



AIG Australia Limited

BusinessGuard

Combined Public & Products

Liability

Policy Wording



Important Notices

This **Policy** is issued/insured by AIG Australia Limited (AIG), ABN 93 004 727 753 AFSL No 381686

Sydney: Level 19, 2 Park Street, NSW 2000 (1300 030 886)
Melbourne: Level 13, 717 Bourke Street, VIC 3008 (1300 030 886)
Brisbane: Level 11, 120 Edward Street, QLD 4000 (1300 030 886)
Perth: Level 11, 108 St. George Terrace, WA 6000 (1300 030 886)

Duty of Disclosure

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

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract. You do not need to tell us anything that:

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

Subject to the Cancellation General Provision and to the extent permitted by the relevant law, if you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

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

Privacy Notice

This notice sets out how AIG collects, uses and discloses personal information about:

- **you, if an individual; and**
- **other individuals you provide information about.**

Further information about our Privacy Policy is available at www.aig.com.au or by contacting us at australia.privacy.manager@aig.com or on 1300030886.

How we collect your personal information

AIG usually collects personal information from you or your agents. AIG may also collect personal information from:

- our agents and service providers;
- other insurers;
- people who are involved in a claim or assist us in investigating or processing claims, including third parties claiming under your Policy, witnesses and medical practitioners;
- third parties who may be arranging insurance cover for a group that you are a part of;
- providers of marketing lists and industry databases; and
- publicly available sources.

Why we Collect your Personal Information

AIG collects information necessary to:

- underwrite and administer your insurance cover;
- improve customer service and products and carry out research and analysis, including data analytics; and
- advise you of our and other products and services that may interest you.

You have a legal obligation under the Insurance Contracts Act 1984 to disclose certain information. Failure to disclose information required may result in AIG declining cover, cancelling your insurance cover or reducing the level of cover, or declining claims to the extent permitted by the relevant law.

To whom we Disclose your Personal Information

In the course of underwriting and administering your Policy we may disclose your information to:

- your or our agents, entities to which AIG is related, reinsurers, contractors or third-party providers providing services related to the administration of your Policy;
- banks and financial institutions for Policy payments.
- your or our agents, assessors, third party administrators, emergency providers, retailers, medical providers, travel carriers, in the event of a claim.
- entities to which AIG is related and third-party providers for data analytics functions;
- other entities to enable them to offer their products or services to you; and
- government, law enforcement, dispute resolution, statutory or regulatory bodies, or as required by law.

AIG is likely to disclose information to some of these entities located overseas, including in the following countries: United States of America, Canada, Bermuda, United Kingdom, Ireland, Belgium, The Netherlands, Germany, France, Singapore, Malaysia, the Philippines, India, Hong Kong, New Zealand as well as any country in which you have a claim and such other countries as may be notified in our Privacy Policy from time to time.

You may request not to receive direct marketing communications from AIG.

Access to your Personal Information

Our Privacy Policy contains information about how you may access and seek correction of personal information we hold about you. In summary, you may gain access to your personal information by submitting a written request to AIG.

In some circumstances permitted under the Privacy Act 1988, AIG may not permit access to your personal information.

Circumstances where access may be denied include where it would have an unreasonable impact on the privacy of other individuals, or where it would be unlawful.

Claims Notification Notice

The Insured must notify us in writing of any Claim or other circumstance that may give rise to a Claim as soon as reasonably practical and within the Policy Period. The written notice shall include, as far as the Insured, is aware:

- a) a detailed description of the subject matter of the Claim or claim for any other matter covered under the Policy;
- b) details of all the parties involved;
- c) an outline of the facts;
- d) the manner and date upon which the Insured became aware of the matters giving rise to the notification;
- e) a copy of any other insurance policy that may be applicable.

Notice should be addressed to:

The Claims Manager
Casualty Department
AIG Australia Limited
Level 19, 2 Park Street Sydney, NSW 2000, Australia
General customer service Tel: +61 2 9240 1711

Complaints

Our Privacy Policy also contains information about how you may complain about a breach of the applicable privacy principles and how we will deal with such a complaint.

Consent

If applicable, your application includes a consent that you and any other individuals you provide information about consent to the collection, use and disclosure of personal information as set out in this notice.

General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice. This aims to raise the standards of practice and service in the insurance industry, improve the way that claims and complaints are handled and help people better understand how general insurance works. Information brochures on the Code are available upon request.

Information about the Code can be found at:
<https://insurancecode.org.au/resources/2014-general-insurancecode-of-practice/>

Dispute Resolution Procedure

We are committed to handling any complaints about our products or services efficiently and fairly.

Internal Dispute Resolution

If you have a complaint, please contact your insurance intermediary and they may raise it with us.

If your complaint is not satisfactorily resolved, you may request that your matter be reviewed by management by writing to:

The Compliance Manager AIG
Level 13, 717 Bourke Street
Docklands VIC 3008

If you are still unhappy, you may request that the matter be reviewed by AIG's Internal Dispute Resolution Committee. We will respond to you with the Committee's findings within 15 business days.

External Dispute Resolution

If you are not satisfied with the finding of the Committee, you may be able to take your matter to the Australian Financial Complaints Authority. AFCA is insurance industry's independent dispute resolution body. This external dispute resolution body can make decisions with which we are obliged to comply.

AFCA can be contacted at:

AFCA
GPO Box 3 Melbourne Vic
3001 or by phone: 1800
337 444

Information about AFCA can be found on the web at:
<https://afca.org.au/>

Copyright

The content of this Policy wording, the schedule and any endorsement or notice we give you in writing, including but not limited to the text and images therein, and their arrangement, is the copyright property of AIG. All rights reserved. AIG hereby authorises you to copy and display the content herein, but only in connection with AIG business. Any copy you make must include this copyright notice. Limited quotations from the content are permitted if properly attributed to AIG; however, except as set forth above, you may not copy or display for redistribution to third parties any portion of the content of this Policy wording, the schedule and any endorsement or notice we give you in writing, without the prior written permission of AIG. No modifications of the content may be made. Nothing contained herein shall be construed as conferring by implication or otherwise any license or right under any patent, trademark, copyright (except as expressly provided above), or other proprietary rights of AIG or of any third party.

BusinessGuard

Combined Public & Products Liability

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This Policy incorporates the Policy Schedule, Definitions, The Cover, Exclusions, Conditions, Endorsements and any other terms attached which are to be read together.

Throughout this Policy the words **we**, **us** and **our**, refer to AIG Australia Limited.

Words and phrases that appear in **bold** print have special meaning as defined under the Definitions of this Policy.

1. Insurance Covers

1.1 Insuring Agreement

Subject to all provisions, terms, Conditions and Exclusions of this Policy, **we** agree to 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:

- a) **Personal Injury**;
- b) **Property Damage**; or
- c) **Advertising Injury**,

first happening during the **Policy Period** as a result of an **Occurrence** within the **Territorial Limits** in connection with the **Insured's Business or Products**.

1.2 Limits of Liability

Our liability to pay **Compensation** in respect of any one **Occurrence** shall not exceed the Limit of Liability specified in Item 4. (i) of the Policy Schedule. All **Personal Injury**, **Property Damage** or **Advertising Injury** arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one **Occurrence**.

Our total aggregate liability during any one **Policy Period** for all claims involving **Products Hazard** shall not exceed the Limit of Liability specified in Item 4. (ii) of the Policy Schedule.

1.3 Defence Costs & Supplementary Payments

1.3.1 In addition to the Limits of Liability specified in the Policy Schedule, **we** agree to indemnify the **Insured** for

- a) all reasonable legal costs and expenses incurred by **us** or by the **Insured**, with **our** prior written consent in the defence or settlement of any claim for **Compensation** that is indemnifiable under this Policy, even if the allegations made in such claim are groundless, false or fraudulent;
- b) all costs incurred by the **Insured** with **our** prior written consent for legal representation at any coronial inquest or inquiry, royal commission or government inquiry that an **Insured** is required to attend arising from any **Personal Injury**, **Property Damage** or **Advertising Injury** indemnifiable under 1.1 Insuring Agreement; and
- c) all interest accruing on **our** portion of any of the **Insured's** expenses incurred at **our** request or with **our** prior written consent (including actual loss of wages or salary, but not loss of other income).
- d) all reasonable costs incurred by the **Insured** for first aid administered to third parties at the time of **Personal Injury** caused by an **Occurrence** (other than medical expenses prohibited by law).
- e) all reasonable expenses for the temporary protection of damaged or undamaged property of third parties including but not limited to temporary repairs, shoring up or underpinning.

1.3.2 Any indemnity provided under 1.3.1 above is subject to the following limitations:

- a) where settlement has been agreed to by the party being indemnified or has been recommended by a senior lawyer and consent to such settlement is still withheld by the **Insured**, then **our** liability on account of that claim shall not exceed the amount for which **we** could have settled the claim plus the legal costs and expenses incurred to the date such settlement was recommended in writing to the **Insured**;
- b) **We** are not obligated to pay any legal costs or expenses to defend or investigate any claim for **Compensation** after the exhaustion of the applicable Limits of Liability;
- c) if payment exceeding **our** liability under this Policy to indemnify the **Insured** is necessary to finalise a claim, **our** liability is limited to the proportion that **our** liability to indemnify the **Insured** bears to that payment;
- d) in the event of any claim for **Compensation** being made against the **Insured** in any court or before any other legally constituted body in **North America**, all costs and expenses incurred in the defence or settlement of any claim shall be included within the Limits of Liability and not in addition;
- e) **We** shall not be liable for legal costs or expenses where indemnity is not provided by this Policy; and
- f) In the event the **Insured** is a party to a demand, legal proceeding, inquiry or hearing which is covered only in part by this Policy, **we** and the **Insured** will use **our** best efforts to agree upon a fair and proper allocation of legal

costs or expenses or any other amount insured under this Policy which relate solely to what is covered under this Policy.

In the event that an agreement cannot be reached regarding any matter arising under 1.3.2 (a) or (f), a Senior Counsel (to be mutually agreed upon by **us** and the **Insured**) shall, as an expert and not an arbitrator, determine a fair and proper allocation. The **Insured** shall have opportunity to provide written submissions to the Senior Counsel. Until the Senior Counsel has made a determination, **we** may, in **our** absolute discretion, pay such legal costs or expenses or any other amount insured under this Policy as **we** consider appropriate. The costs of any referral to senior Counsel shall be borne by **us**.

2. Definitions

The following Definitions shall apply to this **Policy**:

Term(s)	Meaning
2.1 Advertising Injury	Means a) libel, slander or defamation. b) infringement of copyright or passing off of a title or slogan. c) unfair competition, piracy or idea misappropriation contrary to an implied contract; and d) invasion of privacy, committed or alleged to have been committed during the Policy Period in any advertisement, publicity article, broadcast or telecast and caused by or arising out of any advertising activities conducted by or on the Insured's behalf in carrying out the Insured's Business .
2.2 Aircraft	means a Vehicle designed to be used primarily in the air and to be supported by the dynamic reaction of the air upon the Vehicle's wings or rotor-blades, or by the Vehicle's buoyancy in the air or atmosphere.
2.3 Business	means activities and operations of the Insured specified in Item 2. of the Policy Schedule and includes: a) the ownership, tenancy or occupation of premises by the Insured including the repair and maintenance of property which the Insured owns or is responsible for; b) private work carried out with the consent of the Insured for any director, partner or senior official of the Insured by an Employee provided the Employee is qualified to undertake such work; c) the provision or management of catering, social, welfare or child care facilities, sports and related facilities for the benefit of the Insured's Employee ; d) the provision of the Insured's own internal fire, first aid, medical, security and ambulance services; e) participation in an exhibition, trade fair or conference by the Insured ; f) conducted tours of the Insured's premises; and g) the provision of sponsorship by the Insured .
2.4 Compensation	means monies paid or agreed to be paid by judgment or settlement in respect of Personal Injury, Property Damage or Advertising Injury to which this Policy applies.
2.5 Computer System	means any electronic hardware or software, or components thereof, that are used to store, process, access, transmit or receive information.
2.6 Deductible	Means the uninsured first portion of each and every Occurrence which is payable by the Insured as specified in Item 5. of the Policy Schedule. The Deductible applies to all amounts payable under this Policy including but not limited to amounts payable under Item 4. of the Policy Schedule. In the event that more than one Deductible is payable for any Occurrence then only the highest Deductible amount stated in Item 5. of the Schedule will apply.
2.7 Electronic Data	means any data stored on a Computer System .
2.8 Employee	means any person employed or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise including but not limited to any: a) person under a contract of service or apprenticeship with the Insured b) self-employed person working under contract with the Insured and under its direction. c) volunteer, student or person undertaking work for the Insured under a work experience of similar scheme

2.9 Employment Practices	means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment, or discrimination in respect of employment or prospective employment by the Insured .
2.10 Hovercraft	means any vessel, craft or device made to float on or in, or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.
2.11 Incidental Contracts	means <ul style="list-style-type: none"> a) any written agreement or lease of real or personal property which does not impose upon the Insured: <ul style="list-style-type: none"> (i) an obligation to insure such property; or (ii) any liability regardless of fault; b) any written contract with any public authority for the supply of water, gas or electricity, telephone and communication services, waste disposal facilities or other essential services but only to the extent of indemnifying any such public authority in respect of liability arising out of the Business other than contracts for the performance of work or provision of services by the Insured.

Term(s)	Meaning
2.12 Insured	means <ul style="list-style-type: none"> a) the Named Insured specified in the Policy Schedule; b) any subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control and active management of the Named Insured; c) any subsidiary company or organisation under the control and management of the Named Insured which are constituted or acquired by the Named Insured during the Policy Period, provided always that: (i) such constitution or acquisition is notified to us within 90 days of it first occurring; and (ii) the Named Insured agrees to pay any reasonable additional premium required which will be proportionate to any increased risk. d) the Named Insured's partners, executive officers, Employees, directors, shareholders or volunteers while acting within the scope of their duties on behalf of the Named Insured's Business; e) any office bearer or member of social or sporting clubs formed with the written consent of the Named Insured whilst acting within the scope of their duties connected with activities of any such club. Cover shall not apply to Personal Injury to or Property Damage of any participants in any game, match, race, practice or trial.
2.13 Labour Hire Personnel	means, for the purpose of the application of the Deductible only and where specified in the Schedule, any person, including but not limited to any apprentice indentured to a group training organisation provided to the Insured on a temporary or permanent basis under a specific contract or agreement, including but not limited to an internal agreement with: <ul style="list-style-type: none"> a) a provider of labour hire personnel; or b) any labour hire providers who are a subsidiary company of the Insured that are solely for the provision of labour to the Insured or any other entities, but only while such person remains an employee of that provider or organisation.
2.14 Medical Persons	means qualified medical practitioners, medical nurses, dentists and first aid attendants.
2.15 Named Insured	means the entity specified in Item 1. of the Policy Schedule.

2.16 North America	means a) the United States of America or Canada; b) any state, territory or protectorate incorporated in, or administered by the United States of America and/or Canada; and c) any country or territory subject to the laws of the United States of America or Canada.
2.17 Occurrence	means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury, Property Damage or Advertising Injury neither expected nor intended from the Insured's standpoint during the Policy Period . With respect to Personal Injury or Property Damage , all events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence . All Advertising Injury arising out of the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used or the number of claimants, shall be deemed to be one Occurrence .
2.18 Personal Injury	means a) death, bodily injury, sickness or disease sustained by a person and shall include mental injury, mental anguish, shock and loss of consortium; b) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation; c) libel, slander, defamation of character or invasion of privacy, unless arising out of Advertising Injury ; and d) assault and battery committed by or at the direction of the Insured whilst engaged in Business and for the purpose of preventing or eliminating danger to persons or property.
2.19 Personally Identifiable Information (PII)	means any data that can be used to contact or identify a specific individual.
2.20 Principal	means a third party to whom the Named Insured or a subsidiary has entered into a written contract or agreement which obligates the Named Insured to provide insurance in respect of the Principal's liability arising out of the operations of the Named Insured .

Term(s)	Meaning
2.21 Policy Period	means the period specified in Item 3. of the Policy Schedule, or any shorter period arising as a result of cancellation of this Policy.
2.22 Pollutants	means but is not limited to any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to smoke, vapour, soot, fumes, acids or alkalis of any sort, chemicals and waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.
2.23 Products	means any good or product (after it has ceased to be in the Insured's possession or under the Insured's control) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, treated, imported, exported, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured , including but not limited to any packaging or labelling on, or containers holding, the good or product. Products also includes the design, formulae, specifications, directions, instructions, advice or warning given or omitted to be given in connection with such products. Products does not include: a) food and beverage supplied by an Insured for the benefit of staff; or b) any vending machine rented by an Insured for the use of others
2.24 Products Hazard	means Personal Injury or Property Damage arising out of; a) the Insured's Products ; or b) reliance upon a representation or warranty made at any time with respect thereto, but only if the Personal Injury or Property Damage occurs away from premises owned by, leased to, rented to or occupied by the Insured and after physical possession of such products has been relinquished to others.

2.25 Property Damage	means a) physical damage to or destruction of tangible property including the loss of use of that property thereof. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or b) loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible property which first happened during the Policy Period .
2.26 Territorial Limits	means a) anywhere in the world except North America ; b) North America but only with respect to: (i) non-manual work carried out by the Insured's Employees , directors, officers or executives who are normally non-resident in North America ; and (ii) the Insured's Products exported without the knowledge of the Insured to North America .
2.27 Terrorism	means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority or military force, when the effect is to intimidate or coerce a government, the civilian population or any segment thereof, or to disrupt any segment of the economy. Terrorism shall also include any act which is verified or recognised by the government of any country in which the Insured operates or exports products into, as an act of terrorism.
2.28 Tool of Trade	means any Vehicle which has attached as an integral part of such Vehicle any equipment for mechanical digging, scraping, grading, slashing, mowing, drilling, lifting or levelling, whilst such equipment is being used for the purpose for which it was designed.
2.29 Vehicle	means any type of machine on wheels or on caterpillar tracks made or intended to be self-propelled by mechanical power, and any trailer or other attachment to be used in conjunction with any such machine.
2.30 Watercraft	means any vessel or craft made to or intended to float on or in or travel on or through or under water.

3. Exclusions

The Policy excludes all liability caused by or arising directly or indirectly out of or in connection with:

3.1 Advertising Injury

- a) arising out of a breach of contract, except an implied contract to use another's advertising idea; or
- b) arising out of the failure of goods, **Products** or services to conform with any statement of quality or performance made; or
- c) arising out of the wrong description of the price of goods, **Products** or services; or
- d) arising out of knowingly made false statements; or
- e) committed by an **Insured** whose **Business** is advertising, broadcasting, publishing or telecasting.

3.2 Aircraft & Aircraft Products

- a) the ownership, possession, maintenance, operation or use by or on behalf of the **Insured** of any:
 - (i) **Aircraft** including loading or unloading and refuelling of any **Aircraft**;
 - (ii) restricted access areas of an airport including terminals, aerodromes, airstrips, runways or heliports or other area where **Aircraft** take off or land;
 - (iii) **Aircraft** hangar or any other area used for storing, sheltering, servicing, maintaining or parking **Aircraft**; or
 - (iv) the supply, distribution, sale, lease, hire or manufacture of **Aircraft**;
 - (v) the manufacture or supply of parts or **Products** which are incorporated into the structure, machinery or controls of any **Aircraft** including any repair, maintenance or servicing thereof

3.3 Asbestos

Asbestos or materials containing asbestos howsoever occurring.

3.4 Contractual Liability

- a) where the **Insured** assumes liability under any contract or agreement. Provided this Exclusion 3.4 a) shall not apply to those written contracts:
 - (i) where such liability would have been implied by law;
 - (ii) where the **Insured** assumes liability under a warranty of fitness or quality as regards the **Insured's Products** except to the extent required by law;
 - (iii) to **Incidental Contracts** entered into by the **Insured**; or
 - (iv) any contract designated in Item 6. of the Policy Schedule.
- b) where the **Insured** has waived any rights, which but for the existence of such waiver would accrue to the **Insured**;

3.5 Damage to Own Products

Property Damage to the **Insured's Products** or any part of it if such **Property Damage** is attributable to any defect therein or the harmful nature or unsuitability thereof.

3.6 Cyber

- a) Any access to or disclosure of any person's or organization's confidential or personal information, including any **Personally Identifiable Information**, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- b) The loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate any **Computer System** or **Electronic Data**.

This Exclusion does not apply to **Bodily Injury** or **Property Damage** arising out of the events or circumstances described in subparagraphs a) or b) above. For the purposes of this Exclusion **Bodily Injury** means: death, bodily injury, sickness or disease sustained by a person. For the avoidance of doubt this does not include mental injury, mental anguish, shock and/or loss of consortium

3.7 Expected or Intended

Personal Injury, Property Damage or **Advertising Injury** expected or intended from the standpoint of the **Insured**. Provided that this Exclusion does not apply to:

- a) **Personal Injury, Property Damage** or **Advertising Injury** resulting from the use of reasonable force to protect persons or property; or
- b) liability of the **Insured** for **Compensation** as the result of an act committed by the **Insured's Employees** which results in **Personal Injury, Property Damage** or **Advertising Injury** expected or intended from the standpoint of the **Insured's Employees**, provided such act was not committed at the direction of the **Insured**.

3.8 Faulty Workmanship

Property Damage to any part of any property that must be repaired, reconditioned or replaced by reason of incorrect work performed by the **Insured** or on the **Insured's** behalf, or by reason of materials or equipment which are or are proved to be defective or inadequate in connection with such work, provided this Exclusion shall not apply to **Personal Injury** or **Property Damage** resulting from such work.

3.9 Liquidated Damages, Fines & Penalties

- a) damages arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such terms;
- b) civil or criminal fines or penalties; or
- c) any punitive, aggravated or exemplary damages awarded against the **Insured**.

3.10 Libel & Slander

Personal Injury, Property Damage or **Advertising Injury** arising out of a libel, slander or defamation:

- a) made prior to the commencement of the **Policy Period**; or
- b) made by or at the **Insured's** direction with knowledge of the falsity or defamatory character thereof.

3.11 Loss of Use

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

- a) a delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement; or
- b) the failure of the **Insured's Products** to meet the level of performance, quality, fitness or durability expressly or implied, warranted or represented by the **Insured**.

Provided that this Exclusion 3.11 b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the **Insured's Products** after such **Products** have been put to use by any person or organisation other than the **Insured**.

3.12 Nuclear & Radioactive Contamination

- a) any ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion or fission of nuclear fuel, or
- b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

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

3.13 Products Guarantee

any product guarantee or warranty given by or on behalf of the **Insured** but this Exclusion does not apply to the requirements of any Commonwealth or State legislation with respect to product safety and information.

3.14 Product Recall

any cost or expense incurred or claimed for the recall, withdrawal, inspection, removal, repair, replacement, disposal or loss of use of the **Insured's Products** or of any property of which such **Products** form a part, if such **Products** or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

3.15 Professional Liability

any act, error or omission in the provision of professional advice or service provided for a fee and not connected with the supply or intended supply of the **Insured's Products** other than:

- a) claims for resultant **Personal Injury** or **Property Damage**; and
- b) the rendering of or failure to render professional medical advice by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

3.16 Property Owned or in the Insured's Physical or Legal Control

Property 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:

- a) premises (or to contents therein) tenanted or temporarily occupied by the **Insured** for a period not exceeding 12 months for the purpose of carrying out works thereto or thereon. Provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises or contents on which the **Insured** is or has been working on if the physical damage or destruction arises from such work.
- b) **Vehicles** and their contents (not belonging to or used by or on behalf of the **Insured**) in the **Insured's** physical or legal control where such **Property Damage** occurs while any such **Vehicle** is in a car park owned or operated by the **Insured**. Cover under item 3.16 b) does not apply if the **Insured**, as part of their **Business**, owns or operates a car park for reward;
- c) directors', employees' and visitors' clothing and personal effects;
- d) goods, equipment, merchandise, and property other than real property, subject to cover being limited to a maximum of the sublimit of liability outlined in the schedule for Property in the Care, Custody and Control of the **Insured**

Provided that no indemnity is granted for 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**.

3.17 Pollution

- a) the discharge, dispersal, release, seepage, migration or escape of **Pollutants** into or upon land, the atmosphere or any watercourse or body of water;

- b) the cost of removing, monitoring, testing, containing, treating, detoxifying, neutralising, nullifying or cleaning up **Pollutants** discharged, dispersed, released or escaped into or upon land, the atmosphere or any watercourse or body of water; or
- c) the cost of preventing the escape of **Pollutants**.

This Exclusion shall not apply where the claim for **Compensation** arises from a sudden, identifiable, unintended and unexpected event which takes place in its entirety at a clearly identifiable point in time and place and occurs outside of **North America**.

3.18 Silica

Personal Injury or **Property Damage** 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, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form.

3.19 Terrorism

Terrorism including, but not limited to any contemporaneous or ensuing **Personal Injury** or **Property Damage** caused by fire, looting or theft.

3.20 Vehicle

Personal Injury or **Property Damage** caused by or arising out of the ownership, operation, possession or use by or on behalf of the **Insured** of any **Vehicle** which is registered or in respect of which insurance is required by virtue of any legislation or statutory scheme.

Provided that this Exclusion shall not apply to the **Insured's** liability for:

- a) **Personal Injury** or **Property Damage** arising from the actual loading, unloading, delivery or collection of goods to or from any **Vehicle** where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability;
- b) **Personal Injury** or **Property Damage** arising from the use of any **Tool of Trade** either on any site where the **Insured** is undertaking work or at the **Insured's** premises and where applicable legislation does not require insurance against such liability. This proviso 3.20 b) does not extend cover to the use of any **Tool of Trade**, either on any site where the **Insured** is undertaking work or at the **Insured's** premises, whilst in transit or whilst being used for transport or haulage.
- c) **Personal Injury** where insurance required by any legislation does not provide indemnity and the lack of indemnity is not due to any breach of legislation relating to **Vehicles**.

3.21 War

war, invasion, act of a foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, invasion or military or usurped power.

3.22 Watercraft

Personal Injury or **Property Damage** caused by or arising out of the ownership, possession, maintenance, operation or use by or on behalf of the **Insured** of any **Watercraft** exceeding 20 metres in length, or **Hovercraft**, provided that this Exclusion shall not apply with respect to:

- a) **Watercraft** or **Hovercraft** used in operations carried out by an independent contractor for whose conduct the **Insured** is legally liable; or
- b) **Watercraft** or **Hovercraft** owned and operated by others and used by the **Insured** for entertainment purposes related to the Business; or
- c) hand propelled or sailing craft, but only where such craft is sailing or operating in Australian territorial or inland waters.

3.23 Workers' Compensation & Employers' Liability

any liability:

- a) in respect of which the **Insured** is or would be entitled to indemnity under any fund, scheme, Policy of insurance or self-insurance pursuant to or required by any legislation relating to worker's compensation or accident compensation or any similar law, whether or not such insurance has been effected; or
- b) imposed by the provisions of any industrial award, agreement or determination where such liability would not have been imposed in the absence of such industrial award, agreement or determination; or
- c) relating to **Employment Practices**.

4. Conditions

4.1 Alteration of Risk

The **Named Insured** shall notify **us** in writing within 30 days of any material changes to the description of the **Business** stated in the Policy Schedule or any other material change affecting the facts or circumstances existing at the commencement of or during the **Policy Period**, or at any subsequent renewal date. **We** reserve the right to accept or deny coverage at the time of such notification and to establish a separate rate and premium for any such change in the description of the **Business** or the facts and circumstances affecting it.

4.2 Assignment

This Policy and any rights hereunder cannot be assigned without **our** prior written consent.

4.3 Assistance & Co-operation

The **Insured** shall co-operate with **us** and provide assistance that might be reasonably be requested in all matters relating to this Policy. This may include, but is not limited to attending hearings and trials, assisting in the preparation of evidence, preserving any product, plant or other item which may be necessary as evidence, obtaining the attendance of witnesses, assisting in effecting settlements and in conducting litigation, arbitration or other proceedings.

4.4 Audit

We may audit and examine the **Insured's** books and records as they relate to this Policy with reasonable notice to the **Insured** during the **Policy Period** and within three years after the final expiration or termination of this Policy but only with regard to matters which in **our** reasonable opinion are relevant to the currency of the Policy.

4.5 Cancellation

This Policy may be cancelled at any time at the written request of the **Named Insured** in which case **we** shall be entitled to retain the pro rata proportion of the premium plus 30% of the premium for the unexpired **Policy Period**.

We may cancel this Policy in accordance with the Insurance Contracts Act 1984 (Cth.) in which case **we** shall be entitled to retain the pro-rata proportion of the premium. However, if any Claims have been notified to **us** during the relevant **Policy Period** and prior to the date of cancellation, no refund of premium shall be made to the **Named Insured**.

4.6 Changes

This Policy can be changed only by a written endorsement that **we** make to this Policy.

4.7 Choice of Law & Forum

This Policy shall be governed by, interpreted and construed in accordance with the laws of Australia and the Courts of Australia shall have exclusive jurisdiction in any dispute arising hereunder.

4.8 Cross Liability

If the **Insured** comprises more than one party, **we** will provide indemnity to each in the same manner and to the same extent as if a separate Policy had been issued to each, provided that **our** total liability for liability sustained by any or all of the **Insureds** shall not exceed the Limit of Liability stated in the Policy Schedule.

4.9 Currency

All premiums and payments made on Claims or losses are payable at the place and in the currency of the country where the Policy was issued unless otherwise agreed in writing by **us** or **our** authorised representative.

4.10 Duties in the Event of an Occurrence or Claim

Upon the happening of an **Occurrence** which may give rise to a Claim for **Compensation** under this Policy, the **Insured** must:

a) as soon as reasonably practicable:

(i) notify **us** of such **Occurrence**;

(ii) provide in writing as required particulars and information **we** may request;

b) immediately:

(i) on receipt, forward to **us** every letter, Claim or other document served on the **Insured** or their representative;

- (ii) notify **us** of any impending prosecution, inquest, fatal inquiry or proceedings in any court;
- c) as **we** may require:
 - (i) retain anything connected therewith;
 - (ii) provide all reasonable assistance;
- d) promptly take at the **Insured's** own expense all reasonable steps to prevent other **Personal Injury, Property Damage or Advertising Injury** arising out of the same conditions. Such expense shall not be recoverable under this Policy.

The **Insured** shall not:

- a) make any admission of liability;
- b) take any action which may be construed as an admission of liability;
- c) repudiate or settle any Claim; or
- d) waive any rights of recovery without **our** prior written consent.

We have the right to:

- a) defend any Claim for **Compensation** against the **Insured** by:
 - (i) taking over and conducting the defence or settlement of any Claim;
 - (ii) prosecuting for **our** own benefit any Claim for indemnity or damages or otherwise in the name of the **Insured**;
- b) have subrogation of all the **Insured's** rights of recovery against any person or organisation, whether before or after indemnification by **us**;
- c) The **Insurer** shall be entitled to participate fully in the defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer**.

4.11 Fraudulent Claim

If the **Insured** shall make any application for indemnity under this Policy or submit any initial or final statement of loss or Claim knowing that such application or such initial or final statement of loss or Claim is false or fraudulent, **we** shall refuse, to the extent of such falsity, to indemnify the **Insured** for any loss or Claim arising from such application or submission.

4.12 Interpretation

The headings of this Policy are solely for convenience and form no part of the terms and conditions of coverage. Words and expressions in the singular include the plural and vice versa. Words that are bolded with the exception of headings have special meaning and are defined. Words that are not specifically defined in the Policy have the meaning normally attributed to them.

Any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning whenever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

4.13 How the Insurance Contracts Act (Cth) may affect this Policy

Any terms and conditions of this Policy which are invalid, illegal or unenforceable as a result of the operation of the Insurance Contracts Act 1984 shall be ineffective only to the extent of the invalidity, illegality or unenforceability without invalidating the remainder of such term or condition or the remaining terms and conditions of this Policy.

4.14 Inspection

We have the right, but are not obligated, to inspect the **Insured's** premises and operations with reasonable notice to the **Insured**. The **Insured** will allow **us**, **our** agents, representatives, employees or consultants (hereinafter referred as the "Surveyor"):

- a) access to its premises and other places of **Business**; and
- b) to conduct such enquiries as reasonably necessary, including (without limitation) by way of interviews with **Employees**; and generally
- c) provide reasonable co-operation and assistance as **we** or the Surveyor may require in the conduct of the survey.

We may give the **Insured** reports on the conditions that **we** find. **We** may also recommend changes. **We** do not, however, Undertake to perform the duty of any person or organisation to provide for the health or safety of the

Insured's Employees or the public. **We** do not warrant the health and safety conditions of the **Insured's** premises or operations or represent that the **Insured's** premises or operations comply with laws, regulations, codes or standards.

4.15 Notice & Authority

It is agreed that the **Named Insured** acts on behalf of all **Insureds** with respect to the exercise of all their rights and the discharge of all their duties in respect of this Policy.

4.16 Notices

Except as indicated to the contrary herein, all notices, applications, demands or requests provided for in this Policy will be in writing and will be given to or made upon either party at its address shown in the Policy Schedule.

4.17 Observance

By accepting this Policy, the **Named Insured** agrees that the statements in the Proposal, broker submission and any attachments are accurate and complete and acknowledges that **we** have issued this Policy in reliance upon those representations.

4.18 Occurrence, Claim within Deductible

We have the right to assume the defence of any Claim for **Compensation** whether or not the Claim is considered to fall within the Deductible by the **Insured**.

4.19 Premium

Unless otherwise provided, the premium for this Policy is a flat premium and is not subject to adjustment except as provided in Condition 4.1 Alteration of Risk.

4.20 Reasonable Care

The **Insured** shall take all reasonable care to prevent **Personal Injury, Property Damage or Advertising Injury** and to maintain premises, plant and all other **Business** assets in good repair.

The **Insured** shall make good or remedy any defect or danger and take such additional precautions as may be required as soon as possible after discovery, but such expenses shall not be recoverable under this Policy.

4.21 Reference to Statute

References to any statutory provision are to be construed as references to that statutory provision as amended, supplemented, re-enacted or replaced from time to time and are to include any orders, regulations, instruments or other subordinated legislation made under or deriving validity from that statutory provision.

4.22 Sanctions

We will not be liable to provide any coverage or make any payment hereunder if to do so would be in violation of any sanctions law or regulation which would expose **us, our** parent company or **our** ultimate controlling entity if to do so would be in breach of any law or regulation.

4.23 Severability, Construction & Conformance to Statute

- a) If any provision contained in this Policy is, for any reason, held to be invalid, illegal or unenforceable in any respect, it is hereby deemed to be severed and to have no effect on any other valid, legal and enforceable provision of this Policy.
- b) If any provision contained in this Policy is for any reason held to be invalid, illegal or unenforceable, it will be construed by limiting it so as to be valid, legal and enforceable to the extent compatible with applicable law.
- c) Any provisions of this Policy which are in conflict with the statutes or regulations of the state or country wherein this Policy is issued are hereby amended to conform to such statutes or regulations.

4.24 Statutory Requirements

The **Insured** shall comply with all statutory obligations and regulations that apply to the **Insured, its Business or Products**.

4.25 Subrogation

If **we** make any payment under this Policy, **we** shall be subrogated to all rights of recovery of the **Insured**, and **we** shall be entitled to pursue and enforce such rights in the name of the **Insured** who shall provide **us** with all reasonable assistance and co-operation including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any such amount recovered in excess of **our** total payment shall be returned to the **Insured** less the cost to **us** of such recovery.

5. BusinessGuard Standard Extensions

Indemnity to Principals

It is hereby noted and agreed that, subject to the provisions set out in this Extension and all the terms and conditions of the Policy, the following additional subparagraph is added to Definition 2.12 (“Insured”) in the Policy:

- a) any **Principal** to whom the **Insured**, designated in subparagraphs a) and b) above, is obligated by written contract or agreement to provide insurance, but only in respect of the **Principals** liability arising out of operations conducted by the **Insured** or on their behalf, and only to the extent required by such contract or agreement and in any event only for such coverage and Limit of Liability as provided by this Policy.