



**Public, Products and  
Advertising Liability  
Niche Policy Wording**

v02.16



**Pen Underwriting Group Pty Ltd**

ABN 80 082 459 372 AFSL 238170

Our name comes from the expression 'to pass the pen'. It reflects what we do and what we bring to the insurance industry – specialist expertise and quality underwriting. We strive to exceed the expectations of brokers by providing professional and flexible solutions for their clients' risks across a wide range of major and boutique general insurance products.

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Current as at February 2016

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## IMPORTANT INFORMATION

The Policy consists of this policy wording and your current Schedule. Your Policy is an important document and should be kept in a safe place. Please read it carefully so that you understand the insurance provided.

### Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

### Privacy

Pen Underwriting handles your personal information with care and in accordance with the Privacy Act 1988 and the Australian Privacy Principles. We collect personal information about you to provide you with insurance and insurance related services. We may disclose your personal information to third parties for the purposes described in our Privacy Policy, including related entities, insurers, reinsurers, agents and service providers, some of whom may be located in the United Kingdom and India. By asking us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure (including overseas disclosure) of your personal information for the purposes described in our Privacy Policy. Where you provide personal information about others, you represent to us that you have made them aware of that disclosure and of our Privacy Policy and that you have obtained their consent. If you do not consent to provide us with the personal information that we request, or withdraw your consent to the use and disclosure of your personal information at any stage, we may not be able to offer you the products or provide the services that you seek. For information about how to access and or correct the personal information we hold about you or if you have any concerns or complaints, ask us for a copy of our Privacy Policy or visit [www.penunderwriting.com.au](http://www.penunderwriting.com.au).

### General Insurance Code of Practice

Pen Underwriting and Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The Code commits general insurers to uphold high standards of service and practice. A copy of the Code can be obtained from us upon request or from [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

This Policy is Code of Practice compliant, apart from any claims adjusted outside of Australia.

### Claims

In the event of a claim arising under this insurance immediate notice should be given to Pen Underwriting at [claims.au@penunderwriting.com](mailto:claims.au@penunderwriting.com) or at the address shown on the Contact Details page of this policy wording.

### Complaints

If you are dissatisfied with a decision Pen Underwriting makes, our service, the service of others we appoint to discuss insurance matters with you, or a claim settlement, we have an internal dispute resolution process to assist you. For further information, ask for a copy of our Complaints and Disputes Resolution Policy or visit [www.penunderwriting.com.au](http://www.penunderwriting.com.au).

### Litigation Dispute Resolution

The Insurer(s) hereon agree that:

- (i) In the event of a dispute arising under this Insurance, the Insurer(s) at the request of the Insured 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.
- (ii) Any summons notice or process to be served upon the Insurer(s) may be served upon:  
Lloyd's Underwriters' General Representative in Australia,  
Suite 2, Level 21  
123 Pitt Street  
Sydney NSW 2000  
Telephone Number: (02) 9223 1433  
who has authority to accept service and to enter an appearance on the Insurer(s) behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on the Insurer(s) behalf.
- (iii) If a suit is instituted against any one of the Insurer(s), all Insurer(s) hereon will abide by the final decision of such Court or any competent Appellate Court.

### GST

The Premium includes an amount for GST.

The Insurer's liability to indemnify the Insured under this Policy is calculated less any Input Tax Credit to which the Insured is entitled for any relevant Acquisition, or to which the Insured would have been entitled had it made a relevant Acquisition. The Insured must inform Underwriters of the extent to which it is entitled to an Input Tax Credit for that GST, and any GST liability arising from the Insured's provision of incorrect advice is payable by the Insured.

GST, Input Tax Credit and Acquisition have the meaning given to those words in *A New Tax System (Goods and Services Tax) Act 1999*.

### Premium

The amount of Premium specified herein is the amount due to the Insurer(s) and any commission allowed by them is to be regarded as remuneration of Pen Underwriting.

### **Australian Terrorism Insurance Act**

The Insurer(s) has treated this insurance (or part of it) as an insurance to which the Australian Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism Exclusion to which this Policy 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 Policy 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, insurance coverage and Exclusions of this Policy including applicable limits and excesses remain unchanged.

If any or all of the Insurers have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such insurer 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 Insurer's liability for payment for "eligible terrorism losses".

### **Several Liability**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

### **Further Information**

Your insurance broker has arranged this insurance on your behalf. If you have any questions or need further information concerning your insurance, you should contact your insurance broker to assist you with your enquiry. You should direct all of your correspondence to us through your insurance broker as he is your agent for this insurance.

## 1. OUR AGREEMENT

As **You** have paid or agreed to pay the premium for this Policy, **We** agree to provide **You** the Insurance Cover described in this Policy.

### LIMIT OF LIABILITY

**Our** Liability to pay a claim is limited to the lesser of:

The **Limit of Liability**, as listed in the current Schedule or any sub-limit less any **Excess** or

Any other **limit** less any **Excess** set out in the Policy.

### Excess

**We** will not pay the **Excess** which applies to any claim

The **Excesses** are set out in the current Schedule and the Policy

If more than one **Excess** applies to any one claim or series of claims under this policy, then only the single highest **Excess** will apply.

The Policy wording, Schedule and endorsements (if any) are to be read together as one Policy. Any word or expression which has been given a specific meaning in any section shall have that meaning throughout the Policy.

## 2. DEFINITIONS

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

**2.2 Advertising Injury** means **Injury** arising out of:

**2.2.1** libel, slander or defamation, or

**2.2.2** any infringement of copyright or passing off of title or slogan; or

**2.2.3** unfair competition, piracy, idea misappropriation contrary to an implied contract; or

**2.2.4** 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.

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

**2.4 Asbestos** means that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite.

Or that group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres.

And includes **Asbestos Products** and **Products** containing **Asbestos**.

**2.5 Business** means the **business** shown in the Schedule including the ownership and tenancy of premises, provision and management of canteens, social, sports and welfare organisations, including first aid and safety services of **Your Employees**.

**2.6 Employee** means any person employed by **You**, engaged by **You** under a contract of service, or deemed to be **Your** employee or worker under any **Workers Compensation Law**.

**2.7 Excess** means the amount which **You** must pay towards any claim under this Policy which will be deducted before any amount is paid to **You** or paid on **Your** behalf.

**2.8 Hovercraft** means any vessel or craft or thing 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.

**2.9 Limit of Liability** means the amounts shown in the Schedule for which **You** have chosen to insure.

**2.10 Medical Persons** means qualified medical practitioners, dentists, nurses and first aid attendants.

**2.11 Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** or **Advertising Injury** neither expected nor intended from **Your** standpoint. All **Personal Injury** or **Property Damage** or **Advertising Injury** arising out of continuous or repeated exposure to substantially the same general conditions, shall be construed to arise out of one **Occurrence**.

**2.12 Period of Insurance** means the **period of insurance** shown in the current Schedule.

**2.13 Personal Injury** means

a) death, bodily injury, sickness or disease to any person, disability, shock, mental anguish or mental injury,

b) false arrest, wrongful detention, false imprisonment or malicious prosecution, wrongful entry or eviction

- or other invasion of the right of privacy,
- c) libel, slander, defamation of character or invasion of the right of privacy, unless arising out of **Advertising Injury**;
- d) assault and battery not committed by or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property.
- 2.14 Product** means anything (after it has ceased to be in **Your** possession or under **Your** control) manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, assembled, altered, serviced, repaired, sold, treated, handled, supplied or distributed by **You** or by others trading under **Your** name, including any container thereof (other than a **Vehicle**) in the course of the **Business**.
- 2.15 Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- 2.16 Property Damage** means physical damage to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical injury that caused it. Damage also means loss of use of tangible property that is not physically damaged, provided such loss of use is caused by physical damage to some other tangible property which first happens during the **Period of Insurance**.
- 2.17 Vehicle** means any type of machine on wheels or on self-laid tracks made or intended to be propelled other than by manual or animal power, including attachments designed to be drawn by any such machine.
- 2.18 Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through water.
- 2.19 Workers Compensation Law** means any law relating to compensation for injury to workers or employees
- 2.20 You/Your** means each of the following to the extent set forth below:
- 2.20.1** the Insured named in the Schedule;
- 2.20.2** all subsidiary companies (present and future) of the named Insured whose places of incorporation are within Australia and New Zealand (including their Mandated Territories and Protectorates);
- 2.20.3** any director, executive officer, **Employee**, partner or shareholder of the Insured or a company designated

in paragraph 2.20.2 but only while acting within the scope of their duties in such capacity;

**2.20.4** any principal in respect of the liability of such principal arising out of the performance by the Insured or by a company designated in paragraph 2.20.2 of any contract or agreement for the performance of work for such principal and only to the extent required by such contract or agreement. But subject always to the terms, conditions, conditions, exclusions and **Limit of Liability** provided in this Policy;

**2.20.5** the officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and welfare organisations formed with the consent of the Insured (other than an insured designated in paragraph 2.20.4) in respect of claims arising from duties connected with activities of any such club or organisation.

**2.20.6** any work experience **Employees** or volunteers whilst engaged in activities for **You** or on **Your** behalf

**2.21 We/Us/Our** means certain Underwriters at Lloyd's.

### 3. COVER

**We** will pay to **You** or on **Your** behalf all amounts which **You** shall become legally liable to pay for compensation:

in respect of **Personal Injury** or **Property Damage** or **Advertising Liability** happening during the **Period of Insurance** caused by an **Occurrence** in connection with the **Business**.

**We** will not pay more than the **Limit of Liability** stated in the current Schedule for Public Liability for any one claim or series of claims arising from one **Occurrence**.

**Our** total aggregate liability for any one **Period of Insurance** for all claims arising from **Your Products** shall not exceed the sum in the Schedule.

#### Costs and Expenses

In addition to the stated **Limit of Liability**, **We** will:

defend any suit against **You** claiming compensation for **Personal Injury** or **Property Damage** or **Advertising Liability** and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; **We** may investigate, negotiate and settle any claim or suit as **We** deem expedient; **We** shall not be obliged to pay any claim or judgement or to defend any suit after **Our Limit of Liability**

has been exhausted by payment of judgements or settlements;

pay all expenses incurred by **Us**, all **Your** legal costs recoverable in any such suit and all interest accruing after any such judgement as does not exceed **Our Limit of Liability** thereon;

reimburse **You** for all reasonable expenses, other than loss of earnings, incurred with **Our** consent;

pay expenses incurred by **You** for first aid to others at the time of any **Personal Injury** for which **You** are entitled to compensation.

If a payment exceeding **Our Limit of Liability** has to be made to dispose of a claim, **Our** liability to pay Additional Payments in connection therewith shall be limited to such proportion of the Additional Payments as the **Limit of Liability** bears to the amount paid to dispose of the claim.

#### **Excess**

Where an **Excess** is specified in the Schedule **You** shall bear this amount of each and every claim.

## 4. CONDITIONS

### 4.1 Adjustment of Premium

Where premium has been calculated on estimates furnished by **You**, **You** shall within 30 days after the expiry of each **Period of Insurance** furnish to **Us** such information as **We** may require to adjust the premium for the expired **Period of Insurance**. Any difference in premium shall be paid by or allowed to **You**. **You** shall allow **Us** to inspect **Your** records of such information.

### 4.2 Cancellation

**4.2.1** **You** may cancel this Policy at anytime by forwarding a written request to **Us**. **We** will refund 90% of the pro-rata premium calculated for the unexpired **Period of Insurance**.

**4.2.2** **We** may cancel this Policy in any of the circumstances detailed in the Insurance Contracts Act 1984. **We** will refund the pro-rata premium calculated for the unexpired **period of insurance**.

### 4.3 Claims

**4.3.1** Notice in writing shall be given to **Us** as soon as possible of every **Occurrence**, claim, writ, summons, proceedings, impending prosecution or inquest an all information in relation thereto in respect of which a claim may result under this Policy;

**4.3.2** In the event of an **Occurrence**, **You** shall at **Your** expense take all reasonable steps to prevent other **Personal Injury** or **Property Damage** or **Advertising Liability** from arising out of the same or similar conditions, but such expense shall not be recoverable under this Policy.

**4.3.3** **You** shall not without **Our** consent make any admission, offer promise or payment in connection with any **Occurrence** or claim.

**4.3.4** **You** shall use **Your** best endeavours to preserve any **Products** or property which may assist in the defence or investigation of a claim and so far as may be reasonable practical no alteration or repair shall be made without **Our** consent or until **We** shall have had an opportunity of inspection.

**4.3.5** **We** shall be entitled to prosecute in **Your** name at **Our** expense and for **Our** benefit any claim for indemnity or damages or otherwise.

**4.3.6** **You** shall give all information and assistance as **We** may require in the prosecution defence or settlement of any claim, or in any recovery actions.

**4.3.7** **We** may at any time pay **You** in respect of all claims against **You**, arising directly or indirectly from one source or original cause the amount of the **Limit of Liability** or such other amount specified in respect thereof (after deduction of any amounts already paid as compensation in respect thereof) or any lesser sum for which the claim or claims can be settled. Upon such payment **We** shall relinquish conduct or control of and be under no further liability under this Policy in connection with such claim or claims except for costs, charges and expenses:

**4.3.7.1** recoverable from **You** in respect of the period prior to the date of such payment;

**4.3.7.2** incurred by **Us**;

**4.3.7.3** incurred by **You** with **Our** consent prior to the date of such payment.

### 4.4 Change of Facts or Circumstances

Notice in writing shall be given to **Us** as soon as possible of every change materially varying any of the facts or circumstances existing at the commencement of this Policy that **You** become aware of.

**4.5 Cross Liability**

Where **Your** company is comprised of more than one party, each of the parties shall be considered as a separate legal entity and the word Insured shall apply to each party as if a separate policy had been issued to each party but nothing contained in this Condition 4.7 shall result in an increase in **Our Limit of Liability** in respect of any **Occurrence** or **Period of Insurance**.

**4.6 Inspection of Property**

**We** shall be permitted but not obligated to inspect **Your** property and operations at any time. Neither **Our** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for **Your** benefit or others, to determine or warrant that such property or operations are safe.

**4.7 Joint Insureds**

Where **Your** company is comprised of more than one party, information supplied to **Us** shall be deemed to have been furnished by and on behalf of all such parties and any information supplied to **Us** or any omission or non-disclosure in relation to any renewal or extension thereof shall likewise be deemed to have been furnished, omitted or withheld by and on behalf of all such parties.

Condition 4.7 does not apply when a tenant is required to effect insurances on behalf of the tenant and the landlord and the tenant is not aware of material information that has not been supplied to them by the landlord and which should have been disclosed to the insurer provided that the tenant has made the necessary enquiries with the landlord prior to incepting cover.

**4.8 Legislation**

**You** are required to comply with all Legislation and Regulations, including Occupational Health and Safety requirements.

**4.9 OTHER INSURANCE**

**You** must tell **Us** in writing and supply copies to **Us** as soon as possible about any other insurance which covers the risks insured by this Policy.

The insurance afforded by this Policy is excess over and reduced by any other valid and collectable insurance available to **You**. Valid and collectable insurance includes any self insurance plan which would be applicable to the loss.

**4.10 Reasonable Precautions**

**You** shall take all reasonable precautions to:

- 4.10.1** prevent **Personal Injury** and **Property Damage** or **Advertising Liability**;

- 4.10.2** prevent manufacture, sale or supply of defective **Products**;

- 4.10.3** comply and ensure that **Your Employees**, servants and agents comply with all statutory obligations, by-laws or regulations imposed by a public authority in respect thereof for the safety of persons or property;

- 4.10.4** trace or recall or modify, at your own expense, any of **Your Products** containing any defect or deficiency of which **You** have knowledge or have reason to suspect.

**4.11 Servers liability**

Subject to the terms and conditions of this policy, **We** will pay on **Your** behalf all sums in respect of liability incurred arising out of the sale or serving of liquor in the course of **Your** running **Your Business**, unless knowingly being in breach of licensing requirements including but not limited to serving persons under the legal age, operating outside of license conditions, and deliberately not complying with responsible service of alcohol requirements.

**4.12 Subrogation**

- (a) **We** are entitled to pursue any claim to recover any amount paid to **You** or on **Your** behalf under this Policy in **Your** name at **Our** expense and for **Our** benefit.
- (b) **You** must give **Us** all the reasonable assistance and information that **We** require in pursuing any such claim.

**5. EXCLUSIONS**

**We** shall not be liable for claims in respect of:

**5.1 Advertising Injury**

for Advertising Injury:

- 5.1.1** resulting from statements made at **Your** direction with knowledge that such statements are false.

- 5.1.2** 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.

- 5.1.3** resulting from any incorrect description of **Products** or services.

- 5.1.4** resulting from any mistake in advertised price of **Products** or services.

- 5.1.5** failure of the **Your Products** or services to conform with advertised

performance, quality, fitness or durability.

5.1.6 incurred by **You** if **Your** principal occupation or business is advertising, broadcasting, publishing or telecasting.

## 5.2 Aircraft, Hovercraft and Watercraft

**Liability arising out of or caused by, through or in connection with:**

5.2.1 the ownership, maintenance operation or use by **You** or the use on **Your** behalf of any **Aircraft** or **Hovercraft**;

5.2.2 the selling or manufacturing of **Aircraft** or the manufacture, assembly and or supply of any **products** that are used with **Your** knowledge in **Aircraft** or aerial device;

5.2.3 the repair, service or maintenance of **Aircraft** or **Aircraft products** or the installation of any **products** into **Aircraft**;

5.2.4 the ownership, maintenance, operation or use by **You** or on **Your** behalf of any **Watercraft**, exceeding 10 metres in length except where such **Watercraft** are owned or operated by others and used by **You** for **business** entertainment;

5.2.5 any **Watercraft** operating in excess of 3 nautical miles offshore.

## 5.3 Asbestos

Any loss, or alleged loss, damage, cost, liability, expense, fine or penalty of any kind or nature whatsoever incurred by **You**, directly or indirectly, resulting from, in consequence of, or with respect to illness or sickness or death in any way relating to direct or indirect exposure to **asbestos** or materials containing **asbestos**.

## 5.4 Assault and Battery

**Personal Injury** or **Property Damage** caused by or arising from assault or battery committed by **You**, **Your Employee** or at **Your** direction, unless reasonably necessary for the protection of persons or property.

## 5.5 Contractual Liability

Liability assumed by **You** under any contract or agreement except to the extent that such liability would have been implied by law.

This Exclusion shall not apply to:

- (i) the written contracts designated in the current Schedule
- (ii) liability assumed by **You** under a warranty of fitness or quality as regards **Your products**.

- (iii) liability assumed by the **You** under any lease of real or personal property other than a provision which obliges **You** to effect insurance or provide indemnities in respect of the subject matter of that contract.

Any written contract made or entered into with any public authority for the supply of water, gas, electricity or telephone services, except a contract made or entered into with such authority for work done or to be done for such authority;

## 5.6 Contractors & Subcontractors

**Personal Injury** or **Property Damage** or **Advertising Liability** caused by or arising directly or indirectly out of or in connection with the activities of:

a) any contractor or sub-contractor; or

b) any person in the direct service or employ of a contractor or sub-contractor; employed or engaged by **You** or on **Your** behalf.

**We** will indemnify **You** for **Your** vicarious liability in relation to the acts of contractors and subcontractors as defined above, provided that **You** have taken all reasonable steps to ensure that the contractors and/or subcontractors have effected valid insurance in respect of the **Products** and/or activities being performed for **You**.

It is further agreed and understood that in the event of a claim arising from contractors and/or subcontractors insurance effected by such contractors and/or subcontractors shall be considered as the primary insurance and that this Policy will respond only where such insurance is exhausted.

## 5.7 E-Commerce

for **Personal Injury** or **Property Damage** or **Advertising Liability** arising directly or indirectly out of, or in any way involving **Your** internet operations or

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:

5.7.1 the use of any computer hardware or software

5.7.2 the provision of computer or telecommunications services by **You** or on **Your** behalf

5.7.3 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 :

- (a) **Personal Injury** or **Property Damage** or **Advertising Liability** arising out of any material which is already in print 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
- (b) liability which arises irrespective of the involvement of **Your** internet operations.

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.

#### 5.8 Electromagnetic Fields

**We** will not indemnify **You** in respect of claims arising out of:

Any **Personal Injury** or **Property Damage** caused by or attributed, directly or indirectly, to exposure to any electromagnetic field or radiation.

#### 5.9 Employees

**5.9.1 Personal Injury** to any of **Your Employees** or deemed **Employees** arising out of or in the course of his/her employment in **Your Business**;

**5.9.2 Personal Injury** to any person in **Your** service arising from a liability imposed by an industrial award or agreement or determination;

**5.9.3** Any liability in respect of which **You** are entitled to seek compensation under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation whether or not **You** have effected such a policy;

#### 5.10 Erection and Alteration to Buildings

The erection, demolition of and/or alteration or addition to buildings or structures by **You** or on **Your** behalf except where the completion value of such work does not exceed \$500,000, unless some other sub-limit is stated in the current Schedule.

#### 5.11 Faulty Workmanship

**Property Damage** to that part of any property upon which **You** have been working where the **Property Damage** arises from **Your** work or the cost of performing, completing, correcting or improving any work undertaken by **You**.

#### 5.12 Fines and Penalties

Punitive, aggravated or exemplary damages, fines or penalties imposed by law.

#### 5.13 Libel and Slander

for libel and slander:

**5.13.1** resulting from statements made prior to the commencement of the Period of Insurance.

**5.13.2** resulting from statements made at **Your** direction with knowledge that such statements are false.

**5.13.3** related to advertising, broadcasting, publishing or telecasting activities conducted by **You** or on **Your** behalf.

#### 5.14 Loss of Use

Loss of use of tangible property which has not been physically damaged or destroyed resulting from:

**5.14.1** a delay in or lack of performance by or on **Your** behalf of any contract or agreement; or

**5.14.2** the failure of **Your Products** to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by **You**, but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss or destruction of **Your Products** after such **products** have been put to use by any person or organisation other than **You**.

#### 5.15 Micro-Organism

This Policy excludes any loss, damage, claim, cost, expense or sum directly or indirectly arising out of or relating to:

Mould, mildew, fungus, spores or other micro-organism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or

functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

#### 5.16 Nuclear Fuel/Weapons

**Personal Injury** or **Property Damage** or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

**5.15.1** ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion combustion shall include any self-sustaining process of nuclear fission.

**5.15.2** the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**5.17 Pollution**

**Personal Injury** or **Property Damage** arising out of the discharge, dispersal, release or escape of **Pollutants** into or upon land, the atmosphere or any watercourse or body of water. **We** shall also not be liable to pay any costs and expenses incurred in the prevention, removal, or clean-up of such **Pollutants**.

Exclusion **5.17** shall not apply if such discharge, dispersal, release or escape is caused by a sudden, identifiable, unexpected and unintended happening and takes place in its entirety at a specific time and place during the **Period of Insurance**.

However, notwithstanding Exclusion **5.17**, cover does not apply in respect of Pollution for:

- (i) **Property Damage** to premises presently or at any time previously owned or tenanted by **You**
- (ii) **Property Damage** to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by **You** or otherwise in **Your** care custody or control.

**5.18 Professional Advice**

The rendering of or failure to render professional advice or service by **You** or **Medical Persons** or any error or omission connected therewith, but this exclusion does not apply to:

- (i) the rendering of or the failure to render professional medical advice by **Medical Persons** employed by **You** to provide first aid and other medical services on **Your** premises, or
- (ii) **Personal Injury** or **Property Damage** arising from such rendering of or failure to render professional advice or service, providing such professional advice or service is not given for a fee.

**5.19 Property Damage to:**

**5.19.1** Property owned by or leased or rented to **You**; or

**5.19.2** Property in **Your** physical or legal control.

Exclusion **5.19** shall not apply to liability for **Property Damage** to:

- (i) Property in **Your** physical or legal control up to the amount stated in the Policy Schedule, any one **Occurrence** and in the aggregate during any one **Period of Insurance**. However **We** shall not be liable for **Property Damage** to that part of any property upon which **You** are or have been working where such **Property Damage** arises from **Your** such work.
- (ii) Premises which are leased or rented to **You**.
- (iii) **Employees** property.
- (iv) **Vehicles** (not belonging to or used by or on **Your** behalf) in **Your** physical or legal control where such **Property Damage** occurs whilst any such **Vehicle** is in a car park owned or operated by **You**, provided that **You** do not own or operate a car park for reward as part of **Your Business**.

Provided that where cover is not excluded **You** shall bear an **Excess** in respect of such **Property Damage** as specified in the Schedule.

**5.20 Recall of Products**

Damages, costs or expenses claimed for the withdrawal, inspection, repair, replacement or loss of use of **Your Products** or of any property of which such **products** form a part, if such **Products** or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

**5.21 Sexual Assault, Abuse or Molestation**

**Personal Injury** or **Property Damage** caused by or arising out of or in connection with any actual or alleged sexual assault, sexual abuse or molestation of any person.

**5.22 Territorial Limits**

**Personal Injury** or **Property Damage** or **Advertising Liability**:

**5.22.1** occurring in the United States of America or Canada and any other country which operates under the laws of the United States of America or Canada. This exclusion shall not apply to claims arising from the presence of any person who is normally resident in Australia or New Zealand and who is not

undertaking manual work or a supervision of any kind in United States of America or Canada. However the Limits of Liability for such claims are inclusive of all law costs and expenses as set out in Clause 2.2 of the Policy;

**5.22.2** caused by or arising out of **Your products** knowingly exported by **You** or **Your** agents to the United States of America or Canada;

**5.22.3** where claims are made upon **You** outside Australia or New Zealand in any country where **You** are represented by a branch or company or firm or individual holding **Your** power of attorney;

**5.22.4** where such claims arise out of any contract entered into by **You** under the terms of which, work is to be performed outside Australia or New Zealand.

### **5.23 Legal Jurisdiction**

**Personal Injury** or **Property Damage** or **Advertising Liability** where the action is brought against **You** in any country outside Australia or New Zealand.

### **5.24 Terrorism**

Liability for loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this exclusion an act of terrorism means an act including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed to political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If **We** allege that by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon **You**.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

### **5.25 Tobacco**

Any injury caused directly or indirectly by the inhalation or ingestion of or exposure to tobacco.

### **5.26 Treatment and Dispensing**

Should **Your Business** be involved in the treatment of:

**5.26.1** humans or animals for any physical or mental deficiency, injury, illness or disease, or the dispensing of drugs, or

**5.26.2** the dispensing of drugs, medicines, pharmaceutical supplies or artificial aids;

Then **We** shall not be liable for **Property Damage** or **Personal Injury** arising from the treatment of those humans or animals nor for **Your** liability for **Property Damage** or **Personal Injury** caused through the dispensing of drugs, medicines, pharmaceutical supplies, or artificial aids.

### **5.27 Vehicles**

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

**5.27.1** which is registered; or

**5.27.2** in respect of which insurance is required by virtue of any legislation.

Exclusion **5.27** shall not apply to **Personal Injury** or **Property Damage** arising from:

(i) 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.

(ii) the loading or unloading of any **Vehicle**.

### **5.28 War**

**Personal Injury** or **Property Damage** directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.

### **5.29 Sanctions**

or to provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America."