



Hospitality Broadform Liability Policy

Version HOSPLLIAB 0313

Hostsure Underwriting Agency Pty Ltd

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OUR AGREEMENT

THE AGREEMENT

Because **You** have paid or agreed to pay the premium for this Policy, **We** agree to provide **You** with the insurance cover described in this Policy.

HOW MUCH WE WILL PAY

Limit of Liability

We will not pay any more for any claim under this Policy than the lesser of:

- The **Limit of Liability** or any Sub-limit less any **Excess** which is listed in the current Schedule, or
- Any other limit less any **Excess** which is set out in this Policy.

Excess

We will not pay the **Excess** which applies to any claim.

The **Excesses** are set out in the current Schedule and the Policy.

If more than one **Excess** applies to any one claim or series of claims under this Policy, then only the single highest **Excess** will apply.

WHAT THIS POLICY CONSISTS OF

This Policy consists of the current Schedule, Our Agreement, Coverage, Definitions, Conditions, Exclusions and Optional Benefits, which apply. All parts of the printed Policy wording, the Schedule, Proposal Form and any Endorsements must be read as if they are one and the same document.

COVERAGE

We will pay to **You** or on **Your** behalf all amounts which **You** shall become legally liable to pay for compensation

- in respect of **Personal Injury** or **Property Damage**,
- which happens during the **Period of Insurance**, and
- is caused by an **Occurrence** in connection with the **Business**.

We will not pay more than the **Limit of Liability** stated in the current Schedule for Public Liability for all claims or series of claims arising out of any one **Occurrence**.

We will not pay more than the **Limit of Liability** stated in the current Schedule for Products Liability for all claims arising out of all or any of **Your Products** during any one **Period of Insurance**.

Costs and Expenses

In addition to the **Limits of Liability** stated in the current Schedule, **We** will:

1. Defend any suit against **You**, claiming any amounts for **Personal Injury** or **Property Damage** and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; **We** may investigate, negotiate and settle any claim or suit as **We** deem expedient; **We** shall not be obligated to pay any claim or judgement or to defend any suit after **Our Limit of Liability** has been exhausted by payment of judgements or settlements;
2. Pay all expenses incurred by **Us**, all legal costs recoverable from **You** in any such suit and all interest accruing after any such judgement until **We** have paid, tendered, or deposited in court such part of such judgement as does not exceed **Our Limit of Liability** thereon;
3. Reimburse **You** for all reasonable expenses other than **Your** loss of earnings, incurred with **Our** consent;
4. Pay reasonable expenses incurred by **You** for first-aid to others at the time of any **Personal Injury** for which **You** are entitled to compensation. (Other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973 or any amending legislation)

If a payment exceeding **Our Limit of Liability** has to be made to dispose of a claim **Our** liability to pay these additional payments in connection therewith shall be limited to such proportion of the additional payments as the **Limit of Liability** bears to the amount paid to dispose of the claim.

DEFINITIONS

The following words will have the meaning set out below wherever they appear in the Policy.

Aircraft

Means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space

Accommodation

It is warranted that all premises owned, leased or occupied by the insured must comply with all Federal, State, local government, fire brigade and other such institutions or body's fire regulations.

Asbestos

Means that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite.

Or that group of man made mineral fibres that comprises mineral wool, rockwool, glass fibres ceramic fibres and superfine fibres.

And includes **Asbestos** products and products containing **Asbestos**.

Business

Means the business specified in the current Schedule, and includes the following;

- (a) The ownership or tenancy of premises, and
- (b) The provision and management of canteens, social and welfare organisations and first aid and safety services for **Your** employees.

Excess

Means the amount which **You** must pay towards any claim under this Policy which will be deducted before any amount is paid to **You** or paid on **Your** behalf.

Hovercraft

Means any vessel or craft or thing made or intended to float on or in or travel on or through the atmosphere or water, on a cushion of air provided by a downward blast.

Limit of Liability

Means the amounts shown in the current Schedule for which **You** have chosen to insure.

Medical Persons

Means qualified medical practitioners, dentists and nurses.

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. All **Personal Injury** or **Property damage** arising out of continuous or repeated exposure to substantially the same general conditions, shall be construed to arise out of one **Occurrence**.

Period of Insurance

Means the period of insurance shown in the current Schedule.

Personal Injury

Means:

- (a) Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) False arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation;
- (c) Libel, slander, defamation of character or invasion of right of privacy;
- (d) Assault and battery not committed by or at **Your** direction unless committed for the purpose of preventing or eliminating danger to persons or property.

Personal Injury to Contracted Employees or Worker Excess

Means where this **Excess** is shown in the Schedule that amount shall apply to each and every **Occurrence** in respect of **Personal Injury** to Contracted Employees and / or Workers Compensation Subrogation Claims inclusive of Costs and Expenses.

For the purpose of the application of this **Excess** the term Contracted Employee or Worker includes Hired Labourers, Contractors or Sub-Contractors or any employee of any Hired Labourers, Contractors or Sub-Contractors whilst engaged by **You** to replace or supplement **Your** workforce thus performing work on **Your** behalf or for **Your** benefit. The term Contracted Employee or Worker does not include occasional maintenance or repair contractors specifically engaged for such occasional maintenance or repair.

Pollution

Means pollution or contamination of the atmosphere or of any water, land or other tangible property by any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemical and waste. Waste includes material to be recycled, reconditioned or reclaimed.

Property Damage

Means:

- (a) Physical damage to or loss or destruction of tangible property including the loss of use thereof at any time resulting therefrom; or
- (b) Loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by an **Occurrence**.

Vehicle

Means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power.

Vehicle includes any trailer or caravan or other implement made or intended to be drawn by any such machine.

Watercraft

Means any vessel or craft made or intended to float on or in or travel on or through water. Pontoons and inflatable's used in swimming pools are not deemed to be watercraft.

We/Our/Us

Means certain Lloyds syndicates who are the underwriters of this Insurance.

You/Your

Means each of the following, to the extent set forth below;

- (a) the named Insured in the current Schedule;
- (b) all subsidiary companies (present and future) of the named Insured whose places of incorporation are within Australia and New Zealand (including their Mandated Territories and Protectorates);
- (c) any director, executive officer, employee or partner of the named Insured or of a company designated in (b) but only whilst acting within the scope of their duties in such capacity;
- (d) any principal in respect of the liability of such principal arising out of the performance by the named Insured or by a company designated in (b) of any contract or agreement for the performance of work for such principal to the extent required by such contract or agreement but limited to the coverage provided by this Policy, noting this definition (d) shall include the Parents and Citizens Association or Parents and Friends Associations as principal;
- (e) any office bearer or member of social or sporting clubs or welfare organisations formed with the consent of the Insured (other than an Insured designated in (d)) in respect of claims arising from duties connected with activities of any such club or organisation;
- (f) any work experience employees or volunteers whilst engaged in activities for or on behalf of the named Insured.

Your Products

Means anything (after it has ceased to be in the **Your** possession or under **Your** control) manufactured, grown, extracted, produced, processed, constructed, erected, assembled, installed, repaired, serviced, treated, sold, supplied or distributed by **You** (including any container thereof other than a **Vehicle**).

CONDITIONS

Failure to comply with these conditions could result in a claim under this policy being denied.

Alteration of Risk:

Every change which substantially varies any of the material facts or circumstances existing at the commencement of each **Period of Insurance**, that shall come to the knowledge of **Your** officer responsible for insurance matters, shall be notified to **Us** as soon as reasonably practicable thereafter and **You** shall (if so requested) pay such reasonable additional premium as **We** may require.

Bankruptcy or Insolvency

In the event that **You** should become bankrupt or insolvent **We** shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

In case of execution against **You** of any final judgment covered by this Policy being returned 'unsatisfied' by reason of such bankruptcy or insolvency, then an action may be maintained by the injured party or their representative against **Us** in the same manner, and to the same extent as **You** but not in excess of the **Limit of Liability**.

Breach of Conditions

Your rights under this Policy shall not be prejudiced by any unintentional and or inadvertent:

- (a) breach of a Condition without **Your** knowledge or consent or
- (b) error in the name or title of any person(s), corporation and/or other organisation which forms part of the definition of **You/Your**: or
- (c) error in name, description or situation of property or
- (d) failure to report any property and /or entity and /or insurable exposure in which **You** have an interest

Provided always that, upon discovery of any such fact or circumstance referred to above, **You** shall give written notice to **Us** as soon as is reasonably practicable and **You** shall (if so requested) pay such reasonable additional premium that **We** may require.

Cross Liability

Where **You** are comprised of more than one person or entity, each shall be considered as a separate legal entity.

The words **You** and **Your** shall apply to each person or entity as if a separate policy had been issued to each.

This Condition does not increase the Limit of Liability under this Policy in respect of any **Occurrence** or **Period of Insurance**.

Claims Procedure

- (a) When an event occurs which could give rise to a claim **You** must:
- (i) As soon as possible notify **Us** of the **Occurrence**;
 - (ii) Within 30 days of notifying **Us**, give **Us** a statement in writing with as much detail as **You** can about the cause, description and amount of the Loss or Damage;
 - (iii) Forward details and documentation of any claim or legal proceedings including any prosecutions by any party brought against **You** to **Us** as soon as possible after receipt;
 - (iv) Preserve any property which may be needed as evidence in any claim against **You** and make it available for inspection by **Us** and **Our** representatives.
- (b) **You** must not make admissions, settle or attempt to settle or defend any claim against **You** without **Our** written consent.
- (c) **We** may at **Our** option take over the defence of any claim or legal proceedings brought against **You**. If **We** do so, **We** may settle or defend the claim or proceedings as **We** see fit. **You** must give **Us** any reasonable assistance and information that **We** require in the defence or settlement of any such claim.
- (d) **We** may at any time pay to **You** the **Limit of Liability** (after deduction of any sum or sums already paid) in respect of any claim(s) made against **You** or any lesser sum for which the claims(s) can be settled. Upon such payment, **We** will have no further liability under this Policy in connection with that claim(s) except for costs, charges and expenses recoverable from **You** or incurred by **Us** or by **You** with **Our** consent prior to the date of such payment.

Cancellation by You

- (a) **You** may cancel this Policy at any time. To do so **You** must tell **Us** in writing that **You** want to cancel the policy and the future date from which the cancellation is to apply.
- (b) **We** will retain the premium which applies to the days the Policy has been in force and an amount for **Our** expenses of the cancellation, subject to minimum premium provisions.

Cancellation by Us

- (a) **We** may cancel this Policy by giving written notice to **You** if:
- (i) **You** failed to comply with:
 - The duty of utmost good faith, or
 - A provision of this Policy, including a provision with respect to the payment of premium; or
 - (ii) before this Policy was entered into **You** failed to comply with the duty of disclosure or made a misrepresentation to **Us**; or
 - (iii) **You** have made a fraudulent claim under this or any other policy of insurance with **Us** or any other insurer; or
 - (iv) **You** did not tell **Us** about something that this Policy required **You** to tell **Us**.

- (b) Cancellation by **Us** will take effect from the earlier of:
- (i) the day on which **You** arrange other insurance to replace this Policy, or
 - (ii) 4.00pm on the third business day after the day on which notice of cancellation was given to **You** or any later date shown in the notice of cancellation.
- (c) The cancellation will be effective unless **You** can prove that, through no fault of **Yours**, **You** did not receive the notice of cancellation.
- (d) If **We** cancel the Policy, **We** will retain the premium which applies to the days this Policy has been in force, subject to minimum premium provisions.

Cancellation by Premium Finance Company

The Premium Finance Company may cancel the Policy by advising **Us** within fourteen (14) days of a premium instalment date passing without payment. Under these circumstances, as long as there are no losses outstanding or paid on the Policy, **We** will refund the Premium Finance Company the appropriate proportion of premium.

Excursions, Events and Fund Raising

The Policy is extended to include events and fundraising, where the daily attendance to such events and/or fundraising does not exceed 500.

The Policy is extended to include excursions, organised and supervised by **You**, however limited to one day in duration and not requiring overnight stay. All excursion activities that involve overnight stay must be specially noted by **Us**.

Foreign Currency

All amounts referred to in this Policy are in Australian Dollars.

If **You** incur liability to settle any claim for an amount stated in the local currency of any country or territory outside Australia, where an award is made or a settlement is agreed upon, the following rules will apply. The amount payable by **Us** shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published by Bloomberg on the date the award was made or settlement was agreed upon; subject always to the applicable Limit of Liability.

Hold Harmless Agreements

You must not enter into an agreement with another person which excludes or reduces **Your** rights to make a claim against that person at any time without **Our** written consent.

If **You** do, **We** may reduce the amount of any claim **You** make under this Policy by the extent to which **Your** agreement prevents **Us** making a claim against that person under **Our** rights of subrogation.

Independent Hirers

The Policy is extended to include the interests of Independent Hirers, when specifically noted on the current Schedule, however only when such hirers are only conducting meetings where;

- (a) No smoking or Alcohol is permitted, and
- (b) The number of attendees does not exceed 50

Joint Insureds

Where the Policy covers the interest of more than one person or entity:

- (a) any information supplied to or withheld from **Us** in relation to entering into, renewing or extending this Policy or any claim under the Policy will be deemed to have been supplied or withheld by all persons or entities insured by this Policy;
- (b) an action or omission of one which increases the risk of **Personal Injury** or **Property Damage** will not prejudice the rights of the other named Insureds, provided that immediately on becoming aware of the increase in the risk of **Personal Injury** or **Property Damage**, the other named Insureds give **Us** written notice and pay any reasonable additional premium charged by **Us**.

Jurisdiction

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

Legislation

You are required to comply with all Legislation and Regulations.

Goods and Services Tax

You must inform **Us** of the extent to which **You** are entitled to an input tax credit for the premium each time that **You** make a claim under this Policy. No payment will be made to **You** for any GST liability that arises on the settlement of a claim under this Policy when **You** have not informed **Us** of **Your** correct entitlement to an input tax credit.

Notwithstanding anything contained in this Policy to the contrary (including the current Schedule and any Endorsements attached hereto), **Our** liability will be calculated after taking into account:

- (a) any input tax credit to which **You**, or any claimant against **You**, is entitled for any acquisition relevant to a claim paid under this Policy; and
- (b) any input tax credit to which **You**, or any claimant against **You**, would have been entitled were **You** or the claimant to have made a relevant acquisition; and
- (c) the GST exclusive amount of any supply made by **You** which is relevant to **Your** claim.

If the applicable **Limit of Liability** is not sufficient to cover **Your** claim, **We** will only pay GST (less any relevant input tax credit) that relates to **Our** proportion of **Your** claim.

The terms "GST", "input tax credit", "acquisition" and "supply" have the meanings ascribed to them in the "A New Tax System (Goods and Services Tax) Act 1999" (or any amending legislation).

Nothing contained herein shall be held to vary, alter, waive or extend any of the terms, Conditions, Exclusions or Definitions and Optional Benefits of this Policy other than as stated above.

Other Insurance

You must tell **Us** in writing and supply copies to **Us** as soon as possible about any other insurance which covers the risks insured by this Policy.

The insurance afforded by this Policy is excess over and reduced by any other valid and collectable insurance available to **You**. Valid and collectable insurance includes any self insurance plan which would be applicable to the loss.

Other Party's Interests

You must tell **Us** of the interests of all parties (e.g. financiers, owners, lessors) who will be covered by this insurance. **We** will protect their interests only if **You** have told **Us** about these parties and **We** have noted these parties on the current Schedule.

Inspection and Audit

We shall be permitted, but not obligated, to inspect **Your** premises and operations at any reasonable time. Neither **Our** right to make inspections, nor **Our** failure to make inspections, nor the making of inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of **You** or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

We may examine and audit **Your** books and records at any time during the currency of this Policy and within three (3) years after the final termination of this Policy but only with regard to matters, which in **Our** opinion are relevant to this Policy.

Premium Adjustment

If the premium for this Policy has been calculated on estimates by **You**, **You** shall within 30 days after expiry of the **Period of Insurance** provide **Us** with such particulars and information relevant to the Policy as **We** may reasonably require. The premium for the period shall be adjusted and any difference paid by or allowed to **You** as the case may be. Provided that the adjusted premium shall not be lower than the minimum premium normally charged by **Us**.

Reasonable Precautions

- a) **You** must take all reasonable precautions to:
 - (i) prevent **Personal Injury** or **Property Damage**;
 - (ii) prevent the manufacture, sale or supply of defective products.
- b) **You** must at **Your** own expense, trace or recall or modify any of **Your Products** which contain any defect or deficiency of which **You** are aware or have reason to suspect.
- c) **You** and **Your** employees, servants and agents must comply with the requirements of any statutory authority for the safety of persons and property.

Recovery

We will not pursue any claim to recover any amount paid to **You** or on **Your** behalf under this Policy against:

- (a) any entity (and its directors, officers, employees or servants) which is **Your** subsidiary, which **You** own or control or which co-owns any property insured by this Policy;
- (b) any named Insured (and its directors, officers, employees or servants) described in this Policy.

Servers Liability

Subject to the terms, **Conditions and Exclusions** of this policy, **We** will pay to **You** or on **Your** behalf all sums in respect of liability incurred by **You** arising out of the sale or serving of liquor in connection with **Your Business**, unless knowingly serving underage persons or serving without a licence.

To the extent that a claim is brought by anyone or for any reason whatsoever arises out of or in respect of the sale or serving of liquor in connection with **Your Business**, it is a condition precedent to cover under this Policy that **You** have complied with all State or Federal licensing requirements relating to the sale of liquor and/or associated activities. :

Subrogation

- (a) **We** are entitled to pursue any claim to recover any amount paid to **You** or on **Your** behalf under this Policy in **Your** name at **Our** expense and for **Our** benefit.
- (b) **You** must give **Us** all the reasonable assistance and information that **We** require in pursuing any such claim.

EXCLUSIONS

We shall not be liable for claims in respect of:

1. **Aircraft, Hovercraft and Watercraft**

Liability arising out of or caused by, through, or in connection with:

- (a) the ownership, maintenance, operation or use by **You** or the use on **Your** behalf of any **Aircraft** or **Hovercraft**;
- (b) the selling or manufacturing of **Aircraft** or the manufacture, assembly and or supply of any products that are used with **Your** knowledge in **Aircraft** or aerial device;
- (c) the repair, service or maintenance of **Aircraft** or **Aircraft** products or the installation of any products into **Aircraft**;
- (d) the ownership, maintenance or operation of any **Aircraft** landing pad or strip, airfield or airport;
- (e) the ownership, maintenance, operation or use by **You** or on **Your** behalf of any **Watercraft**, exceeding 10 metres in length, except where such watercraft are owned or operated by others and used by **You** for business entertainment;
- (f) any **watercraft** operating in excess of 5 kilometres offshore.

2. **Asbestos**

Any actual or alleged liability whatsoever in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, or in any way involving **asbestos**, or any materials containing **asbestos** in whatever form or quantity;

3. **Contracts and Agreements**

Liability assumed by **You** under any contract or agreement except to the extent that such liability would have been implied by law.

This Exclusion shall not apply to:

- (a) the written contracts specified in the current Schedule;
- (b) any written contract made or entered into with any public authority for the supply of water, gas, electricity or telephone services, except a contract made or entered into with such authority for work done or to be done for such authority;
- (c) liability assumed by **You** under a warranty of fitness or quality as regards **Your Products**;
- (d) liability arising from a provision in a contract for lease of real or personal property other than a provision which obliges **You** to effect insurance in respect of the subject matter of that contract.

4. Contractors and/or Sub-Contractors

Any liability to pay compensation arising directly or indirectly, out of, caused by or contributed to by contractors and/or sub-contractors.

We will however indemnify **You** in respect of **Personal Injury** or **Property Damage** arising out of, caused by or contributed to by acts or omissions of contractors or subcontractors where **You** have confirmed that the contractor and/or subcontractor has in place their own policy of insurance in respect of **Your Products** and/or activities being performed by them (and their employees and contractors) for **You**.

5. Employers Liability

- (a) **bodily injury** to any **Worker** in respect of which **You** are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Workers Compensation or accident compensation whether or not such policy, fund, scheme or self insurance has been effected.

Provided that this Policy will respond to the extent that **Your** liability would not be covered under any such policy, fund, scheme or self insurance arrangement had **You** complied with its obligations pursuant to such law.

- (b) Liability imposed by:
- (i) the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement;
 - (ii) any law relating to Employment Practices

For the purpose of this Exclusion:

Bodily injury means bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury.

Employment Practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of **Your** employees.

Worker means any person deemed to be employed by **You** pursuant to any Workers Compensation Law.

6. Erection and Alteration to Buildings

The erection, demolition of and/or alteration or addition to buildings or structures by **You** or on **Your** behalf except where the completion value of such work does not exceed \$500,000, unless some other sub-limit is stated in the current Schedule;

7. Faulty Workmanship

The cost of performing, completing, correcting or improving any work undertaken by **You**;

8. Fines and Penalties

Punitive, aggravated, exemplary damages or criminal damages, fines or penalties or the like imposed by the law;

9. Legal Jurisdiction

Personal Injury or **Property Damage** where the action is brought against **You** in any country outside Australia or New Zealand;

10. Libel and Slander

Liability arising out of the publication or utterance of a libel or slander:

- (a) made prior to the commencement date of this Policy, or
- (b) made by **You** or at **Your** discretion with the knowledge that it is false; or
- (c) related to advertising, broadcasting, printing, publishing or telecasting activities by **You** or on **Your** behalf;

11. Loss of Use

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

- (a) a delay in or lack of performance by **You** or on **Your** behalf of any contract or agreement, or
- (b) the failure of **Your Products** to meet the level of performance, quality fitness or durability expressly or impliedly warranted or represented by **You**, but this exclusion does not apply to loss of use of other tangible property resulting from the sudden or accidental physical damage to or destruction of **Your Products** after such products have been put to use by any person or organisation other than **You**;

12. Nuclear Fuel/Weapons

Personal Injury or **Property Damage** caused by 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, combustion shall include any self-sustaining process of nuclear fission;
- (b) nuclear weapons material.

13. Pollution

Personal Injury or **Property Damage** arising out of **Pollution** occurring in its entirety during the **Period of Insurance** as stated in the current Schedule but this exclusion shall not apply if **You** can demonstrate that such **Pollution**:

- (a) was the direct result of a sudden specific and identifiable event occurring during the **Period of Insurance**; and
- (b) was not the direct result of **You** failing to take reasonable precautions to prevent such **Pollution**

However, notwithstanding Exclusion 13 (a) and (b), cover does not apply in respect of **Pollution** for:

- (i) **Property Damage** to premises presently or at any time previously owned or tenanted by **You**
- (ii) **Property Damage** to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by **You** or otherwise in **Your** care custody or control.

14. Professional Advice

The rendering of or failure to render professional advice or service by **You** or any error or omission connected therewith, but this Exclusion does not apply to claims:

- (a) Arising from the rendering of or failure to render first-aid services performed by persons other than **Medical Persons** on **Your** premises;
- (b) For **Personal Injury** or **Property Damage** arising from such rendering of or failure to render professional advice or service or any error or omission connected therewith;
- (c) Arising out of advice given in respect of the use or storage of **Your Products**.

15. Property Damage to:

- (a) Property owned by or leased or rented to **You**, or
- (b) Property in **Your** physical or legal control.

This Exclusion shall not apply to liability for **Property Damage** to:

- (i) Property in **Your** physical or legal control up to a maximum of \$100,000 any one **Occurrence** and in the aggregate during the **Period of Insurance** unless some other sub-limit is stated in the current Schedule. However **We** shall not be liable for **Property Damage** to that part of any property upon which **You** are or have been working where such **Property Damage** arises from such work;
- (ii) Premises which are leased or rented to **You** for the purposes of carrying on **Your Business** provided the liability does not arise from **Your** failure to insure the Premises as required in the lease or rental agreement;
- (iii) employees' property;
- (iv) **Vehicles** (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** provided that **You** do not own or operate a car park for reward as part of **Your Business**.

16. Property Damage to Your Products

Property Damage to Your Products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof;

17. Recall of Products

Damages, costs or expenses claimed for the withdrawal, recall, inspection, repair, replacement or loss of use of **Your** Products or of any property of which such products form a part if such products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

18. Territorial Limits

Personal Injury or Property Damage;

- (a) occurring in the United States of America or Canada, their territories or protectorates,
- (b) caused by or arising out of **Your Products** knowingly exported by **You** or **Your** agents to the United States of America or Canada, their territories or protectorates,

provided that:

this exclusion does not apply to claims and actions arising from the presence outside Australia or New Zealand of any person who is normally resident in Australia and who is not undertaking manual work or supervision of work of any kind whilst in the United States of America or Canada, their territories or protectorates;

19. Tobacco

Any injury caused directly or indirectly by the inhalation or ingestion of or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco;

20. Transmissible Disease

Personal Injury sustained by any person arising out of or as a result of any communicable disease.

21. Vehicles

Personal Injury or **Property Damage** arising out of the ownership, maintenance, possession or use by **You** of any **Vehicle**;

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

This Exclusion shall not apply to **Personal Injury** or **Property Damage** arising from:

- (i) the delivery or collection of goods to or from any **Vehicle** where such **Personal Injury** or **Property Damage** occurs beyond the limits of any road, carriageway or thoroughfare,
- (ii) the loading or unloading of any **Vehicle**;

22. War

Personal Injury or **Property Damage** arising out of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, insurrection, military or usurped power, or requisition or damage to property by or under order of government or public or local authority in preventing or attempting to prevent any such act or in minimising the consequences of any such act or confiscation or nationalisation.

23. Terrorism

Liability for loss, injury, damage, cost or expense of whatsoever 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.

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 organisation(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, injury, 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 any act of terrorism.

If **We** allege that by reason of this Exclusion, any loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon **You**.

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

24. Inefficacy

Personal Injury or **Property Damage** caused by or arising out of the failure of any product to fulfil the function for which it is intended.

25. Pure Financial Loss

Any financial loss which is not consequent upon **Personal Injury** or **Property Damage**

26. E-Commerce

Personal Injury or **Property Damage** arising directly or indirectly out of, or in any way involving **Your** internet operations or **Property Damage** to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:

- (a) the use of any computer hardware or software
- (b) the provision of computer or telecommunications services by **You** or on **Your** behalf
- (c) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus

But this Exclusion does not apply to:

- (i) **Personal Injury** or **Property Damage** arising out of any material which is already in print in support of its product, including but not limited to product use and safety instructions or warnings and which is also reproduced on its site or
- (ii) liability which arises irrespective of the involvement of **Your** internet operations.

Nothing in this Exclusion will be construed to extend coverage under this Policy to any Liability which would not have been covered in the absence of this Exclusion.

OPTIONAL BENEFIT – WORKCOVER DEFENCE COST

PREAMBLE

It is agreed that:

- a. **We** will pay the Defence and Investigation Costs on account of any investigation or Prosecution by a Government or Regulatory Authority arising from an **Occurrence** in respect to alleged breaches of Safety Laws or Regulations, up to a maximum of \$50,000 any one **Occurrence** and in the aggregate during the **Period of Insurance**.
- b. This Optional Benefit does not increase the **Limit of Liability** under this Policy in respect of any **Occurrence** or **Period of Insurance**,
- c. the indemnity provided by this Optional Benefit is subject to the Policy, the current Schedule, the Certificate of Insurance, and any Endorsement (unless otherwise expressly stated herein); and these will be considered one document and any word or expression to which a specific meaning has been attached will bear such meaning wherever it happens,
- (d) where this Optional Benefit is not specified as included in the current Schedule then this Policy shall not provide any indemnity in relation to coverage specified in this Optional Benefit.

OPTIONAL BENEFIT – CRIMINAL DEFENCE EXPENSE INSURANCE

PREAMBLE

It is agreed that:

- (a) **We** will pay **Your Legal Costs and Expenses** subject to the terms and conditions of this Optional Benefit,
- (b) the indemnity provided by this Optional Benefit is subject to the Policy, the current Schedule, the Certificate of Insurance, and any Endorsement (unless otherwise expressly stated herein); and these will be considered one document and any word or expression to which a specific meaning has been attached will bear such meaning wherever it appears,
- (c) where this Optional Benefit is not specified as included in the current Schedule then this Policy shall not provide any indemnity in relation to coverage specified in this Optional Benefit.

Unless specifically stated otherwise in the current Schedule the aggregate **Limit of Liability** applicable under this Optional Benefit during any one **Period of Insurance** shall be \$50,000

DEFINITIONS

The following Definitions apply additionally to this Optional Benefit

Appointed Solicitor

means the solicitor appointed under Claims Condition 3 to act for **You**.

Insured Event

means any actual or alleged criminal act or omission in Australia or New Zealand committed or alleged to have been committed by **You** arising out of and in the course of the normal conduct by **You** of the **Business** as stated in the current Schedule

Legal Costs and Expenses

means legal costs, fees and disbursements reasonably and properly charged or incurred by the **Appointed Solicitor** in accordance with the appropriate statutory or court scale of fees and may be determined by taxation or should **We** deem it appropriate by a legal costs consultant approved by **Us**.

INSURING CLAUSE

Subject to the **Limit of Liability** specified in the current Schedule for this Optional Benefit, **We** will indemnify **You** in respect of **Legal Costs and Expenses** incurred in:

- (a) the defence of criminal proceedings in a court of criminal jurisdiction commenced against **You** during the **Period of Insurance** and arising from any Insured Event.
- (b) the appeal, or the defence of any appeal, against judgement, conviction or sentence in any Initial Proceedings.

CLAIMS CONDITIONS

The following Claims Condition applies additionally to this Optional Benefit

1. Presentation of Claim

You must advise **Us** immediately in writing of the full circumstances of any **Insured Event** or any actual or likely legal proceedings which give rise or is likely to give rise to a claim under this Policy and provide such proof, supporting evidence, and other information as **We** may request.

2. Claims Consent

- (a) **We** shall provide indemnity with respect to a claim where **You** are able to satisfy **Us** that:
 - (i) there are reasonable grounds for defending the legal proceedings; and
 - (ii) it is reasonable for **Legal Costs and Expenses** to be provided in the particular case.

You must obtain and forward to **Us** upon **Our** request, and at **Your** expense, a written opinion from **Your** solicitor and should **We** deem necessary, counsel, on the merit of the claim or legal proceedings. If the claim is subsequently admitted by **Us**, the costs incurred by **You** in obtaining these opinions will be covered by this Policy.

- (b) If **We** either refuse to accept, or do not continue to support a claim **We** shall inform **You** of the reasons for doing so.

3. Representation

- (a) Upon making a claim **You** may either request **Us** to nominate a solicitor to act for **You** or **You** may nominate a solicitor to act for **You**.
- (b) Upon request for the nomination of a solicitor **We** shall recommend the appointment of a solicitor and **You** will instruct that solicitor accordingly.
- (c) **We** reserve the right to refuse the nomination of a solicitor by **You** without giving any reason and prior to **Our** acceptance of **Your** nomination of a solicitor **We** may make such enquiries as **We** deem appropriate with respect to that solicitor.
- (d) **We** reserve the right to instruct **You** to terminate the services of a solicitor nominated by **You** or appointed by **Us** if **We** believe it is in **Your** best interest to do so. **You** shall terminate the services of the solicitor and a new solicitor shall be appointed to act for **You** nominated by **You** or appointed by **Us** in the circumstances referred to above.
- (e) The solicitor whom **We** agree shall be nominated to act for **You** shall be appointed by **Us** in **Your** name and on **Your** behalf.
- (f) Prior to **Our** acceptance of **Your** nomination of a solicitor or if **You** fail to nominate a solicitor **We** shall be entitled but not bound to instruct a solicitor on **Your** behalf if **We** consider this necessary to safeguard **Your** immediate interests.

4. Control of Claim

- (a) **We** shall have direct access to the **Appointed Solicitor** at all times and **You** shall cooperate fully with **Us** in all respects and shall keep **Us** fully and continually informed of all material developments in the legal representation or proceedings. At **Our** request **You** shall instruct the **Appointed Solicitor** to produce immediately any documents, information or advice in his/her possession and further shall give him/her such other instructions in relation to the conduct of the claim as **We** may require.
- (b) **We** shall not be liable for the costs or fees of counsel, accountants or any expert witness unless **We** have given **Our** prior approval to the appointment of such person and agreed the proposed costs or fees.
- (c) Unless **Our** consent is first obtained **We** shall not be liable for any costs or expenses that may be payable as a result of any agreement, undertaking or promise made or

given by **You** to the **Appointed Solicitor** or to any witness, expert or other person relevant to the proceedings.

- (d) If in any legal proceedings **You** are not successful in the claim or defence put forward by **You**, **We** will not be liable for any appeal or further proceedings unless **We** are notified in writing of the intention to appeal no later than six (6) clear days before the time for making an appeal expires and **We** consider there are reasonable prospects of such appeal succeeding and it is reasonable for **Legal Costs and Expenses** to be provided in the particular case.
- (e) At **Our** request **You** shall require the **Appointed Solicitor** to have the **Legal Costs and Expenses** taxed by the relevant statutory authority or otherwise assessed by an appropriate cost consultant approved by **Us**, as **We** may direct.
- (f) If for any reason the **Appointed Solicitor** refuses to continue acting for **You** or if **You** withdraw **Your** instruction from the **Appointed Solicitor** then **Our** liability will cease forthwith unless in **Our** absolute discretion **We** agree to the appointment of another solicitor to continue with the claim.
- (g) Where **You** are awarded costs, **You** must take steps to recover **Legal Costs and Expenses** which would be the subject of payment under this Policy. Such **Legal Costs and Expenses** actually recovered will be taken into account by **Us** when calculating **Our** liability under the Policy.

5. Payment of Costs

All accounts for **Legal Costs and Expenses** payable under this Policy shall be submitted to **Us** immediately.

EXCLUSIONS

The following Exclusions apply additionally to Optional Benefit

We shall not be liable for any claim for **Legal Costs and Expenses**:

- 1. in respect of or arising from or relating to:
 - (a) any **Insured Event** which occurred or is alleged to have occurred prior to the commencement of the **Period of Insurance** and which **You** knew or ought reasonably to have known was likely to give rise to legal proceedings against **You**;
 - (b) **Legal Costs and Expenses** incurred prior to the written acceptance of a claim by **Us**;
 - (c) defamation, slander or libel;
 - (d) a dispute with **Us** arising from any claim under this Policy;
 - (e) the defence of any criminal prosecution under any relevant motor and road traffic legislation; or
 - (f) the defence of any criminal prosecution arising from or out of fraud or overcharging in relation to Commonwealth or State legislation.
- 2. where **You**
 - (a) defend legal proceedings without **Our** consent or contrary to or in a different manner from that advised by the **Appointed Solicitor**;
 - (b) fail to give proper instructions in due time to the **Appointed Solicitor** or counsel appointed by **You**; or
 - (c) are responsible for delay, which is prejudicial to the successful outcome of the claim or legal proceedings.
- 3. for any legal proceedings in a court or tribunal outside Australia or New Zealand.

4. the molestation or interference of any person(s) by **You**.
Further **We** shall not have any duty to defend any action, suit or proceedings brought against **You** (or any other person or body corporate who might otherwise but for the provisions of this clause be entitled to indemnity under this Policy) which either directly or vicariously seeks compensation in respect of such molestation or interference as above or any **Personal Injury** resultant therefrom.
5. in respect of or arising from or relating to the defence of any criminal prosecution where a criminal conviction is subsequently recorded. In respect of any **Insured Event** whereby indemnity is provided by **Us** under this Optional Benefit and a criminal conviction is subsequently recorded against **You** relating to the same **Insured Event**, **You** shall return to **Us** all **Legal Costs and Expenses** paid by **Us** immediately.
6. relating to the defence of any criminal prosecution not arising from or relating directly to **Your Business**.
7. in respect of or arising from or relating to any **Occurrence** which would otherwise be excluded under this Policy.

Subject otherwise to the terms Conditions and Exclusions of this Policy

IMPORTANT NOTICES

YOUR DUTY OF DISCLOSURE

Before **You** enter into a contract of general insurance with an Insurer, **You** have a duty, under the Insurance Contracts Act 1984, to disclose to the Insurer every matter that **You** know, or could reasonably be expected to know, is relevant to the Insurer's decision whether to accept the risk of insurance and, if so, on what terms. **You** have the same duty to disclose those matters to the Insurer before **You** renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter:-

- that diminishes the risk to be undertaken by the Insurer;
- that is of common knowledge;
- that **Your** Insurer knows or, in the ordinary course of his business, ought to know;
- as to which compliance with **Your** duty is waived by the Insurer.

NON DISCLOSURE

If **You** fail to comply with **Your** duty of disclosure, the Insurer may be entitled to reduce his liability under the contract in respect of a claim or may cancel the contract. If **Your** non disclosure is fraudulent, the Insurer may also have the option of avoiding the contract from its beginning.

PREVENTING OUR RIGHT OF RECOVERY

Where another person is liable to compensate **You** for any loss, damage or liability which is covered by this Policy but **You** have agreed not to seek recovery of any monies from that person, we will not cover **You** under this policy for that loss, damage or liability.

PRIVACY

We are committed to protecting **Your** privacy. **We** only use the personal information **You** give **Us** to quote on and insure **Your** risks. **We** only give personal information to:

- our underwriters (and their representatives);
- our reinsurers (and their representatives); and
- people we appoint to assist us with any claims under **Your** policy.

We will not trade, sell or rent **Your** information.

If **You** don't give us complete information, **We** cannot properly quote for **Your** insurance and **We** cannot insure **You**. **You** can check the personal information **We** hold about **You** at any time.

If **You** give us personal information about anyone else, **We** rely on **You** to notify them:

- that **You** will give **Your** information to **Us**;
- to whom **We** may give the information;
- the purposes for which **We** will use the information; and
- that they can access the information.

If the information **You** give **Us** about someone else is sensitive, **We** rely on **You** to obtain their consent to disclosing it to **Us** for the uses, and disclosure to the parties, **We** refer to in this statement.

For a full statement of our Privacy Policy, ask for a copy.

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