

# Broadform Liability

## Insurance Policy



**Jardine Lloyd Thompson Pty Limited**  
ABN 69 009 098 864  
AFS Licence No. 226827



**CGU Insurance Limited**  
ABN 27 004 478 371  
AFS Licence No. 238291



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## INTRODUCTION

### **WHO IS Jardine Lloyd Thompson Pty Limited?**

Jardine Lloyd Thompson Pty Ltd (JLT) is one of Australia's largest general insurance brokers, a group totally committed to service and the fulfilment of our clients' needs. The group offers a diverse range of products and services to all areas of industry and the wider community in all parts of Australia. In arranging this Policy, JLT is acting on your behalf and not as the agent of the insurer. The JLT Australian Business Number is 69 009 098 864. The JLT Australian Financial Services Number is 226827.

### **WHO INSURES YOU**

CGU Insurance Limited is the Insurer. Our Australian Business Number is 27 004 478 371. Our Australian Financial Services Licence Number is 238291. In this Policy the insurer is called "we", "us" or "our".

CGU Insurance Limited pays remuneration to insurance intermediaries when we issue, renew or vary a policy the intermediary has arranged or referred to us. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration we may pay your intermediary, you should ask your intermediary.

### **POLICY SCHEDULES**

Policy Schedules are a record of your specific insurance covers. When you receive them, please check the Policy Schedules carefully and inform JLT immediately if you feel anything needs to be changed.

In order that you always have a complete up-to-date record of your cover, JLT will send you a new set of Policy Schedules whenever your insurance cover is renewed or changed in any way.

### **POLICY WORDINGS**

The Policy Wordings detail all the terms and conditions of cover. In certain cases, Additional Benefits, Definitions, Exclusions and Conditions have been included or varied to suit the requirements of your Business. In these cases Endorsements are included with the relevant Policy Wordings and shown on your Policy Schedule.

## IMPORTANT INFORMATION

### Before you enter into a contract of insurance

#### YOUR DUTY OF DISCLOSURE

Before you enter into this contract of insurance, you have a duty under the INSURANCE CONTRACTS ACT 1984, to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms. You have the same duty to disclose these matters to us before you extend, renew, vary or reinstate this Policy. Your duty, however, does not require disclosure of any matter that:

- reduces our risk;
- is common knowledge;
- we know, or as an insurer should know;
- we indicate that we do not want to know.

#### NON-DISCLOSURE

If you fail to comply with your duty of disclosure we may be entitled to reduce our liability under this Policy in respect of a claim or may cancel this Policy. If your non-disclosure is fraudulent, we may also have the option of avoiding this Policy from its beginning.

#### PRIVACY

We will collect personal information from you for the purpose of providing you with insurance products and services, and processing and assessing claims. You can choose not to provide this information, however, we may not be able to process your requests.

We treat your personal information with care. We will not release your personal information to anyone other than another insurer or an insurance reference service or as permitted or required by law. In the event of a claim, we may disclose information to and/or collect additional information about you from investigators or legal advisers.

If you wish to update the information we hold about you, please contact us.

#### THE GENERAL INSURANCE CODE OF PRACTICE

CGU Insurance proudly supports the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. The objectives of the Code are:

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

Brochures on the Code are available from your nearest CGU Insurance office.

We have adopted and support the Code and are committed to complying with it.

Please contact us if you would like more information about the Code.

## IMPORTANT INFORMATION

### **OUR SERVICE COMMITMENT**

CGU Insurance is proud of its service standards and supports the General Insurance Code of Practice. In an unlikely event that you are not satisfied with the way in which we have dealt with you, as part of our commitment to customer service, we have an internal dispute resolution process in place to deal with any complaint you may have.

Please contact your nearest CGU Insurance office if you have a complaint, including if you are not satisfied with any of the following:

- one of our products;
- our service;
- the service of our authorised representatives, loss adjusters or investigators; or
- our decision on your claim.

Our staff will help you in any way they can. If they are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to our Internal Dispute Resolution Department.

### **MONEY BACK PROMISE**

If you are not completely happy with this contract, we will try to help with your concerns, or you can return it with the Policy Schedule for a refund – we will refund the full amount of the premium if you do this within (30) days of cover starting and no event for which a claim could be made has occurred.

### **RENEWAL PROCEDURE**

Before this contract expires, we will normally send a Renewal Notice or Expiry Notice advising the cover details, the sum insured and the amount of premium payable to renew this contract.

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When you have paid or agree to pay the premium stated in the policy schedule, then subject to the terms, conditions and exclusions contained in or endorsed on this Policy we will pay to or on your behalf all sums provided by this Policy which you shall become legally liable to pay as compensation for personal injury, property damage or advertising liability caused by an occurrence within the Geographical Limits as stated herein in connection with your business.

## LIMIT OF LIABILITY

Our Limit of Liability in respect of any one occurrence shall not exceed the Limit of Liability stated in the policy schedule for Public Liability, Products Liability or Advertising Liability. All personal injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one occurrence.

Our total aggregate limit during any one period of insurance for all claims arising out of products liability shall not exceed the Limit of Liability stated in the policy schedule.

Provided that the Limit of Liability in respect of Occurrences in North America will be inclusive of Supplementary Payments and will apply in the aggregate to all claims in any one Period of Insurance.

## SUPPLEMENTARY PAYMENTS

We will pay in addition to the applicable Limit of Liability

- (a) all expenses incurred by us, all costs taxed against you in any suit defended by us and all interest on the entire amount of any judgment which occurs after the entry of the judgment and before we have paid or tendered or deposited in Court that part of the judgment which does not exceed our Limit of Liability thereon.
- (b) expenses incurred by you for first aid to others at the time of an occurrence for personal injury covered by this Policy.
- (c) reasonable expenses incurred by you at our request in assisting us in the investigation or defence of any claim excluding loss of earnings.
- (d) all legal costs incurred by you with our consent for your representation at:
  - (i) any Coroner's Inquest or Inquiry;
  - (i) any proceedings in any Court of Summary Jurisdiction in connection with liability insured under this Policy.

We shall have the right and duty to defend any suit against you seeking compensation on account of such personal injury or property damage even if the allegations of the suit are groundless, false or fraudulent and may make such investigation and settlement of any claim or suit as is deemed expedient. We shall not be obliged to pay any claim or judgment or to defend any suit after we have discharged our liability under this Policy.

## EXCESS

You shall pay the amount shown in the Policy Schedule in respect of each occurrence. This amount will be deducted from the total amount otherwise payable by us, including Supplementary Payments.

## GEOGRAPHICAL LIMITS

This Policy applies in respect of Occurrences anywhere in the world but does not apply to or insure any liability for claims arising in North America in respect of:

1. ownership, occupancy or tenancy of any building, land or structure
2. performance of manual labour
3. any of Your Products knowingly exported by you, your agents or servants .

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## WHO IS INSURED UNDER THIS POLICY

Each of the following is insured under this Policy to the extent set forth below:

- (a) You, the Named Insured stated in the policy schedule;
- (b) All subsidiary companies (now or hereafter constituted) of the Named Insured whose place of incorporation is within Australia and whose business falls within the definition of the Named Insured's Business;
- (c) Any Director, Executive Officer, Employee, Voluntary Unpaid Worker, Work Experience Students, Partner or Shareholder of the Named Insured or of any company designated in paragraph (b) above but only while acting within the scope of their duties in such capacity;
- (d) Any principal by whatever name in respect of the liability of such principal arising out of the performance by the Named Insured or by any company designated in paragraph (b) above of any contract or agreement for the performance of work for such principal, to the extent required by such contract or agreement;
- (e) Any office bearer or member of social and/or sporting clubs formed with the consent of the Insured (other than an Insured designated in paragraph (d) above) in respect of claims arising from duties of or connected with activities of any such club;
- (f) Any incorporated or unincorporated associations or organisations (now or hereafter constituted) organised by you, or your employees with your knowledge and consent for the purpose of providing canteen, social, sports, welfare and/or child care organisations or first aid, medical, fire or ambulance services and/or educational activities for such employees and/or their families;
- (g) At the request of the Insured designated in paragraph (a) and (b) above: any director, partner, or executive officer of such Insured in respect of private work undertaken by such Insured's employees for such director, partner or executive officer.

In this Policy the above are called "insured", "you", or "your".

## DEFINITIONS

Some of the words in this Policy have a special meaning. These words are listed below.

### **Personal Injury means:**

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury;
- (b) false arrest, false imprisonment, malicious prosecution and humiliation;
- (c) libel, slander, defamation of character;
- (d) wrongful entry or wrongful eviction or other invasion of the right of private occupancy;
- (e) assault and battery, not committed by you or at your direction unless committed for the purpose of preventing or eliminating danger to persons or property;

which occurs during the period of insurance.

### **Property Damage means:**

- (a) physical injury to or destruction or loss of tangible property which occurs during the period of insurance and any loss of use of that property resulting therefrom; or
- (b) loss of use of tangible property which has not been physically injured or destroyed or lost which is caused by physical injury to or destruction or loss of other tangible property which occurs during the period of insurance.

### **Occurrence**

means an event including continuous or repeated exposure to substantially the same general conditions, which results in personal injury or property damage neither expected nor intended from your standpoint.

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## **Medical Persons**

means medical doctors, medical nurses, dentists and first aid attendants.

## **Public Liability**

means liability covered by this Policy but does not include products liability.

## **Products Liability**

means personal injury or property damage:

- (a) caused by any defect, or the harmful nature of any of your products;
- (b) resulting from any defect or deficiency in any direction or advice given or intended to be given by you concerning the use or storage of your products;

after your products have passed from your physical or legal control.

## **Your Products**

means anything, including any packaging or container thereof (after it has ceased to be in your possession or under your control) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by you.

## **Advertising Liability**

Advertising Liability means:

- 1. libel, slander or defamation;
- 2. infringement of copyright or of title or slogan;
- 3. piracy or unfair competition or idea misappropriation under an implied contract;
- 4. invasion of privacy,

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

## **Vehicle**

means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power or any trailer or other attachment made or intended to be drawn by such machine.

## **Business**

means the business stated in the policy schedule and shall include:

- (a) property owners/occupiers;
- (b) all past or present activities associated with the Business as stated in the Policy Schedule;
- (c) the activities of any canteen, social, sports, welfare and/or child care organization or first aid, medical, fire or ambulance services referred to in paragraph (f) under "who is insured under this policy", and
- (d) private work undertaken by your employees designated in paragraph (a) and (b) under "who is insured under this policy", for any director, partner or executive officer of the Insured.

## **Watercraft**

means any vessel, craft or thing made or intended to float on or in or travel on or through water.

## **Hovercraft**

means any vessel, craft or thing designed to transport persons or property over land or water, supported on a cushion of air.

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## **Aircraft**

means any vessel, craft or thing designed to transport persons or property in or through the air, atmosphere or space.

## **Policy Schedule**

means the Schedule, Insurance Certificate, Renewal Invitation or Revised Policy Schedule issued by us, whichever of those is the most current.

## **Tool of Trade**

means any vehicle which has any tool or plant forming part of or attached to or used in connection with it while such tool or plant is engaged on a work site, but does not include:

- (a) Vehicles whilst in transit to or from any worksite; or
- (b) Vehicles used for transport or haulage.

## **Period of Insurance**

means the period of time commencing on the From date stated in the current policy schedule and ending on the To date stated in that policy schedule.

## **North America**

means the United States of America and Canada and any state or territory incorporated in, or administered by, or from, either the United States of America or Canada.

## **EXCLUSIONS**

We shall not be liable to indemnify you in respect of:

1. (a) Liability for personal injury to any person arising out of, or sustained in the course of, the employment of such person in your service, or through the breach of any duty owed to that person, where you:
  - (i) are indemnified or entitled to be indemnified (either in whole or in part) in respect of claims for damages under a policy of insurance (which expression includes arrangements made by you to provide accident insurance for your workers under a licence to self insure) arranged (whether required by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
  - (ii) would have been indemnified or entitled to be indemnified had you arranged a policy of insurance as required by such legislation;
- (b) Liability for personal injury to any person arising out of, or sustained in the course of, the employment of such person in your service in Western Australia, other than a person of whom you are deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Rehabilitation Act 1981 (WA);
- (c) Liability for mental anguish suffered by any person arising out of, or in the course of, that persons employment by or service to you;
- (d) Liability for personal injury arising out of harassment, libel, slander, defamation or humiliation of, or discrimination against, any person while in your service or while employed by you;
- (e) Liability of a type in respect of which indemnity previously would have been provided under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current period of insurance; and
- (f) Any other liability imposed by the provisions of any workers compensation legislation or accident compensation legislation or industrial award, agreement or determination.

This Exclusion does not apply to the liability of others assumed by you under a written contract where the contractual liability has been notified and specifically accepted by us.

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2. Liability to pay compensation for property damage to:

- (a) property owned by you;
- (b) property leased, rented or in your physical or legal control.

This exclusion does not apply to liability for property damage to;

- (i) premises which are leased or rented by you or temporarily occupied by you for the purpose of your business;
- (ii) any vehicle (not belonging to or used by you or on your behalf) in your physical or legal control where such property damage occurs whilst any such vehicle is in a car park owned or operated by you;
- (iii) any property not under lease or rental agreement in your physical or legal control up to a limit of \$100,000 (or any other amount if specified in the policy schedule) for any one occurrence.

3. Liability to pay compensation for:

- (a) physical injury to or destruction or loss of your products or any part of those products arising out of them or any part of them;
- (b) loss of use of any tangible property caused by physical injury to or destruction or loss of your products or any part of those products arising out of them or any part of them.

This Exclusion does not apply to other products repaired, serviced or treated by you after those products were originally sold, supplied or distributed.

4. Liability to pay compensation for damages claimed for the withdrawal, inspection, repair, replacement or loss of use of your products.

5. Any liability for the cost of performing, completing, correcting, rectifying or improving any work done or undertaken by you.

6. Personal injury or property damage arising from your ownership, maintenance, possession, operation, use or legal control of:

- (a) any aircraft;
- (b) any hovercraft; or
- (c) any watercraft or vessel exceeding eight (8) metres in length.

7. Any liability arising out of the selling, leasing, hiring or manufacture and/or supply of parts and/or products that are used with your knowledge in aircraft or any aerial device.

8. Liability to pay compensation for personal injury or property damage arising out of the ownership, possession, operation, use or legal control by you of any vehicle:

- (a) which is registered, or
- (b) in respect of which insurance is required by virtue of any legislation relating to motor vehicles, or
- (c) which is otherwise insured in respect of the same liability.

Provided that this Exclusion does not apply to:

- (i) Personal Injury where compulsory liability insurance or a statutory scheme does not provide indemnity for reasons that do not involve a breach by you of legislation relating to Vehicles.
- (ii) Personal Injury or Property Damage arising out of and during loading and unloading of goods to and from any Vehicle.
- (iii) Vehicles whilst being operated or used by you as a Tool of Trade.
- (iv) Property Damage to Vehicles not belonging to you or used by you or on your behalf, but in your physical or legal control at your Situation for the purpose of servicing, repairing or testing as part of your business up to a limit of \$100,000 (or any amount as specified in the Policy Schedule) for any one Occurrence.

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9. Liability to pay compensation for personal injury or property damage assumed by you in respect of products liability under any contract, warranty or agreement except to the extent that such liability would have otherwise been implied by law. This Exclusion does not apply to those written contracts designated in the policy schedule nor to liability assumed by you under a warranty of fitness or quality as regards your products.
  10. Liability to pay compensation for the rendering of or failure to render professional advice or service by you or any related error or omission connected therewith, but this exclusion does not apply to:
    - (a) the rendering or failure to render professional medical advice by medical persons employed by you to provide first aid and other medical services on your premises, or
    - (b) personal injury 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.
  11. (a) Liability to pay compensation for personal injury or property damage caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater) but this Exclusion does not apply if the actual discharge, dispersal, release or escape:
    - (i) is neither reasonably expected nor intended by you, and
    - (ii) is the consequence of a sudden and instantaneous cause which takes place at a clearly identifiable point in time during the period of insurance, and
    - (iii) occurs outside of North America.
  - (b) Liability for any costs or expenses incurred in the preventing, removing, nullifying, or cleaning up any discharge, dispersal, release or escape as described in (a) above, unless such costs or expenses are consequent upon an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identifiable point in time and occurs outside of North America and during the period of insurance and results in personal injury or property damage neither of which is otherwise excluded by this Policy.
- Provided that our total aggregate liability during any one period of insurance in respect of all claims arising out of such personal injury or property damage or such costs or expenses shall not exceed the Limit of Liability stated in the policy schedule.
12. Any liability to pay compensation arising out of the publication or utterance of a libel or slander,
    - (a) made prior to this Policy commencing on the date stated in the policy schedule, or
    - (b) made at your direction with the knowledge of the falsity thereof, or
    - (c) related to advertising, publishing, printing, broadcasting or telecasting activities conducted by you or on your behalf.
  13. Any liability for fines, penalties, punitive, exemplary or aggravated damages.
  14. Liability to pay compensation for personal injury or property damage caused by or arising directly or indirectly out of or in connection with the use or presence of asbestos.
  15. Liability to pay compensation for personal injury or property damage of whatsoever nature directly or indirectly caused or contributed to by or arising from ionising radiation, or contamination by radioactivity from nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion combustion shall include any self-sustaining process of nuclear fission.
  16. Liability to pay compensation for personal injury or property damage directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (with or without the declaration of war), civil war, rebellion, revolution, insurrection,

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civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority in preventing or attempting to prevent any such act or in minimising the consequences of any such act of confiscation or nationalisation.

17. There is no insurance under this Policy in respect of any claim of whatsoever nature which consists of or arises directly or indirectly out of or in connection with the failure or inability of any:
- (a) electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or other similar device, or any
  - (b) media or systems used in connection with any of the foregoing, whether your property or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date, including, but without being limited to, any failure or inability to recognise, capture, save, retain or restore and/or correctly manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result, or in connection with:
    - (i) anything referred to in (a) or (b) recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time, or
    - (ii) the operation of any command or logic which has been programmed or incorporated into anything referred to in (a) or (b) above.
18. Any liability to pay for compensation for any claim of whatsoever nature which consists of or arises directly or indirectly out of or in connection with:
- (a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data and/or Software;
  - (b) error in creating, amending, entering, deleting or using Electronic Data and/or Software, or;
  - (c) total or partial liability or failure to receive, send, access or use Electronic Data and/or Software for any time or at all;

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

Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation, or, processing by electronic or electromechanical data processing or electronically controlled equipment.

Software means programs, procedures, and routines associated with the operation of electronic or electromechanical data processing or electronically controlled equipment, including any operating system.

19. Any liability directly or indirectly caused by or contributed to by, or arising from or happening through or in connection with any act of terrorism. For the purpose of this exclusion an act of terrorism means an act, which may include but is not limited to an act involving the use of force or violence and/or the threat of force or violence, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government (whether lawfully constituted or not) and/or to put the public, or any section of the public, in fear.

In accordance with the Terrorism Act 2003 this exclusion will not apply in respect of an act deemed by the Federal Treasurer to be a declared terrorist incident.

20. Any liability in respect of personal injury or property damage arising, directly or indirectly, out of, or in any way involving Your Internet Operations. This exclusion does not apply to personal injury or property damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited

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to product use and safety instructions or warnings, and which is also reproduced on its site. Internet Operations means the following: (a) Use of electronic mail systems by you or your employees, including part-time and temporary staff, contractors and others within your organisation; (b) Access through your network to the world wide web or a public Internet site by your employees, including part-time and temporary staff, contractors and others within your organisation; (c) Access to your Intranet (meaning internal company information and computing resources) which is made available through the world wide web for your customers or others outside your organisation; and (d) The operation and maintenance of Your web site. Nothing in this exclusion shall be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

21. Any liability to pay compensation for Advertising Liability arising from:
  - (a) offences committed prior to the inception date of this policy
  - (b) offences made at the direction of the Insured with knowledge of the illegality or falsity thereof.
  - (c) breach of contract other than misappropriation of advertising ideas under an implied contract.
  - (d) incorrect description of the price of the Products, goods or services.
  - (e) infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the Products, goods or services sold, offered for sale or advertised, but this exception does not apply to titles or slogans.
  - (f) failure of the Products, goods or services to conform with advertised performance, quality, fitness or durability.
  - (g) any Insured whose business is advertising, broadcasting, publishing or telecasting.
22. Claims made or actions instituted under the law of any country, state or territory (outside the Commonwealth of Australia) that requires such liability to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance or security.

### CONDITIONS

1. Notice in writing shall be given to us as soon as possible of every occurrence, claim, writ, summons, impending proceedings, impending prosecution and/or inquest in respect of which there may arise a liability under this Policy.
  - (a) You shall not without our written consent make any admission, offer, promise or payment in connection with any occurrence or claim and if we desire shall be entitled to take over and conduct in your name the defence or settlement of any claim and may make such investigation, negotiation and settlement of any claim or suit as we deem expedient.
  - (b) You shall use the best endeavours to preserve any property, products, appliances, plant or other things which might prove necessary or useful by way of evidence in connection with any claim, and so far as may be reasonably practicable no alteration or repair shall be effected without our consent until we shall have had the opportunity of inspection.
  - (c) We shall be entitled to prosecute in your name at our expense and for our benefit any claim for indemnity for damages or otherwise.
  - (d) We shall have full discretion in the conduct of any proceedings in connection with any claim and you shall give all information and assistance as we may require in the prosecution, defence or settlement of any claim.
  - (e) In the event of an occurrence, you shall promptly take at your expense all reasonable steps to prevent other personal injury or property damage arising out of the same or similar conditions, but such expense shall not be recoverable under this Policy.
  - (f) We shall be entitled to attend any inquest in respect of which there may arise liability under this Policy.

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2. We may at any time pay to you in respect of all claims against you arising directly or indirectly from the one source or original cause the amount of the liability or such other amount specified in respect thereof (after deduction of any sum or sums already paid by us which sum or sums would reduce the amount of our unfulfilled liability in respect thereof) or any lesser sum for which the claim or claims can be settled and upon such payment we shall relinquish conduct or control of and be under no further liability under this Policy in connection with such claim or claims except for costs, charges or expenses recoverable from you in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently) or incurred by us or by you with our written consent prior to the date of such payments.
3. You shall:
  - (a) take all reasonable precautions to:
    - (i) prevent personal injury or property damage ;
    - (ii) prevent the manufacture, sale or supply of defective products; and
    - (iii) comply and ensure that your workers, servants and agents comply with all Statutory Obligations, By-Laws or Regulations imposed by any Public Authority in respect thereof for safety of persons and property;
  - (b) at your own expense take reasonable action to trace, recall or modify any products containing any defect or deficiency of which defect or deficiency you have knowledge or have reason to suspect.
4. Where more than one party comprises the Insured each of the parties shall be considered as a separate and distinct unit and the word Insured shall be considered as applying to each party in the same manner as if a separate Policy had been issued to each of the said parties provided that nothing in this clause shall result in the increase of our Limit of Liability in respect of any one occurrence or period of insurance.
5. (a) You must provide us with immediate written notice of every change that materially varies any of the facts or circumstances existing at the commencement of this Policy that comes to your knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be your knowledge.
  - (b) If you do not provide such notification before the happening of an occurrence giving rise to a claim under this Policy, then, subject to the Insurance Contracts Act 1984, We may refuse to pay a claim, either in whole or in part.
6. In the event of payment under this Policy to or on your behalf we shall be subrogated to all your rights of recovery against all persons and organisations and you shall execute and deliver instruments and papers and do all that is necessary to assist in the exercise of such rights.
7. If you make a claim under this Policy in respect of an occurrence recoverable under this Policy which occurrence is or may be covered in whole or in part by any other Insurance, then you must advise us of the full details of such other Insurance when making a claim under this Policy.

Subject to the Insurance Contracts Act 1984, we reserve the rights to seek contribution from the other Insurer(s).
8. If you enter into an agreement with any other party (who for the purpose of this clause is called the "Principal") pursuant to which the Principal has agreed to provide a Policy of insurance that is intended to indemnify you for any loss or liability arising out of the performance of the said agreement then we will (subject to the terms and conditions of this Policy) only indemnify you for loss or liability not covered by the Policy of insurance provided by the Principal.
9. (a) This Policy may be cancelled at any time at your request in writing, in which case we will retain (or be entitled to) the customary short-period rate for the time this Policy has been in force.
  - (b) We may also cancel this Policy by giving you written notice to that effect where:
    - (i) You or any person who was at any time the Insured failed to comply with the duty of utmost good faith;

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- (ii) the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
  - (iii) the person who was the Insured at the time when this Policy was entered into made a misrepresentation to us during the negotiations for the Policy but before it was entered into;
  - (iv) You or any person who was at any time the Insured failed to comply with a provision of this Policy, including a provision with respect to the payment of the premium;
  - (v) You made a fraudulent claim under this Policy or any other contract of insurance (whether with us or some other insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
  - (vi) You failed to notify us of any specific act or omission where such notification is required under the terms of this Policy; or
  - (vii) You acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers us to refuse to pay, or reduce our liability in respect of a claim, in the event of such contravention or omission.
- (c) Our notice of cancellation takes effect at the earlier of the following times:
- (i) the time when another Policy of insurance between you and us or some other insurer, being a Policy that is intended by you to replace this Policy, is entered into; or
  - (ii) 4.00 o'clock in the afternoon of the fourteenth business day after the day on which notice was given to you.
- (d) In the event that we cancel this Policy we will repay on demand a rateable proportion of the premium for the unexpired period of insurance from the date of cancellation.

Notwithstanding the cancellation or termination of the Policy you shall furnish such particulars as we may require for the adjustment of premium as aforesaid.

10. We shall be permitted but not obligated to inspect your property and operations at any time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for your benefit or others, to determine or warrant that such property or operations are safe. We may examine and audit your books and records at any time during the period of insurance and extensions thereof and within three (3) years after the final termination of this Policy, as far as they relate to the subject matter insured.

If the first or renewal premium for this Policy or part thereof shall have been calculated on estimates furnished by you, then you shall keep an accurate record containing all particulars relative thereto and shall at all times allow us to inspect such records. You shall within thirty (30) days after expiry of each period of insurance furnish to us such particulars and information as we may require. The premium for such period shall thereupon be adjusted and any difference paid or allowed to you as the case may be subject to receipt and retention of any minimum premium charged by us.

11. Nothing contained in this Policy shall be construed to reduce or waive either your or our privileges, rights or remedies available under the Insurance Contracts Act, 1984 as amended.
12. Where we make a payment under this Policy for the acquisition of goods, services or other supply, we will reduce the amount of the payment by the amount of any input tax credit that you are, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is actually made.

Where we make a payment under this Policy as compensation instead of payment for the acquisition of goods, services or other supply, we will reduce the amount of the payment by the amount of any input tax credit that you would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

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13. If you have entered into any agreement which excludes or limits a right which you may have against any party, then, subject to the Insurance Contracts Act 1984, we will not be liable for any claim under this Policy to the extent of such exclusion or limitation.
14. Should any dispute arise between you and us over the application of this Policy, such dispute shall be determined in accordance with the laws of the state or territory of Australia in which the Policy was issued.

### ENDORSEMENTS

1. It is hereby noted and agreed that this Policy is extended to indemnify you for liability arising out of the use of any vehicle conditionally registered under Section 25 of the South Australia Motor Vehicles Act 1959 as amended. Provided however we shall not be liable for personal injury arising out of use of any such vehicle whilst being used on any Road as defined in Section 5 of the South Australia Motor Vehicles Act 1959 and amendments thereto.
2. It is further noted and agreed that, notwithstanding Condition 6 and Condition 13 of this Policy, we will waive any right of Subrogation against any Insured where they are entitled to Indemnity under this Policy.

## NOTES



