

# Leisure plus broadform liability

**QBE Insurance (Australia) Limited**

Liability insurance policy



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## About this booklet

This booklet contains 2 separate parts: **General Information and the Policy Terms and Conditions.**

### General Information

This part of the booklet contains information You need to know. Please read it carefully before taking out this insurance

### Policy Terms and Conditions

The Policy part of this booklet details all the Policy terms, General Conditions and Exclusions relating to the Policy. It forms part of Your legal contract with Us.

If We issue You with an insurance Policy, You will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to Your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule We send to You form Your legal contract with Us so please keep them in a safe place for future reference.

If You require further information about this product, please contact Your Financial Services Provider.

### About QBE Australia

QBE Insurance (Australia) Limited is a member of the QBE Insurance Group (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the top 25 insurers and reinsurers worldwide. The company has been operating in Australia since 1886 and continues to provide industry-leading insurance solutions that are focused on the needs of intermediaries and their clients.

QBE is a household name in Australian insurance, backed by sizeable assets, and well known as a strong and financially secure organisation.

### About Pen Underwriting

Pen Underwriting was launched to the market in November 2014, and combines the long established and respected brands of SRS Underwriting Agency and Australis Group Underwriting.

With offices in Sydney, Melbourne and Brisbane, Pen Underwriting currently has more than 80 insurance professionals providing access to a wide range of bespoke products and services. Our clients rest easy with the knowledge that we offer access to both AAA+ rated local and Lloyd's capacity, local claims handling and fast and efficient response times.

For further information please visit [www.penunderwriting.com.au](http://www.penunderwriting.com.au)

## General information for leisure plus broadform liability Policy

The information contained in this part is general information only and does not form part of Your contract with Us. The Policy Terms and Conditions in the remainder of this booklet contain the details of Your contract.

### Duty of Disclosure - What you must tell us

Under the *Insurance Contracts Act 1984* (Cth), you have a duty of disclosure. You are required before you enter into, renew, vary, extend or reinstate your Policy, to tell us everything you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be Insured under the policy, and if so, on what terms.

#### You do not have to tell us about any matter

- that diminishes the risk;
- that is of common knowledge;
- that we know or should know or, in the ordinary course of our business, we ought to know or
- which we indicate we do not want to know.

#### If you do not tell us

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the insurance in respect of a claim or may cancel the insurance.

### Privacy

All companies in the QBE Group are committed to safeguarding your privacy and the confidentiality of your personal information. QBE collects only that personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including any claim made by you. QBE will only use and disclose your personal information for a purpose you would reasonably expect. We will request your consent for any other purpose.

Without this personal information we may not be able to issue insurance cover, administer your insurance or process your claim. Our aim is to always have accurate and up-to-date information. When you receive a Policy Schedule, Certificate of Insurance, Renewal or other document from us, you should contact us if the information is not correct.

QBE uses the services of a related company located in the Philippines to provide Call Centre sales and claims handling, accounting and administration services to QBE in Australia.

QBE or our authorised agent may collect or disclose your personal information from or to:

- any person authorised by you;
- a mail house, records management company or technology services provider (for printing and/or delivery of mail and email, including secure storage and management of our records). These companies may be located or the records stored using 'Cloud' technology overseas, including in India, Ireland, USA or the Netherlands;
- a financier whose name appears on your Policy Schedule (for the purpose of confirming the currency of your Policy or when you have a claim and the insured property is a total loss, to confirm if the financier has a current interest);
- an organisation that provides you with banking facilities (for the purpose of arranging direct debit or other payment transactions or confirming payments made by you to us);
- a financial services provider or our agent who is arranging your insurance (for the purpose of confirming your personal and insurance details);
- another person named as a co-insured on your Policy (for the purpose of confirming if full disclosure has been made to us);
- another insurer (to obtain confirmation of your no claim bonus or to assess insurance risks or to assist with an investigation);

- our reinsurer that may be located overseas (for the purpose of seeking recovery from them);
- a dispute resolution organisation such as the Financial Ombudsman Service (for the purpose of resolving disputes between QBE and you or between QBE and a third party);
- a company to conduct surveys on our behalf for the purpose of improved customer services; and
- an insurance reference bureau (to record any claims you may make upon us).

In addition to the above, in the event of a claim, QBE or our authorised agent may disclose your personal information:

- to a repairer or supplier (for the purpose of repairing or replacing your insured items);
- to an investigator, assessor (for the purpose of investigating or assessing your claim);
- to a lawyer or recovery agent (for the purpose of defending an action by a third party against you or recovering our costs including your excess or seeking a legal opinion regarding the acceptance of a claim);
- to a witness to a claim (for the purpose of obtaining a witness statement);
- to another party to a claim (for the purpose of obtaining a statement from them or seeking recovery from them or to defend an action by a third party).

Personal information (about you) may also be obtained from the above people or organisations.

In addition we will:

- give you the opportunity to find out what personal information we hold about you and when necessary, correct any errors in this information. Generally we will do this without restriction or charge; and
- provide our dispute resolution procedures to you, should you wish to complain about how we handle your personal information.

To obtain further information about our Privacy Policy, to request access to or correct your personal information, or to make a complaint please email: [complaints@qbe.com](mailto:complaints@qbe.com).

## The General Insurance Code of Practice

QBE Insurance (Australia) Limited is a signatory to the General Insurance Code of Practice.

The Code aims to:

- promote more informed relations between insurers and their customers;
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

## Dispute resolution

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention. We have a complaints and dispute resolution procedure which undertakes to provide an answer to your complaint within fifteen (15) working days.

If you would like to make a complaint or access our internal dispute resolution service please contact your nearest QBE office and ask to speak to a dispute resolution specialist. If you are not happy with our answer, or we have taken more than fifteen (15) working days to respond, you may take your complaint to the Financial Ombudsman Service (FOS), an ASIC approved external dispute resolution body.

FOS resolves certain insurance disputes between consumers and insurers and will provide an independent review at no cost to you. QBE is bound by the determination of FOS but the determination is not binding on you.

## Policy terms and conditions for leisure plus broadform liability Policy

### Insurer

The Policy is underwritten by QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545 of 2 Park Street, Sydney NSW 2000.

### Our agreement with you

This Policy is a legal contract between You and Us. You pay Us the premium, and We provide You with the cover You have chosen as set out in the Policy, occurring during the Period of Insurance shown on Your Policy Schedule or any renewal period.

The amount of any Deductible that applies to Your Policy is shown on the Policy Schedule.

The Definition, Exclusions and General Conditions apply to all sections of this Policy.

### Your Policy

Your Policy consists of the Policy Terms and Conditions in this booklet and the Policy Schedule We give You.

Please read this Policy carefully, and satisfy Yourself that it provides the cover You require.

If You need more information about any part of Your Policy, please ask Us, or Your Financial Services Provider.

The address and telephone number of Your QBE branch are on the Policy Schedule.

### Paying your premium

You must pay Your premium, any adjustments of premium, GST and other amounts charged for this Policy and any renewal, extension or endorsement to this Policy by the due date. If We do not receive the premium by this date or Your payment is dishonoured, this Policy will not operate and there will be no cover.

### Preventing our right of recovery

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy, we will not cover you under this Policy for that loss, damage or liability.

### How Goods and Services Tax affects any payments we make

The amount of premium payable by You for this Policy includes an amount on account of the GST on the premium.

When We pay a claim, Your GST status will determine the amount We pay.

When You are:

- not registered for GST, the amount We pay is the Limit of Liability or the other limits of insurance cover including GST;
- registered for GST, We will pay the Limit of Liability or the other limits of insurance and where You are liable to pay an amount for GST in respect of an acquisition relevant to Your claim (such as services to repair a damaged item insured under the Policy) We will pay for the GST amount.

We will reduce the GST amount We pay by the amount of any input tax credits to which You are or would be entitled if You made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through Your Business Activity Statement (BAS).

You must advise Us of Your correct Australian Business Number and Taxable Percentage.

Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of Your claim is less than the Limit of Liability or the other limits of insurance cover, We will only pay an amount for GST (less Your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover Your loss, We will only pay the GST relating to Our settlement of the claim.

We will (where relevant) pay You on Your claim by reference to the GST exclusive amount of any supply made by any Business of Yours which is relevant to Your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in *A New Tax System (Goods and Services Tax) Act 1999* and related legislation as amended from time to time.

Taxable Percentage is Your entitlement to an Input Tax Credit on Your premium as a percentage of the total GST on that premium.

## 1. Definitions

Some key words and terms used in this Policy have a special meaning.

Wherever the following words or terms are used in the Policy, their meaning is as set out below:

Word or term	Meaning
1.1. Act of Terrorism	an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.
1.2. Advertising Liability or Advertisement	<p>liability arising out of one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) defamation except arising out of defamatory statements or disparaging material made or produced prior to the inception date of this Policy or made at Your direction with Your knowledge of the falsity of the statement or material;</li> <li>(b) infringement of copyright, title or slogan;</li> <li>(c) unfair competition, misappropriation of advertising ideas or style of doing Business;</li> <li>(d) invasion of privacy committed or alleged to have been committed in any Advertisement and arising out of any advertising activities conducted by You or on Your behalf, in the course of carrying out Your Business.</li> </ul> <p>For the purposes of this Definition, Advertisement means any manner of communication given to the public including by way of any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, Internet, world wide web or exhibit.</p>
1.3. Aircraft	any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
1.4. Business	the Business described in the Policy Schedule including the provision and management of canteens, social, sports and welfare organisations for the benefit of Your Employees, first aid, fire and ambulance services (formed with Your consent) and the maintenance of Your premises.
1.5. Compensation	<p>monies paid or agreed to be paid by judgement, award or settlement for Personal Injury, Property Damage and/or Advertising Liability.</p> <p>Provided that Compensation is only payable in respect of an Occurrence to which this Policy applies.</p>

Word or term	Meaning
1.6. Deductible	the amount You first bear in relation to each Occurrence. The Deductible applies to all amounts payable under this Policy including the indemnity provided under clause 2.2 'Defence of Claims'.
1.7. Electronic Data	facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.
1.8. Employee	any person or persons engaged by You under a contract of service or apprenticeship, but does not include any person employed under such contract who is excluded from the definition of worker under any workers' compensation legislation.
1.9. Employment practices	any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment of any person or persons by You.
1.10. Hovercraft	any vessel, craft or thing made or intended to transport persons or property over land or water supported on a cushion of air.
1.11. Incidental Contracts	<p>(a) any written rental agreement or lease of real or personal property not requiring an obligation to insure such property or be strictly liable regardless of fault;</p> <p>(b) any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;</p> <p>(c) any written contract with any railway authority for the loading, unloading and/or transport of products, including contracts relating to the operation of railway sidings.</p>
1.12. Limit of Liability	the applicable Limit of Liability specified in the Policy Schedule.
1.13. Medical Persons	qualified medical practitioners, nurses, dentists and first aid attendants.
1.14. Occurrence	an event which results in Personal Injury or Property Damage or Advertising Liability, neither expected nor intended from Your standpoint. All Personal Injury or Property Damage or Advertising Liability arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one (1) Occurrence.

Word or term	Meaning
	With regards to Advertising Liability, all liability arising out of the same injurious material or act regardless of the number or kind of media used, the frequency or repetition thereof and number of claimants shall be deemed to be one (1) Occurrence.
1.15. Period of Insurance	the period shown in the Policy Schedule at Your principal place of Business.
1.16. Personal Injury	<p>(a) bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish, mental injury. In the event of any claims, for Personal Injury arising from latent injury, latent disease or latent sickness, each claim shall be deemed to have first happened on the day such injury, disease or sickness was first medically diagnosed provided that such diagnosis first occurred during the Period of Insurance;</p> <p>(b) the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution;</p> <p>(c) the effects of wrongful entry or eviction;</p> <p>(d) the effects of the publication or utterance of defamatory or disparaging material;</p> <p>(e) the effects of assault and battery not committed by You or at Your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.</p>
1.17. Policy	this booklet, Your Policy Schedule and any endorsement attached or intended to be attached to it.
1.18. Policy Schedule	the schedule of insurance and/or any endorsement schedule We give You
1.19. Pollutants	any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
1.20. Products	any goods, products and property (after they have ceased to be in Your possession or under Your control), which are or is deemed to have been manufactured, grown, extracted, produced, processed, constructed, assembled, erected, installed, repaired, serviced, treated, sold, supplied or distributed by You (including any container thereof other than a vehicle).
1.21. Property Damage	<p>(a) physical damage to or physical loss or physical destruction of tangible property including any resulting loss of use of that property;</p> <p>(b) loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an Occurrence.</p>

Word or term	Meaning
1.22. Subsidiary	<p>(a) any entity which by virtue of any applicable legislation or law is deemed to be Your Subsidiary (where You are a company);</p> <p>(b) any entity over which You (where You are a company) are in a position to exercise effective direction or control.</p>
1.23. Territorial limits	anywhere in the world subject to Exclusion 3.21 - Territorial Limits.
1.24. Tool of Trade	a Vehicle which has a tool or plant forming part of, attached to, or used in connection with it while such tool or plant is engaged on a work site. Tool of Trade does not include any Vehicle whilst travelling to or from a work site, or Vehicles that are used to carry goods to or from any premises.
1.25. Vehicle	any type of machine on wheels or self laid track made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.
1.26. Watercraft	any vessel, craft or thing made or intended to float on or in or travel on or through or under water.
1.27. We, Our, Us	QBE Insurance (Australia) Limited, ABN 78 003 191 035 AFS Licence Number 239545.
1.28. You, Your, Insured	<p>(a) the person(s), companies or firm(s) named on the Policy Schedule as the Insured;</p> <p>(b) all the Subsidiary companies (now, previously or subsequently constituted) of the Insured named on the Policy Schedule, provided their places of incorporation are within Australia or any Territory of Australia;</p> <p>(c) every director, executive officer, Employee, volunteer, work experience student, partner or shareholder of the parties shown in Definition 1.28 (a) and 1.28 (b), but only while acting within the scope of their duties in such capacity;</p> <p>(d) every principal, in respect of that principal's vicarious liability for the acts or omissions of the parties shown in Definition 1.28 (a) and 1.28(b) in the performance by them of work for that principal, but subject always to the extent of coverage and the Limit of Liability provided by this Policy</p> <p>(e) each partner, joint venture partner, co-venturer or joint leasee of the parties shown in Definition 1.28 (a) and 1.28 (b) but only:</p> <p>(i) where You assume active control of, or are required to arrange insurance for the partnership, joint venture, co-venture or joint lease;</p> <p>(ii) with respect to liability incurred as the partnership,</p>

Word or term	Meaning
	<p>joint venture, co-venture or joint lease;</p> <p>(f) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with Your consent (other than the parties shown in Definition 1.28 (d) or 1.28 (e) in respect of claims arising from their duties connected with the activities of any such club, organisation or service;</p> <p>(g) any director or senior executive of the parties shown in Definition 1.28 (a) and 1.28 (b) in respect of private work undertaken by Your Employees for such director or senior executive;</p> <p>'You, Your, Insured' does not include the interest of any other person other than as described in this Definition.</p>

## 2. Cover

### 2.1. Liability

We will cover Your legal liability to pay:

- (a) all sums by way of Compensation, and
- (b) all costs awarded against You in respect of:
  - (i) Personal Injury
  - (ii) Property Damage
  - (iii) Advertising Liability

first happening during the Period of Insurance and caused by an Occurrence within the Territorial Limits in connection with Your Business.

### 2.2. Defence of claims

If We agree to cover You We will:

- (a) defend in Your name and on Your behalf any claim or legal action against You seeking damages for Personal Injury, Property Damage or Advertising Liability even if the action is groundless, false or fraudulent, and We will investigate, negotiate and settle any claim or legal action as We see fit;
- (b) pay all legal costs and expenses incurred by Us and all interest accruing after entry of judgement until We have paid, tendered or deposited in court such part of the judgement as does not exceed the Limit of Liability;
- (c) reimburse You for all reasonable expenses, other than loss of earnings, incurred by You with Our consent in connection with the defence of a claim or legal action;
- (d) pay reasonable expenses incurred by You for first aid to others at the time of a Personal Injury caused by an Occurrence (other than medical expenses prohibited by Law).

We will do this, provided that:

- (e) We will not be obliged to pay any claim or judgement or to defend any claim or legal action after the Limit of Liability has been exhausted by payment of judgements or settlements;
- (f) if a payment exceeding the Limit of Liability has to be made to dispose of a claim, Our liability to pay any costs, expenses and interest under this Clause 2.2 'Defence of Claims' (a) to (d) will be limited to that proportion of those costs, expenses and interest as the Limit of Liability bears to the amount paid to dispose of the claim.

Any amount We pay, other than payments in settlement of claims, suits and all costs awarded against You, are payable over and above the Limit of Liability set out in the Policy Schedule.

### 2.3. Limit of Liability

- (a) Our maximum liability in respect of any claim or any series of claims for Personal Injury, Property Damage or Advertising Liability caused by or arising out of one Occurrence will not exceed the Limit of Liability shown on the Policy Schedule.
- (b) Our total aggregate liability during any one Period of Insurance for all claims arising out of Your Products will not exceed the Limit of Liability shown on Your Policy Schedule.

### 2.4. Deductible

- (a) For claims made on this Policy, You will be required to pay the Deductible which is shown within the Policy Schedule.
- (b) If more than one Deductible is payable under this Policy for any claim, or series of claims arising from the one Occurrence You:
  - (i) must pay the highest Deductible, but
  - (ii) pay only one Deductible.

## 3. Exclusions

The following Exclusions will apply to this Policy.

**This Policy does not cover liability in respect of:**

### 3.1. Advertising Liability

- (a) resulting from statements made at Your direction with knowledge that such statements are false;
- (b) resulting from failure of performance of contract. Provided that this Exclusion 3.1 (b) shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
- (c) resulting from any incorrect description of Products or services;
- (d) resulting from any mistake in advertised price of Products or services;
- (e) failure of Your Products or services to conform with advertised performance, quality, fitness or durability;
- (f) liability incurred by You if Your Business is Advertising, broadcasting, publishing or telecasting.

### 3.2. Aircraft, Aircraft products, Watercraft and Hovercraft

Claims arising out of:

- (a) the ownership, maintenance, operation or use by You or on Your behalf of any Aircraft provided this exclusion does not apply to kites or model aircraft;
- (b) the ownership, operation or use by You or on Your behalf of:
  - (i) any Watercraft exceeding ten (10) metres in length, except where such Watercraft are owned and operated by others and used by You for Business entertainment;
  - (ii) Hovercraft.
- (c) Your Products that are Aircraft or Aircraft component parts used for maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery which to Your knowledge are incorporated in an Aircraft.

### 3.3. Asbestos

Claims directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

### 3.4. Assault and battery

Personal Injury or Property Damage caused by or arising from assault and battery committed by You or at Your direction

Provided that this Exclusion 3.4 does not apply to 'You, Your, Insured' Definition 1.28 (a), 1.28 (b) and 1.28 (f) where reasonably necessary for the protection of persons or property.

### 3.5. Contractual liability

Any obligation assumed by You under any contract or agreement that requires You to:

- (a) effect insurance over property, either real or personal;
- (b) assume liability for, Personal Injury, Property Damage or Advertising Liability regardless of fault. Provided that this Exclusion 3.5. shall not apply with regard to;
- (c) liabilities which would have been implied by law in the absence of such contract or agreement;
- (d) liabilities assumed under Incidental Contracts;
- (e) terms regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute;
- (f) the obligation is assumed under those agreements specified in the Policy Schedule.



### 3.6. Defamation

For defamation:

- (a) made prior to the commencement of the Period of Insurance,
- (b) made by You or at Your direction with knowledge of its falsity,
- (c) if Your Business is Advertising, broadcasting, publishing or telecasting.

### 3.7 Electronic Data

- (a) communication, display, distribution or publication of Electronic Data, provided that this Exclusion 3.7 (a) does not apply to Personal Injury or Advertising Liability resulting therefrom;
- (b) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation, or misappropriation of Electronic Data;
- (c) error in creating, amending, entering, deleting or using Electronic Data;
- (d) total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

### 3.8. Employment liability

- (a) Personal Injury to any of Your Employees arising out of, or in the course of their employment in Your Business;
- (b) Personal Injury to any person who is deemed to be Your Employee pursuant to any legislation relating to workers' compensation;
- (c) which You are entitled to seek indemnity under any Policy of insurance required to be taken out pursuant to any legislation relating to Workers' Compensation, whether or not You are a party to such Policy of insurance;
- (d) the provisions of any Workers' Compensation legislation or any industrial award or agreement or determination;
- (e) Employment Practices.

### 3.9. Faulty workmanship

The cost of performing, correcting, improving or replacing any work undertaken by You or on Your behalf.

### 3.10. Fines, penalties, liquidated damages

Fines, penalties and/or liquidated damages.

### 3.11. Loss of use

Loss of use of tangible property which has not been physically injured, or physically lost or physically destroyed resulting from:

- (a) a delay in or lack of performance by or on Your behalf of any agreement;
- (b) the failure of Your Products to meet the level of performance, quality, fitness or durability expressed or implied, or warranted or represented by You. Provided that this Exclusion 3.11 (b) does not apply to the loss of use of other tangible property resulting from the sudden unintended and unexpected physical damage to or loss or destruction of Your Products after they have been put to use by any person or organisation other than You as specified within Definition 1.28 (a) and 1.28 (b) 'You', 'Your' or 'Insured'.

### 3.12 Pathogenic Organism

- (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising there from or any consequential loss; or
- (b) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from any Pathogenic Organism.

For the purposes of this Exclusion Pathogenic organism shall include but not be limited to the following:

Mould or fungi or its spores bacteria yeasts mildew algae mycotoxins or any other metabolic products enzymes or protein secreted by the above whether toxic or otherwise

We shall not be under any duty to defend You in any proceedings in connection with any Pathogenic Organism claims or incidents.

This exclusion shall apply irrespective of when the claim arose or was made and irrespective of when the exposure to any Pathogenic Organism occurred.

### 3.13. Participation

Personal Injury to any person caused by or arising out of the participation of such person in any game, match, race, practice, trial, training, competition, warm ups, warm downs and other preliminary activities unless such Personal Injury is as a result of Your negligence in regard to the facility provided.

### 3.14. Pollution

- (a) Personal Injury or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water. Provided that this Exclusion 3.14.(a) does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place and which occurs outside of the United States of America or Canada;
- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution. Provided that this Exclusion 3.14 (b) does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury and/or Property Damage and which occurs outside of the United States of America or Canada;
- (c) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by Your Product that has been discarded, dumped, abandoned or thrown away by You or on Your behalf.

Our liability under Exclusion 3.14.(a) and 3.14.(b) in respect of any one (1) discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of Pollutants during any one (1) Period of Insurance will not exceed the Limit of Liability.

### 3.15. Product defect

Property Damage to Your Products if the damage is resultant from any defect in them or to their harmful nature or unsuitability.

### 3.16. Product recall

Claims arising out of or resulting from any loss, cost or expense incurred by You for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of Your Products or of any property of which they form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

### 3.17. Professional liability

The rendering of or failure to render professional advice or service by You or any related error or omission, provided that Exclusion 3.17 shall not apply to:

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

### 3.18. Property in custody or control

Property Damage to:

- (a) property owned by or leased or rented to You;
- (b) property in Your physical or legal control.

Provided that this Exclusion 3.18 does not apply to liability for Property Damage to:

- (c) premises (including landlord's fixtures and fittings) which are leased or rented to You;
- (d) premises (or their contents) not owned, leased or rented by You but temporarily occupied by You for work therein;
- (e) Vehicles (not belonging to or used by You) in Your physical or legal control where the Property Damage occurs while the Vehicles are in a car park owned or operated by You, unless You own or operate the car park for reward;
- (f) the property of an Employee, or of the parties shown in Definition 1.28 (a) and 1.28 (b) 'You', 'Your' or 'Insured';
- (g) other property temporarily in Your physical or legal control provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which You are or have been working on and our limit under this Exclusion 3.18 (g) does not exceed \$100,000 for any one (1) Occurrence and in the aggregate for any one (1) Period of Insurance.

Provided that there will be no cover under this Exclusion 3.18 in respect of liability assumed by You under any contract or agreement which requires You to effect material damage insurance on premises, property or goods which You do not own.

### 3.19. Punitive damages

Punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

### 3.20. Radioactivity

Liability directly or indirectly caused by, contributing to or arising from:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the Combustion of nuclear fuel. For the purpose of this Exclusion 3.20 only, "Combustion" shall include any self-sustaining process of nuclear fission;
- (b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

### 3.21. Sexual molestation

Claims arising from, contributed to by or in connection with sexual and/or child assault, abuse, molestation or attempt thereof. Furthermore, We will not indemnify You for 'Defence of Claim' 2.2 as detailed in this Policy.

### 3.22. Territorial limits

- (a) claims made or actions instituted within any Country, State or Territory (outside Australia) where the laws of that Country, State or Territory require insurance to be effected or secured with an insurer or organisation licensed in that Country, State or Territory to grant such insurance;
- (b) claims made and actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the courts of the United States of America or Canada;
- (c) claims and actions to which the laws of the United States of America or Canada apply.

Provided that Exclusion 3.22 (b) and 3.22 (c) do not apply to:

- (d) claims and actions arising from the presence outside Australia of any of Your Employees and/or directors or partners who are normally resident in Australia and who are not undertaking manual work or

supervision work of any kind while in the United States of America or Canada;

- (e) claims for Personal Injury, Property Damage or Advertising Liability caused by or arising out of Your Products not knowingly exported by You or on Your behalf to the United States of America or Canada.

The Limit of Liability in respect of coverage provided under Exclusion 3.22 (d) and 3.22 (e) is inclusive of all costs, expenses and interest as set out in Clause 2.2. 'Defence of claims' of this Policy.

### 3.23. Terrorism

Loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion 3.23 also excludes loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

### 3.24. Tobacco

Personal Injury arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- (a) tobacco or tobacco smoke;
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

### 3.25. Vehicles

Personal Injury or Property Damage arising out of the ownership, possession, operation, or use by You or on Your behalf of any Vehicle:

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

Exclusion 3.25 (a) and 3.25 (b) do not apply to:

- (c) Personal Injury where that compulsory liability insurance or statutory indemnity does not provide indemnity and the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity does not involve a breach by You of legislation relating to Vehicles;
- (d) Property Damage arising out of and during the loading or unloading of goods to or from any Vehicle;
- (e) Property Damage caused by or arising from the operation or use of any Vehicle which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by You or on Your behalf within the confines of Your premises;
- (f) Property Damage caused by or arising out of the use of:
  - (i) any Vehicle whilst being used as a tool of trade;
  - (ii) plant forming part of Your Vehicle being used as a tool operating at any worksite;

but excluding Property Damage caused by or arising whilst the Vehicle is transporting or carting goods.

### 3.26. War

Invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.

## Endorsements

If Your Business described in the Policy Schedule is swimming pool owner or operator exclusion 3.12 Pathogenic Organism is deleted and replaced by

### Toxic Mould

This Policy will not provide indemnity

- (a) for loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising there from or any consequential loss, or
- (b) against any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from the existence of any Toxic Mould.

### Definition relating to the above Exclusion:

For the purposes of this Exclusion Toxic Mould shall include but not be limited to the following:

Mould or fungi or its spores bacteria yeasts mildew algae mycotoxins or any other metabolic products enzymes or protein secreted by the above.

It is understood and agreed that We shall not be under any duty to defend the insured in any proceedings in connection with any Toxic Mould claims or incidents.

This exclusion shall apply irrespective of when the claim arose or was made and irrespective of when the exposure to any Toxic Mould occurred.

## Optional extension

### Errors and Omissions Extension

This extension operates on a 'claims made and notified' basis. This means that the Policy covers You for claims made against You and notified to us during the period of insurance.

Where You give notice in writing to Us of any facts that might give rise to a claim against You as soon as reasonably practicable after You become aware of those facts but before the expiry of the Period of Insurance, You may have rights under Section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any Claim subsequently made against You arising from those facts notwithstanding that the Claim is made after the expiry of the Period of Insurance. The terms of the Policy and the effect of the Policy is that You are not covered for Claims made against You after the expiry of the Period of Insurance.

Notwithstanding anything in the Policy to the contrary it is hereby noted and agreed that where coverage for Errors and Omissions is granted in the Schedule this Policy is extended to indemnify You up to the limit shown in the aggregate for the period against all sums which You become legally liable to pay by way of compensation as a result of a Claim or Claim(s) first made against You and reported to Us during the Period of Insurance arising out of any negligence, whether by act or omission committed by You and which gives rise to Personal Injury or Property Damage during the Period of Insurance in connection with Your Business which would otherwise be Excluded by reason of Exclusion 3.17 Professional liability.

We agree to pay all Defence Costs (including claims handling expenses) for which indemnity is available under this extension provided that Our total aggregate liability (including Defence Costs) shall not exceed in all the Limit of Liability for Errors and Omissions specified in the schedule notwithstanding the number of Claims Made. The excess shown in the Schedule shall be borne by You at Your own expense and Our Liability shall only be in excess of this amount.

Provided we will not be liable under this extension in respect of:

- (a) any negligence, whether by acts, errors or omissions which occurred or allegedly occurred prior to the Retroactive Date specified in the Schedule;
- (b) any facts or circumstances which You were aware of prior to the commencement of the Period of Insurance or which a reasonable

person in Your position could have considered may give rise to a Claim;

- (c) or attributable to any failure or omission on the part of You to effect or maintain insurance;
- (d) any Liability more specifically insured against in any other section of this Policy;
- (e) the repair, reconditioning, replacement, making good or recall of any product or faulty inadequate workmanship performed by or on behalf of You;
- (f) Liability assumed under contract or agreement unless such liability would have attached in the absence of such contract or agreement;
- (g) or in connection with advice, design, consultancy, specification, formula or supervision given or undertaken by You not in relation to Your Business;
- (h) conspiracy, conversion, deceit, inducement, breach of contract or injurious falsehood;
- (i) punitive, exemplary, aggravated, multiple or liquidated damages, fines or penalties;
- (j) Liability incurred by or caused by Your Directors or Officers whilst acting within the scope of their duties in such capacity.

This Extension is subject to all other Terms, Conditions, Limitations and Exclusions of the Policy

## 4. General conditions

These General Conditions apply to all sections of this Policy.

### 4.1. Acquisition of properties or companies

The Cover granted by this Policy extends to properties, assets, companies, firms, entities or other bodies:

- (a) formed or acquired by You or for which You assume management responsibility during the Period of Insurance;
- (b) which undertake activities consistent with the description of the Business in the Policy Schedule subject to disclosure to Us prior to any new acquisition which represents more than 15% of the current group turnover, in which event We may seek revised terms including but not limited to payment of additional premium. You are not obliged to accept such terms, but if You do not, that new acquisition will not be covered by this Policy.

Provided that:

- (c) no indemnity shall be granted in respect of claims for Personal Injury, Property Damage or Advertising Liability which first happened prior to the date of such acquisition, formation or assumption of management responsibility.

### 4.2. Adjustment of premium

Where the Policy Schedule shows premium for the Policy has wholly or partly been calculated on estimates You must, within thirty (30) days after the expiry of each Period of Insurance, provide to Us such matters, particulars and information relevant to the Policy as We may reasonably require. The premium for the Period of Insurance will then be adjusted and any difference paid by or allowed to You, as the case may be, provided that the adjusted premium will not be less than any minimum premium specified in the Policy Schedule.

You must keep a record of all matters, particulars and information requested by Us and must on reasonable notice allow Us or Our nominee to inspect and make copies of those records.

### 4.3. Cancelling Your Policy

- (a) How You may cancel this Policy
  - (i) You may cancel this Policy at any time by telling Us in writing that You require cancellation.
  - (ii) Where 'You' involves more than one (1) person, We will only cancel the Policy when a written agreement to cancel the Policy is received from all persons named as the Insured.
- (b) How We may cancel this Policy
  - (i) We may cancel this Policy in any of the circumstances permitted by law by informing You in writing.
  - (ii) We will give You this notice as detailed in General Condition 4.10 'Notices'.
- (c) The Premium
 

We will refund to You the proportion of the premium for the remaining Period of Insurance, subject to any agreed minimum premium. When the premium is subject to adjustment, cancellation will not affect Your obligation to supply to Us such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

### 4.4. Changes to information previously advised

You must tell Us as soon as possible if circumstances occur, or if changes or alterations are intended or made which increase the risk of Personal Injury, Property Damage or Advertising Liability.

You must tell Us immediately in writing of every change that comes to Your knowledge which materially varies any of the facts or circumstances existing at the commencement of this Policy.

We may at Our discretion, for what We consider to be an increase of risk:

- (a) charge additional premium;
- (b) amend or impose additional terms or conditions;
- (c) cancel the Policy.

### 4.5. Changes to the Policy

If You want to make a change to this Policy, the change becomes effective when We:

- (a) agree to it;
- (b) give You a new Policy Schedule and/or an endorsement schedule detailing the change.

### 4.6. Cross liability

Where more than one (1) party comprises the Insured each of the parties will be considered as a separate and distinct unit and the words 'You', 'Your' or 'Insured' will be considered as applying to each party in the same manner as if a separate Policy had been issued to each of them. Provided that nothing in this General Condition 4.6 will result in an increase of Our Limit of Liability in respect of any Occurrence or Period of Insurance.

### 4.7. Discharge of liabilities

At any time We can pay to You or on Your behalf, all claims made against You for any one (1) Occurrence:

- (a) the Limit of Liability, after deducting any amounts already paid;
- (b) any lower sum for which the claim may be settled.

If We do so:

- (c) the conduct of any outstanding claim(s) will become Your responsibility; and
- (d) We will not be liable to pay any further amounts in relation to that Occurrence other than costs, charges; or expenses that We agreed to pay before or when We made the payment referred to in this General Condition 4.7 (a) and 4.7 (b).

### 4.8. Inspection of property

- (a) We will be permitted but not obligated to inspect Your property and operations at any time;
- (b) Neither Our right to inspect nor Our failure to inspect nor the making of any inspection nor any report of an inspection may be used by You or others in any action or proceeding involving Us;
- (c) We may examine and audit Your books and records at any time during the Period of Insurance and within three years thereafter but that examination and audit will be restricted to matters which in Our opinion are relevant to the Policy.

### 4.9. Jurisdiction

All disputes arising out of or under this Policy will be subject to determination by any Court of competent jurisdiction within Australia.

### 4.10. Notices

Any notice given by Us to the first named Insured within the Policy Schedule will be treated as notice to all parties comprising 'You', 'Your' ' Insured', and it will be effective:

- (a) if it is delivered to You personally;
- (b) if it is posted to Your address last known to Us, three Business days after having been posted by Us;
- (c) immediately if it is sent by electronic communication.

### 4.11. Other interests

- (a) You cannot transfer any interests in this Policy without Our written consent;
- (b) Any person whose interests You have told Us about and We have noted on Your Policy Schedule is bound by the terms of this Policy.

#### 4.12. Preventing Our right of recovery

If You have agreed not to seek compensation from another person who is liable to compensate You for any loss, damage or liability which is covered by this Policy, We will not cover You under this Policy for that loss, damage or liability.

#### 4.13. Reasonable care

You must:

- (a) exercise reasonable care that only competent Employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- (b) take all reasonable precautions to prevent Personal Injury, Property Damage or Advertising Liability, and prevent the manufacture, sale or supply of defective Product, and comply with and ensure that Your Employees, contractors, employees of labour hire organisations utilised by You, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:
  - (i) safety of persons or property;
  - (ii) disposal of waste products;
  - (iii) handling, storage or use of flammable liquids or substances, gases or toxic chemicals;
- (c) at Your own expense take reasonable action to trace, recall or modify any of Your Products containing any defect or deficiency of which You have knowledge or have reason to suspect, including (but not limited to) any of Your Products subject to governmental or statutory ban.

#### 4.14. Subrogation

We may prosecute in Your name for damages or otherwise. We may do this before or after We have paid Your claim and whether or not You have been fully compensated for Your actual loss. You must execute and deliver instruments and papers and do everything that is necessary to assist Us in the exercise of those rights.

## 5. Claims

### 5.1. You must:

- (a) notify Us immediately in writing of every Occurrence, claim, writ, summons, proceeding, impending prosecution, and inquest together with all relevant information which may result in a claim under this Policy, whether or not You believe any claim amount might fall below the Deductible;
- (b) supply Us with all information We require to settle the claim;
- (c) take all reasonable precautions to prevent further loss or damage;
- (d) endeavour to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of right of subrogation, and as may be reasonably practicable, You must not without Our written consent carry out any alteration or repair until We have had an opportunity to inspect;
- (e) co-operate with Us fully in any action We take if We have a right to recover any money payable under this Policy from any other person;
- (f) pay the amount of the Deductible in relation to each Occurrence within fourteen (14) days of receiving a request form from Us to pay Your Deductible. Cover provided by Clause 2 – 'Cover' of this Policy will not be available until the Deductible has been paid.

If in doubt at any time, ring Us or Your Financial Services Provider for advice on the procedure to follow.

### 5.2. What You must not do:

- (a) admit liability, make an admission, offer, promise or payment if an incident occurs which is likely to result in someone claiming against You;
- (b) make any admission of guilt or promise or offer of payment in connection with any such claim, unless We first agree in writing. This applies to You or any other person making a claim under this Policy;
- (c) negotiate, admit, repudiate or pay any claim by any person.

### 5.3. What We do

We may take over and conduct the defence or settlement of any claim or issue legal proceedings for damages. If We do this We will do it in Your name. We have full discretion in the conduct of any legal proceedings and in the settlement of any claim. You must co-operate by giving Us any statements, documents or assistance We require. This may include giving evidence in any legal proceedings.

### 5.4. What can affect a claim

We will reduce the amount of a claim by the Deductible shown in the Policy terms, General Conditions or on the Policy Schedule. We may refuse to pay a claim if You are in breach of Your Duty of Disclosure or any of the conditions of this Policy, including any endorsements noted on or attached to the Policy Schedule. We pay only once for loss or damage from the same event covered by this Policy. We may be entitled to refuse to pay or to reduce the amount of a claim if:

- (a) it is in any way fraudulent;
- (b) any fraudulent means or devices are used by You or anyone acting on Your behalf to obtain any benefits under this Policy.

**QBE Insurance (Australia) Limited**

2 Park Street  
Sydney NSW 2000 Australia

[www.qbe.com.au](http://www.qbe.com.au)

This Policy is underwritten by QBE Insurance (Australia) Limited  
ABN 78 003 191 035 of 2 Park Street, Sydney.