



# **Broadform Public and Products Liability Policy Wording**

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## General Information & Important Notices

### We/ Us / Our

For the purposes of this **General Information and Important Notices**, 'We' or 'Us' or 'Our' means Pacific Indemnity Underwriting Solutions Pty Ltd (Pacific Indemnity) ABN 14 606 511 639 - on behalf of Zurich Australian Insurance Limited (Zurich), ABN 13 000 296 640, AFS Licence Number 232507.

### 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 & Computer Technology Insurance, Management Liability Insurance and similar products).

Pacific Indemnity issues and administers the policy (including handling and settling claims). In arranging and effecting this insurance policy, Pacific Indemnity is acting as an agent of the Insurer, Zurich Australian Insurance Limited, ABN 13 000 296 640, and not as **Your** agent. Zurich's Australian Financial Service Licence number is 232507.

### Privacy

Pacific Indemnity and Zurich are both bound by the Privacy Act 1988 (Cth). **We** collect **Your** information in the first instance. **We** and Zurich collect, disclose and handle information, and in some cases personal or sensitive (eg health) information, about **You** ('**Your** details') to assess applications, administer policies, contact **You**, enhance **Our** products and services and manage claims ('Purposes'). If **You** do not provide **Your** information, **We** may not be able to do those things. By providing **Us**, **Our** representatives or **Your** intermediary with information, **You** consent to Pacific Indemnity and Zurich using, disclosing to third parties and collecting from third parties **Your** details for the Purposes.

**We** and Zurich may disclose **Your** details, including **Your** sensitive information, to relevant third parties including **Your** intermediary, affiliates of Pacific Indemnity, affiliates of Zurich Insurance Group Ltd, other insurers and reinsurers, **Our** banking gateway providers and credit card transactions processors, **Our** service providers, **Our** business partners, health practitioners, **Your** employer, parties affected by claims, government bodies, regulators, law enforcement bodies and as required by law, within Australia and overseas.

**We** and Zurich may obtain **Your** details from relevant third parties, including those listed above. Before giving **Us** information about another person, please give them a copy of this document. Laws authorising or requiring Pacific Indemnity and Zurich to collect information include the Insurance Contracts Act 1984, Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Corporations Act 2001, Autonomous Sanctions Act 2011, A New Tax System (Goods and Services Tax) Act 1999 and other financial services, crime prevention, trade sanctions and tax laws.

Pacific Indemnity Privacy Policy is available at [www.pacificindemnity.com.au/privacy-policy](http://www.pacificindemnity.com.au/privacy-policy). Zurich's Privacy Policy is available at [www.zurich.com.au/important-information/privacy](http://www.zurich.com.au/important-information/privacy). These policies provide further information for example listing service providers, business partners and countries in which recipients of **Your** details are likely to be located. They also set out how Pacific Indemnity and Zurich handle complaints and how **You** can access or correct **Your** details or make a complaint.

### General Insurance Code of Practice

Zurich is 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. The objectives of the Code are:

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

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

### Our Service Commitment

Pacific Indemnity and Zurich are proud of their 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 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.

### 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 Wording

### 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

- a) **Personal Injury**;
- b) **Property Damage**; or
- c) **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;
- 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;
- c) fees incurred with **Our** written consent for any solicitor, defence counsel or the equivalent of, for **Your** representation at any inquest, fatal inquiry or criminal proceedings relating to an **Occurrence** which gives rise to a claim for compensation under this **Policy**; and
- d) 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** consider reasonably necessary. **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**. **Our** total aggregate limit during any one **Period of Insurance** for all claims arising out of **Products Liability** and **Advertising Liability** only 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**.

## Extensions of Cover

### Automatic Acquisition

This **Policy** shall extend to apply to cover, on a contingency basis, to any company or companies acquired or established or created by **You** during the **Period of Insurance**, provided that:

- a) their business is the same as **Your Business** stated in the **Schedule**;
- b) the turnover of the new company or companies does not exceed 10% of the turnover which was the basis of the premium calculation; and
- c) the new company or companies are domiciled in Australia.

This cover applies only for 90 days following the takeover or formation of the company or companies. Unless **We** expressly confirm coverage, this contingent coverage will expire on the 90th day following the takeover or formation of the companies.

**We** reserve the right to charge an additional premium and/or apply additional terms.

### Compensation for Court Attendance

If any of **You** attends court as a witness, at **Our** request, in connection with an **Occurrence** in respect of which **You** are entitled to indemnity under this **Policy**, then **We** will provide reimbursement to **You** at the following rates per day for each day on which attendance is required:

- a) any of **Your** directors, officers or partners \$250.00 per day;
- b) any of **Your Employees** \$150.00 per day.

### Joint Venture

**We** will indemnify **You** in the event of any claim caused by or arising out of any joint venture in which **You** have an interest but subject to the **Policy Limits** stated in the **Schedule** and to all the terms and conditions of the **Policy**.

Where the percentage of **Your** interest in the joint venture is not set forth in writing, the percentage to be applied shall be that which is imposed by law at the inception of the joint venture and shall not be increased by the insolvency of the others interested in the joint venture.

The indemnity provided by this extension will not apply:

- a) to claims of the partners in the joint venture against one another;
- b) to claims by the joint venture against **You**; or
- c) resulting from non-disclosure of a material fact.

### Overseas Personal Liability

**We** will indemnify **You** for legal liability incurred in connection with the **Business** which may be deemed to include any liability incurred in a personal capacity by an **Employee** or director of **Yours** (including the spouse or any family member of any such person while accompanying such **Employee** or director) whilst travelling outside his or her country of domicile in connection with the **Business**, provided that the **Employee** or director is not entitled to indemnity under any other policy of insurance, self insurance or deductible programme effected in **Your** name.

## What is Not Covered

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

### Advertising Liability

Liability for **Advertising Liability** arising from:

- a) offences committed prior to the **Period of Insurance**;
- b) offences made at the direction of **You** with knowledge of the illegality or falsity thereof;
- c) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- d) incorrect description of the price of **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;
- e) failure of **Your Products**, goods or services to conform with advertised performance, quality, fitness or durability; or
- f) any of **Your** business where the primary occupation is advertising, broadcasting, publishing or telecasting.

### 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 (15) metres in length.

Provided that b) of this exclusion shall not apply to claims arising out of:

- (i) **Watercraft** used in operations carried out by any independent contractors for whose conduct **You** may be held liable;
- (ii) **Hovercraft** owned and operated by others and used by **You** for **Business** entertainment;
- (iii) **Watercraft** owned by others and used by **You** for **Business** entertainment.

### 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.

### 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.

### 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) arises from a provision in a contract for lease of real or personal property other than a provision which obliges **You** to effect insurance or provide indemnity in respect of the subject matter of contract; and
- b) arises from a provision in a written contract with any public supplier for the supply of water, gas, electricity, fuel, sewerage or waste removal services, telephone and communications services, except contracts with such suppliers for the performance of work by **You**; or
- c) would have attached in the absence of such agreement; or
- d) is specifically allowed by **Our** written endorsement; or
- e) is assumed by **You** under a warranty of fitness or quality, or is implied by law, in respect of **Your Products**.

### Cyber Risks

Liability for loss, damage or destruction arising, directly or indirectly, out of or in any way connected with or contributed to, or from a **Cyber Event**.

However, this exclusion will not apply to the extent any liability, loss, damage or destruction arises, directly or indirectly, out of or is in any way connected with or contributed to, or from **Your Internet Operations** where **Personal Injury** or **Property Damage** arises out of any material:

- a) which is already in print in support of **Your Products**, including but not limited to product use and safety instructions or warnings; and
- b) which is also published by **You** via **Your Internet Operations**.

Notwithstanding the 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.

### 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**.

### Electromagnetic fields

Any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from electromagnetic fields (EMF) or electromagnetic interference (EMI).

## Electronic Data

Loss of, damage to or destruction of any **Electronic Data**.

## Employer's Liability

- a) Liability for **Personal Injury** to any of **Your Employees** arising out of, or in the course of their employment in **Your Business**;
- b) Liability for **Personal Injury** to any person who is deemed to be **Your Employee** pursuant to any legislation relating to workers' compensation;
- c) Liability for claims which **You** are entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not **You** are a party to such policy of insurance;
- d) Liability imposed by the provisions of any workers' compensation legislation or any industrial award or agreement or determination;
- e) Any liability howsoever or whatsoever for claims related to or arising from **Employment Practices**.

Provided that exclusions a), b) and c) above do not apply to the extent that **Your** legal liability would not be covered under any such policy of insurance or fund set up pursuant to or required by any legislation relating to workers' compensation had **You** complied with **Your** obligations pursuant to such law.

## Faulty Workmanship

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

## Fines and Punitive Damages

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

## 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 by **You** or at **Your** direction with the knowledge that it is false; or
- c) related to advertising, publishing or printing, broadcasting or telecasting activities conducted by or on behalf of **You**.

## 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**. However, this does not apply to loss of use of other tangible property resulting from the sudden, unexpected and unintended physical injury to or destruction of **Your Products** after such **Products** have been put to use by any person or organisation other than **You**.

## Motor Vehicles

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

- a) which is registered or which is required under any legislation to be registered; or
- b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).

Exclusions a) and b) above do not apply to claims:

- c) for **Personal Injury** where:
  - (i) that compulsory liability insurance or statutory indemnity does not provide indemnity; and
  - (ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by **You** of legislation relating to **Vehicles**;
- d) arising out of and during the loading or unloading of goods to or from any **Vehicle**;
- e) caused by or arising from the operation or use of any **Vehicle** which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by **You** or on **Your** behalf within the confines of **Your** premises;
- f) caused by or arising out of the use of:
  - (i) any **Vehicle** whilst being used as a tool; or
  - (ii) plant forming part of any **Vehicle** being used as a tool within the confines of **Your** premises or at any **Worksite**; or
- g) for **Property Damage** arising out of the movement by **You** or by any **Employee(s) of Yours** of any **Vehicle** or trailer not belonging to **You** which is interfering with access to or from **Your** premises or any site where **You** are carrying out work.
- h) for **Property Damage** caused by or arising out of the movement of any **Vehicle** (which is required to be conditionally registered in accordance with the law of any State or Territory in Australia) in the event of **Your** inadvertent and unintentional failure to effect conditional registration.

## North American Jurisdiction

- a) Legal proceedings brought within **North America**;
- b) The enforcement of any judgment or award obtained within or determined pursuant to the laws of **North America**; or
- c) Legal proceedings in which the laws of **North America** are applicable even if only in a limited respect.

This exclusion does not apply to:

- (i) overseas business visits by any of **Your** directors, partners, officers, executives or employees, who are non-resident in **North America**, but not where they perform manual work in **North America**.
- (ii) Products exported to **North America** without **Your** knowledge.

## 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.

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

## 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) occurs outside of **North America**; and
  - (iii) 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 occurs outside of **North America** and 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**.

## Product Recall

Liability for damages claimed for the withdrawal, inspection, repair, replacement or loss of use of **Your Products**.

## 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:

- a) 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; or
- b) **Your** liability in respect of **Personal Injury** or **Property Damage** resulting from the provision of professional advice or services, or any error or omission in connection with **Your Products** which is not given for a fee.

## 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 any 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) any other property not owned by **You** (and not referred to in a) - d) above), but temporarily in **Your** physical or legal care, custody or control, whether or not **You** have accepted or assumed legal liability for such property, subject to a maximum of \$500,000, or other higher amount stated in the **Schedule**, for any one **Occurrence** and in the aggregate during any one **Period of Insurance**.

## 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.



## Silica

Liability for **Personal Injury** or **Property Damage** of whatsoever nature directly or indirectly caused by, or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, actual, alleged, threatened or suspected inhalation or absorption of **Silica** or **Silica Related Dust**.

## 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**.

## 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.

## Claims Provisions

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

If **You** do not meet these responsibilities, **We** may refuse to pay a claim or reduce cover under the **Policy**. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984.

The course of action **We** take when **You** fail to do any of these things will be considered in each circumstance based on what impact or effect **Your** failure to do so caused or contributed to the claim or changes **Our** liability under the **Policy**.

## Claims Control

**You** must fully and promptly comply with all of **Our** reasonable requests for assistance and cooperation in relation to a claim on the **Policy**, including:

- a) supplying **Us** with all information and assistance **We** may reasonably require;
- b) allowing **Us** to negotiate, defend or settle a claim against **You**:
  - (i) in **Your** name and on the **Your** behalf; or
  - (ii) in the name of and on behalf of any other party covered by the **Policy**;

however, **We** will not settle any claim against party covered by the **Policy** without the consent of that, such consent not to be unreasonably withheld or delayed;
- c) claim, writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest **You** receive or become aware of; and
- d) as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until **We** have had a reasonable opportunity of inspection.

**You** shall not, without **Our** prior written consent, which will not be unreasonably withheld or delayed, admit or repudiate liability, negotiate, or make any offer, promise or payment in connection with any claim against it or **Occurrence**.

**We** shall be entitled, but not obligated, to take over and conduct in **Your** name, the defence or settlement of any claim against **You** or to prosecute in **Your** name at **Our** own expense and for its own benefit any claim for indemnity or damages or otherwise against any persons.

**We** will, whenever reasonably practical, inform **You** of the progress of any defence or prosecution **We** have elected to take conduct of, and/or consult with **You** as to its interests or concerns in relation to any claim, defence or prosecution, but **You** agree that **We** will have ultimate discretion in the conduct and settlement of any proceedings or claim it has elected to take conduct of, save that **We** will not settle a claim against **You** without **Your** consent, such consent not to be unreasonably withheld or delayed.

Where **We** do not elect to take over conduct of the defence or settlement of any claim which is covered or, if sustained, would be covered, under the **Policy**, **We** have the right to:

- a) be provided with all such information as **We** reasonably require;
- b) be kept fully informed as to all matters relating to or concerning the investigation, defence or settlement of the claim and the right to receive copies of all relevant documentation relating thereto; and
- c) associate effectively with **You** in the defence, investigation and the negotiation of any settlement. No settlement is to be entered into without **Our** prior written consent, such consent not to be unreasonably withheld or delayed.

## 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**.

## 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**;
  - (ii) prevent the manufacture, sale or supply of defective products; and
  - (iii) comply with all statutory obligations, by-laws or regulations imposed by any public authority 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.

## Waiver of subrogation

**We** hereby agree to waive all **Our** rights of subrogation under this **Policy** against:

- a) each of the parties described under the definition of **You** or **Your**; and
- b) any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this **Policy**.

Where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, **Our** right of subrogation is not waived to the extent and up to the amount of such other policy.

## 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 reasonably necessary to assist in the exercise of such rights. **We** will consider **Your** reasonable preferences as they relate to subrogated recovery and will act contrary to such preferences only in circumstances where it is reasonably necessary to protect our legitimate recovery interests. **We** will pay the costs of prosecuting subrogated recovery claims which **We** institute.

## 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

### Alteration of Risk

- a) **You** must as soon as reasonably possible, provide **Us** with 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. This includes (but is not necessarily limited to):
  - (i) if **Your** business changes;
  - (ii) if **You** start doing anything that **You** were asked about when commencing or renewing **Your Policy** and **You** then replied that **You** did not;
  - (iii) if there has been a loss or condition imposed upon any license or authority that **You** require to conduct **Your** business; or
  - (iv) if **You** become insolvent or if any circumstances arise that make it more likely that **You** might become insolvent.
- b) When **You** advise **Us** of a matter such as that set out above, **We** will advise **You** whether **We** are to provide additional cover or continue offering cover, and if so on what terms (for example, any endorsement, additional excess or special condition that may need to be applied) and for what additional premium (if any). This will be based on **Our** risk appetite and underwriting guidelines. If the change in risk means that the risk is no longer acceptable under **Our** risk appetite or underwriting guidelines, **We** may cancel the **Policy**. Any offer by **Us** to cover the changes in risk notified to **Us** is not effective until **We** receive **Your** written acceptance of **Our** offer. Until then, the changes notified are not covered. **You** are entitled to cancel the policy at anytime, including where **We** do not offer to cover the changes that **You** notified, or if **You** do not accept **Our** offer to cover the changes. If a claim arises from the changes in risk which are not covered or **We** do not agree to provide cover, **We** may reduce or refuse to pay such claim to the extent it arises from the change in risk
- c) It is important for **You** to know that **We** may make changes to this **Policy** as a result of a change in information. When there is a change, **We** will inform **You**.
- d) If **You** do not provide such notification before the happening of an **Occurrence** giving rise to a claim under this **Policy** then, **We** may refuse to pay a claim or reduce cover under the **Policy**. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984.
- e) The course of action **We** take when **You** fail to notify **Us** of a material change will be considered in each circumstance based on what impact or effect **Your** failure to do so caused or contributed to the claim or changes **Our** liability under the **Policy**.

## Inspection and Premium Adjustment

**We** are permitted, but not obligated, to inspect **Your** property and operations, subject to **Us** providing **You** with reasonable notice in advance of any such inspection. **We** may exercise this right for underwriting or claims management purposes. 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, subject to **Us** providing **You** with reasonable notice in advance of any such inspection, 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, within a reasonable time following receipt of **Our** request, 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 thereupon 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 as soon as possible 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**;
- 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**. Otherwise, any outstanding premium or part thereof may be deducted from the amount **We** pay **You**.

## 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**.

# Canceling the Policy

## 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 (Cth), by giving notice in writing to **You** of the date from which cancellation is to take effect. **We** may do so if:
  - (i) **You** failed to comply with the duty of the utmost good faith; or
  - (ii) there was a relevant failure (i.e. a pre-contract misrepresentation by **You** or a failure by **You** to observe the duty to take reasonable care not to make a misrepresentation to **Us** or to comply with a duty to make disclosures to **Us** of matters that are relevant to **Us** providing this insurance); or
  - (iii) **You** failed to comply with a provision of the contract, including a provision with respect to payment of the premium; or
  - (iv) **You** have made a fraudulent claim under the contract or under some other contract of insurance (whether with **Us** or with some other insurer) that provides insurance cover during any part of the period during which the first-mentioned contract provides insurance cover.
- 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.

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 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 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 described in the **Schedule** including:

- a) ownership or occupation of premises and the repair or maintenance of property owned or for which such responsibilities exist, the installation and maintenance of plant and equipment and all other activities incidental to the conduct of **Your** occupation or trade;
- b) any prior operations or activities which have ceased or have been disposed of but for which **You** may retain legal liability;
- c) participation in exhibitions;
- d) construction, erection, demolition, alteration or addition, not exceeding in cost the sum of \$500,000, of or to buildings owned by **You**;
- e) the provision and management of canteens, social, sports and welfare organisations primarily for the benefit of **Your Employees**, first aid, fire and ambulance services;
- f) private work undertaken by any **Employee** of **Yours**, for any of **Your** directors or senior executives;
- g) hire or loan of plant, equipment or goods to other parties;
- h) conducted tours of **Your** Premises; and
- i) the erection, use and/or maintenance by **You** or on **Your** behalf of advertising and directional signs, their frames, supports and appurtenances.

## Computer Virus

means an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host, program or other computer code or data, causing undesired program or computer system operation.

## Electronic Data

means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

## Employee

means any person engaged under a contract of service or apprenticeship with **You**, but does not include any person employed under such contract who is excluded from the definition of 'worker' under any workers' compensation legislation while working for **You** in connection with the **Business**.

## Employment Practices

means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to or in respect of employment or prospective employment of any person or persons by **You**.

## Excess

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

## Geographical Limits

means:

- a) anywhere in the World except **North America**;
- b) **North America**, but on with respect to:
  - (i) overseas business visits by any of **Your** directors, partners, officers, executives or employees, who are non-resident in **North America**, but not where they perform manual work in **North America**.
  - (ii) Products exported to **North America** without **Your** knowledge.

## Hovercraft

means any vessel, craft or thing made or intended to float on water and travel over water or land supported on a cushion of air.

## IT Network

means any computer hardware (or components thereof), software (or components thereof), communication system networks, **Internet Operations**, websites whatsoever hosted, online or offline media libraries, data, or other peripheral devices.

## Internet Operations

means

- a) transfer of computer data or programmes by use of electronic mail systems by **You** including for the purpose of this definition only, part-time and temporary staff, contractors and others within **Your Business** whether or not such data or programmes contain any malicious or damaging code, including but not limited to **Computer Virus**, worm, logic bomb, or trojan horse;
- b) access through **Your** network to the world wide web or a public internet site by **You** including for the purpose of this definition only, part-time and temporary staff, contractors and others within **Your Business**;
- c) access to **Your** intranet (meaning internal company information and computing resources) which is made available through the world wide web for **Your** customers or others outside **Your Business**; and
- d) the operation and maintenance of **Your** website.

## 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**.

## North America

means United States of America or Canada or their respective territories and protectorates.

### Occurrence

means an event, including continuous or repeated exposure to conditions, which results in **Personal Injury, Property Damage or Advertising Liability** neither expected nor intended from **Your** standpoint, during the **Period of Insurance**.

With respect to **Personal Injury or Property Damage**, all such exposure to substantially the same general conditions shall be deemed one **Occurrence**.

With respect to **Advertising Liability** all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants, shall be deemed to arise out of one **Occurrence**.

### Period of Insurance

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

### Personal Injury

means:

- a) bodily injury (and this expression includes death, disease and illness), disability, shock, fright, mental anguish, mental injury or loss of consortium;
- b) false arrest, wrongful detention, false imprisonment, malicious prosecution or humiliation;
- c) discrimination whether because of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) but only with respect to liability other than fines and penalties imposed by law;
- d) wrongful entry upon, wrongful eviction from or other invasion of right to private occupancy of property;
- e) libel and slander arising out of the publication or utterance of defamatory or disparaging material; and
- f) assault and battery not committed by **You** or at **Your** direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

Personal Injury, if relating to a latent injury, a latent illness, a latent disease or a latent disability, shall be deemed to have happened at the time when such injury, illness, disease or disability was first medically diagnosed.

### 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**.

### Silica

means silicon dioxide, occurring in crystalline, amorphous and impure forms, silica particles, silica dust or silica compounds.

### Silica Related Dust

means a mixture or combination of **Silica** and other dust or particles.

### 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.

### 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.

### We, Us or Our

Pacific Indemnity Underwriting Solutions Pty Ltd  
ACN 606 511 639 - on behalf of Zurich Australian Insurance  
Limited, ABN 13 000 296 640 (Zurich).

### Worksite

means any premises or site where work is performed by **You** in connection with the **Business** and includes any surrounding area or premises used by **You** to undertake such work.

### You or Your

means:

- a) the person(s), companies or firms named on the current **Schedule** as the **Named Insured**;
- b) all the Subsidiary companies (including subsidiaries thereof) and/or controlled corporations (including subsidiaries thereof) of the parties shown in definition a) above, now or subsequently constituted, provided their places of incorporation are within Australia or any Territory of Australia;
- c) every past, present or future director, executive officer, **Employee**, partner, shareholder or voluntary worker of the parties shown in a) and b) above (including the spouse or family member of any such person performing a designated role in connection with the **Business**) while acting within the scope of their duties in such capacity;
- d) each partner, joint venturer, co-venturer or joint lessee of the **Named Insured** in the **Schedule** but only if **We** agree to insure them and the **Named Insured** in the **Schedule** agrees to pay the premium **We** require;
- e) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with **Your** consent (other than one of the parties shown in definitions c) and d) in respect of claims arising from their duties connected with the activities of any such club, organisation or service;
- f) any director or senior executive or partner of the parties shown in definitions a) and b) in respect of private work undertaken by an **Employee** of those parties for such director or senior executive;
- g) if a party named in the **Schedule** as a **Named Insured** is an individual, the personal representative of that individual in the event of the death of that individual, but only in respect of liability incurred by that individual;
- h) any person whilst working for a party any organisation or entity designated in definitions a) and b), for the purpose of gaining work experience.

However, **You/Your** does not include the interest of any other person other than as described in this definition.

### Your Products

means anything (after it has ceased to be in **Your** possession or under **Your** control), which is or is deemed to have been manufactured, grown, extracted, produced, processed, imported, exported, constructed, assembled, erected, installed, repaired, serviced, renovated, treated, sold, supplied or distributed by **You** or on **Your** behalf (including **Your** predecessors in the **Business**) including labels, packaging or any container thereof the design, specification or formula of the products and directions, instructions or advice given or omitted to be given in connection with such products and anything which by law or otherwise **You** are deemed to have manufactured in the course of the **Business** including discontinued products.