Professional Indemnity and Broadform Liability Policy Wording
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General Information & Important Notices

How We protect your privacy

We use information provided by Our customers to allow Us to offer Our products and services. This means We may need to collect Your personal information, and sometimes sensitive information about You as well (for example, Your claims history). We will collect this information directly from You where possible, but there may be occasions when We collect this information from someone else.

We will only use Your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give Us Your information, but this may affect Our ability to provide You with insurance cover.

We may share this information with companies within Our group, government and law enforcement bodies if required by law and others who provide services to Us or on Our behalf, some of which may be located outside of Australia.

By applying for, using or renewing any of Our products or services, or providing Us with Your information, You agree to this information being collected, held, used and disclosed as set out in this policy.


General Insurance Code of Practice

The Insurers are a signatory to the General Insurance Code of Practice (‘Code’) and Pacific Indemnity also proudly supports the Code.

The Code, was developed by the Insurance Council of Australia to further raise standards of practice and service across the insurance industry.


Our service commitment

We are proud of Our service standards and support the General Insurance Code of Practice. In an unlikely event that You are not satisfied with the way in which We have dealt with You, as part of Our commitment to customer service, We have an internal dispute resolution process in place to deal with any complaint You may have.

Please contact Us if You have a complaint, including if You are not satisfied with any of the following:

- one of Our products;
- Our service;
- the service of Our authorised representatives;
- Our claims representatives; or
- Our decision on Your claim.

Our staff will help You in any way they can. If they are unable to satisfy Your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to Our Internal Dispute Resolution Department. Details of Our internal dispute resolution process are available from Our office.

Intermediary Remuneration

Pacific Indemnity Underwriting Solutions Pty Ltd pays remuneration to insurance intermediaries when We issue, renew or vary a policy the intermediary has arranged or referred to Us. The type and amount of remuneration varies and may include commission and other payments. If You require more information about remuneration We may pay Your intermediary You should ask Your intermediary.

We, Us and Our

For the purposes of this policy, ‘We’, ‘Us’, and ‘Our’ means Pacific Indemnity Underwriting Solutions Pty Ltd ABN 14 606 511 639 - on behalf of the Insurers.

The Insurers of this product are set out in the definition of “We or Us or Our” in each of the sections in this policy.

To the extent that any policy is jointly issued on a co-insurance basis then each Insurer provides cover under the same terms and conditions but with a limited share of liability as per the percentage stated in the definition of “We or Us or Our” in that policy section.

About Pacific Indemnity

Pacific Indemnity Underwriting Solutions Pty Ltd, ABN 14 606 511 639, specialises in Professional Risk insurance (including Professional Indemnity Insurance, Malpractice Insurance, Information & Communication Technology Insurance, Management Liability Insurance and similar products). Pacific Indemnity’s Australian Financial Service Licence number is 480863.

Pacific Indemnity’s Australian Financial Service Licence number is 480863. In arranging this insurance, Pacific Indemnity is acting on behalf of the Insurers.

Wholesale only

Pacific Indemnity Underwriting Solutions Pty Ltd is only licensed to offer or provide General Insurance products or services which do not include any of the following types of General Insurance (which are defined by the Corporations Act as “retail”): Motor Vehicle, Home Building, Home Contents, Sickness and Accident, Consumer Credit, Travel, Personal or Domestic Property, Medical Indemnity or any other kind of General Insurance which has been prescribed by the Corporations Regulations.
Policy A - Professional Indemnity Policy

Insuring Clauses

We will pay to or on Your behalf all awards of damages and awards of claimants costs against You resulting from any Claim for Civil Liability arising from the provision of Professional Services by or on behalf of the Named Insured.

We do this only for Claims which:

a) are made against You during the Period of Insurance; and
b) We are told about in writing as soon as reasonably possible during the Period of Insurance; and
c) arise out of an act or omission after the Retroactive Date, if any, specified in the Schedule.

We will also pay on Your behalf (and as needed, advance) the Claim Investigation Costs for Covered Claims. We are not however obliged to defend, or to continue to defend, any Claim or pay, or continue to pay, Claim Investigation Costs, once the Policy Limit (or the Sub Limit, as the case may be) has been exhausted.

All Cover provided under this Policy is subject to the Insuring Clauses and all the Policy terms, conditions, exclusions and limits contained in or endorsed on this Policy and the payment of the Gross Premium stated in the Schedule.

Insuring Clause clarifications

For clarity, and subject to the terms, conditions, exclusions and limits of the Policy, Civil Liability Covered by this Policy includes (but is not necessarily limited to) liability arising from the provision of Professional Services for the following:

- Breach of professional duty;
- Breach of confidentiality;
- Breach of privacy;
- Breach of fiduciary duty;
- Defamation;
- Loss of or damage to Documents (to the full Policy Limit);
- Liability for the dishonest, fraudulent, criminal or malicious acts or omissions of persons for whom You are responsible – vicarious liability (subject to the Additional Special Provisions for Misappropriation of Money, Dishonesty and Fraud);
- Intellectual Property breaches;
- Breaches of the Competition and Consumer Act and the Fair Trading Acts (Australian & New Zealand);
- Misleading and deceptive conduct breaches under the Australian Securities and Investments Commission Act 2001;
- Vicarious Liability;
- Unintentional breaches of warranty of authority.

Extensions

Each of the following extensions automatically applies unless otherwise stated in the endorsements or the Schedule. Each of the extensions is subject to the Insuring Clause and all other terms, exclusions, conditions and the Policy Limit of this Policy unless otherwise expressly stated.

Compensatory Penalties

Notwithstanding the Punitive & Exemplary & Liquidated Damages exclusion, We Cover Claims for Compensatory Civil Penalties. Our total liability for the payment of Compensatory Civil Penalties under the Policy shall not exceed $250,000 in the aggregate, which is included within and not in addition to the Policy Limit.

However, We will not be liable to Cover You for any Compensatory Civil Penalty:

a) for which We are legally prohibited at law from indemnifying You;

b) based upon, attributable to or in consequence of any:

(i) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or

(ii) gross negligence or recklessness; or

(iii) any requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

A separate Excess will apply to each Compensatory Civil Penalty payable under this extension.

Costs of responding to third party claims for equitable relief

In so far as an action for equitable relief is brought against You while this Policy is in force (arising from the provision of Professional Services by or on behalf of the Named Insured) and We are told about this in writing as soon as reasonably possible while this Policy is in force, then We will also pay on Your behalf (and as needed, advance) the Claim Investigation Costs of any such action.

Enquiries – legal costs cover – including for regulatory, licensing, disciplinary or coronial enquiries

For those Enquiries of which You first become aware (and of which We are told about in writing as soon as reasonably possible) while this Policy is in force, We Cover You and Your Employees up to $250,000 in the aggregate in respect of Claim Investigation Costs for Your representation at any such Enquiry. This Cover does not extend to paying Your regular or overtime wages, salaries or fees, or those of Your Employees.

The Excess applicable to the Cover provided under this extension is the Excess stated in the Schedule.
Court Attendance Costs
For any person described in a) and b) below who is required to physically attend at Court for the purposes of giving evidence as a witness in connection with a Covered Claim, then it is agreed that Claim Investigation Costs will include the following payments, per day on which attendance in court is required:

a) Payable to any Principal or Former Principal - $500
b) Payable to any Employee - $250

No Excess shall apply to this extension of the Policy.

Public Relations Cover
We will pay the reasonable and necessary fees, costs and expenses of a public relations consultant retained by You with Our prior written consent (which shall not be unreasonably delayed or withheld) to design and implement a Publicity Campaign approved by Us, which is designed to prevent or mitigate damage to Your reputation in consequence of a Covered Claim arising from the provision of Professional Services.

Our total liability for the payment of such fees, costs and expenses of a public relations consultant under the Policy shall not exceed a Sub Limit of $50,000 in the aggregate, which is included within and not in addition to the Policy Limit.

Notwithstanding the Policy Excess specified in the Schedule, the Excess applicable to the cover provided under this extension is $1,000 for each and every Publicity Campaign.

Contractual Liability Defence Costs
Notwithstanding the exclusion for contractual warranties and guarantees within this Policy We will Cover You for all Claim Investigation Costs which We consider reasonable and necessary in defending You against any Claim which:

a) is made against You while this Policy is in force; and
b) We are told about in writing as soon as reasonably possible while this Policy is in force; and

arise from an act, error or omission on or after the Retroactive Date as specified in the Schedule which arise out of:

(i) a liability under a contractual warranty, guarantee or undertaking; or
(ii) a breach of an indemnity and/or hold harmless term of a written contract,

to the extent that such liability or breach resulted from Your act, error or omission in the performance or provision Professional Services.

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

Privacy Remediation Expenses
We will pay, on Your behalf, Privacy Remediation Expenses in respect of a privacy breach event which is notified to Us during the Period of Insurance, subject to a Sub Limit of $100,000 any one privacy breach event and in the aggregate for all such privacy breach events.

Vicarious Liability
The performance of Professional Services by You includes, for the purpose of this Policy, acts, errors or omissions of Your agents or consultants while undertaking work pursuant to the contract with You which is reasonably incidental to Your Professional Services and for which You are liable. Such agents and consultants, however, are not Covered by this Policy.

Continuous Cover
We Cover You for any Claim, otherwise Covered by this Policy, arising from a Known Circumstance (notwithstanding the exclusion for Claims arising from Known Circumstances within this Policy) if:

a) there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such Known Circumstance; and
b) We were Your professional liability insurer when You first knew of such Known Circumstance; and
c) We continued without interruption to be Your professional liability insurer up until this Policy came into effect; and
d) had We been notified by You of the Known Circumstance when You first knew of it, You would have been entitled to Cover under the policy in force at that time but are not now entitled to be Covered by that policy, and You would (but for the Claims or Facts Which May Give Rise To Any Claim or Loss or Liability or Enquiry exclusion of this Policy) otherwise be Covered under this Policy; and
e) neither the Claim nor Known Circumstance have previously been notified to Us or to any other insurer.

If You were entitled to have given notice under any other policy of insurance but did not (for whatever reason) and have therefore lost an entitlement to indemnity, then this Continuous Cover extension does not apply to provide indemnity under this Policy.

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

The Policy Limit of the Cover We provide under this provision is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph d) above, or under this Policy. The terms of this Policy otherwise apply.
Prior Corporate Entities and Former Subsidiaries - Run-off Cover

This Policy extends to Cover (as if they were You):

a) corporate entities through which the Named Insured previously traded, in the course of the provision of Professional Services, provided that those corporate entities are still owned by the Named Insured; and

b) any of Your former Subsidiary companies or other former incorporated entities, provided that such Cover shall only apply in respect of:

   (i) Claims arising from the provision of Professional Services; and

   (ii) acts, errors or omissions which occurred after the Retroactive Date specified in the Schedule and prior to the date on which such Subsidiary ceased to be Your Subsidiary or ceased to trade.

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

Mergers & Newly Acquired Subsidiaries

This Policy extends to Cover entities (practicing in the same professional discipline as You) in respect of Claims arising from the provision of Professional Services of substantially the same type as those Covered by this Policy, which are merged with or acquired by You while this Policy is in force. This Cover is only an interim Cover for a maximum of thirty days from the date of the merger or acquisition (or until the Policy expires if that is sooner). We may agree to extend this period (subject to additional premium) after receipt of a satisfactory underwriting submission in respect of the merged or acquired entity.

The Retroactive Date for such Cover is deemed to be the date of the merger with or acquisition by You unless We otherwise agree in writing.

Run-off cover until policy expiry date following mergers, acquisitions and winding up

In the event that a Run-Off Event occurs to You during the Period of Insurance specified in the Schedule, then the Cover provided by this Policy shall continue until the expiry date of this Policy but only in respect of any Claim otherwise Covered by this Policy arising from any act, error or omission prior to the date of the Run-Off Event.

Cover to Spouse, domestic partner, Estates, Administrators & Executors and Legal Representatives

If You, or anyone entitled to Cover under this Policy, dies or becomes legally incompetent or insolvent, We Cover Your spouse, domestic partner, estate, legal representative or assigns, or the party entitled to Cover, to the same extent as Cover would otherwise have been available to You, but only in respect of Your acts, errors or omissions and not of the spouse, domestic partner, estate, administrator, executor, legal representatives or assigns.

Non-Renewal Extended Notification Period

a) In the event that this Policy is not renewed or is cancelled for any reason, other than fraud or non-payment of premium, then You have until such time that You effect another insurance policy which Covers substantially the same risk as this Policy, either with Us or any other insurer(s), or a period of thirty (30) days commencing on the day immediately following expiry/cancellation of this Policy, whichever is sooner, to notify Us of any Claims made against You while this Policy is in force.

b) Cover under this extension:

   (i) does not reignstate or increase the Policy Limit or extend the Period of Insurance;

   (ii) will only apply to acts, errors or omissions committed or alleged to have been committed by You before the end of the Period of Insurance or the cancellation date of this Policy where this Policy has been cancelled; and

   (iii) is limited to Claims and Enquiries arising from an act, error or omission which occurred on or after the Retroactive Date specified in the Schedule.

Joint Venture

a) If the name of a Joint Venture is specified in the Schedule, then We Cover You for Your individual and joint liability in respect of that Joint Venture as otherwise Covered by this Policy.

b) If the name of the Joint Venture is not specified in the Schedule then We Cover You only for Your acts, errors or omissions arising from the provision of Professional Services as otherwise Covered by this Policy.

What is not Covered

We do not Cover You for or in respect of:

Claims or Facts Which May Give Rise To Any Claim or Loss or Liability or Enquiry

Claims, or facts which may give rise to any Claim or loss or liability or Enquiry:

a) known to You at the inception date of this Policy; or

b) arising from a Known Circumstance; or

c) directly or indirectly based upon, attributable to, or in consequence of any Known Circumstance or known Claims, losses, liabilities or Enquiries; or

d) disclosed in the Proposal or arising from or associated with facts or circumstances disclosed in the Proposal; or

e) if the Policy is endorsed or amended mid term, for any Claim or Covered Claim or any associated costs that arose from a Known Circumstance (as at the effective date of the amendment or endorsement) to the extent that the Claim or Covered Claim or any associated costs would not have been Covered by the Policy before such amendment or endorsement.
Foreign Courts

Claims:

a) first brought in or determined pursuant to the laws of, the United States of America or the Dominion of Canada, or their territories or protectorates; or
b) arising out of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their territories or protectorates; or
c) where the proper law of the United States of America or the Dominion of Canada, or their territories or protectorates is applied to any of the issues in any Claim or Covered Claim, Covered by this Policy.

d) any other person, firm or incorporated body having control over 10% or more of the voting shares or rights or an executive role; or

e) any trust in respect of which You or any person or party specified in a) above holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role; or

Assumed duty or obligation

Claims:

a) which allege a liability under a contractual warranty, guarantee or undertaking (unless the liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
b) which arise from circumstances where a right of contribution or indemnity has been given up by You; or
c) which arise from circumstances where someone has done work or provided services under an arrangement or agreement with You which limits any potential right for You to receive contribution or indemnity from that person; or
d) which arise from any Civil Liability which You agree to accept in connection with the provision of the Professional Services which is more onerous than that which You would otherwise have at common or statute law; or
e) which arise from any business not conducted for or on behalf of the Named Insured.

Related parties

Claims against any of You brought by or on behalf of:

a) any other of You; or
b) any company in respect of which You or any person or party specified in a) above holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role; or
c) any trust in respect of which You or any person or party specified in a) above is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or
d) any other person, firm or incorporated body having control of over 10% or more of the voting shares or rights or an executive role in the operation of the Named Insured.

Refund of Professional Fees and Trading Debts

Claims:

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

Profit

Any forgone or un-realised profit. In particular, there is no Cover under this Policy for any component of profit which would have been derived or derivable by You from the sale or supply of any goods, services or rights by You or on Your behalf.

Insolvency

Liability or loss directly or indirectly arising out of or in any way connected with Your insolvency, bankruptcy or liquidation.

Goods & Workmanship

Claims directly or indirectly arising from:

a) the manufacture, maintenance, installation, assembly, processing, sale, supply or distribution of goods or products by You or on Your behalf; or
b) workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, maintenance, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by You or on Your behalf; or from supervision of such workmanship by any of You.

Employers Liability, Directors’ & Officers’ Liability, Occupier’s Liability, Motor, Marine, etc

Claims:

a) directly or indirectly based upon, attributable to or in consequence of Your liability as an employer; or
b) for bodily injury (including mental anguish or emotional distress), sickness, disease or death of any employee, apprentice, contractor, volunteer or any worker who is under Your direction, control and/or supervision or for whose workplace safety You are responsible; or

c) arising out of or in respect of actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any of You against any employee or employment applicant; or
d) arising out of or in respect of actual or alleged acts, errors or omissions of any of You who is a director or officer of any incorporated body and while acting in that capacity; or

e) arising from occupation (or alleged occupation) of land or buildings by any of You; or

f) arising from or in respect of Your liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

Punitive & Exemplary & Liquidated Damages

For punitive, aggravated or exemplary or liquidated damages or for fines or penalties. Further, this Policy does not provide Cover for any investigation or defence costs associated with such Claims or Covered Claims.

Intentional or Dishonest Damage or Loss

Intentional or dishonest damage or loss:

a) arising from Your acts, errors, omissions or conduct, or acts, errors, omissions or conduct by a party otherwise entitled to Cover under this Policy, with the intention (or with reckless disregard for the consequences) of either:

(i) causing loss, damage or injury (including mental or emotional damage); or

(ii) depriving a third party (or another of You) of a tangible or intangible asset or thing to which they are entitled; or

b) arising from any wilful breach of any statute, contract or duty by You; or

c) arising from Your fraudulent or dishonest or criminal or malicious acts or omissions or conduct.

This exclusion does not restrict Cover otherwise provided under the Policy for vicarious liability for the dishonest, fraudulent, criminal or malicious acts or omissions of persons for whom You are responsible.

De-Registration

Claims arising from acts, errors or omissions by or on Your behalf which occurred at a time when a statutory registration or licence (which was required by law in order for You to be entitled to practice or provide the Professional Services) was not held, was cancelled or suspended or was otherwise not current or valid for the Professional Services provided.

Asbestos

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

Radioactivity & Nuclear Hazards

Claims arising from:

a) ionising radiations or contamination by radioactivity from any nuclear material; or

b) the hazardous properties of any nuclear explosive, assembly or component.

War & Uprisings

Claims arising directly from:

a) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or

b) property being taken, damaged or destroyed by a government or public or local authority.

Terrorism

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

a) any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or

b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of Terrorism.

Sanctions

Claims in respect of which and to the extent to which trade or economic sanctions or other laws or regulations prohibit Us from providing Cover.

Pollution

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

Limits & GST

Cover under this Policy shall not exceed the Policy Limit for any one Claim or series of Claims (including Covered Claims) arising from the same or interrelated acts, errors or omissions. For the purposes of this Policy, all such Claims shall be deemed to have been made against You in the earliest Period of Insurance in which such a Claim is first made against You (or during which You first become aware of facts that might give rise to a Claim).

Where the same Claim is made against more than one of You then the limit is not increased by reason of the number of persons against whom the Claim is made.
Aggregate Policy Limit

Subject to the above and the following qualifications, We will provide Cover to a maximum of twice the Policy Limit for all Claims Covered by this Policy.

Aggregate Limit qualifications

To the extent permitted by law, if there is other insurance cover available to You, then subject to Section 45 of the Insurance Contracts Act, Cover in excess of one Policy Limit (up to a maximum of twice the Policy Limit) is only available for so much of the liability (otherwise Covered by this Policy) which is not Covered by such insurance.

Limit of Cover for Claim Investigation Costs

Where Cover is provided under this Policy for any Claim, then Claim Investigation Costs are payable in respect of that Claim in addition to the Policy Limit but only up to an amount equal to the Policy Limit. The aggregate amount We will pay in total for Claim Investigation Costs for or in respect of all Claims Covered by this Policy shall not exceed an amount equal to twice the Policy Limit.

Sub Limits

If this Policy or the Schedule indicates any Sub Limits for specific types of Cover under this Policy, then the applicable Sub Limits and not the Policy Limit apply only to these Claims. These Sub Limits are included within and not in addition to the Policy Limit.

GST Input Tax Credits

a) Where and to the extent that We are entitled to claim an Input Tax Credit for a payment made under the Policy, then any monetary limit in the Policy on Our obligation to make such a payment, shall be net of Our entitlement to the Input Tax Credit.

b) Where and to the extent that You are entitled to claim an Input Tax Credit for a payment required to be made by You as an Excess, then the amount of the Excess shall be net of Your entitlement to the Input Tax Credit.

c) Where payment is made under this Policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any Input Tax Credit that You are, or will be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.

d) Where payment is made under this Policy as compensation instead of payment for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any Input Tax Credit that You would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

Claim Conditions - Part A

Investigation, defence and settlement of Claims

We must be told about Claims

You must tell Us in writing about any Claims or losses as soon as possible and while this Policy is in force. If this is not done, Your right to Cover under this Policy may be affected.

Claims co-operation

Each of You must:

a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen Your liability in relation to a Claim (or Covered Claim) or loss otherwise Covered by this Policy; and

b) promptly give to Us all the help and information that We may reasonably require to:

(i) investigate, mitigate and defend a Claim or loss; and

(ii) determine Our liability under this Policy.

We can protect Our position

When We receive a notification of a Claim, or Covered Claim, then We can take whatever action We consider appropriate to protect Our position.

This does not, however:

a) indicate that any of You is entitled to be Covered under this Policy; or

b) prejudice Our rights under the Policy or at law.

We can manage the Claim (or Covered Claim) on Your behalf

We can:

a) take over and defend or settle any Claim (or Covered Claim) in Your name; and

b) claim in Your name, any right that You may have for contribution or indemnity.

You must not admit liability for or settle any Claim (or Covered Claim)

You must:

a) admit liability for, or settle any Claim (or Covered Claim); or

b) incur any Claim Investigation Costs without first obtaining Our written consent. If Our prior written consent is not obtained, Your right to Cover under this Policy may be affected.
Your right to contest
If You elect not to consent to a settlement that We recommend and You want to contest or continue the dispute or legal proceedings, then We will only Cover You (subject to the Policy Limit) for:

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

Senior Counsel
Unless a Senior Counsel, that We and You both agree to instruct, advises that the Claim or Covered Claim should be contested, then to the extent permitted by law (subject to Section 43 of the Insurance Contracts Act) neither We nor You can require the other to contest any legal proceedings about a Claim if the other does not agree to do so.

In formulating his or her advice, Senior Counsel must be instructed to consider the economics of the matter, having regard to but not limited to:

a) the damages and costs likely to be recovered; and
b) the likely costs of defence; and
c) Your prospects of successfully defending the Claim or Covered Claim.

The cost of Senior Counsel’s opinion will form part of the Claim Investigation Costs.

If Senior Counsel advises that the matter should be or is appropriate to be settled and if the terms of settlement which We recommend are within limits which are reasonable (in Senior Counsel’s opinion and in the light of the matters he/she is required to consider), then You:

a) cannot (subject to the provisions herein under the heading “Your right to contest”) object to the settlement; and
b) must immediately pay the relevant Excess specified in the Schedule.

Payments to settle potential Claims
Any money We pay to settle anything which might give rise to a Claim (or Covered Claim), is taken to be:

a) a payment to settle a Claim (or Covered Claim); and
b) a payment for the purpose of calculating the total of all Claims (or Covered Claims) under this Policy.

Recovering money from Employees
We will not recover any amount paid out in respect of a Claim or loss under this Policy from any of Your Employees or former Employees unless the Claim (or Covered Claim) arose from dishonest, fraudulent, criminal or malicious acts or omissions of such Employee or former Employee.

Offsetting of costs & expenses You owe Us against what We owe You
If We incur costs or expenses above Our liability under the Policy for Claim Investigation Costs, then You must pay whatever amount is above that liability immediately We ask for it.

We can offset that payment due from You against (and deduct that amount from) any amount We must pay to or on behalf of You under this Policy.

The Excess
a) We only provide Cover (up to the Policy Limit) for that part of the Covered Claim above the Excess specified in the Schedule;
b) There is no Excess for Claim Investigation Costs when We Cover You for the Covered Claim;
c) Only one Excess is payable for any one Claim or series of Claims (including Covered Claims) arising from the same or interrelated acts, errors or omissions.

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

a) We have not already denied indemnity under the Policy; and
b) Our written consent is obtained prior to You incurring such Claim Investigation Costs (such consent not to be unreasonably withheld).

We reserve the right to recover any Claim Investigation Costs paid under this provision from You, in the event and to the extent that:

a) You make an admission in writing of any fraudulent, dishonest, malicious or intentional conduct; or
b) it is subsequently established, directly or indirectly, by admission, judgment or other final adjudication, that You were not entitled to Cover under this Policy.
Allocation

a) If a Claim includes both matters which are Covered and matters which are not Covered by this Policy, then both You and We will allocate (based upon Your relative legal and financial exposures to matters Covered and matters not Covered by this Policy) any amounts which have been incurred by You or on Your behalf.

b) If both You and We cannot agree on an allocation of such amounts incurred by You or on Your behalf then:

(i) We will advance such portion of the Claim investigation Costs which We deem to be Covered under this Policy, unless and until a different and final allocation is mutually agreed upon between You and Us or is judicially determined.

(ii) We may, in Our sole discretion, pay amounts (other than amounts for Claim Investigation Costs) which We deem to be Covered under this Policy, unless and until a different and final allocation is mutually agreed upon between You and Us or judicially determined.

(iii) any allocation of damages, Claim Investigation Costs or other amounts which are mutually agreed upon between You and Us or judicially determined.

(iv) any allocation or advancement of Claim Investigation Costs will not apply to or create any presumption with respect to the allocation of amounts in respect of a Claim, other than in respect of Claim Investigation Costs.

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

The solicitors instructed by Us for any Claim (or Covered Claim) can disclose to Us any information that they may receive in that capacity, wherever and from whomsoever they obtain it and notwithstanding that they may also be representing You in respect of the notified circumstance or Covered Claim. By claiming under this Policy, You and any person entitled to indemnity under this Policy authorise such solicitors to disclose this information to Us.

Additional Special Provisions for Misappropriation of Money, Dishonesty and Fraud

When the Claim under this Policy involves the theft or misappropriation of Money (excluding the theft or misappropriation from a trust account operated by the Named Insured):

a) the Cover is subject to a Sub Limit of $500,000 in the aggregate for all such Claims; and

b) the Cover is subject to the Policy terms and conditions for Claim Investigation Costs, We also pay in addition to the Sub Limit specified in a) above, Claim Investigation Costs (but only up to an amount equal to the Sub Limit); and

c) for any Claim, or Claims (including Covered Claims) arising from one act, error or omission, the aggregate Cover under this Policy for Claims involving or arising from the theft or misappropriation of Money shall not exceed the Sub Limit specified in a) above; and

d) the Named Insured must pay only one Excess inclusive of Claim Investigation Costs for all Covered Claims involving or arising from the theft or misappropriation of Money arising from the one act, error or omission.

When the Claim under this Policy involves theft or misappropriation of Money from a trust account operated by the Named Insured, then We only provide Cover, if:

a) the trust account was audited at least annually by a qualified independent accountant; and

b) all cheques prepared on that trust account are required to be signed by a Principal or two authorised people;

c) all electronic fund transfers are required to be authorised by a Principal and accounts which are accessible on line are reviewed at least weekly.

You must take and continue to take all reasonable precautions to prevent any Claim arising from fraud or dishonesty and continue to perform all the supervision, controls, checks and audits reasonably practicable to avoid or lessen a Claim arising from fraud or dishonesty.

We deduct from any money We pay for a Claim or loss arising from fraud or dishonesty.

a) the amount of any money which You would have paid to the fraudulent, dishonest, criminal or malicious person the subject of Cover under this Policy, if they had not been fraudulent, dishonest, criminal or malicious; and

b) the amount of any money, or to which the person referred to in paragraph a) above is entitled, which You hold (if We can do so by law).
Notwithstanding express Cover extensions for vicarious liability arising from fraud or dishonesty of Employees, there is no Cover under this Policy to any person or entity the subject of Cover under this Policy, for any Claim or loss directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions or conduct of which:

a) any such person or entity had knowledge, or had reason to suspect, at or prior to the time of such acts or omissions; and

b) failed to take any reasonable action to prevent.

There is no Cover under this Policy to any person who was a participant in any fraudulent or dishonest or criminal or malicious acts or omissions or conduct for any Claim arising from such acts or omissions or conduct.

For the purpose of this Policy, Money means local or foreign currency, coins, bank notes, cheques, travellers cheques, registered cheques, postal orders, money orders, negotiable instruments, bearer bonds or coupons, stamps and bullion.

General Provisions - Part A

Premium Payment
The Cover We provide in this Policy is subject to full payment of the Gross Premium as stated in the Schedule. If full payment of the Gross Premium is not made, there is no Cover.

Cover Beneficiaries
In so far as Cover is extended under this Policy to individuals and entities who are not a contracting party under this Policy, such Cover is subject to those individuals and/or entities (as the case may be) agreeing in writing within a reasonable time of notification to Us of the Claim or Covered Claim:

a) to be bound by the terms, conditions, exclusions and limits of this Policy;

b) to be bound by obligations of utmost good faith as if they were a contracting party; and

c) to be liable individually, and together with You, for paying the Excess (or any other payment due to Us under this Policy) in respect of any Cover provided to them under this Policy.

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

Other Insurance Which May Cover The Risk
You must immediately advise Us in writing of any insurance already affected or which may subsequently be affected covering, in total or in part and whether absolutely or contingently, the liability, Claim, loss or Claim Investigation Costs, or any part of them, Covered by this Policy.

Material Change in the Risk
You must immediately advise Us in writing of any material change in the risk Covered by this Policy.

The Proposal – Severability and Non-imputation
The Proposal We were given by or on Your behalf before this Policy commenced, is taken to be a separate Proposal for each natural person or entity Covered under this Policy.

If there is any incorrect fact or misstatement in the Proposal that relates to one of You who is a natural person then, for the purposes of this Policy, We do not attribute it to any other of You who was not aware of the incorrect fact or misstatement.

Authority to accept notices & to give instructions
The person or entity first listed as the Named Insured in the Schedule is appointed as agent of:

a) each of You; and

b) any person or entity who is entitled to a benefit under this Policy (when they request Cover or suffer a loss under this Policy),

in all matters relating to this Policy, and to Claims or Covered Claims which are (or are to be) Covered by the Policy.

In particular (but without limitation) the person or entity first listed in the Schedule, as the Named Insured, is the agent for the following purposes:

(i) to give and receive notice of Policy cancellation, to pay premiums and to receive any return premiums that may become due under this Policy; and

(ii) to accept endorsements or other notices provided for in this Policy; and

(iii) to give instructions to solicitors or counsel that We appoint or agree to, and to receive advice from them and to act on that advice; and

(iv) to consent to any settlement that We recommend; and

(v) to do anything that We or Our legal advisers think might help with the procedures set out in this Policy for settling and defending Claims or Covered Claims; and

(vi) to give Us information relevant to this Policy, which We can rely on when We decide whether to accept the risk, and set the Policy terms or the premium.
De-registration

You must tell Us immediately in writing if Your statutory registration or licence, (which you are legally required to hold to provide Professional Services) is cancelled, suspended or terminated or has had conditions imposed during the Period of Insurance specified in the Schedule.

Payment in Australian dollars in Australia

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

Law of the Policy

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

Territorial & Jurisdiction Limits

Cover under this Policy is not restricted by where anything giving rise to the Claim occurred. However, Our Cover is restricted in accordance with the Foreign Courts exclusion in this Policy.

Schedule must be included

This Policy is only legally enforceable if it includes a Schedule issued by Us.

Cancelling the Policy - Part A

You can cancel the Policy

You are entitled to cancel this Policy from the date We receive a written request to cancel the Policy, provided that any such cancellation is subject to the following terms:

a) if a Claim has been paid under the Policy or if You have notified a Claim (or facts which may give rise to a Claim) under the Policy then no return premium is payable.

b) if there has been no Claim made or notified under the Policy then We will be entitled to retain premium for pro-rata ‘time on risk’ subject to a minimum administration charge of $250 plus applicable statutory charges.

We can cancel the Policy

a) We may cancel this Policy at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984, by giving notice in writing to You of the date from which cancellation is to take effect.

b) We may deliver this notice to You personally, or post it by certified mail (to Your broker or to the address You last gave Us). Proof that We mailed the notice is sufficient proof that You received the notice.

c) Under Section 60 of the Insurance Contracts Act 1984, We may cancel this Policy at any time where:

(i) it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or

(ii) it is an interim contract of general insurance.

After cancellation pursuant to this Clause, We will refund the premium for the time remaining on the Policy, less any non-refundable duties, unless any of You have made a fraudulent claim under the Policy.

How to read Part A of this Insurance Policy

Words with special meanings

Some of the words in this Policy wording have special meanings. These meanings can be found in Definitions. If a word has a special meaning, it appears in this Policy in bold type and with a capital letter. These words may appear without bold type in endorsements in the Schedule.

Policy Interpretation

Except where the context otherwise requires it:

(i) the singular includes the plural and the plural includes the singular; or

(ii) if a word or phrase is defined, its grammatical forms have a corresponding meaning; or

(iii) words importing a gender include every other gender.

Definitions

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

Civil Liability

Liability for the compensatory damages, costs and expenses which a civil court orders You to pay on a Claim (as opposed to criminal liability or penalties). It includes the legal costs of the person making the Claim, for which You become liable.
Claim (or Claims)
The receipt by You of:

a) any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against You; or

b) any written or verbal demand from a third party claiming compensation against You.

Claim Investigation Costs
The reasonable and necessary legal costs and expenses (other than regular or overtime wages, salaries or fees of any of You) incurred by or on Your behalf with Our prior approval in the investigation, defence or settlement of any Claim or Covered Claim which is Covered by this Policy at the time the legal costs and expenses arise.

Compensatory Civil Penalties
Means pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

a) You for any civil offence; or

b) You for a strict liability offence in connection with a breach of occupational health and safety law or regulation (“OH&S”), but solely resulting from the conduct of the Professional Services.

Cover (and ‘Covered’)
Indemnity under this Policy.

Covered Claim
The:

a) Claims, liabilities, losses, costs; or

b) facts which may give rise to a Claim, which We may Cover or agree to Cover under this Policy.

Documents
Documents of any nature including the electronically stored data, software or computer programs for or in respect of any computer system; but not including bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

Loss or damage to Documents does not include:

a) loss or damage (including rearrangement) to such electronically stored data, software or computer programs arising from any computer virus or malware or from any design or programming defect in any computer program or computer operating system; or

b) normal wear and tear or the action of insects or rodents or other gradual process; or

c) documents lost, damaged or mislaid outside of Australia or New Zealand.

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

a) is a party to a contract of service with the Named Insured and is or was remunerated by the Named Insured for that service; or

b) is neither a party to a contract of service with the Named Insured, nor an independent contractor, but a party to a contract for services with the Named Insured for the provision of services to the Named Insured for reward; or

c) a volunteer worker; or

d) a student,

and in respect of a), b), c) and d) above is (or was) at the time of the act, error or omission which gave rise to the Claim under Your direct control and supervision in the provision of Professional Services.

Enquiry (or Enquiries)
Any legal or quasi legal enquiry including coronial enquiry (into a matter arising out of the provision of Professional Services and such matter is the subject of and is not excluded from Cover under this Policy) in respect of which You are legally required to participate by reason of the fact that the body conducting the enquiry (including a regulatory, licensing or statutory body) has legal jurisdiction over You or any of You (either by reason of a statutory power or by reason of Your membership of a professional association which has the power to discipline its members).

Excess
The part You must pay of each Covered Claim.

Former Principal
A person who has been, but is no longer:

a) a Principal of You; or

b) the Principal of any firm or incorporated body declared in the Proposal, which previously conducted the Professional Services which is now being conducted by the Named Insured.

Intellectual Property
Copyright, design, patent, trade mark or moral right, including false attribution of authorship (under the Copyright Act 1968 (Cth)).
Joint Venture
An undertaking (regardless of what it is called) which the
Named Insured carry on together with someone else who is not otherwise Covered under this Policy.

Known Circumstance
Any fact, situation or circumstance of which:

a) any of You was aware at any time before this Policy began or before this Policy was amended or endorsed; or

b) a reasonable person in Your professional position would have thought, at any time before this Policy began or before this Policy was amended or endorsed,

might result in someone making an allegation against any of You in respect of a liability or loss that might be Covered by this Policy or any amendment or endorsement of this Policy.

Named Insured
Any person or entity expressly identified in the Schedule as the Named Insured.

Period of Insurance
The ‘Period of Insurance’ specified in the Schedule – being the period between the inception date of this Policy and the expiry date of this Policy at 4.00 PM. The time being determined at the place where the Policy was issued.

Policy
The insurance contract made up of:

a) this document;

b) the Schedule; and

c) the endorsements, if any, contained or referred to in the Schedule.

Policy Limit
The ‘Policy Limit’ specified in the Schedule.

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

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

Privacy Remediation Expenses
Reasonable and necessary expenses for:

a) advertising or other media services;

b) broadcast, electronic, printed, telecast or telephonic announcements, communications or notices; or

c) public relation services,

incurred by solely to comply with a law, ordinance or regulation concerning the notification of others consequent upon the potential or actual unauthorised access to or unauthorised use by another person of an individual’s personal information which is not publicly available.

Professional Services
The professional services undertaken by or on Your behalf and which are specified in the Schedule as Covered by this Policy. The performance of Professional Services by You includes, for the purpose of this Policy, acts, errors or omissions of Your agents or consultants while undertaking work which is reasonably incidental to the conduct by You of the Professional Services and for which You are liable. Such agents and consultants, however, are not Covered by this Policy.

Proposal
The written proposal form (the date of which is specified in the Schedule) together with any other material which was given to Us by or on Your behalf, and relied on by Us to effect this Policy.

Publicity Campaign
A publicity and/or public relations campaign designed and implemented by a public relations consultant.

Run-Off Event
Any Named Insured which, during the Policy Period, ceases to exist or operate, or which is disposed of or merged with or acquired by another entity.

Schedule
The Schedule to this Policy wording, which is issued by Us.

Sub Limit(s)
The limit of Cover for each of the matters referred to in this Policy as being subject to a Sub Limit of Cover. If this Policy indicates any Sub Limits for specific types of Cover under this Policy, then the applicable Sub Limits and not the Policy Limit apply only to these Claims. These Sub Limits are included within and not in addition to the Policy Limit.

Subsidiary
Any company or other incorporated entity which, at the commencement of the Period of Insurance, and by virtue of Australian law was, or is, either directly or indirectly a subsidiary of any incorporated body identified in the Schedule.
Terrorism

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

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

You / Your

Each of the following, individually and jointly:

a) each person, firm or incorporated body identified in the Schedule as a Named Insured and each Principal or Former Principal of any such firm or incorporated body; and
b) any entity which is engaged in the provision of Professional Services and which is created and controlled, while this Policy is in force, by anyone identified in the Schedule as a Named Insured; and
c) anyone who becomes a Principal of the Named Insured while this Policy is in force (but only in respect of work undertaken for or on behalf of the Named Insured firm or incorporated body); and
d) any person, firm or incorporated body who is entitled to Cover under the terms of this Policy (as a beneficiary), including any Employee or former Employee.

We or Us or Our

Pacific Indemnity Underwriting Solutions Pty Ltd ACN 606 511 639 – on behalf of the Insurers.

The Insurers of this policy section are:

Insurance Australia Limited (IAL), ABN 11 000 016 722 - AFSL No: 227681.

Zurich Australian Insurance Limited (Zurich), ABN 13 000 296 640 - AFSL No. 232507.

This policy section is jointly issued on a co-insurance basis whereby each Insurer provides cover under the same terms and conditions but with a limited share of liability. IAL provides cover for 75% of the liability under this policy section, Zurich provides cover for 25% share of liability under this policy section.
Policy B - Broadform Liability Policy

The Cover We Provide

We will pay to or on Your behalf all sums provided by the Policy which You shall become legally liable to pay as compensation for Personal Injury, Property Damage or Advertising Liability caused by an Occurrence during the Period of Insurance within the Geographical Limits as specified in the Policy and happening in connection with Your Business.

All cover provided under this Policy is subject to ‘The Cover We Provide’ clause and all the Policy terms, conditions, exclusions and limits contained in or endorsed on this Policy and the payment of the Gross Premium stated in the Schedule.

Supplementary Payments

We will pay in addition to the applicable Policy Limit:

a) all expenses incurred by Us, all costs taxed against You in any suit We defend, and all interest on the entire amount of any judgement which occurs after the entry of the judgement and before We have paid or tendered or deposited in Court that part of the judgement which does not exceed the limit of Our liability thereon; and

b) reasonable expenses incurred by You at Our request in assisting Us in the investigation or defence of any claim but excluding loss of earnings; and

c) expenses incurred by You for the first aid to others at the time of an Occurrence for Personal Injury covered by this Policy.

We shall have the right and duty to defend any suit against You seeking compensation on account of such Personal Injury or Property Damage or Advertising Liability even if the allegations of the suit are groundless, false or fraudulent and may make such investigation and settlement of any claim or suit as we deem expedient. We shall not be obliged to pay any claim or judgement or to defend any suit after We have paid the Policy Limit.

Limit of Liability

Our liability in respect of any one Occurrence shall not exceed the Policy Limit stated in the Schedule for Public Liability, Products Liability and Advertising Liability. All Personal Injury, Property Damage and Advertising Liability arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence and deemed to occur at the time of the first relevant event. Our total aggregate limit during any one Period of Insurance for all claims arising out of Products Liability and Advertising Liability shall not exceed the Policy Limit. Provided that the Policy Limit in respect of Occurrences in the United States of America or Canada or their protectorates or territories will be inclusive of Supplementary Payments and will apply in the aggregate to all claims in any one Period of Insurance.

Geographical Limits

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

a) the Business carried on by You at or from any premises situated in the United States of America or Canada or their respective territories and protectorates; or

b) any contract entered into by You under the terms of which work is to be performed in the United States of America or Canada; or

c) any exports by You, Your agents or servants to the United States of America or Canada.

What is Not Covered

We shall not be liable to indemnify You in respect of:

Employer’s Liability

a) Liability for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in Your service, or through the breach of any duty owed to that person, where You:

(i) are indemnified or entitled to be indemnified (either in whole or in part) in respect for claims for damages under a policy of insurance (which expression includes arrangements made by You to provide accident insurance or similar for Your employees under a licence to self insure) arranged (whether required by law or not) in accordance with any workers’ compensation legislation or accident compensation legislation; or

(ii) would have been indemnified or entitled to be indemnified had You arranged a policy of insurance as required by such legislation.

b) Liability for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in Your service in Western Australia, other than a person of whom You are deemed to be an employer by reason only of Section 175 of the Workers’ Compensation and Rehabilitation Act 1981 (WA);

c) Liability for mental anguish suffered by any person arising out of, or in the course of, that persons employment by or service to You;

d) Liability for Personal Injury arising out of the harassment, libel, slander, defamation or humiliation of, or discrimination against, any person while in Your service or while employed by You.
e) Liability of a type in respect of which indemnity previously would have been provided under a policy of insurance arranged in accordance with any workers’ compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current **Period of Insurance**; or

f) Any other liability imposed by the provisions of any workers compensation legislation or accident compensation legislation or industrial award, agreement or determination.

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

**Motor Vehicles**

Liability for:

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

b) **Property Damage** arising out of the ownership, operation or use by **You** of any **Vehicle** that is registered.

Provided that this exclusion shall not apply to **Vehicles** whilst being operated or used by **You** as a **Tool of Trade**.

**Aircraft and Watercraft**

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

a) any **Aircraft**; or

b) any **Watercraft** or vessel exceeding eight (8) metres in length.

**Electronic Data**

Loss of, damage to or destruction of any electronic data.

**Property in Physical or Legal Control**

Liability arising out of or in any way connected with **Property Damage** to property which **You** own, lease, hire, is loaned or rented to **You**, or is otherwise in **Your** physical or legal control other than:

a) premises or part of any premises (including the contents of such premises), leased or rented to **You**, or temporarily occupied by **You** for the purpose of the **Business**. This exclusion for “Property in Physical or Legal Control” does not extend to liability where **You** have assumed the responsibility to effect or maintain insurance with respect to any premises referred to in this clause;

b) premises temporarily occupied by **You** (including the contents of such premises), for the purpose of carrying out work in connection with the **Business**. This exclusion for “Property in Physical or Legal Control” does not extend to liability for physical damage to or destruction of any premises or contents on which **You** were or are working, if such physical damage or destruction arises from such work;

c) any other property temporarily in **Your** possession for the purpose of being worked upon. This exclusion for “Property in Physical or Legal Control” does not extend to liability for physical damage to or destruction of that part of any property on which **You** were or are working, if such physical damage or destruction arises from such work;

d) any **Vehicle** (including its contents, spare parts and accessories while they are in or on a **Vehicle**), not belonging to or used by **You** while such **Vehicle** is in a car park owned or operated by **You**, provided that **You** do not operate the car park for reward as a principal part of the **Business**;

e) **Property Damage** to any **Vehicle** temporarily in **Your** possession for the purpose of parking or removing from a car park such a **Vehicle** any other property (except property owned by **You**), temporarily in **Your** physical or legal care, custody or control subject to a maximum of $250,000, or other higher amount stated in the **Schedule**, for anyone **Occurrence** and in the aggregate during any one **Period of Insurance**.

**Faulty Workmanship**

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

**Damage to Your Products**

Liability for:

a) physical damage to or destruction or loss of **Your Products** or any part of **Your Products** arising out of them or any part of them; or

b) loss of use of any tangible property caused by physical damage to or destruction or loss of **Your Products** or any part of **Your Products** arising out of them or any part of them.

This exclusion does not apply to **Your Products** repaired, serviced or treated by **You** after **Your Products** were originally sold, supplied or distributed by **You**.

**Product Recall and Repair**

Liability for damages claimed for the withdrawal, inspection, repair, replacement or loss of use of **Your Products**.
Aircraft Products
Any liability arising out of the selling, leasing, hiring or manufacture and/or supply of parts and/or products that are used with Your knowledge in Aircraft or any aerial device.

Contractual Liability
Liability for Personal Injury or Property Damage or Advertising Liability to the extent such liability has been assumed under an agreement unless such liability:

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

Agreement Limiting Rights
Any claim under the Policy if You have entered into any agreement which excludes or limits a right which You may have against any party. Subject to the Insurance Contracts Act, 1984, We will not be liable for any claim under the Policy to the extent of such exclusion or limitation.

Professional Errors and Omissions Liability
Liability for the rendering of or failure to render professional advice or service by You or error or omission connected therewith, but this exclusion does not apply to the rendering or failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises.

Libel and Slander
Liability arising out of the publication or utterance of a libel or slander:

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

Fines and Punitive Damages
Liability for fines, penalties, liquidated damages, punitive damages, exemplary damages, or aggravated damages.

Loss of Use
The loss of use of property which has not been physically damaged or destroyed flowing from:

a) a delay in or lack of performance by or on Your behalf of any contract; or
b) the failure of any products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You.

Pollution
a) Liability for Personal Injury, Property Damage or Advertising Liability caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater) but this exclusion does not apply if the actual discharge, dispersal, release or escape:
   (i) is neither reasonably expected nor intended by You; and
   (ii) is the consequence of a sudden and instantaneous cause which takes place at a clearly identifiable point in time during the Period of Insurance.

b) Liability for any costs or expenses incurred in the preventing, removing, nullifying, or cleaning up any discharge, dispersal, release or escape as described in a) above, unless such costs or expenses are consequent upon an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identifiable point in time during the Period of Insurance and results in Personal Injury, Property Damage or Advertising Liability and is not otherwise excluded by this Policy; or Provided that Our total aggregate liability during any one Period of Insurance in respect of all claims arising out of such Personal Injury, Property Damage or Advertising Liability or such costs or expenses shall not exceed the Policy Limit stated in the Schedule.

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

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

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

d) incorrect description of the price of Your Products, goods or services, infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of Your Products, goods or services sold, offered for sale or advertised, but this exclusion does not apply to titles or slogans; or

e) failure of Your Products, goods or services to conform with advertised performance, quality, fitness or durability; or

Terrorism

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

Internet Operations

a) Any liability, loss, damage or destruction arising, directly or indirectly, out of or in any way connected with Your Internet Operations;

b) Part a) above does not apply to Personal Injury or Property Damage arising out of any material which is already in print in support of Your Products, including but not limited to product use and safety instructions or warnings, and which is also published by You via Your Internet Operations;

c) Notwithstanding b) above, We shall not be liable to indemnify You in respect of Personal Injury or Property Damage arising out of any other advice or information published by You, via Your Internet Operations, that is used for the purpose of attracting customers.

For the purpose of this exclusion, Your “Internet Operations” means:

(i) use of electronic mail systems by Your employees, including part time and temporary staff and others within Your Business;

(ii) access through Your network to the world wide web or a public internet site by Your employees including part-time and temporary staff and others within Your Business;

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

(iv) the operation and maintenance of Your web-site.

Advertising Liability

Liability for Advertising Liability arising from:

a) offences committed prior to the Period of Insurance; or

b) offences made at the direction of You with knowledge of the illegality or falsity thereof; or

c) breach of contract, other than misappropriation of advertising ideas under an implied contract; or

d) incorrect description of the price of Your Products, goods or services, infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of Your Products, goods or services sold, offered for sale or advertised, but this exclusion does not apply to titles or slogans; or

e) failure of Your Products, goods or services to conform with advertised performance, quality, fitness or durability; or

f) any of You whose business is advertising, broadcasting, publishing or telecasting.

Product Recall

Any costs incurred in withdrawing or recalling any products (including any costs involved in inspecting, repairing or replacing) because of any known or suspected defect or deficiency.

North American Jurisdiction

a) Legal proceedings brought within the United States of America and/or Canada or any of their territories or protectorates;

b) The enforcement of any judgment or award obtained within or determined pursuant to the laws of the United States of America and/or Canada or any of their territories or protectorates; or

c) Legal proceedings in which the laws of the United States of America and/or Canada or any of their territories or protectorates are applicable even if only in a limited respect.

This exclusion does not apply to claims resulting from the acts, errors or omissions of an employee of the Named Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Named Insured outside Australia.

Other Insurance

Claims or losses for which cover is provided or available under the accompanying Part A - Professional Indemnity Policy of this Policy.

Sanctions

Liability in respect of which and to the extent that such cover, payment, service, benefit and/or any Business or activity of Yours would violate any applicable trade or economic sanctions, law or regulation.
Claims Provisions - Part B

Claims Control

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

a) You shall not without Our written consent make any admission, offer, promise or payment in connection with any Occurrence or claim and We may make such investigation, negotiation and settlement of any claim or suit as We deem expedient.

b) You shall use the best endeavours to preserve any property, products, appliances, plant or other things which might prove necessary or useful by way of evidence in connection with any claim and so far as may be reasonably practicable no alteration or repair shall be effected without Our consent and until We have had the opportunity of inspection.

c) We shall have full discretion in the conduct of any proceedings in connection with any claim and You shall give all information and assistance as We may require in the prosecution, defence or settlement of any claim.

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

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

Discharge of Liabilities

We may at any time pay to You in respect of all claims against You arising directly or indirectly from the one Occurrence the amount of the liability or such other amount specified in respect thereof (after deduction of any sum or sums already paid by Us which sum or sums would reduce the amount of Our unfulfilled liability in respect thereof) or any lesser sum for which the claim or claims can be settled and upon such payment, and notwithstanding anything else to the contrary, We shall relinquish conduct or control of and be under no further liability under the Policy in connection with such claim or claims except for costs charges or expenses 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 incurred by Us or by You with Our written consent prior to the date of such payments.

Reasonable Care and Loss Risk Management

You shall:

a) take all reasonable precautions to:
   (i) prevent Personal Injury, Property Damage or Advertising Liability; and
   (ii) prevent the manufacture, sale or supply of defective products; and
   (iii) comply and ensure that Your workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority in respect thereof for the safety of persons and property;

b) 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 has reason to suspect.

Cross Liabilities

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

Subrogation

In the event of payment under this Policy to or on behalf of You, We shall be subrogated to all Your rights of recovery against all persons and organisations and You shall execute and deliver instruments and papers and do all that is necessary to assist in the exercise of such rights.

Goods and Services Tax

Where We make a payment under this Policy for the acquisition of goods, services or other supply We will reduce the amount of the payment by the amount of any Input Tax Credit You are, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made. Where We make a payment under this Policy as compensation instead of payment for the acquisition of goods, services or other supply, We will reduce the amount of payment by the amount of any Input Tax Credit that You would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.
General Provisions - Part B

Alteration of Risk

a) You must provide Us with immediate written notice of every change which materially varies any of the facts or circumstances existing at the commencement of this Policy that comes to Your knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be Your knowledge; and

b) If You do not provide such notification before the happening of an Occurrence giving rise to a claim under this Policy then, subject to the Insurance Contracts Act, 1984, We may refuse to pay a claim, either in whole or in part.

Inspection and Premium Adjustment

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 You or for Your benefit or others, to determine or warrant that such property or operations are safe. We may examine and audit Your books and records at any time during the Period of Insurance and extensions thereof and within three (3) years after the final termination of this Policy, as far as they relate to the subject matter insured. If the first or renewal premium for the Policy or part thereof shall have been calculated on estimates furnished by You, then You shall keep an accurate record containing all particulars relative thereto and shall at all times allow Us to inspect such records. The Named Insured shall within thirty (30) days after the expiry of each Period of Insurance furnish to Us such particulars and information as We may require. The premium for such period shall therefore be adjusted and any difference paid or allowed to You as the case may be subject to receipt and retention of any minimum premium charged by Us.

Other Insurances

If You make a claim under this Policy in respect of an Occurrence recoverable under this Policy which Occurrence is or may be covered in whole or in part by any other insurance, then You must advise Us of the full details of such other insurance when making a claim under this Policy. Subject to the Insurance Contracts Act 1984, We reserve the right to seek contribution from the other insurer(s).

Insurance Arranged By Principal

If You enter into an agreement with any other party (who for the purpose of this clause is called the “Principal”) pursuant to which the Principal has agreed to arrange a policy of insurance which is intended to indemnify You for any loss or liability then We will (subject to the terms and conditions of this Policy) only indemnify You for loss or liability not covered by the policy of insurance provided by the principal.

Cover Beneficiaries

In so far as cover is extended under this Policy to individuals and entities who are not a contracting party under this Policy, such cover is subject to those individuals and/or entities (as the case may be) agreeing in writing within a reasonable time of notification to Us of an Occurrence:

a) to be bound by the terms, conditions, exclusions and limits of this Policy; and

b) to be bound by obligations of utmost good faith as if they were a contracting party; and

c) to be liable individually, and together with You, for paying the Excess (or any other payment due to Us under this Policy) in respect of any cover provided to them under this Policy.

The Proposal – Severability and Non-imputation

The Proposal We were given by You or on Your behalf before this Policy commenced, is taken to be a separate Proposal for each natural person or entity covered under this Policy.

If there is any incorrect fact or misstatement in the Proposal that relates to one of You who is a natural person then, for the purposes of this Policy, We do not attribute it to any other of You who is a natural person and who was not aware of the incorrect fact or misstatement at the time it was made.

Authority to accept notices & to give instructions

The person or entity first listed as the Named Insured in the Schedule is appointed as agent of:

a) each of You; and

b) any person or entity who is entitled to a benefit under this Policy (when they request cover or suffer a loss under this Policy),

in all matters relating to this Policy, and to Occurrences which are (or are to be) covered by the Policy.

In particular (but without limitation) the person or entity first listed in the Schedule, as the Named Insured, is agent for the following purposes:

(i) to give and receive notice of Policy cancellation, to pay premiums and to receive any return premiums that may become due under this Policy; and

(ii) to accept endorsements or other notices provided for in this Policy; and

(iii) to give instructions to solicitors or counsel that We appoint or agree to, and to receive advice from them and to act on that advice; and

(iv) to consent to any settlement that We recommend; and

(v) to do anything that We or Our legal advisers think might help with the procedures set out in this Policy for settling and defending claims or covered claims; and
(vi) to give **Us** information relevant to this **Policy**, which **We** can rely on when **We** decide whether to accept the risk, and set the **Policy** terms or the premium.

**Premium Payment**

The cover **We** provide in this **Policy** is subject to full payment of the Gross Premium as stated in the **Schedule**. If full payment of the Gross Premium is not made, there is no cover.

**All Payments in Australian Dollars**

All premiums and claims must be paid in Australian dollars in Australia.

**Law of the Policy**

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

**Insurance Contracts Act**

Nothing contained in this **Policy** shall be construed to reduce or waive either **Your** or **Our** privileges, rights or remedies available under the Insurance Contracts Act 1984.

**Schedule must be included**

This **Policy** is only legally enforceable if it includes a **Schedule** issued by **Us**.

**Cancelling the Policy - Part B**

**You can cancel the Policy**

**You** are entitled to cancel this **Policy** with effect from the date **We** receive a written request to cancel the **Policy**, provided that any such cancellation is subject to the following terms:

a) if a claim has been paid under the **Policy** or if **You** have notified a claim or facts which may give rise to a claim) under the **Policy** then no return premium is payable.

b) if there has been no claim made or notified under the **Policy** then **We** will be entitled to retain premium for pro-rata ‘time on risk’.

**We can cancel the Policy**

a) **We** may cancel this **Policy** at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984, by giving notice in writing to **You** of the date from which cancellation is to take effect.

b) **We** may deliver this notice to **You** personally, or post it by certified mail (to **Your** broker or to the address **You** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that **You** received the notice.

c) Under Section 60 of the Insurance Contracts Act 1984, **We** may cancel this **Policy** at any time where:

   i) it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or

   ii) it is an interim contract of general insurance.

After cancellation pursuant to this Clause, **We** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties, unless any of **You** have made a fraudulent claim under the **Policy**.

When the premium is subject to adjustment, cancellation will not affect **Your** obligation to supply such information as **We** may require for the adjustment of the premium. Cancellation will not affect **Your** obligations to pay the amount of adjustment applicable up to the date of cancellation.

**How to read Part B of this Insurance Policy**

**Policy Interpretation**

Except where the context otherwise requires it:

a) the singular includes the plural and the plural includes the singular;

b) if a word or phrase is defined, its grammatical forms have a corresponding meaning;

c) words importing a gender include every other gender.
Words With Special Meaning

Whenever the following words are used in Part B - Broadform Liability Policy of this Policy in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the Schedule.

Advertising Liability

means:

a) libel, slander or defamation;

b) infringement of copyright or of title or slogan;

c) piracy or unfair competition or idea misappropriation under an implied contract; or

d) invasion of privacy,

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

Aircraft

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

Business

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

Excess

means the amount payable by You in respect to each Occurrence and includes all ‘Supplementary Payments’.

Medical Persons

means medical doctors, medical nurses, dentists and first aid attendants.

Named Insured

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

Occurrence

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

Period of Insurance

means the duration of this Policy as stated in the Schedule.

Personal Injury

means:

a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury;

b) false arrest, false imprisonment, malicious prosecution and humiliation;

c) libel, slander, defamation of character;

d) wrongful entry or wrongful eviction or other invasion of the right of private occupancy;

e) assault and battery not committed by or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property, which occurs during the Period of Insurance.

Policy Limit

means the amount(s) specified as such in the Schedule.

Policy

means the insurance contract made up of:

a) this document; and

b) the Schedule; and

c) the endorsements, if any, contained or referred to in the Schedule.

Products Liability

means Personal Injury or Property Damage:

a) caused by any defect, or the harmful nature of any of Your Products; or

b) resulting from any defect or deficiency in any direction or advice given at any time or intended to be given by You concerning the use or storage of Your Products.

Property Damage

means:

a) physical damage to or destruction or loss of tangible property which occurs during the Period of Insurance and any loss of use of that property resulting there-from; or

b) loss of use of tangible property which has not been physically damaged or destroyed or lost which is caused by physical damage to or destruction or loss of other tangible property which occurs during the Period of Insurance.

Proposal

means the written proposal form (the date of which is stated in the Schedule) together with any other material that was given to Us, and relied on by Us to effect this Policy.
Public Liability
means liability covered by this Policy but does not include Products Liability.

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

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

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

a) Vehicles whilst in transit to or from any worksite; or

b) Vehicles used for transport or haulage.

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

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

You or Your
means each of the following to the extent set forth below:

a) the Named Insured;

b) all subsidiary companies (now or hereafter constituted) of the Named Insured whose place of incorporation is within Australia and whose business falls within the definition of Your Business;

c) any director, executive officer, employee, partner or shareholder of the Named Insured or of any company designated in paragraph b) above, but only while acting within the scope of their duties in such capacity;

d) contractors not being the Named Insured but with whom the Named Insured has entered into a contract for work for the Named Insured, and only in respect of work performed as part of the Business; and

e) any Principal, not being the Named Insured, but with whom the Named Insured has entered into a contract for work and provided their interests are required to be insured jointly by the Named Insured and then only to the extent required by such contract, and only in respect of work performed as part of the Business.

For the purposes of this definition ‘Principal’ shall mean any person with whom the Named Insured has entered into a written contract or agreement to do any work or provide any services in connection with the Business.

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