

# **PUBLIC & PRODUCTS LIABILITY**

Form V2013-E Wording (Standard)



# **STERLING**

INSURANCE

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## **STERLING INSURANCE PTY LIMITED**

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# Combined Public & Products Liability Policy

## 1. Insuring Clause

Subject to the terms of this Policy, Underwriters will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation in respect of:

- 1.1 Injury
- 1.2 Damage
- 1.3 Advertising Liability

happening during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

## 2. Definitions

2.1 "Advertising Liability" means liability arising out of:

- 2.1.1 Libel, slander or defamation of character; or
- 2.1.2 Infringement of copyright of or passing off of title or slogan; or
- 2.1.3 Unfair competition, piracy or idea misappropriation contrary to an implied contract; or
- 2.1.4 Invasion of privacy,

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities conducted by the Insured in the course of advertising the Insured's Products.

2.2 "Aircraft" means any craft or object designed to travel through air or space.

2.3 "Damage" means:

- 2.3.1 Physical loss, destruction of or damage to tangible property, (other than Product) including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical loss, destruction or damage that caused it.
- 2.3.2 Loss of use of tangible property, (other than Product) that is not physically lost, destroyed or damaged provided such loss of use is caused by physical loss, destruction of or damage to other tangible property which happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical loss, destruction or damage that caused it.
- 2.3.3 Denial of access to property, premises, services or facilities, or interference with any right of way, light, air or water.
- 2.3.4 Stoppage of or interference with pedestrian, vehicular, air, rail or waterborne traffic.

2.4 "Deductible" means the amount payable by the Insured in respect to each Occurrence and includes all Defence Costs and Additional Expenses as described under Clause 6 of this Policy.

- 2.5 "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.
- 2.6 "Hovercraft" means any vessel, craft, or device made or intended to float on or in or travel on or through the atmosphere or water on a cushion of air powered by a downward blast.
- 2.7 "Injury" means:
- 2.7.1 Death, bodily injury, sickness, disease, illness, disorder, disability, shock, fright, mental anguish and mental injury to any person, including loss of consortium or services resulting therefrom;
  - 2.7.2 The effects of false arrest, wrongful detention, false imprisonment, malicious prosecution or humiliation;
  - 2.7.3 The effects of wrongful entry or wrongful eviction or other invasion of privacy; and
  - 2.7.4 The effects of assault and battery not committed by the Insured or at the Insured's direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

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

- 2.8 "Insured" wherever used in this Policy means the Insured named in the Schedule and,
- 2.8.1 Any subsidiary company (including subsidiaries thereof) of the Insured;
  - 2.8.2 Any entity controlled by the Insured and/or over which the Insured assumes active management during the Period of Insurance; and
  - 2.8.3 Any entity controlled by the Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested entity caused by or arising out of Occurrences insured under this Policy, and which occurred prior to the divestment.
- 2.9 "Insured's Business" is the business shown in the Schedule, which shall include:
- 2.9.1 The ownership of premises and/or the tenancy thereof by the Insured, and
  - 2.9.2 Private work undertaken by the Insured's employees for any director, partner, proprietor, officer or executive of the Insured.
- 2.10 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.
- 2.11 "Loading or Unloading" means the handling of property at the job site where the Insured is performing their Business:
- 2.11.1 After the property is moved from the place where it is accepted for movement into or onto a Watercraft, Aircraft, Vehicle, trailer attachable or attached to a Vehicle, or rolling stock of any kind, or
  - 2.11.2 While the property is in or on a Watercraft, Aircraft, Vehicle, trailer attachable or attached to a Vehicle, or rolling stock of any kind, or

2.11.3 While the property is being moved from a Watercraft, Aircraft, Vehicle, trailer attachable or attached to a Vehicle, or rolling stock of any kind to the place where it is finally delivered;

but Loading or Unloading does not include the movement of property by means of mechanical device, other than a hand truck, that is not attached to the Watercraft, Aircraft, Vehicle, trailer attachable or attached to a Vehicle, or rolling stock of any kind.

- 2.12 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage and/or Advertising Liability neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.13 "Period of Insurance" is the period shown in the Schedule or the period shown within any subsequently issued renewal documentation.
- 2.14 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 2.15 "Premium" means the amount the Underwriters shall charge for insurance under this Policy for a Period of Insurance.
- 2.16 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a Vehicle).
- 2.17 "Tool of Trade" means a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by the Insured either at or away from the Insured's business premises. Tool of Trade does not include:
- 2.17.1 Any Vehicle whilst travelling to or from the Insured's business premises, or to any area which the Vehicle will be used as a Tool of Trade; or
- 2.17.2 Vehicles that are used to carry goods to or from any premises.
- 2.18 "Vehicle" means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilized in conjunction with or drawn by any such machine.
- 2.19 "Watercraft" means any vessel, craft or thing made or intended to float on or in or travel on or through water, other than model boats.
- 2.20 "Worker" means any person employed by the Insured or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise.
- 2.21 "Workers' Compensation Law" means any law relating to compensation for Injury to Workers or employees.

### **3. Indemnity to Others**

The indemnity granted by this Policy will extend to:

- 3.1 Any principal in respect of the liability of such principal to third parties arising out of the performance by the Insured of any written contract or agreement with the Insured for the performance of work for such principal but this Policy shall only indemnify the principal to the extent that the Insured is required to insure such liability pursuant to such written contract or agreement, but subject always to the terms of this Policy.
- 3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity.
- 3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting, charities, child care facilities and employee welfare organisations in their respective capacity as such.
- 3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy (insofar as they can apply) as though they were the Insured.

### **4. Cross Liabilities**

Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that the Underwriters' total liability shall not exceed the Limit of Indemnity for all claims under this Policy.

### **5. Limit of Indemnity**

The Underwriters' liability to pay compensation shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of the Underwriters for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's Product(s) shall not exceed the sum stated in the Schedule.

### **6. Defence Costs and Additional Expenses**

In addition to the Limit of Indemnity, the Underwriters will pay:

- 6.1 Reasonable legal and investigative costs and expenses incurred with Underwriters' prior written consent in connection with:
  - 6.1.1 Any claim or potential claim for which the Insured is indemnified by this Policy.
  - 6.1.2 Representation at any formal legal inquiry involving an accident resulting in Injury or at any Coroner's Inquiry.
  - 6.1.3 The protection of damaged or undamaged property of any person(s) including temporary repairs and/or temporary shoring up and/or underpinning thereof.

- 6.1.4 The purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which the Insured must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.
- 6.2 Reasonable expenses incurred by the Insured (following an Occurrence for which indemnity is provided by this Policy) for the rendering of immediate first aid and/or medical and surgical relief to others as may be required at the time of any Occurrence of Injury.
- 6.3 Up to \$20,000 for reasonable professional fees and such other expenses incurred by the Insured for the preparation of a claim under this Policy with prior written agreement of the Underwriters.
- 6.4 On the Insured's behalf any costs and expenses necessarily incurred in respect of measures taken by the Insured with the object of avoiding or mitigating a claim for which the Insured would be entitled to indemnity under the Policy had such measures not been taken.
- 6.5 Pay all charges, expenses and legal costs recoverable from or awarded against the Insured in any such claim or suit and all interest accruing on the Underwriter's portion of any judgment until the Underwriters have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of the Underwriter's liability thereon.

Provided that the Underwriters shall not pay any legal costs or expenses in respect of any Occurrence after Underwriters have paid compensation up to the Limit of Indemnity.

Provided further that the legal costs and expenses incurred in connection with claims made and/or actions instituted within the United States of America, the Dominion of Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity and will not be payable by the Underwriters in addition to the Limit of Indemnity.

## **7. Exclusions**

This Policy does not cover liability:

- 7.1 Directly or indirectly arising out of the ownership, operation, possession or use by the Insured of any Vehicle (including any trailer attached thereto) which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:
  - 7.1.1 Injury for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law.
  - 7.1.2 Injury caused by the use of any Vehicle (including any trailer attached thereto and any tool or plant forming part of or attached to or used in connection with any Vehicle or trailer for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law) as a Tool of Trade.
- 7.2 Directly or indirectly arising out of the ownership, operation, possession or use by the Insured of any Vehicle (including any trailer attached thereto) which is required by law to be registered or in respect of which there is required by law to be in force a policy of

compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:

- 7.2.1 Damage caused by the use of any Vehicle as a Tool of Trade.
  - 7.2.2 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any Vehicle including any trailer attached thereto or of the load carried thereon.
  - 7.2.3 Damage caused by or arising out of the Loading or Unloading of any Watercraft, Aircraft, Vehicle including any trailer attached thereto, or rolling stock of any kind used in work undertaken by the Insured.
  - 7.2.4 Damage to any Vehicle including any trailer attached thereto (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.
- 7.3 Arising out of damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:
- 7.3.1 Premises (or contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises on which the Insured is or has been working on if the physical damage or destruction arises from such work.
  - 7.3.2 Premises tenanted by the Insured.
  - 7.3.3 Directors', employees' and visitors' clothing and personal effects.
  - 7.3.4 Other property (not owned by the Insured) temporarily in the Insured's possession provided:
    - 7.3.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which the Insured is or has been working on;
    - 7.3.4.2 The Underwriters' limit of liability under this Clause 7.3.4 does not exceed \$250,000 each and every Occurrence and in the aggregate for any one Period of Insurance.
- Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.
- 7.4 Arising out of costs incurred in or in connection with the repair, reconditioning, replacement, removal or recalling of any Product or component part.
  - 7.5 Arising out of any Product guarantee given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
  - 7.6 Assumed:
    - 7.6.1 Under the terms of a contract, agreement or warranty unless the Insured would have been liable in the absence of such terms or warranty;

7.6.2 Where the Insured may have been able to recover from another party(ies) but for an agreement between the Insured and such party(ies) where the Insured has waived, released or abandoned any right of recourse or recovery against such other party(ies).

7.7 Arising from:

7.7.1 Any contractor or subcontractor of the Insured,

7.7.2 Any contractor or subcontractor of any contractor or subcontractor of the Insured or any tier thereof,

7.7.3 Any director, executive officer, employee or partner of any contractor or subcontractor (or any of their contractors or subcontractors) of the Insured or any tier thereof.

Notwithstanding the above, it is noted and agreed that this Exclusion 7.7 shall not apply to the Insured in respect of their own liabilities arising out of any act, omission or otherwise of any contractor, subcontractor or other entity named in 7.7.1, 7.7.2 or 7.7.3 above.

7.8 Arising out of any Product which is incorporated into the structure, machinery or controls of any Aircraft, Watercraft or Hovercraft.

7.9 For Injury to any Worker.

Provided that if the Insured:

7.9.1 Is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or

7.9.2 Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or "employee" within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such Law;

then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, Policy of insurance or self insurance arrangement had the Insured complied with its obligations pursuant to such Law.

7.10 Imposed:

7.10.1 By any Workers' Compensation Law;

7.10.2 By the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination;

7.10.3 For or in respect of Employment Practices.

7.11 For loss of use of tangible property which has not been physically damaged or destroyed resulting from:

7.11.1 A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or

7.11.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organization other than the Insured.

7.12 Arising out of any change in the nature of the Insured's Business which:

7.12.1 Occurred during the currency of this Policy; and

7.12.2 Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy;

Unless the Insured provides written notice to the Underwriters and such change has been accepted in writing by the Underwriters. Such change becomes effective from:

7.12.3 The date the Underwriters have stated on their written confirmation; or

7.12.4 If no date is specified in the Underwriters written confirmation, then the date that the Underwriters written confirmation is received by the Insured.

For the purposes of this Exclusion 7.12, where the Insured is a corporate body, the knowledge of any officer of the Insured shall be deemed to be the knowledge of the Insured.

7.13 Caused by or arising out of the rendering of or failure to render professional advice or service by the Insured or any related error or omission but this exclusion does not apply to:

7.13.1 The rendering of or failure to render first aid provided always that the Insured's Business does not include the provision of medical services; or

7.13.2 Injury or Damage arising therefrom providing such professional advice or service is not given for a fee.

7.14 Arising out of Advertising Liability:

7.14.1 Libel, slander or defamation of character, unless arising out of the Insured's advertising activities;

7.14.2 Resulting from acts, errors, omissions or statements made in the course of the Insured's advertising activities prior to the commencement of the Period of Insurance;

7.14.3 Resulting from statements made at the direction of the Insured with the knowledge of the falsity thereof;

7.14.4 For breach of contract, other than misappropriation of advertising ideas contrary to an implied contract;

7.14.5 For infringement or passing off of a trade mark, service mark or trade name on any Products, goods or services sold, offered for sale or advertised. This does not apply to infringement of titles or slogans;

7.14.6 Arising from the export of the Products to, or business visits by the Insured to the United States of America, the Dominion of Canada, their respective territories

and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada;

- 7.14.7 For any Insured whose Business is advertising, broadcasting, publishing or telecasting;
  - 7.14.8 For incorrect description of the price of Products, goods or services;
  - 7.14.9 For failure of Products, goods or services to conform with advertised performance, quality, fitness or durability.
- 7.15 7.15.1 Arising out of Injury or Damage directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants;
- 7.15.2 The cost of removing, nullifying or cleaning up Pollutants;

Provided that the Underwriters shall cover liability otherwise excluded under Clauses 7.15.1 and 7.15.2 which is caused by a sudden, identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place during the Period of Insurance.

- 7.16 Directly or indirectly caused by, arising out of or anyway connected with:
- 7.16.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion;
  - 7.16.2 Nuclear weapons material.
- 7.17 Directly or indirectly caused by, arising out of or in any way connected with, occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
- 7.18 Arising out of ownership, maintenance, operation, possession or use by or on behalf of the Insured of any Aircraft, Watercraft or Hovercraft but this exclusion does not apply to:
- 7.18.1 Any Watercraft not owned or operated by the Insured but which is used for entertainment as part of the Insured's Business;
  - 7.18.2 Any Watercraft which is less than 8 metres in length.
- 7.19 Arising out of the Deductible and/or self-insured retention shown in the Schedule.
- 7.20 Arising out of the erection and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of \$1,000,000 or 10% (ten percent) of the Limit of Indemnity whichever is the lesser.
- 7.21 Directly or indirectly caused by, arising out of or in any way connected with asbestos including but not limited to:
- 7.21.1 The existence of or exposure to asbestos and/or any asbestos containing materials;
  - 7.21.2 Any obligation to defend any claim or suit against the Insured alleging liability resulting from 7.21.1 above nor to Underwriters' liabilities for Defence Costs arising therefrom.

- 7.22 Arising out of any Injury directly or indirectly due to the inhalation or ingestion of, or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.
- 7.23 7.23.1 For claims made and actions instituted within the United States of America, the Dominion of Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada;
- 7.23.2 For claims and actions to which the laws of the United States of America, the Dominion of Canada and their respective territories and protectorates apply.

Provided that this exclusion 7.23 does not apply to claims and actions caused by an employee of the Insured who normally resides in the Commonwealth of Australia while such employee is temporarily travelling on behalf of the Insured in order to perform non-manual duties outside the Commonwealth of Australia.

- 7.24 Arising out of fines, penalties, punitive damages, exemplary damages, liquidated damages and/or aggravated damages.
- 7.25 Arising out of any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Policy. Provided that this Exclusion 7.25 shall only apply if a judgment or other final adjudication of any court, tribunal or arbitrator establishes that such conduct, act or omission was committed by the Insured with actual fraudulent, dishonest, wilful or criminal purpose and intent and was material to any claim under this Policy.
- 7.26 Arising out of the use of any electric, oxy-acetylene or similar welding or cutting equipment and allied processes by or on behalf of the Insured unless such welding or cutting was done in full compliance with Australian Standard 1674 "Safety in Welding and Allied Processes".
- 7.27 Arising out of the storage, transportation and/or use of explosives.
- 7.28 Arising out of any contract requiring the Insured to perform work immediately above, over or beside a railway line which is in use.
- 7.29 Arising out of any contract that requires the Insured to use a ball and chain.
- 7.30 Arising out of the failure of underpinning or de-watering to fulfil the purpose for which it was designed or to perform as specified, warranted or guaranteed.
- 7.31 Arising out of any Insured not licensed in accordance with all relevant Government Acts, Rules, Regulations and Industry requirements.
- 7.32 Directly or indirectly caused by, arising out of or anyway connected with any act of Terrorism.

For the purpose of this Exclusion, "Terrorism" shall mean 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 organization(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, in fear.

If the Underwriters allege that by reason of this Exclusion 7.32, any loss, Injury, Damage, cost or expense is not covered by this insurance the burden of proving contrary shall be upon the Insured.

In the event any portion of this Exclusion 7.32 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

This Exclusion 7.32 shall take precedence over any other term of the Policy, including any Endorsement added at any time, which does not expressly override it.

- 7.33 Arising out of any costs or expenses incurred in performing, completing, correcting or improving any work or service undertaken or provided by the Insured or on behalf of the Insured.

## **8. General Conditions**

- 8.1 The Insured shall give written notice to the Underwriters as soon as possible after any Occurrence that may give rise to a claim under this Policy and shall give all such additional information as the Underwriters may require. Every letter, claim, writ, summons or process shall be forwarded to the Underwriters immediately it is received.
- 8.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of the Underwriters who shall be entitled to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Underwriters shall require.
- 8.3 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.
- 8.4 The amount shown within the Schedule as an excess or Deductible is the first amount for each claim arising out of any one Occurrence which is to be borne by the Insured.
- 8.5 The Underwriters may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:
- 8.5.1 The total amount in respect of the said claim or claims to which the Insured is entitled to indemnity under this Policy, or
  - 8.5.2 The total amount sought by the claimant(s) in the said claim or claims, or
  - 8.5.3 The total amount for which the said claim or claims can be settled,
- and in addition to such payment the Underwriters will pay Defence Costs and Additional Expenses incurred up to the date of the said payment as provided for by Clause 6 of this Policy.
- Upon such payment, the Underwriters shall relinquish conduct or control of such claims and be under no further liability under this Policy in connection with such claim or claims.
- 8.6 This Policy is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to

raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this Insurance should be referred to the Lloyd's Coverholder. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21, Angel Place, 123 Pitt Street  
Sydney NSW 2000  
Australia

Telephone Number: (02) 9223 1433

Facsimile Number: (02) 9223 1466

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

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

In the event that a dispute arises between Underwriters and the Insured out of or otherwise in relation to this agreement, then:

8.6.1 Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "Dispute Notice") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;

8.6.2 If a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:

8.6.2.1 A process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (**LEADR**) (or other appropriate professional body as agreed by the parties); or

8.6.2.2 Referral of the matters in dispute to an independent expert to an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:

- a. will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
- b. will act as an expert and not as an arbitrator;
- c. will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- d. will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and

- e. will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause 8.6.3 below) without first pursuing such informal resolution techniques in good faith.

In the event that the dispute is not resolved by such informal process within 35 days of the Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

- 8.6.3 Following either a mediation or an expert determination pursuant to clause 8.6.2.2 of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21, Angel Place, 123 Pitt Street  
Sydney NSW 2000  
Australia

Telephone Number: (02) 9223 1433

Facsimile Number: (02) 9223 1466

who has authority to accept service and to appear on Underwriters' behalf.

If proceedings are instituted against any one of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

- 8.6.4 Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- 8.6.5 Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- 8.6.6 Notwithstanding anything in this General Condition 8.6 either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief.

- 8.7 The Insured shall be bound by all Procedures and Regulations as stated within Australian Standard 2601-1991 together with all relevant Occupational Health and Safety Guidelines and Procedures.

8.8 The Insured must:

- 8.8.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- 8.8.2 Take reasonable precautions to:
  - 8.8.2.1 Prevent Injury and Damage;
  - 8.8.2.2 Prevent the manufacture, sale or supply of defective Products;
  - 8.8.2.3 Comply, and ensure that its Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
- 8.8.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which the Insured has knowledge of or has reason to suspect.

The amount of any benefit under this Policy for any liability arising from Injury and/or Damage caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which the Underwriters' interests have been prejudiced thereby.

- 8.9 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as the Underwriters require and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.

- 8.10 8.10.1 The Insured may cancel this Policy at any time by giving notice in writing to the Underwriters.

This premium is non-refundable unless it is premium funded.

Where the premium has been premium funded, a refund will be granted:

- 8.10.1.1 After written proof is provided to the Underwriters showing that a premium funding contract was in place for this Policy during the Period of Insurance and that the Policy is being cancelled by the premium funder; and

- 8.10.1.2 Where a minimum and deposit premium applies, then the Insured shall declare the actuals and the premium shall be adjusted and any difference taken into account prior to calculating a refund (subject to any minimum premium that may apply); and

- 8.10.1.3 The premium refund is calculated on a pro-rata basis of the unexpired Period of Insurance less 20%. Additionally, underwriter/policy fees are non-refundable and statutory charges will only be refunded where allowed; and

- 8.10.1.4 If the premium refund (excluding statutory charges) exceeds \$1,000.

- 8.10.2 The Underwriters may cancel this Policy at any time where:

- 8.10.2.1 The Underwriters are entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto, or

8.10.2.2 The Insured has failed to notify the Underwriters of any specific act or omission where such notification is required under the terms or conditions of this Policy, or

8.10.2.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers the Underwriters to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by the Underwriters shall take effect either at the time when another contract of insurance between the Insured and the Underwriters or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into, or the date specified by the Underwriter (whichever is the earlier).

Where the Insured comprises more than one person or company, it is agreed that the named Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies or others indemnified by Clause 3 for the purposes of receiving any notice of cancellation pursuant to this Clause, or any other notice, statement, document or information relating to this Policy. Where the Insured has an insurance broker, nothing in this paragraph shall restrict the Underwriters right to notify the broker as agent of the Insured.

8.11 Where this Policy provides any indemnity to the Insured which is prohibited by law, this Policy shall be varied by operation of this Clause so that this Policy does not respond to the extent that the indemnity is prohibited by law.

8.12 Where the Underwriters makes a payment under this Policy for the acquisition of goods, services or other supply, the Underwriters will reduce the amount of the payment by the amount of any input tax credit that the Insured is, 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 the Underwriters makes a payment under this Policy as compensation instead of payment for the acquisition of goods, services or other supply, the Underwriters will reduce the amount of the payment by the amount of any input tax credit that the Insured is, or will be, or 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.

8.13 Lloyd's and its agents are bound by the obligations of the Privacy Act 1988 as amended by the Privacy Amendment Private Sector Act 2000 (the Act). This sets out basic standards relating to the collection, use, disclosure and handling of personal information.

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

Information will be obtained from individuals directly where possible. Sometimes it may be collected indirectly (e.g. from your representatives).

Only information necessary for the arrangement and administration of Lloyd's business by Lloyd's, its agents and their representatives will be collected. This includes information necessary to accept risk, to assess a claim, to determine competitive and appropriate premiums, etc.

Lloyd's and its agents disclose personal information to third parties who they believe are necessary to assist them in doing the above. These parties will only use the personal information for the purposes we provided it to them for (or if required by law).

When you give Lloyd's and its agents personal information about other individuals, we rely on you to have made or make them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

You are entitled to access your information if you wish and request correction if required.

- 8.14 The Insured's rights under this Policy shall not be prejudiced by any unintentional and/or inadvertent:
- 8.14.1 Breach of a condition or warranty without the Insured's knowledge or consent, or
  - 8.14.2 Error in the name or title of any person(s), corporation and/or other organisation which forms part of the definition of "Insured"; or
  - 8.14.3 Error in name, description or situation of property or
  - 8.14.4 Failure to report any property and/or entity and/or insurable exposure in which the Insured has an interest.

Provided always that, upon discovery of any such fact or circumstances referred to above, the Insured's officer responsible for insurance matters shall give written notice thereof to the Underwriters as soon as reasonably practicable thereafter and the Insured shall (if so requested) pay such reasonable additional premium that the Underwriter's may require.

- 8.15 The Insured must advise the Underwriters in writing as soon as possible if circumstances occur, or if changes or alterations are intended or made which increase the risk of Injury, Damage or Advertising Liability.

The Insured must advise the Underwriters immediately in writing of every change that comes to the Insured's knowledge which materially varies any of the facts or circumstances existing at the commencement of this Policy. The Underwriters may at their discretion, for what they consider to be an increase of risk:

- 8.15.1 Charge additional premium;
- 8.15.2 Amend or impose additional terms or conditions;
- 8.15.3 Cancel the Policy.

If the Underwriters agree to make a change to this Policy, then such change becomes effective from:

- 8.15.4 The date the Underwriters have stated on their written confirmation; or
  - 8.15.5 If no date is specified in the Underwriters written confirmation, then the date that the Underwriters written confirmation is received by the Insured.
- 8.16 Any notice given in writing by the Underwriter to the first named Insured specified in the Schedule will be treated as notice to each of the parties comprising the Insured.

Service of notices by the Underwriter will be effective immediately on receipt by the first named Insured of a letter or electronic communication sent by the Underwriter or in the case of notices by post, three business days after having been posted by the Underwriter.