



**General Public and Products
Liability Insurance
Policy Wording**
vLBRE0121



Pen Underwriting Pty Ltd
ABN 89 113 929 516 AFSL 290518

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Current as at January 2021

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IMPORTANT INFORMATION

This Policy

This Policy is an important document and should be kept in a safe place. Please read it carefully so that you understand the insurance provided.

Pen Underwriting

In issuing this Policy Pen Underwriting Pty Ltd ABN 89 113 929 516 AFSL 290518 ('Pen Underwriting') is acting as agent on behalf of the Insurer(s) pursuant to a Binding Authority Agreement(s). The Insurer(s) are specified in the Schedule and details of the Insurers and the proportions for which each of them are liable may be obtained from Pen Underwriting.

Further Information

Your insurance broker has arranged this insurance on your behalf. If you have any questions or need further information concerning this insurance, you should contact your insurance broker to assist you with your enquiry. You should direct all of your correspondence to Pen Underwriting through your insurance broker as they are your agent for this insurance.

Agreement

In consideration of the payment of the Premium and in reliance on the contents of the Proposal, the Insurer will indemnify the Insured in accordance with the terms of this Policy.

Premium

The amount of Premium specified is the amount due to the Insurer and any commission allowed by them is to be regarded as remuneration of Pen Underwriting.

Your 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.

If you do not tell us something

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.

Section 54 Insurance Contracts Act

Where the effect of this Policy is that the insurer may refuse to pay a claim, either in whole or in part, because of an act of the insured or of some other person after the policy was entered into, the insurer may not refuse to pay the claim because of that act but the insurer's liability to pay the claim is reduced by the amount that fairly

represents the extent to which the insurer's interests were prejudiced as a result, unless that act could reasonably be regarded as capable of causing or contributing to the loss, in which case the insurer may refuse to pay the claim.

The insurer may not refuse to pay the claim where:

- the insured proves that no part of the loss that gave rise to the claim was caused by the act;
- the insured proves that some part of the loss that gave rise to the claim was not caused by the act (the Insurer may not refuse to pay that part of the loss);
- the act was necessary to protect the safety of a person or to preserve property; or
- it was not reasonably possible for the insured or other person not to do the act.

GST

The Premium includes an amount for GST.

The Insurer's liability to indemnify the Insured under this Policy is calculated less any Input Tax Credit to which the Insured is entitled for any relevant Acquisition, or to which the Insured would have been entitled had it made a relevant Acquisition. The Insured must inform the Insurer of the extent to which it is entitled to an Input Tax Credit for that GST, and any GST liability arising from the Insured's provision of incorrect advice is payable by the Insured.

GST, Input Tax Credit and Acquisition have the meaning given to those words in A New Tax System (Goods and Services Tax) Act 1999.

Privacy

Pen Underwriting and the Insurer(s) handle your personal information with care and in accordance with the Privacy Act 1988 and the Australian Privacy Principles. We collect personal information about you to provide you with insurance and insurance related services. We may disclose your personal information to third parties for the purposes described in our Privacy Policy, including related entities, insurers, reinsurers, agents and service providers, some of whom may be located in the United States of America, United Kingdom, Singapore, Germany, Sweden and India. By asking us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure (including overseas disclosure) of your personal information for the purposes described in our Privacy Policy. Where you provide personal information about others, you represent to us that you have made them aware of that disclosure and of our Privacy Policy and that you have obtained their consent. If you do not consent to provide us with the personal information that we request, or withdraw your consent to the use and disclosure of your personal information at any stage, we may not be able to offer you the products or provide the services that you seek. For information about how to access and or correct the personal information we hold about you or if you have any concerns or complaints, ask us for a copy of our Privacy Policy or visit www.penunderwriting.com.au.

Claims

In the event of a claim arising under this insurance, notice should be given as soon as reasonably practicable to:

Pen Underwriting
General Liability Claims
GPO Box 541
Brisbane QLD 4001
Email: claims.au@penunderwriting.com

Complaints Handling

Any enquiry or complaint relating to this insurance should be referred to Pen Underwriting in the first instance. If you are dissatisfied with a decision Pen Underwriting makes, our service, the service of others we appoint to discuss insurance matters with you, or a claim settlement, we have an internal dispute resolution process to assist you. For further information, ask for a copy of our Complaints and Disputes Resolution Policy or visit www.penunderwriting.com.au.

If Pen Underwriting is unable to resolve the matter and it or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Australia Limited
Level 9, 1 O'Connell St
Sydney NSW 2000

Telephone: (02) 8298 0783
Facsimile: (02) 8298 0788

Email: ldraustralia@lloyds.com

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

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

Several Liability Notice

The liability of an Insurer under this contract is several and not joint with other Insurers party to this contract. An Insurer is liable only for the proportion of liability it has underwritten. An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer. Nor is an Insurer otherwise responsible for any liability of any other Insurer that may underwrite this contract. The proportion of liability under this contract underwritten by an Insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract. In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an Insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is

Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address. Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

1. DEFINITIONS

Where used in this Policy the following Definitions apply.

1.1 Advertising Liability

Liability arising out of the following:

- (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 the Insured's direction with knowledge of the falsity of the statement or material;
- (b) infringement of copyright, title or slogan;
- (c) unfair competition, misappropriation of advertising ideas or style of doing Business;
- (d) invasion of privacy,

arising out of any advertising activities conducted by or on the Insured's behalf in connection with the Business.

1.2 Aircraft

Any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

1.3 Business

The business specified in the Schedule.

1.4 Employee

Any person engaged under a contract of service or apprenticeship provided that they fall within the definition of 'worker' under any workers' compensation legislation.

1.5 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 the Insured.

1.6 Healthcare Professionals

Qualified nurses, dentists and first aid attendants (not being qualified medical practitioners).

1.7 Hovercraft

Any vessel, vehicle, craft or thing made or intended to travel across land or water on a cushion of air.

1.8 Insured

- (a) The Named Insured;
- (b) All the subsidiary companies (now or subsequently constituted) of the Named Insured provided their places of incorporation are within Australia;
- (c) Every director, executive officer, Employee, partner or shareholder of the Named Insured or of the parties specified in Clause 1.8(b), but only while acting within the scope of their duties in such capacity;
- (d) Every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with the consent

of the Named Insured in respect of claims arising from their duties connected with the activities of any such club, organisation or service. This insurance will not apply to Personal Injury or to Property Damage of any participants of any game, match, race, practice or trial;

- (e) Every principal, in respect of that principal's vicarious liability for the acts or omissions of one of the Named Insured or one of the parties specified in Clause 1.8(b) in respect of the performance by them of work for that principal, but subject always to the extent of coverage and the Limit of Indemnity provided by this Policy;
- (f) Each partner, joint venturer, co-venturer or joint lessee of the Named Insured but only if the Insurer agrees to insure them and the Named Insured agrees to pay the premium the Insurer requires;
- (g) Any director or senior executive of the Named Insured or one of the parties specified in Clause 1.8(b) in respect of private work undertaken by Employees of the Named Insured for such director or senior executive; and
- (h) Additional Insureds as specified in the Schedule

1.9 Insurer

The Insurer(s) specified in the Schedule.

1.10 Named Insured

The insured person or entity named as the insured in the Schedule.

1.11 Occurrence

An event which results in Personal Injury, Property Damage or Advertising Liability neither expected nor intended from the standpoint of the Insured.

1.12 Period of Insurance

The period specified in the Schedule.

1.13 Personal Injury

- (a) Bodily injury including death and illness, disability, shock, fright, mental anguish, mental injury;
- (b) The effects of false arrest, wrongful detention, false imprisonment or malicious prosecution;
- (c) The effects of wrongful entry or eviction; or
- (d) The effects of assault and battery not committed by or at the direction of the Insured unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

1.14 Policy

This policy wording, the Schedule and any endorsements.

1.15 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.

1.16 Products

Anything (after it has ceased to be in the physical custody of or under the control of the Insured) grown, manufactured, processed, treated, extracted, produced, supplied, distributed, sold, imported, repaired, serviced, installed, assembled, erected or constructed by the Insured, including packaging and containers.

1.17 Property Damage

- (a) Physical damage to or loss or destruction of tangible property including any resultant loss of use of that property; or
- (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.

1.18 Schedule

The policy schedule issued by Pen Underwriting which is current at the time of the Occurrence.

1.19 Territorial Limits

Anywhere in the world subject to Exclusion 3.10 and Exclusion 3.22.

1.20 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.

1.21 Watercraft

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

2. COVER

2.1 Liability

The Insurer will indemnify the Insured for all sums which they become legally liable to pay as compensation (including costs awarded against the Insured) in respect of:

- (a) Personal Injury;
- (b) Property Damage;
- (c) Advertising Liability,

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

2.2 Costs, Expenses and Interest

With respect to the indemnity provided by Clause 2.1, the Insurer will:

- (a) defend, in the Insured's name and on the Insured's behalf, any claim or legal action against the Insured, even if any of the

allegations are groundless, false or fraudulent, and the Insurer shall have full discretion in the defence, investigation, negotiation and settlement of any claim or legal action;

- (b) pay all charges, expenses and legal costs recoverable from or awarded against the Insured in any claim or legal action;
- (c) pay the reasonable and necessary legal costs and expenses incurred by the Insurer and or by the Insured, with the Insurer's prior written consent in the defence, investigation, negotiation or settlement of any claim or legal action, including any appeal in connection with such legal action;
- (d) pay all interest, including pre-judgement accruing on the Insurer's portion of any judgement until the Insurer has paid, tendered or deposited such part of the settlement or judgement that does not exceed the Limit of Indemnity;
- (e) pay expenses incurred by the Insured for first aid, surgical, medical and or therapeutic relief rendered to others at the time of Personal Injury caused by an Occurrence (other than any medical expenses which the Insurer is prohibited from paying by law);
- (f) pay the reasonable and necessary legal costs, incurred with the Insurer's prior written consent, for the representation of the Insured at any:
 - (i) coronial inquest or inquiry;
 - (ii) proceedings in any competent court or tribunal;
 - (iii) Royal Commission or Government Enquiry arising out of any alleged breach of statutory duty, or other similar judicial enquiry;
 - (iv) enquiry, prosecution or hearing of a disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like,

in connection with an Occurrence, claim or potential claim which would be the subject of indemnity under Clause 2.1 and up to a maximum of \$250,000 any one Occurrence;

The Insurer's liability to pay costs, expenses and interest under this Clause is in addition to the Limit of Indemnity, provided that:

- (g) the Insurer will not be obliged to pay any claim or judgement or to defend any claim or legal action after the Limit of Indemnity has been exhausted by payment of judgements or settlements.
- (h) if a payment exceeding the Limit of Indemnity has to be made to dispose of a claim or legal action, the Insurer's liability to pay any costs, expenses and interest under Clauses 2.2(a) to (f) will be limited to that proportion of those costs, expenses and interest as the Limit of Indemnity bears to the amount paid to dispose of the claim.

2.3 Limit of Indemnity

- (a) The Limit of Indemnity is specified in the Schedule.
- (b) The 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 shall not exceed the Limit of Indemnity.
- (c) The Insurer's aggregate liability for the Period of Insurance for all claims arising out of Products shall not exceed the Limit of Indemnity.
- (d) All Personal Injury, 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 Occurrence.

2.4 Excess

- (a) The Excess is specified in the Schedule.
- (b) The Insured shall be liable to pay the amount of the Excess specified in the Schedule, being the first amount of all claims including any costs and expenses in respect of each Occurrence.
- (c) The Excess shall also apply to Clause 2.2.

3. EXCLUSIONS

This Policy does not cover liability in respect of:

3.1 Aircraft, Watercraft and Hovercraft

- (a) the ownership, maintenance, operation or use by the Insured or on behalf of the Insured of any Aircraft;
- (b) the ownership, maintenance, operation or use by the Insured or on behalf of the Insured of:
 - (i) any Watercraft exceeding ten (10) metres in length, except where such Watercraft are owned or operated by others and used by the Named Insured for business entertainment; or
 - (ii) Hovercraft;
- (c) Products that are Aircraft component parts where such component parts affect the safety, flight controls or take-off or landing of an Aircraft.

3.2 Asbestos

claims arising directly or indirectly out of, or resulting from, or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

3.3 Assault and Battery

Personal Injury, Property Damage or Advertising Liability caused by or arising from assault and battery committed by or at the direction of the Insured unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

3.4 Biological or Chemical Materials

any liability, loss, cost or expense of whatsoever nature directly or indirectly caused by, arising from, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto. This Exclusion also excludes loss, damage, cost or expense of whatsoever 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 pathogenic or poisonous biological or chemical materials.

3.5 Biosecurity

any liability, loss, cost or expense directly or indirectly arising out of, related to, or in connection with a Listed Human Disease or any directly or indirectly related condition or threat or fear thereof (whether actual or perceived).

Listed Human Disease shall mean any disease declared to be a listed human disease under the Biosecurity Act 2015 (Cth) or its current equivalent, as amended or replaced from time to time, or any infectious disease that is declared a pandemic by the World Health Organisation.

3.6 Contractual Liability

any obligation assumed by the Insured under any agreement or contract except to the extent that:

- (a) the liability would have been implied by law in the absence of the agreement or contract;
- (b) the liability arises from a provision in a contract for lease of real or personal property other than a provision which obliges the Insured to effect insurance or provide indemnity in respect of the subject matter of that contract;
- (c) the liability is assumed by the Insured under a warranty of fitness or quality as regards to Products,

but this Exclusion will not apply to liabilities assumed under the contracts specifically designated in the Schedule or in any Endorsement for the purposes of Contractual Liability cover.

3.7 Cyber

Cyber Loss.

For the purposes of this Exclusion:

Cyber Loss means all actual or alleged Personal Injury or Property Damage or any other injury or damage of any kind, or any loss, liability, compensation, or statutory fine or penalty or any other cost or expense whatsoever, directly or indirectly caused by, contributed by, resulting from, arising out of or in connection with any Cyber Incident.

Cyber Incident means:

- (a) an unauthorised or malicious act or series of related unauthorised or malicious acts, regardless of time and place, or the threat or hoax thereof; and or
- (b) a failure to act, any error or omission or accident or series of related failures to act, errors or omissions or accidents; and or
- (c) a breach of duty, statutory duty or regulatory duty or trust or series of related breaches of duty, statutory duty or regulatory duty or trust, involving access to, processing of, use of or operation of any Computer System or any data by any person or group(s) or persons.
- (d) Computer system means any computer, hardware, software, information technology and communications system or electronic device, including any similar system or any configuration of the aforementioned and including any associated input, output or data storage device, networking equipment or back up facility.

3.8 Defamation

defamation:

- (a) resulting from statements made prior to the commencement of the Period of Insurance; or
- (b) resulting from statements made by or at the direction of the Insured with knowledge of its falsity; or
- (c) related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Insured.

3.9 Employment Liability

Personal Injury:

- (a) imposed by any workers' compensation law;
- (b) imposed by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement; or
- (c) arising out of or in respect of Employment Practices.

3.10 Exports to the United States of America or Canada

Personal Injury or Property Damage caused by or arising out of Products knowingly exported by the Insured or its agents, to the United States of America or Canada or any territory coming within the jurisdiction of the Courts of the United States of America or Canada.

3.11 Faulty Workmanship

the cost of making good, replacing, repairing, re-performing, correcting, improving or reinstating any work performed by or on behalf of the Insured which is defective or deficient.

Provided that this Exclusion shall not exclude liability for costs incurred to rectify any part or parts

of the property which itself are free of defect and deficiency, but are damaged as a consequence.

3.12 Fines, Penalties and Punitive Damages

finances, penalties, liquidated damages, or aggravated, punitive or exemplary damages.

3.13 Loss of Use

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

- (a) a delay in or lack of performance by or on behalf of the Insured of any agreement; or
- (b) the failure of Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured, provided that this Exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss of destruction of the Products after they have been put to use by any person or organisation other than the Insured.

3.14 Pollution

- (a) Personal Injury or Property Damage 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 does not apply if such discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.
- (b) any costs and expenses incurred in the prevention, removal, nullifying or cleaning up of such contamination or Pollutants provided that this Exclusion does not apply to the clean-up, removal or nullifying expenses, which are solely consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury or Property Damage.
- (c) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others.
- (d) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants in the United States of America or Canada or in any other state or territory to which the laws of the United States of America or Canada apply.

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

3.15 Product Defect

Property Damage to Products if the Property Damage is attributed to any defect in them or to their harmful nature or unsuitability but this Exclusion does not apply to the cost of replacing, repairing, making good or reinstating any property of which the Product forms a component part.

3.16 Product Recall

the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of 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 the Insured or any related error or omission, but this Exclusion does not apply to the rendering of or failure to render professional advice by Healthcare Professionals employed by the Insured to provide first aid on the Insured's premises.

3.18 Prohibited by Law

any Personal Injury the insurance of which is prohibited by law.

3.19 Property in Care, Custody or Control

Property Damage to:

- (a) property owned by or leased or rented to the Insured; or
- (b) property in the physical or legal control of the Insured.

But this Exclusion does not apply to liability for Property Damage to:

- (c) premises (including landlord's fixtures and fittings) which are leased or rented to the Insured;
- (d) premises (or their contents) not owned, leased or rented but temporarily occupied by the Insured for work therein;
- (e) Vehicles (not belonging to or used by the Insured) in the physical or legal control of the Insured where the Property Damage occurs while the Vehicles are in a car park owned or operated by the Insured, unless the Insured owns or operates the car park for reward;
- (f) the property of an Employee of the Insured specified in Clause (a) and (b) of Definition 1.8 Insured;
- (g) other property temporarily in the Insured's physical or legal control but no indemnity is granted for liability in respect of Property Damage to that part of any property upon which the Insured is or has been working. The sub-limit under this Clause shall not exceed the amount specified in the Schedule for any one Occurrence and in the aggregate for any one Period of Insurance.

Provided that the Insurer will not indemnify the Insured in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods which are not owned by the Insured.

3.20 Radioactivity

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

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (c) any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this Sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.

3.21 Sanctions

any loss, damage, cost, liability or expense of whatsoever nature to the extent that the provision of such cover, payment of a claim or provision of a benefit would expose the Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or United States of America.

3.22 Territorial Limits

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

Provided that:

- (d) Clauses 3.22(b) and 3.22(c) do not apply to claims and actions arising from the presence outside Australia of any Employees and/or directors, partners or proprietors of the Insured who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in the United States of America or Canada.
- (e) the Limit of Indemnity in respect of coverage provided under Clause 3.22(d) is inclusive of all costs, expenses and interest set out in Clause 2.2.

3.23 Vehicles

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

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

Clauses 3.23(a) and 3.23(b) do not apply to:

- (c) Personal Injury where:
 - (i) that compulsory liability insurance or statutory indemnity does not provide indemnity; and
 - (ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by the Insured of legislation relating to Vehicles.
- (d) Property Damage arising out of and during the loading or unloading of goods to or from any Vehicle; or
- (e) Property Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any Vehicle.

3.24 War and Terrorism

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

- (a) war, invasion, acts of foreign enemies, hostilities or warlike 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; or
- (b) any act of terrorism.

For the purpose of this Exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in

connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public, in fear.

This Exclusion also excludes loss, damage, cost or expense of whatsoever 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 Clause 3.24(a) and or Clause 3.24(b).

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

4. CLAIMS CONDITIONS

4.1 Claim Notifications and Co-operation

The Insured must:

- (a) give written notice to the Insurer as soon as reasonably practicable of any claim made against the Insured or any Occurrence that may give rise to a claim being made against the Insured and which is covered by this Policy;
- (b) provide all documents relating to the claim or Occurrence and all additional information and documentation that the Insurer may reasonably require as soon as reasonably practicable. Every demand, writ, summons, proceedings, impending prosecution or inquest shall be forwarded to the Insurer as soon as reasonably practicable after they are received;
- (c) not, without the Insurer's written consent make any admission, offer, promise or payment in connection with any Occurrence or claim.
- (d) use their best endeavours to preserve all property, Products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without the Insurer's consent and until the Insurer has had an opportunity of inspection.

The Insured shall give such information and assistance that the Insurer may reasonably require in the prosecution, defence or settlement of any claim.

4.2 Discharge of Liabilities

The Insurer may at any time:

- (a) pay to the Insured in respect of all claims arising from an Occurrence the balance of the Limit of Indemnity or any lesser amount for which the claim or claims can be settled; and
- (b) relinquish conduct and control of those claim(s),

and the conduct of any outstanding claim(s) will become the Insured's responsibility and the Insurer will be under no further liability under this Policy except for costs, charges and expenses:

- (a) incurred by the Insurer;
- (b) incurred by the Insured with the written consent of the Insurer prior to the date of such payment.

4.3 Other Insurance

In the event of any claim being made under this Policy, the Insured must notify the Insurer of any other insurance covering the same liability, loss or damage.

5. GENERAL CONDITIONS

5.1 Alteration to Risk

The Named Insured must tell the Insurer as soon as possible:

- (a) if circumstances occur, or if changes or alterations are intended or made which increase the risk of Personal Injury, Property Damage or Advertising Liability;
- (b) of every change that comes to the Insured's knowledge which materially varies any of the facts or circumstances existing at the commencement of this Policy;

In the event of an increase of risk, the Insurer may charge additional premium, amend or impose additional terms or conditions on the Policy.

5.2 Changes to Policy

If the Named Insured wants to make a change to this Policy, the change becomes effective when the Insurer:

- (a) agrees to it;
- (b) issues an Endorsement or new Schedule detailing the change.

5.3 Cross Liability

Where more than one party comprises the Insured each of the parties will be considered as a separate and distinct party and the word Insured shall be construed 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 Clause will result in an increase in the Limit of Indemnity in respect of any one Occurrence or Period of Insurance.

5.4 Inspection and Audit

The Insurer will be permitted but not obligated to inspect the Insured's property and operations at any reasonable time.

5.5 Jurisdiction

This Policy shall be interpreted in accordance with the laws of Australia and shall be subject to determination by any court of competent jurisdiction within Australia.

5.6 Lloyd's Underwriters

Lloyd's Underwriters agree that:

- (a) in the event of a dispute arising under this Policy, Lloyd's Underwriters at the request of the Insured will submit to the jurisdiction of any competent Court in Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

- (b) any summons notice or process to be served upon Lloyd's Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia,

Level 9, 1 O'Connell Street

Sydney NSW 2000

Telephone Number: (02) 8298 0783

who has authority to accept service and to enter an appearance on Lloyd's Underwriters' behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on Lloyd's Underwriters' behalf.

- (c) if a suit is instituted against any one of the Lloyd's Underwriters, all Lloyd's Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

5.7 Occurrence

All Personal Injury, 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 Occurrence.

5.8 Policy Cancellation

This Policy may be cancelled:

- (a) by the Named Insured giving written notice to the Insurer such notice to be effective when received by the Insurer; and the Named Insured shall be entitled to a refund of the premium in respect of the unexpired policy period
- (b) by the Insurer in accordance with the provisions of the Insurance Contracts Act 1984 and the Named Insured shall be entitled to a refund of the premium in respect of the unexpired policy period,

provided that:

- (c) Pen Underwriting's administration fee is earned upon Policy inception and is non-refundable.
- (d) where any Occurrence, liability, loss or claim or circumstance has been notified under this Policy, the Premium shall be deemed fully earned.

5.9 Policy Interpretation

- (a) In this Policy, the singular includes the plural and vice versa.

- (b) A reference in this Policy to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision.

5.10 Premium Adjustment

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

5.11 Reasonable Care and Precautions

The Insured must take reasonable care and precautions, and:

- (a) comply with all laws and statutory obligations, bylaws or regulations imposed by any public authority for the safety of persons or property;
- (b) comply with all recommendations of manufacturers or suppliers;
- (c) comply with all reasonable recommendations made by the Insurer to prevent loss or damage;
- (d) employ competent Employees.

5.12 Subrogation

In the event that the Insurer has a right to recover any monies payable under this Policy from any other person, the Insured must co-operate with the Insurer fully in any proceedings available at law, which the Insurer may take. The Insurer may take action before paying any claim and whether or not the Insured has been fully compensated for its actual loss.