venture companies and partnerships to whom the Named Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this Policy.
- 25.10 persons who are assisting the Named Insured on an unpaid voluntary basis.

## WHAT WE EXCLUDE

We do not cover any liability:

### 1. Property Owned by You

for Property Damage to property owned by You.

### 2. Property in Your Care, Custody or Control

for Property Damage to:

2.1 property owned by or leased or rented to you, or

2.2 property in your physical or legal control.

but this exclusion does not apply to liability for property damage to:

2.3 premises (including landlords fixture's and fittings) which are leased or rented to you

2.4 premises (or their contents) not owned, leased or rented by you but temporarily occupied by you for work therein

2.5 vehicles (not belonging to or used by or on your behalf) in your physical or legal control where the property damage occurs while the vehicles are in a car park owned or operated by you, unless you own or operate the car park for reward

2.6 the property of an employee of yours or of one of your subsidiary companies as per Definition 12.3 or 12.4

2.7 property (excluding any vehicle which is registered or which is required under any legislation to be registered) in your physical or legal control for the purpose of repair, service, maintenance or alteration or which is on temporary hire or loan to you, subject to a maximum indemnity for any once occurrence of \$100,000 or the amount stated in the Schedule.

### 3. Vehicles

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

3.1 which is registered or which is required under any legislation to be registered, or

3.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected); but Exclusions 3.1 and 3.2 shall not apply to:

Personal Injury where:

3.2.1 that compulsory liability insurance or statutory indemnity does not provide indemnity; and

3.2.2 the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles.

Provided further that this subclause 3.2.2 shall not apply where there has been an accidental or erroneous failure to maintain statutory insurance or contribution to a fund or where indemnity is not granted under such insurance or fund.

3.3 the delivery or collection of goods to or from any Vehicle.

3.4 the loading or unloading of any Vehicle.

3.5 any Vehicle temporarily in Your custody or control for the purpose of parking.

**4. Aircraft, Hovercraft or Watercraft**

for Personal Injury and/or Property Damage arising from:

- 4.1 the ownership, maintenance, operation or use by You of any Aircraft or Hovercraft.
- 4.2 the ownership, maintenance, operation or use by You of any Watercraft exceeding eight (8) metres in length, whilst such Watercraft is afloat. Provided that Exclusion 4.2 shall not apply with regard to claims arising out of:
  - 4.2.1 Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable.
  - 4.2.2 Watercraft owned by others and used by You for business entertainment.
  - 4.2.3 hand propelled or sailing craft not exceeding eight (8) metres in length, whilst such craft is in territorial waters.

**5. Aircraft Products**

arising out of any Products which, with Your knowledge, is intended for incorporation into the structure, machinery or controls of any Aircraft.

**6. Damage to Products**

for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to damage to that part and only that part of such product to which the damage is directly attributable.

**7. Faulty Workmanship**

for the cost of performing, completing, correcting or improving any work undertaken by You.

**8. Loss of Use**

for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:

- 8.1 a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- 8.2 failure of any Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You; but this Exclusion 8.2 shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after such products or work have been put to use by any person or organisation other than You.

**9. Product Guarantee**

for any Products warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

**10. Product Recall**

for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by any person or organisation because of any known, alleged or suspected defect or deficiency in such Products.

**11. Advertising Injury**

for Advertising Injury:

- 11.1 resulting from statements made at Your direction with knowledge that such statements are false.
- 11.2 resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.
- 11.3 resulting from any incorrect description of Products or services.

- 11.4 resulting from any mistake in advertised price of Products or services.
- 11.5 failure of the Insureds' Products or services to conform with advertised performance, quality, fitness or durability.
- 11.6 incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

**12. Asbestos**

for Personal Injury, Property Damage (including loss of use of property) or Advertising Injury directly or indirectly caused by or arising from exposure to asbestos or materials containing asbestos.

**13. Breach of Professional Duty**

arising out of any breach of duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable, but this exclusion shall not apply to claims:

- 13.1 for Personal Injury and/or Property Damage arising from such breach of duty.
- 13.2 arising out of 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.
- 13.3 arising out of advice which is not given by You for a fee.
- 13.4 arising out of advice given in respect of the use or storage of Your Products.

**14. Contractual Liability**

which has been assumed by You under any contract or agreement that requires You to:

- 14.1 effect insurance over property, either real or personal.
- 14.2 assume liability for, Personal Injury or Property Damage regardless of fault; provided that this exclusion shall not apply with regard to:
  - 14.2.1 liabilities which would have been implied by law in the absence of such contract or agreement; or
  - 14.2.2 terms regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute; or
  - 14.2.3 liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.

**15. Employers Liability**

- 15.1 for Injury to any Worker.

Provided that if the Insured:

- 15.1.1 is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such Injury; or
- 15.1.2 is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a 'worker' or 'employee' within the meaning of the relevant Workers' Compensation Law or the Injury is not an injury which is subject to such Law;
- 15.1.3 is not required to so insure or otherwise fund such common law liability by reason only that the Injury is to a person who is a "deemed worker" within the meaning of the relevant Workers Compensation Law and insurance of the employer's common law liability for such "deemed workers" is not covered by the relevant workers compensation insurance policy;
- 15.1.4 then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, policy of insurance or self insurance agreement had the Insured complied with its obligations pursuant to such Law.

- 15.2 imposed by:
- 15.2.1 any Worker's Compensation Law;
  - 15.2.2 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;
  - 15.2.3 any law relating to Employment Practises.
- 15.3 The following Definitions are added to the Policy:
- 15.3.1 Worker**  
means any person employed by the Insured or deemed to be employed by the Insured pursuant to any Worker's Compensation Law.
  - 15.3.2 Workers' Compensation Law**  
means any law relating to compensation for Injury to Workers or employees.
  - 15.3.3 Employment Practices**  
means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by the Insured.
- 15.4 The following General Condition is added to the Policy:
- Where this Policy provides any indemnity to the Insured which is prohibited by law, this policy shall be varied by operation of this clause so that this Policy does not respond to the extent that the indemnity is prohibited by law.
- 16. Fines, Penalties, Punitive, Exemplary or Aggravated Damages**  
for any fines, penalties, punitive, exemplary or aggravated damages and any additional damages resulting from the multiplication of compensatory damages.
- 17. Information Technology Hazards, Computer Data, Program and Storage Media**
- 17.1 for Personal Injury or property damage arising directly or indirectly out of, or in any way involving Your internet operations, or
  - 17.2 for Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
    - 17.2.1 the use of any computer hardware or software
    - 17.2.2 the provision of computer or telecommunication services by You or on Your behalf
    - 17.2.3 the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus But this exclusion does not apply to:
  - 17.3 Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site, or
  - 17.4 liability which arises irrespective of the involvement of your internet operations,
  - 17.5 and nothing in this exclusion will be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion

**18. Libel and Slander**

for libel and slander:

- 18.1 resulting from statements made prior to the commencement of the Period of Insurance.
- 18.2 resulting from statements made at Your direction with knowledge that such statements are false.
- 18.3 related to advertising, broadcasting, publishing or telecasting activities conducted by You or on Your behalf.

**19. 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.

**20. Pollutants**

- 20.1 for Personal Injury and/or Property Damage directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any water course or body of water.
- 20.2 for the cost of testing and monitoring for, removing, nullifying, or cleaning up of Pollutants.

Provided that, with respect to any such liability which may be incurred anywhere other than North America, Exclusions 20.1 and 20.2 shall not apply where such discharge, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

**21. War, Terrorism, Radioactivity**

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

- 21.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under order of any government or public or local authority, or
- 21.2 Any Act(s) of Terrorism. For the purpose of this exclusion, an 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, ethnic 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:
  - 21.2.1 involves violence against one or more persons, or
  - 21.2.2 involves danger to property; or
  - 21.2.3 endangers life other than that of the person committing the action; or
  - 21.2.4 creates a risk to health or safety of the public or a section of the public; or
  - 21.2.5 is designed to interfere with or to disrupt an electronic system.
- 21.3 radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion. This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to the above.

Provided that Exclusion 21.3 shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

## CLAIMS CONDITIONS

### 1. Notification of Claim, Occurrence or Suit

You shall give:

- 1.1 written notice to Us, as soon as reasonably practicable, of any claim made against You or any Occurrence that may give rise to a claim being made against You and which is covered by this Policy.
- 1.2 all such additional information that We may reasonably require and every demand, writ, summons, proceedings, impending prosecution or inquest and all documents relating to the claim or Occurrence shall be forwarded to Us as soon as practicable after they are received by You.
- 1.3 Written notice (including facsimile transmission) must be given to Us.

### 2. Your Duties in the Event of a Claim, Occurrence or Suit

- 2.1 You shall not, without Our written consent, make any admission, offer, promise or payment in connection with any Occurrence or claim.
- 2.2 You shall use the best endeavours to preserve all property, products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without Our consent until We have had an opportunity of inspection.
- 2.3 You shall, when so requested, provide Us with details of any other insurances current at the time of any Occurrence, and/or Personal Injury and/or Property Damage and/or Advertising Injury and covering any of the liability insured by this Policy.

### 3. Our Rights Regarding Claims

- 3.1 Following the happening of any Occurrence in respect of which a claim is, or may be, made under this Policy, We shall have full discretion in the conduct of any proceedings in connection with any claim. You shall give such information and assistance that We may reasonably require in the prosecution, defence or settlement of any claim.
- 3.2 We may at any time pay to You, in respect of all claims against You arising directly or indirectly from one source or original cause:
  - 3.2.1 the amount of the Limit of Liability or such other amount specified in respect thereof (after deduction of any sum(s) already paid by Us, which sum(s) would reduce the amount of Our unfulfilled liability in respect thereof); or
  - 3.2.2 any lesser sum for which the claim(s) can be settled.
- 3.3 Upon making such payment, We shall relinquish conduct and control of, and be under no further liability under this Policy in connection with, such claim(s) except for Defence Costs and Supplementary Payments:
  - 3.3.1 recoverable from You in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or
  - 3.3.2 incurred by Us or by You with Our written consent, prior to the date of such payment.

### 4. Goods and Services Tax

You must inform Us of the extent to which You are entitled to an input tax credit for the premium each time that You make a claim under this Policy. No payment will be made to You for any GST liability that arises on the settlement of a claim under this Policy when You have not informed Us of Your entitlement or correct entitlement to an input tax credit. Notwithstanding anything contained in this Policy (including the Schedule and any endorsements attached hereto) to the contrary, Our liability will be calculated after taking into account:

- 4.1 any input tax credit to which You, or any claimant against You, is entitled for any acquisition relevant to a claim paid under this Policy; and
- 4.2 any input tax credit to which You, or any claimant against You, would have been entitled were You or the claimant to have made a relevant acquisition; and
- 4.3 the GST exclusive amount of any supply made by You which is relevant to Your claim. If the applicable Limit of Liability is not sufficient to cover Your claim, We will only pay GST (less any relevant input tax credit) that relates to Our proportion of Your claim. The terms. GST, input tax credit, acquisition and supply, have the meanings ascribed to them in the A New Tax System (Goods and Services Tax) Act 1999. Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, Claims Conditions, General Conditions, Exclusions or Definitions of this Policy other than as stated above.

## **5. Service of Suit**

We hereon agree that:

- 5.1 in the event of a dispute arising under this Policy, We, at Your request, will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- 5.2 Any summons, notice or process to be served upon Us may be served upon:  
  
Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
SYDNEY NSW 2000  
Tel: 02 9223 1433 Fax: 02 9223 1466  
  
who has authority to accept service and to enter an appearance on Our behalf, and who is directed at Your request to give a written undertaking to You that he will enter an appearance of Our behalf.
- 5.3 If a suit is instituted against any one of the Underwriters, all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.
- 5.4 The amount of Premium specified herein is the amount due to Us and any commission allowed by Us is to be regarded as remuneration of the Coverholder placing this Insurance.

## GENERAL CONDITIONS

### 1. Adjustment of Premium

If the first premium or any renewal premium for this Policy or any part thereof shall have been calculated on estimates provided by You, You shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow Us to inspect such record. You shall, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information as We may require as soon as reasonably practicable. The premium for such Period shall thereupon be adjusted and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum premium that may have been agreed upon between Us and You at inception or the last renewal date of this Policy.

### 2. Alteration of Risk

Every change which substantially varies any of the material facts or circumstances existing at the commencement of each Period of Insurance, that shall come to the knowledge of Your officer responsible for insurance matters, shall be notified to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium as We may require.

### 3. Bankruptcy or Insolvency

In the event that You should become bankrupt or insolvent, We shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency. In case of execution against You of any final judgment covered by this Policy being returned unsatisfied, by reason of such bankruptcy or insolvency, then an action may be maintained by the injured party or their representative against Us in the same manner, and to the same extent as You but not in excess of the Limit of Liability.

### 4. Breach of Condition or Warranty

Your rights under this Policy shall not be prejudiced by any unintentional and/or inadvertent:

- 4.1 breach of a condition or warranty without Your knowledge or consent, or
- 4.2 error in the name or title of any person(s), corporation and/or other organisation which forms part of the definition of .You, Your, Insured; or
- 4.3 error in name, description or situation of property or
- 4.4 failure to report any property and/or entity and/or insurable exposure in which You have an interest. Provided always that, upon discovery of any such fact or circumstances referred to above, Your officer responsible for insurance matters shall give written notice thereof to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium that We may require.

### 5. Cancellation of This Policy

#### By You

- 5.1 You may cancel this Policy at any time by tendering notice in writing to Us to that effect, in which event the cancellation will become effective from the earlier of the date the notice is received by Us or the date on which You arranged alternative insurance protection.

#### By Us

- 5.2 Subject to General Conditions 4. (Breach of Condition or Warranty) and 12. (Privacy Complaints Advice), We may cancel this Policy in any of the circumstances set out in Sections 60 or 61 of the Insurance Contracts Act 1984 (as amended). Such cancellation shall take effect at the earlier of the following times:
  - 5.2.1 the time when another policy of insurance between You and Us or some other insurer, being a policy that is intended by You to replace this Policy, is entered into; or
  - 5.2.2 at 4.00 p.m. on the thirtieth (30th) business day after the day on which notification was given to You.

In the event of cancellation of this Policy by either party, You shall be entitled to a pro rata refund of premium subject to any minimum and deposit premium that may apply. If the premium is subject to adjustment, cancellation will not affect Your obligation to supply Us with such information as is necessary to permit the premium adjustment to be calculated.

## **6. Cross Liabilities**

This insurance extends to indemnify:

- 6.1 each of the parties comprising the Named Insured, and
- 6.2 each of the Insureds hereunder, separately in the same manner and to a like extent as though policies had been issued in their separate names. In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in clauses 6.1 and 6.2 in respect of claims made by any other of such parties. Provided always that:
- 6.3 each of such parties shall be separately subject to the terms, Claims Conditions, General Conditions, Exclusions and Definitions of this Policy in the same manner and to a like extent as though separate policies had been issued, and
- 6.4 in no case shall the amount payable by Us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

## **7. Foreign Currency**

All amounts referred to in this Policy are in Australian Dollars. If You incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by Us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date when the award was made or settlement was agreed upon; subject always to the applicable Limit of Liability.

## **8. Inspection and Audit**

We shall be permitted, but not obligated, to inspect Your premises and operations at any reasonable time. Neither Our right to make inspections, nor Our failure to make inspections, nor the making of inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation. We may examine and audit Your books and records at any time during the currency of this Policy and within three (3) years after the final termination of this Policy but only with regard to matters which in Our opinion are relevant to this Policy.

## **9. Jurisdiction**

This contract of insurance shall be governed by and construed in accordance with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this Policy shall be determined in accordance with the law and practice of such Court.

## **10. Non-Imputation**

Where this insurance is arranged in the joint names of more than one Insured, as described in clause 13.1, it is hereby declared and agreed that:

- 10.1 each Insured shall be covered as if it made its own proposal for this insurance.
- 10.2 any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each Insured.
- 10.3 any knowledge possessed by any Insured shall not be imputed to the other Insured(s).

### **11. Premium Funders**

If the premium has been funded by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney, then subject to Section 60 of the Insurance Contracts Act 1984, We may cancel this Policy at the request of the premium funding company, after substantiation of the debt and default in payment by You has been made and proven to Us, by giving You not less than three (3) business days written notice to that effect, following which a refund will be made to the premium funding company of the proportionate part of the premium applicable to the unexpired Period of Insurance.

### **12. Privacy Complaints Advice**

Lloyd's and its agents are bound by the obligations of the Privacy Act 1998 as amended by the Privacy Amendment (Private Sector) Act 2000 (the Act). These set basic standards relating to the collection, use, disclosure and handling of personal information.

"Personal Information" is essentially information or an opinion about a living individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

An individual who believes their privacy may have been prejudiced has a right to make a complaint about the matter. In the first instance, the Insured's complaint should be addressed to Aurora Underwriting Agency Pty Ltd. This may be done either verbally or in writing to The Compliance Officer, Aurora Underwriting Agency Pty Ltd, Suite 502, Level 5, 54 Miller Street, North Sydney NSW 2060 Ph: 02 9925 8905 Fax: 02 8904 1699.

If the Insured is dissatisfied with the response, the Insured may refer the matter to Lloyd's Australia Ltd, which has the appropriate authority to investigate and address matters of this nature. Lloyd's Australia Ltd. can be contacted at:

Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney NSW 2000  
Ph: 02 9223 1433 Fax: 02 9223 1466

Lloyd's Australia Ltd will respond in writing within 15 working days, and if the Insured remains dissatisfied with their response the Insured will be provided at that time with the details of any other avenues for resolution that may be available to them.

### **13. Reasonable Precautions**

You must:

- 13.1 exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition.
- 13.2 take reasonable precautions to prevent:
  - 13.2.1 Personal Injury, Property Damage and Advertising Injury.
  - 13.2.2 the manufacture, sale or supply of defective Products, and comply, and ensure that Your employees, servants and agents comply, with all statutory obligations, by-laws or regulations imposed by any public authority in respect of Your Products for the safety of persons or property.
  - 13.2.3 at Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency You have knowledge of or have reason to suspect.

**14. Release**

Where You are required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority or any landlord or any other persons or parties from liability for loss, destruction or damage or legal liability insured against under this Policy, such release is allowed without prejudice to this insurance. Notwithstanding General Condition 15. (Subrogation and Allocation of the Proceeds of Recoveries) of this Policy, We agree to waive all Our rights of subrogation against any such Authority or persons or parties in the event of any Occurrence for which a claim for indemnity may be made under this Policy.

**15. Subrogation and Allocation of the Proceeds of Recoveries**

Subject to General Condition 16. (Subrogation Waiver), any corporation, organisation or person claiming under this insurance shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by Us for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which We shall be or would become entitled upon Us paying for or indemnifying You in respect of legal liability under this insurance. Should You incur any legal liability which is not covered by this insurance:

15.1 due to the application of an Excess; and/or

15.2 where the amounts of any judgments or settlements exceed the applicable Limit of Liability; You will be entitled to the first call on the proceeds of all recoveries made, by either You or Us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by Us) and any remaining amount(s) will be applied to reimburse Us.

**16. Subrogation Waiver**

Notwithstanding General Condition 15. (Subrogation and the Allocation of Proceeds and Recoveries), We hereby agree to waive all Our rights of subrogation under this Policy against:

16.1 each of the parties described under Definition 28. (You, Your, Insured).

16.2 any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this Policy. Where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other policy.