

Affinity Broadform Public and Products Liability

Insurance Policy

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Affinity Broadform Public and Products Liability Insurance Policy

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Introduction

Please read the policy carefully to ensure that it meets your requirements. The insurer will provide insurance in accordance with the terms of this policy.

The policy, endorsements and the schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear that specific meaning wherever it may appear. The singular shall include the plural and vice versa.

Where headings are used in this policy, they are purely descriptive in nature and are not intended to be used for interpretative purposes.

The named insured received important notices about their duty of disclosure and our privacy statement prior to purchasing this policy. The notices are replicated below for your reference.

Notices

These notices do not form part of the policy.

1. Your duty of disclosure

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

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

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

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

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

2. Average provision

If a payment in excess of the limit of liability available under your policy has to be made to dispose of a claim, the insurer's liability for 'Defence costs and supplementary payments' shall be such proportion thereof as the amount of indemnity available under this policy bears to the amount paid to dispose of the claim payments.

3. Preservation of rights of recovery / subrogation waiver

This policy contains provisions that have the effect of excluding the insurer's liability for a loss or liability incurred due to the insured:

- (a) releasing, agreeing not to sue or, waiving or prejudicing its rights of recovery; or
- (b) entering into any agreement or compromise whereby any rights or remedies to which the insurer would be subrogated are or may be prejudiced.

4. Privacy statement

AAI Limited trading as Vero Insurance is the insurer and issuer of this product, and is a member of the Suncorp Group, which we refer to as "the Group".

Why do we collect personal information?

Personal information is information or an opinion about an identified individual or an individual who is reasonably identifiable. We collect personal information so that we can:

- ▼ identify you and conduct appropriate checks;
- ▼ understand your requirements and provide you with a product or service;
- ▼ set up, administer and manage our products and services and systems, including the management and administration of underwriting and claims;
- ▼ assess and investigate any claims you make under one or more of our products;
- ▼ manage, train and develop our employees and representatives;
- ▼ manage complaints and disputes, and report to dispute resolution bodies; and
- ▼ get a better understanding of you, your needs, your behaviours and how you interact with us, so we can engage in product and service research, development and business strategy including managing the delivery of our services and products via the ways we communicate with you.

What happens if you don't give us your personal information?

If we ask for your personal information and you don't give it to us, we may not be able to provide you with any, some, or all of the features of our products or services.

How we handle your personal information

We collect your personal information directly from you and, in some cases, from other people or organisations. We also provide your personal information to other related companies in the Group, and they may disclose or use your personal information for the purposes described in 'Why do we collect personal information?' in relation to products and services they may provide to you. They may also use your personal information to help them provide products and services to other customers, but they'll never disclose your personal information to another customer without your consent.

Under various laws we will be (or may be) authorised or required to collect your personal information. These laws include the Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Personal Property Securities Act 2009, Corporations Act 2001, Autonomous Sanctions Act 2011, Income Tax Assessment Act 1997, Income Tax Assessment Act 1936, Taxation Administration Act 1953, A New Tax System (Goods and Services Tax) Act 1999 and the Australian Securities and Investments Commission Act 2001, as those laws are amended and includes any associated regulations.

We will use and disclose your personal information for the purposes we collected it as well as purposes that are related, where you would reasonably expect us to. We may disclose your personal information to and/or collect your personal information from:

- ▼ other companies within the Group and other trading divisions or departments within the same company (please see our Group Privacy Policy for a list of brands/companies);
- ▼ any of our Group joint ventures where authorised or required;
- ▼ customer, product, business or strategic research and development organisations;
- ▼ data warehouse, strategic learning organisations, data partners, analytic consultants;
- ▼ social media and other virtual communities and networks where people create, share or exchange information;
- ▼ publicly available sources of information;
- ▼ clubs, associations, member loyalty or rewards programs and other industry relevant organisations;
- ▼ a third party that we've contracted to provide financial services, financial products or administrative services – for example:
 - ▼ information technology providers,
 - ▼ administration or business management services, consultancy firms, auditors and business management consultants,
 - ▼ marketing agencies and other marketing service providers,
 - ▼ claims management service providers,
 - ▼ print/mail/digital service providers, and
 - ▼ imaging and document management services;
- ▼ any intermediaries, including your agent, adviser, a broker, representative or person acting on your behalf, other Australian Financial Services Licensee or our authorised representatives, advisers and our agents;
- ▼ a third party claimant or witnesses in a claim;
- ▼ accounting or finance professionals and advisers;
- ▼ government, statutory or regulatory bodies and enforcement bodies;
- ▼ policy or product holders or others who are authorised or noted on the policy as having a legal interest, including where you are an insured person but not the policy or product holder;
- ▼ in the case of a relationship with a corporate partner such as a bank or a credit union, the corporate partner and any new incoming insurer;
- ▼ the Australian Financial Complaints Authority or any other external dispute resolution body;
- ▼ credit reporting agencies;
- ▼ other insurers, reinsurers, insurance investigators and claims or insurance reference services, loss assessors, financiers;
- ▼ legal and any other professional advisers or consultants; W hospitals and, medical, health or wellbeing professionals;
- ▼ debt collection agencies;
- ▼ any other organisation or person, where you've asked them to provide your personal information to us or asked us to obtain personal information from them, eg your mother.

We'll use a variety of methods to collect your personal information from, and disclose your personal information to, these persons or organisations, including written forms, telephone calls and via electronic delivery. We may collect and disclose your personal information to these persons and organisations during the information life cycle, regularly, or on an ad hoc basis, depending on the purpose of collection.

Overseas disclosure

Sometimes, we need to provide your personal information to – or get personal information about you from – persons or organisations located overseas, for the same purposes as in 'Why do we collect personal information?'.
The complete list of countries is contained in our Group Privacy Policy, which can be accessed at www.vero.com.au/privacy, or you can call us for a copy.

From time to time, we may need to disclose your personal information to, and collect your personal information from, other countries not on this list. Nevertheless, we will always disclose and collect your personal information in accordance with privacy laws.

How to access and correct your personal information or make a complaint

How to access and correct your personal information or make a complaint

You have the right to access and correct your personal information held by us and you can find information about how to do this in the Group Privacy Policy.

The Policy also includes information about how you can complain about a breach of the Australian Privacy Principles and how we'll deal with such a complaint. You can get a copy of the Group Privacy Policy. Please use the contact details in **Contact Us**.

Contact us

For more information about our privacy practices including accessing or correcting your personal information, making a complaint, or obtaining a list of overseas countries you can:

- ▼ Visit www.vero.com.au/privacy
- ▼ Speak to us directly by phoning one of our Sales & Service Consultants on: 1300 888 073
- ▼ Email us at privacyaccessrequests@vero.com.au

5. General Insurance Code of Practice

We support and adhere to the General Insurance Code of Practice. By incorporating these standards into our business, we are committed to providing the highest level of service to our customers, every time. Access a copy of the Code at <http://www.codeofpractice.com.au/> or alternatively, contact the Insurance Council of Australia on 9253 5100.

6. How to contact us with a complaint

Let us know

If you experience a problem, are not satisfied with our products or services or a decision we have made, let us know so that we can help.

Contact us:

- ▼ By phone: 1300 888 073
- ▼ By email: claims@vero.com.au

Complaints can usually be resolved on the spot or within 5 business days.

Review by our Customer Relations Team

If we are not able to resolve your complaint or you would prefer not to contact the people who provided your initial service, our Customer Relations team can assist:

- ▼ By phone: 1300 264 470
- ▼ By email: idr@vero.com.au
- ▼ In writing: Vero Customer Relations Team PO Box 14180, Melbourne City Mail Centre, Victoria 8001

Customer Relations will contact you if they require additional information or if they have reached a decision.

When responding to your complaint you will be informed of the progress of and the timeframe for responding to your complaint.

What if you are not satisfied with our final IDR decision?

We expect our procedures will deal fairly and promptly with your complaint. However, if you are not satisfied with our final decision there are external dispute remedies such as mediation, arbitration or legal action that you may pursue.

Policy wording

A. Agreement between Named Insured and the Insurer

The **Named Insured** and the **Insurer** agree that the **Insurer** will provide insurance in accordance with the terms, conditions, exclusions, definitions and **Limits of Liability** of this **Policy** as set out below.

B. Where 'prior consent' is required from the Insurer

There are some clauses under this **Policy**, where the **Insured** will need to obtain the **Insurer's** prior consent, for example, before incurring costs under clause 4 'Defence costs and supplementary payments', and in order to comply with some claims conditions. Where prior consent is required, consent must be obtained from the **Insurer**, unless otherwise specified in the **Policy**. The **Insurer's** consent will not be unreasonably withheld or delayed.

Where prior consent has not been obtained as required, it does not mean the **Insured** cannot make a claim. However, the **Insurer** may be able to reduce the claim payable by an amount that fairly represents the extent to which the **Insurer's** interests were prejudiced by the failure to obtain prior consent.

C. Payment of reasonable amounts of any costs, charges, expenses and fees under this Policy

A range of different costs, charges, expenses and fees are covered under this **Policy**, for example, under clause 4 'Defence costs and supplementary payments'. Unless otherwise specified, this **Policy** provides cover for the 'reasonable' amount of such cost, charge, expense or fee. This means the **Insurer** will pay the **Insured** an amount that is not excessive and where the **Insured** has given reasonable consideration in the circumstances to the different courses of action available prior to incurring the amounts and the course of action taken was prudent in that context.

Where consent is required before incurring such costs, when the **Insured** contacts the **Insurer** to seek the **Insurer's** consent, the **Insured** can let the **Insurer** know the steps it has taken to consider the courses of action available and discuss the circumstances with the **Insurer**. If the amounts which are to be incurred are reasonable in the circumstances, the **Insurer** will provide consent for the costs to be incurred.

D. Policy terms

1. Insuring clauses

Section A – Public liability

The **Insurer** will pay to or on behalf of the **Insured** all sums which the **Insured** shall become legally liable to pay as **Compensation** in respect of:

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

happening during the **Period of Insurance** within the **Territorial Limits** as a result of an **Occurrence** and in connection with the **Insured's Business**.

Section B – Products liability

The **Insurer** will pay to or on behalf of the **Insured** all sums which the **Insured** shall become legally liable to pay as **Compensation** in respect of:

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

happening during the **Period of Insurance** within the **Territorial Limits** as a result of an **Occurrence** and caused by or arising from the **Insured's Products**.

2. Extensions

These 'Extensions' are subject to the terms, conditions, exclusions and definitions of the **Policy**, unless otherwise stated.

The total of all payments made under the 'Extensions' will be part of and not in addition to the **Limit of Liability** in respect of the insuring clause to which they apply.

Extension to Section A – Public liability

2.1 Care, custody and control expense coverage

The cover under Insuring clause 1, 'Section A - Public Liability' is extended to include all sums which the **Insured** shall become legally liable to pay as **Compensation** in respect of damage to:

1. premises tenanted, leased or hired by the **Insured**;
2. **Land Vehicles** (other than **Land Vehicles** owned or used by or on behalf of the **Insured**) in the **Insured's** care, custody or control but only while such **Land Vehicles** are in a car park owned or operated by the **Insured** other than for income or reward as a car park operator;

3. clothing and personal effects of the **Insured's** directors, employees and visitors; or
4. property not owned by the **Insured** (and not being property referred to in items 1, 2 and 3 above) but temporarily in the **Insured's** care, custody or control, subject to the **Insurer's** maximum liability for such property damage under this item 4 being:
 - (a) the amount stated in the **Schedule**; or
 - (b) if no amount is stated in the **Schedule**, \$500,000,for each and every **Occurrence**.

3. Limits of liability

Unless otherwise stated in the **Policy**, the **Insurer's**:

1. liability to indemnify the **Insured** will not exceed the **Limit of Liability** in respect of any one **Occurrence**; and
2. maximum liability in respect of 'Section B – Products liability' for all **Occurrences** during the **Period of Insurance** will not exceed the **Limit of Liability**.

The applicable **Limit of Liability** is over and above the **Deductible** payable by the **Insured**.

4. Defence costs and supplementary payments

The **Insurer** will pay the following in connection with a claim for which indemnity is available under this **Policy**:

- 4.1 all reasonable costs and expenses incurred by the **Insurer** and/or by the **Insured** with the **Insurer's** prior consent in defending, investigating or settling any claim or suit against the **Insured**, even if such claim or suit is groundless, false or fraudulent;
- 4.2 all interest accruing on the **Insurer's** portion of any judgment until the **Insurer** has paid, tendered or deposited in court that part of such judgment which does not exceed the **Limit of Liability**;
- 4.3 premium on appeal bonds or security for costs required in any suit, and premium on bonds to release attachments in any suit, for an amount not exceeding the applicable **Limit of Liability**, but the **Insurer** shall have no obligation to apply for or furnish any such bond or security;
- 4.4 expenses incurred by the **Insured** for rendering of first aid or other medical service to others at the time of any **Personal Injury** (other than the payment of any medical expense by the **Insurer** which the **Insurer** is prevented from paying by law);
- 4.5 temporary protection of property, including temporary repairs or protection of property of others that has been damaged as a result of an **Occurrence** which is the subject of indemnity under this **Policy**; and
- 4.6 all costs incurred by the **Insured** with the **Insurer's** prior consent for legal representation at any coronial inquest or inquiry, court or tribunal, royal commission or government inquiry, or any inquiry or hearing of a disciplinary nature held before a legally constituted inquiry board, committee, or authority.

The **Insurer** will pay up to \$25,000 in respect of each **Occurrence** for reasonable professional fees or costs incurred by the **Named Insured** or **Subsidiaries** for the preparation of a claim under this **Policy**.

The **Insurer** will pay 'Defence costs and supplementary payments' in addition to the **Limit of Liability**. This is unless a claim is being made against the **Insured** in any court or before any other legally constituted body in the United States of America, Canada or their respective protectorates and territories, in which case the total amount payable in respect of the claim by the **Insurer** under this **Policy** including 'Defence costs and supplementary payments' will not exceed the **Limit of Liability**.

These 'Defence costs and supplementary payments' are payable subject to the following:

1. if a payment exceeding the **Insurer's** liability under this **Policy** to indemnify the **Insured** has to be made to dispose of a claim, the **Insurer's** liability in respect of 'Defence costs and supplementary payments' is limited to the proportion that the **Insurer's** liability to indemnify the **Insured** under this **Policy** bears to that payment; and
2. in jurisdictions where the **Insurer** is not legally permitted to, or cannot for any other reason, defend any claim or suit against the **Insured**, the **Insurer** will reimburse the **Insured** for the expense of such defence provided that such expenses are incurred with the **Insurer's** prior consent.

5. Deductible

The **Deductible** applies to each **Occurrence** and/or claim in respect of 'Defence costs and supplementary payments' and is payable by the **Insured** at such time reasonably required by the **Insurer**.

Provided that the **Deductible** shall only apply once to an **Occurrence** and any claims arising from that **Occurrence**.

The method for payment of the **Deductible** will depend on the particular circumstances of the **Occurrence** or claim, for example:

- (a) the **Insurer** may pay the amount of **Compensation** or 'Defence costs and supplementary payments' that is less than the **Deductible**, and then require repayment of this amount from the **Insured**;
- (b) the **Insurer** may deduct the amount of the **Deductible** from the amount payable by the **Insurer** to the **Insured**; or
- (c) the **Insurer** may require the **Insured** to pay the **Deductible** directly to a third party.

6. Exclusions

Applicable to 'Section A - Public liability' and any extensions to that section

The **Insurer** does not cover liability:

6.1 Aircraft, watercraft and hovercraft

directly or indirectly caused by or arising from:

1. the operation, ownership, possession or use by or on behalf of the **Insured** of any **Aircraft** or **Hovercraft**; or
2. the operation, ownership, possession or use by or on behalf of the **Insured** of any **Watercraft** exceeding fifteen (15) metres in length, while such **Watercraft** is on, in or under water.

However, this exclusion does not apply to claims for **Personal Injury** or **Damage to Property** arising out of:

- (a) **Watercraft** used in operations carried out by an independent contractor for whose conduct the **Insured** is legally liable; or
- (b) **Watercraft** and **Hovercraft** owned and operated by others and used by the **Insured** for the purposes of business entertainment only.

6.2 Defective work

for the cost of performing, completing, correcting or improving any work done or undertaken by the **Insured**.

6.3 Land vehicles

directly or indirectly caused by or arising from the use of a **Land Vehicle** owned by, or in the physical or legal control of the **Insured** which is registered, required by law to be registered, or in respect of which insurance is required by virtue of any legislation which applies to its use (whether or not such insurance is effected).

However, this exclusion shall not apply to:

1. liability directly or indirectly caused by or arising from the use of a **Land Vehicle** (other than a **Land Vehicle** owned or used by or on behalf of the **Insured**) whilst that **Land Vehicle** is in a car park owned or operated by the **Insured** other than for income or reward as a car park operator;
2. **Personal Injury** or **Damage to Property** occurring during the loading or unloading of a **Land Vehicle** caused by or arising from the collection or delivery of any goods from or to the **Land Vehicle** where such **Personal Injury** or **Damage to Property** occurs beyond the limits of any carriageway, and where applicable legislation does not require insurance against such liability. For the avoidance of doubt, a stopping area, such as a loading zone, and pedestrian thoroughfares are taken to be beyond the limits of a carriageway;
3. **Personal Injury** or **Damage to Property** caused by the use of any tool, plant or equipment forming part of or attached to or used in connection with any **Land Vehicle** and where applicable legislation does not require insurance against such liability; or
4. **Personal Injury** where the insurance required by virtue of any legislation does not provide indemnity, and the lack of indemnity is not due to a breach of legislation relating to **Land Vehicles**.

6.4 Products liability

indemnifiable under 'Section B – Products liability'.

However, this exclusion does not apply to **Personal Injury** or **Damage to Property** caused by food or beverages sold or supplied by the **Insured** as a service to the **Insured's** employees or visitors for consumption on the **Insured's** premises.

6.5 Property in the insured's care, custody or control

for **Damage to Property** owned by the **Insured** or property in the **Insured's** care, custody or control other than as provided in 'Extension 2.1 – Care, custody and control expense coverage'.

6.6 Property worked on by the insured

arising out of or in any way connected with physical damage to, destruction of or loss of that part of any property upon which the **Insured** is or has been working.

Applicable to 'Section B - Products Liability'

6.7 Aircraft products

directly or indirectly caused by or arising from any **Product** that is an **Aircraft** or is incorporated in an **Aircraft** with the **Insured's** knowledge and which affects the flying capabilities of an **Aircraft**.

6.8 Product recall or replacement

for the cost of recalling, withdrawing, replacing or repairing **Products**, or of making any refund on the price paid for **Products**.

However, this exclusion shall not apply to liability for physical damage to or destruction of **Products** caused by other **Products** if they were physically independent at the time of such physical damage or destruction.

6.9 Public liability

indemnifiable under 'Section A – Public liability' or any extension to that section.

General exclusions (applicable to both Section A and B and any extensions to those sections)

The **Insurer** does not cover any liability:

6.10 Advertising injury

for **Advertising Injury** directly or indirectly caused by, or arising from:

1. failure of performance of contract, however this exclusion does not apply to claims for unauthorised appropriation of ideas based upon breach of an implied contract;
2. infringement of trade mark, service mark or trade name, however this exclusion shall not apply to titles or slogans;
3. incorrect description of any good or **Product**; or
4. mistake in advertised price.

6.11 Asbestos

directly or indirectly caused by, arising from or in connection with asbestos or materials containing asbestos.

6.12 Cyber, privacy breach and confidential or personal information breach

directly or indirectly arising out of or in connection with:

1. any access to or disclosure of any **Private and Confidential Information** or **Personal Information**;
2. (a) total or partial destruction, distortion, erasure, corruption, theft, misappropriation, misuse or alteration of **Data**;
(b) total or partial inability or failure to receive, send, access, manipulate or use **Data** for any time or at all; or
(c) any **Loss of Use**, reduction in functionality, restriction of access or inability to manipulate, repair, replacement, restoration or reproduction of any **Data**; or
3. any corruption, **Loss of Use** or misuse of or inability to access, process, use or operate any **Computer System**.

This exclusion does not apply to:

- (i) **Damage to Property, Bodily Injury or Advertising Injury** arising out of the circumstances described in sub-paragraphs 1, 2 or 3 above; or
- (ii) mental anguish, mental injury, shock, fright or loss of consortium arising out of the circumstances described in sub-paragraph 3 above. For avoidance of doubt, the exclusion continues to apply to mental anguish, mental injury, shock, fright or loss of consortium arising out of the circumstances described in sub-paragraphs 1 and 2 above.

Definitions

For the purpose of this exclusion only, the following definitions apply:

Bodily Injury means death, bodily injury, sickness or disease sustained by a person. Bodily Injury does not include mental impairment, mental injury, mental anguish, shock, fright, mental illness, humiliation, discrimination or any injury arising out of invasion of privacy, breach of confidentiality, defamation and/or loss of consortium.

Damage to Property means loss of, physical damage to or destruction of tangible property including the loss of use thereof resulting therefrom. Tangible property does not include **Data**.

Computer System means any computer, hardware, software, communications system, electronic device (including but not limited to smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output or data storage device, networking equipment or back up facility.

Data means information, facts, concepts, code or any other information of any kind that is converted, recorded or transmitted in a form to be accessed, communicated, displayed, distributed, interpreted, processed, transmitted or stored or used in or by a **Computer System**.

Loss of Use means the inability to obtain the intended benefit which is not resulting from damage to tangible property.

Private and Confidential Information means any information (including **Data**) other than **Personal Information** that is not publicly available and where disclosure may affect the economic, competitive or commercial interests of the owner of the information including trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods.

Personal Information means any information from which an individual may be reasonably identified or contacted, including an individual's name, telephone number, email address, tax file number, Medicare number, credit card details or any other non-public personal information as defined in the Privacy Act 1988 (Cth) or in any subsequent legislation that alters, repeals or replaces such legislation.

6.13 Defamation

directly or indirectly caused by or arising from the publication or utterance of any defamatory matter or material:

1. made prior to the commencement of the **Period of Insurance**;
2. made at the direction of the **Insured** with knowledge of the falsity thereof; or
3. where the occupation or business of the **Insured** is advertising, broadcasting, publishing or telecasting.

6.14 Employers liability

1. in respect of which the **Insured** is or would be entitled to indemnity under any fund, scheme, policy of insurance or self insurance pursuant to or required by any legislation relating to workers' compensation whether or not such insurance has been effected;
2. imposed by the provisions of any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or
3. relating to **Employment Practices**.

6.15 Liability under agreement

assumed under a contract or agreement that requires the **Named Insured** or its **Subsidiaries** to:

1. effect insurance over property; or
2. accept liability regardless of fault. However, this exclusion does not apply where:
 - (a) that liability would otherwise exist at law in the absence of the contract or agreement; or
 - (b) the contract is an **Incidental Contract** and liability does not arise due to an obligation to insure rented, leased or hired property or an obligation to indemnify a landlord irrespective of fault.

6.16 Loss of use

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

1. delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement;
2. the failure of **Products** or work performed by or on behalf of the **Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured**. However, this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of **Products** or work performed by or on behalf of the **Insured** after such **Product** or work has been put to their intended use by any person or organisation other than the **Insured**.

6.17 Other insurance

for which an **Insured** is entitled to indemnity under:

1. any other insurance policy available from or through any third party; or
2. any insurance policy which is specified in any endorsement, any renewal or replacement of that insurance policy,

unless the **Insured** entered into that policy in their own name.

6.18 Penalties and punitive damages

for fines, penalties, aggravated, exemplary, punitive or liquidated damages.

6.19 Pollution

1. directly or indirectly caused by or arising from the discharge, dispersal, release, seepage, migration or escape of **Pollutants**, including the cost of testing, monitoring, treating, detoxifying, removing, neutralising or cleaning up **Pollutants**; or
2. for the cost of preventing the discharge, dispersal, release, seepage, migration or escape of **Pollutants**.

However, this exclusion does not apply where such discharge, dispersal, release, seepage, migration or escape arises from a sudden, identifiable, unintended and unexpected event from the standpoint of the **Insured** which takes place in its entirety at a specific time and place and occurs outside of the United States of America, Canada and their respective protectorates and territories.

6.20 Professional liability and errors or omissions

directly or indirectly caused by or arising from the rendering of or failure to render any professional advice or service by the **Insured**.

However, this exclusion shall not apply to liability that arises from the rendering of or failure to render medical advice or services by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

6.21 Radioactive contamination

directly or indirectly caused by or arising from:

1. ionising radiation or contamination by radioactivity from any nuclear fuel, weapon or waste from the combustion or fission of nuclear fuel; or
2. the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

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

6.22 Reckless or willful failure to take care

directly or indirectly caused by or arising from:

1. the **Insured's** reckless or willful disregard for the condition of premises and plant;
2. the **Insured's** reckless or willful failure to ensure that all employees have appropriate training applicable to their roles;
3. the **Insured's** reckless or willful failure to monitor their employees' compliance with relevant standards;
4. any breach of any statute or non-compliance with statutory obligations, by-laws or regulations committed by the **Insured** with reckless or wilful intent;
5. the **Insured's** reckless or willful failure to prevent **Personal Injury** and/or **Damage to Property** and/or **Advertising Injury** and/or any other loss, damage or expense; or
6. the Insured's reckless or willful failure to prevent the manufacture, sale or supply of defective Products.

6.23 Terrorism

directly or indirectly caused by or arising from any **Act of Terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence to the **Personal Injury** or **Damage to Property**.

6.24 War

directly or indirectly caused by or arising from war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to a popular rising, military rising, military or usurped power.

7. Definitions

For the purpose of determining the cover provided by this **Policy**:

Act of Terrorism means:

an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

Advertising Injury means:

any unintentional:

1. defamation;
2. infringement of copyright or passing off of title or slogan;
3. piracy, unfair competition, idea misappropriation or invasion of rights of privacy; or
4. breach of the misleading or deceptive conduct provisions of any consumer protection legislation or similar legislation of any country, state or territory,

committed or alleged to have been committed during the **Period of Insurance** in any advertisement, publicity article, broadcast, telecast or via an internet website or social media, and caused by or arising out of the **Insured's** advertising activities.

Aircraft means:

any craft or machine designed to travel through air or space, other than unmanned inflatable balloons used for advertising or promotional purposes or model aircraft.

Business means:

the business as described in the **Schedule** including the following activities when undertaken in connection with the business:

1. any prior operations or activities which have ceased or have been disposed of where the **Insured** retains a legal liability;
2. the ownership of premises and/or the tenancy thereof by the **Insured**;
3. participation in any exhibition or conference by or on behalf of the **Insured**;
4. first aid, medical, ambulance or fire fighting services;
5. the provision of sponsorships by or on behalf of the **Insured**;
6. private work undertaken by the **Insured's** employees for any of the **Insured's** directors, partners, proprietors, officers or executives; and
7. the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and/or child care facilities by or on behalf of the **Insured**, which are primarily for the benefit of the **Insured's** employees. With respect to childcare facilities, this **Policy** does not apply to **Personal Injury** directly or indirectly caused by, arising from or in connection with actual, threatened or perceived sexual assault, sexual harassment or molestation.

Compensation means:

monies paid or payable by judgment, award or settlement together with any liability on the **Insured's** part to pay legal costs and expenses (other than those referred to in 'Defence costs and supplementary payments') for:

1. **Personal Injury**; or
2. **Damage to Property**;
3. **Advertising Injury**.

Damage to Property means:

1. physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; and/or
2. loss of use of tangible property which has not been physically damaged, destroyed or lost, provided that such loss of use is caused by or arises out of physical damage of other tangible property.

Deductible means:

the amount stated in the **Schedule** payable by the **Insured**.

Employment Practices means:

any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of the **Insured's** employees.

Hovercraft means:

any vessel, craft or machine made or intended to transport persons or property over land or water supported on a cushion of air, other than an **Aircraft, Land Vehicle** or **Watercraft**.

Incidental Contracts means:

1. any written rental, lease or hiring agreement of real or personal property, other than with respect to any term or condition contained in such rental, lease or hiring agreement that requires the **Insured** to insure such property;
2. any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;
3. any written contract with any railway authority for the loading, unloading and/or transport of **Products**, including contracts relating to the operation of railway sidings; and
4. contracts specified in the **Schedule**.

Insured means:

1. the **Named Insured**;
2. the **Subsidiaries**;
3. every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the **Named Insured** and its **Subsidiaries**, including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the **Business**, while such persons are acting for or on behalf of the **Named Insured** and its **Subsidiaries** and/or within the scope of their duties in such capacities;
4. every principal in respect of the principal's liability arising out of:
 - (a) the performance by or on behalf of the **Named Insured** or its **Subsidiaries** of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and **Limit of Liability** as is provided by this **Policy**;
 - (b) any **Products** sold or supplied by the **Named Insured** or its **Subsidiaries**, but only in respect of the **Named Insured's** or its **Subsidiaries'** own acts or omissions in connection with such products and in any event only for such coverage and **Limit of Liability** as is provided by this **Policy**;
5. every person, corporation, organisation, joint venture company or partnership, to whom the **Named Insured** or its **Subsidiaries** are obligated by virtue of any contract or agreement to provide insurance such as is afforded by this **Policy**; but only to the extent required by such contract or agreement and in any event only for such coverage and **Limit of Liability** as is provided by this **Policy**;
6. every officer, member, employee or voluntary helper of the **Named Insured's** or its **Subsidiaries'** canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charity or welfare work and/or child care facilities, while acting in their respective capacities as such; and
7. any director, partner, proprietor, officer or executive of the **Named Insured** or its **Subsidiaries** in respect of private work undertaken by the **Named Insured's** or its **Subsidiaries'** employees for such person, and any employee whilst actually undertaking such work.

Insurer means:

AAI Limited ABN 48 005 297 807 trading as Vero Insurance.

Land Vehicle means:

any type of machine on wheels or caterpillar tracks made or intended to be propelled by other than manual or animal power, which is designed to travel primarily on land. **Land Vehicle** includes any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

Limit of Liability means:

the limit of liability stated in the **Schedule**.

Medical Persons means:

qualified medical practitioners, dentists, nurses and first aid attendants.

Named Insured means:

the persons, organisations or entities named in the **Schedule**.

Occurrence means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** and/or **Damage to Property** and/or **Advertising Injury** that is neither expected nor intended from the standpoint of the **Insured**.

With respect to **Personal Injury** and/or **Damage to Property**, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one **Occurrence**.

All **Advertising Injury** arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one **Occurrence**.

Period of Insurance means:

the period stated in the **Schedule** and any extension thereof which may be agreed in writing between the **Insured** and the **Insurer**.

Personal Injury means:

1. bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium resulting therefrom;
2. the effects of false arrest, false imprisonment, wrongful detention, wrongful entry or wrongful eviction, invasion of the right to private occupation, malicious prosecution or humiliation;
3. the effects of defamation;
4. the effects of assault and battery not committed by or at the direction of the **Insured**, unless committed for the purpose of preventing or eliminating danger to persons or property; and
5. the effects of discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by or at the direction of the **Insured**, but only with respect to liability other than fines and penalties imposed by law.

Policy means:

the contract of insurance between the **Insurer** and the **Insured** which comprises this policy wording, the **Schedule** issued by the **Insurer** (including any **Schedule** replacement or renewal) and any endorsement or document issued by the **Insurer** varying coverage.

Pollutants means:

any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material, including materials that are intended to be recycled, reconditioned or reclaimed.

Premium means:

the amount the **Named Insured** pays for this insurance. The **Named Insured's** premium includes any applicable GST, stamp duty, other government charges and any levies that apply. It also includes any discounts the **Insurer** has given the **Named Insured**, and these are applied before the addition of any applicable government taxes and charges. The amount of these taxes and charges will be shown on the **Named Insured's Schedule**.

Products means:

anything (after it has ceased to be in the possession or control of the **Insured**) manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, distributed, imported or exported, by or on behalf of the **Insured**, including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which by law the **Insured** is deemed to have manufactured in the course of the **Business** including discontinued products.

Schedule means:

the schedule issued by the **Insurer** in connection with this **Policy**.

Subsidiary means:

1. any subsidiary company and any other organisation under the control of the **Named Insured**;
2. any subsidiary and/or controlled corporation which is constituted or acquired by the **Named Insured** during the **Period of Insurance**; and
3. any subsidiary and/or controlled corporation and/or other organisation of the **Named Insured** which is divested during the **Period of Insurance**, but only in respect of claims made against such divested subsidiary or controlled corporation or organisation caused by or arising out of **Occurrences** which occurred prior to the date of divestment.

Territorial Limits means:

1. anywhere in the world except the United States of America, Canada and their respective protectorates and territories;
2. the United States of America, Canada and their respective protectorates and territories if the **Personal Injury** or **Damage to Property** arises from:
 - (a) **Products** exported into such countries;
 - (b) business visits of the **Insured's** directors, partners, officers, executives or employees, who are non-resident in the United States of America, Canada, other than where such persons perform manual work.

Watercraft means:

any vessel, craft or machine made or intended to float on or in or travel on or through water other than model boats.

8. Claims Conditions

In the event of a failure by the **Insured** to comply with a provision requiring the **Insured's** compliance under this section, the **Insurer** may be able to:

- (a) refuse a claim;
- (b) reduce its liability to pay a claim by an amount that fairly represents the extent to which the **Insurer's** interests are prejudiced by the failure to comply; or
- (c) cancel the **Policy**.

8.1 Claims notifications

The **Insured** must give the **Insurer** a notification of any **Occurrence** or loss likely to give rise to a claim under this **Policy** as soon as reasonably possible.

Every legal document or other communication the **Insured** receives (including letters, demands, writs, summons and legal processes) relating to such **Occurrence**, loss or claim shall be forwarded to the **Insurer** as soon as possible after receipt.

All notifications to the **Insurer**, and any legal documents and other communications specified above, must be sent to the Claims Notification address specified in the **Schedule**.

8.2 Claims co-operation

The **Insurer** may undertake any investigation as is reasonably required in relation to the **Occurrence**, loss or claim.

The **Insured** must:

- (a) provide the **Insurer** with all assistance, documents and co-operation reasonably required by the **Insurer** in connection with any investigation, negotiation, recovery, defence and legal proceeding or settlement of an **Occurrence**, loss or claim. This assistance may include:
 - (i) lodging a police report;
 - (ii) providing a more detailed version of facts, including signing statements and affidavits;
 - (iii) providing further information, evidence and documentation;
 - (iv) attending court or meetings with appointed legal experts;
 - (v) making available directors, officers, employees and other personnel for interviews, meetings and court attendance;
 - (vi) enforcing any right to contribution or indemnity from any person, corporation or organisation;
 - (vii) providing contact details of individuals who may have information that is relevant to the **Occurrence**, loss or claim (to the extent that the provision of such details would not breach any legally enforceable privacy or confidentiality requirement); or
 - (viii) providing access to systems and records (to the extent that doing so would not breach any legally enforceable privacy or confidentiality requirement); and
- (b) where reasonably practicable, take steps to avoid or diminish further loss, for example:
 - (i) taking steps to investigate the cause of the loss or suspected loss;
 - (ii) stopping the sale, distribution, import or export of a **Product** that the **Insured** suspects of causing or has caused bodily injury, death, illness or disability or physical destruction of tangible property and take steps to investigate the suspicion or cause;
 - (iii) checking the functionality of any processes or security in place that are intended to prevent loss or damage;
 - (iv) avoiding confrontational engagement with an aggravated claimant;
 - (v) maintaining a detailed record of all communications with any party about the loss; or
 - (vi) providing appropriate additional training, communication or instruction to employees and other personnel following an **Occurrence**;
- (c) where reasonably possible, take all reasonable steps to:
 - (i) preserve all property, any **Product**, appliance and plant and any other thing that the **Insured** knows or suspects is connected with an **Occurrence**, loss or claim, until the **Insurer** has had an opportunity to determine whether such property or things may assist in the investigation or defence of the claim or in the exercise of rights of subrogation; and

- (ii) continue preserving any property, any **Product**, appliance and plant and any other things the **Insurer** has determined may assist in the investigation or defence of the claim or in the exercise of rights of subrogation, until such property or things are no longer required for that purpose.

Provided that if the **Insured's** compliance with this clause would limit their ability to continue operating their **Business**, the **Insurer** must make their determination as soon as reasonably possible.

The reasonable steps of preservation may include:

- (i) preventing or limiting access to a location where the **Occurrence** happened, except for the purposes of taking steps to prevent other **Occurrences** happening;
 - (ii) securing and preventing access to any **Product** connected with an **Occurrence**, except for the purposes of taking steps to prevent other **Occurrences** happening; or
 - (iii) ceasing use of and limiting access to any appliance or plant that caused the **Occurrence**, except for the purpose of taking steps to prevent other **Occurrences** happening; and
- (d) provide the **Insurer** with an opportunity of inspection and obtain the **Insurer's** consent prior to effecting the alteration or repair of any thing connected with an **Occurrence**, loss or claim.

Any costs in the **Insured's** time and effort to comply with the above requirements shall be borne by the **Insured**, unless otherwise covered under the **Policy**.

8.3 Claims conduct

Conducting defence and settlement of claims

The **Insurer** has the right and full discretion, but is not obligated to take over and conduct in the name of the **Insured** the defence or settlement of any suit or claim against the **Insured** seeking **Compensation** or reimbursement of expenses for an **Occurrence** or loss (including in relation to insured, underinsured and uninsured losses). The **Insurer** may engage legal or other representatives to assist in the conduct of any suit or claim.

The **Insurer** reserves entirely its rights under this **Policy**, including its right to agree or deny cover while it assesses an **Occurrence**, loss or claim or conducts the defence. The **Insurer's** rights under this **Policy** are not affected if it does not conduct the defence.

The **Insurer** is not obligated to pay any claim or judgement or to defend any suit or claim after the **Insurer's** liability under this **Policy** in respect of the matter has been exhausted.

Where the Insured disputes the approach to defending claims

If the **Insured** disputes the **Insurer's** approach to defending a suit or claim, the **Insured** and **Insurer** shall endeavour to settle this dispute by mediation administered by the Australian Disputes Centre (ADC) before having recourse to arbitration or litigation.

The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to the ADC (the Guidelines).

The terms of the Guidelines are hereby deemed incorporated into this agreement.

8.4 Claims settlement

The **Insured** must not settle or offer to settle any suit or claim, incur any costs or expenses for which the **Insurer's** prior consent is required under clause 4 'Defence costs and supplementary payments', make any admission, offer, promise or payment, or otherwise assume any contractual obligation or admit any liability in respect of any **Occurrence**, loss or claim without the **Insurer's** prior consent.

If the **Insured** objects to a proposal by the **Insurer** to settle or compromise any suit or claim payable under this **Policy** and wishes to contest or litigate the matter, then the **Insured** may so elect, but the **Insurer's** liability in respect of any such contested or litigated suit or claim will not exceed:

- (a) the amount for which, but for such election, the suit or claim could have been settled or compromised by the **Insurer**; plus
- (b) any additional cost and expense payable in accordance with the terms of this **Policy** and incurred up to the time of such election,

subject to the **Deductible** and to the **Limit of Liability** or the amount of any specified limit applicable to a specific clause where applicable.

8.5 Allocation of loss

When this clause applies

This clause applies to any **Compensation** and amounts payable under clause 4 'Defence costs and supplementary payments' (referred to as "Loss" under this clause) in respect of any claim, which is either or both:

- (a) in respect of more than one person or entity (at least one of whom is an **Insured**), whether jointly or severally; or
- (b) partly covered and partly not covered under this **Policy**.

The above are together referred to as the 'Loss to be Allocated' under this clause.

The **Insurer** must decide a fair and reasonable allocation of the covered part of the Loss to be Allocated among the relevant **Insureds** and the **Insurer** having regard to the extent of each **Insured's** comparative responsibility for the Loss to be Allocated.

What the Insurer must take into account when deciding Loss to be Allocated

The **Insurer's** consideration of what is fair and reasonable shall include without limitation, the following factors:

- (a) the nature of the claim against each **Insured**;
- (b) the issues of fact and law in relation to each **Insured**;
- (c) the content and the manner of the conduct of any defence of the claim;
- (d) the relative degree of personal responsibility for the Loss;
- (e) the extent to which the **Insured's** responsibility for the Loss is joint, several or shared;
- (f) the extent to which any person or entity, other than that **Insured**, would obtain a benefit from the payment by the **Insurer**;
- (g) the extent to which the Loss is solely of that **Insured**;
- (h) the extent to which the issues in the claim against that **Insured** are in common with the issues in the claim against any other person or entity;
- (i) the extent to which the Loss is partly covered and partly not covered under this **Policy**; and
- (j) in the event of a settlement, the likely comparative responsibility had the settlement not occurred.

If the Insured does not agree with the Insurer's decision relating to the Allocation of Loss

If the **Insured** wishes to dispute the **Insurer's** decision in respect of allocation, each party agrees that the dispute must be referred for expert determination in accordance with the Australian Disputes Centre's ("ADC") Rules for Expert Determination ("Rules") available on the ADC's website, to an expert agreed by the parties, or if the parties do not agree on an expert, an expert appointed by the ADC in accordance with the Rules.

Each party agrees to sign an agreement with the expert that confirms the following matters, unless contrary to the Rules or the requirements of the ADC:

- (a) the payment of fees for the appointed expert (Note: refer to 'Cost of the expert determination' below for more information);
- (b) the expert may:
 - (i) consider relevant industry practice;
 - (ii) consider all information presented to the expert by either party;
 - (iii) request more information from either party;
 - (iv) request a meeting with the parties (to which they may bring their legal representatives or other persons with information or knowledge relevant to the determination (Note: in accordance with the Rules, the meeting is not a hearing));
- (c) the expert must provide a determination, subject to receiving all information required, within thirty days after the agreement is signed, unless:
 - (i) another time is agreed between the parties, in which case the agreement will provide for this timeframe; or
 - (ii) the expert must comply with a timeframe as set by ADC, in which case the agreement will provide for this timeframe;
- (d) the expert must provide written reasons for the determination;
- (e) the expert's decision will be binding on the parties and final; and
- (f) the liability of the expert to either party (including liability for negligence) will be excluded to the full extent permitted by law.

Any allocation of Loss will not apply to or create a presumption with respect to the allocation of other Loss on account of such claim.

Cost of the expert determination

The **Insurer** will pay for the cost of the expert determination above, including the **Insured's** share of the costs.

The ADC may require each party to bear the cost of the expert determination in equal proportions and require each party to individually pay their share of any cost required directly (including any fee, deposit or other amount charged). Where this is required, the **Insured** must pay the costs accordingly and the **Insurer** will separately reimburse the **Insured** for the cost of the expert determination.

8.6 Recovery rights

Preservation of rights of recovery

The **Insured** must not, without the **Insurer's** prior consent:

- (a) enter into any agreement whereby the **Insured** releases, agrees not to sue on, waive or prejudice, any rights to recover from a person or organisation who is or could have been liable to compensate the **Insured** for any **Compensation**, loss or legal liability; or
- (b) enter into any arrangement or compromise or do any act whereby any rights or remedies to which the **Insurer** would be subrogated in respect of such **Compensation**, loss or legal liability are or may be prejudiced.

Where the **Insured** does not comply with the above, the **Insurer** may not cover the **Insured** under this **Policy** for such **Compensation**, loss or legal liability.

Rights of recovery

In the event of any payment under this **Policy**, the **Insurer** will be subrogated to all the **Insured's** rights of recovery against any person or organisation.

The **Insurer** has the right and full discretion, but is not obligated to take over and conduct in the name of the **Insured** any recovery action (including in relation to insured, underinsured and uninsured losses). The **Insurer** may engage legal or other representatives to assist in the conduct of any recovery action.

The **Insurer** shall not exercise its rights of subrogation against an **Insured** in connection with a claim, unless and to the extent:

- (a) an **Insured** is protected from liability insured against hereunder by:
 - (i) an indemnity available (other than under an insurance policy) from or through a third party that is not an **Insured**; or
 - (ii) any other policy of insurance, or
- (b) it can establish that an **Insured's** dishonest, fraudulent, malicious or criminal act or omission, or breach of statute committed with reckless or willful intent, caused or contributed to the **Occurrence**, loss or claim.

8.7 Application of recoveries

All recoveries obtained from other parties will be allocated, after the settlement or finalisation of any claim under this **Policy**, as follows:

- (a) firstly, to the benefit of the **Insured** to reduce or extinguish the amount of **Compensation**, reimbursement of expenses for an **Occurrence** or loss, or amounts covered under clause 4 'Defence costs and supplementary payments' to the extent that such amounts would have been paid under this **Policy** but for the fact that such amounts exceed the sum of:
 - (i) the **Limit of Liability**, or the amount of any specified limit applicable to a specific clause where applicable;
 - (ii) the amounts covered under clause 4 'Defence costs and supplementary payments'; and
 - (iii) the **Deductible** where applicable;
- (b) secondly, to the benefit of the **Insurer** for all sums paid in settlement, defence or investigation of any claim under this **Policy**; and
- (c) thirdly, to the benefit of the **Insured** for the **Deductible** under this **Policy**.

All recoveries will be applied as above only after deduction of the reasonable cost of obtaining such recovery. All recoveries made prior to settlement or finalisation of any claim under this **Policy** will be held for the benefit of the **Insurer** and applied as stated above after settlement if any is made.

Recoveries do not include any amount recovered from insurance, surety, reinsurance, security or indemnity taken for the benefit of the **Insurer**.

9. General Conditions

9.1 Adjustment

If the **Premium** for this **Policy** has been calculated on estimates provided by the **Named Insured** and the **Policy** is identified as subject to adjustment based on a minimum and/or deposit **Premium**:

- (a) the **Insurer** shall, prior to commencement of the **Period of Insurance**, inform the **Named Insured** of the minimum and/or deposit **Premium**, the method the **Insurer** will use to calculate the **Premium** adjustment, the information the **Insurer** will require for the calculation of the **Premium** adjustment and, optionally, the timeframe within which the **Insurer** will require that information after expiry of the **Period of Insurance** (but not less than thirty days);
- (b) the **Named Insured** shall within the timeframe specified by the **Insurer** or, if the **Insurer** hasn't specified a timeframe, a reasonable period after expiry of each **Period of Insurance** furnish to the **Insurer** the information specified by the **Insurer** for such expired period; and

- (c) the **Premium** for such period shall be adjusted by the **Insurer** according to the calculation method specified by the **Insurer** and the difference be paid by or refunded to the **Named Insured** subject to any minimum **Premium** applicable. If the adjusted **Premium** is less than the deposit **Premium**, the **Insurer** will refund the difference, less the **Insurer's** minimum **Premium** for the relevant **Period of Insurance** and less any non-refundable government charges. If the adjusted **Premium** is more than the deposit **Premium**, the **Named Insured** will pay the difference to the **Insurer** as soon as possible.

The **Named Insured** shall keep an accurate record of the information required by the **Insurer** and shall allow the **Insurer** to make any reasonable inspection of such record.

If this **Policy** is cancelled the adjustment calculation shall only be applied to the pro rata proportion of the **Premium** for the time the **Insurer** was on risk.

9.2 Cancellation

The **Named Insured** may cancel this **Policy** at any time by giving notice in writing to the **Insurer** specifying the date from which it would like to cancel the **Policy**. The date cannot be earlier than the date the **Insurer** receives the notice.

The **Insurer** may cancel this **Policy** where the law allows the **Insurer** to do so, including where:

- (a) the **Insured** has failed to comply with a provision of the **Policy**; or
- (b) the **Named Insured** has failed to comply with a provision of the **Policy** with respect to payment of premium.

Upon cancellation, the **Insurer** will retain a short period premium calculated at the pro rata proportion of the **Premium** for the time it has been on risk, subject to any minimum and/or deposit **Premium** that may apply in accordance with condition 9.1 'Adjustment', and the **Insurer** will refund to the **Named Insured** the balance of the premium actually paid (including GST if applicable) less any non-refundable government charges.

When the **Premium** is subject to adjustment in accordance with condition 9.1 'Adjustment', cancellation will not affect the obligation of the **Named Insured** to furnish the **Insurer** with the information specified by the **Insurer** as is necessary to enable the **Premium** adjustment to be calculated and to pay the amount of any adjustment applicable up to the date of cancellation. The **Named Insured** can request that the **Insurer** offset the amount of any refund that is due and payable by the **Insurer** to the **Named Insured**, against any amount the **Named Insured** may owe the **Insurer** due to an adjusted **Premium**.

9.3 Cross liability

Each of the parties comprising the **Insured** is considered a separate legal entity and the word **Insured** applies to each party as if a separate policy had been issued to each of the said parties, provided always that:

1. each of such parties shall be separately subject to the terms, conditions, exclusions and definitions of this **Policy**; and
2. nothing contained in this clause will operate to increase the **Insurer's** liability under this **Policy**.

9.4 Currency

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

If the **Insured** incurs liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by the **Insurer** shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the applicable currency rate of exchange on the date on which the payment is made, subject to the **Limit of Liability**.

9.5 Goods and Services Tax

The **Named Insured** must tell the **Insurer** about the input tax credit (ITC) the **Named Insured** is entitled to for the **Named Insured's** premium and the **Named Insured's** claim, each time the **Named Insured** makes a claim. If the **Named Insured** does not give the **Insurer** this information or if the **Named Insured** tells the **Insurer** an incorrect ITC, the **Insurer** will not pay any GST liability the **Named Insured** incur.

The **Insurer's** liability to the **Named Insured** will be calculated taking into account any ITC to which the **Named Insured** is entitled for any acquisition which is relevant to the claim, or to which the **Named Insured** would have been entitled had the **Named Insured** made a relevant acquisition.

In respect of the **Named Insured's** policy, where the **Named Insured** is registered for GST purposes the **Named Insured** should calculate the insured amount having regard to the **Named Insured's** entitlement to input tax credits. The **Named Insured** should, therefore, consider the net amount (after all input tax credits) which is to be insured and determine an insured amount on a GST exclusive basis.

This outline of the effect of the GST on the **Named Insured's** policy is for general information only. The **Named Insured** should not rely on this information without first seeking expert advice on the application of the GST to the **Named Insured's** circumstances.

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

9.6 Law and jurisdiction

Should any dispute arise concerning this **Policy**, the dispute will be determined in accordance with the law of the applicable State or Territory of Australia. In relation to any such dispute the parties agree to submit to the jurisdiction of any competent court in a State or Territory of Australia.

9.7 Material facts

The **Named Insured** must notify the **Insurer** as soon as reasonably practicable of any change to the **Insured's Business** that would change the nature of the risk covered by this **Policy**. These changes might include:

- (a) A change to the nature of the activities carried out by the **Insured's Business**;
- (b) The **Insured** changing the locations from which it conducts the **Business**;
- (c) The **Insured** commencing the manufacture, sale, supply or import of a new **Product**;
- (d) The **Insured** building a new manufacturing facility;
- (e) The **Insured** commencing the export of a **Product** to a country to which the **Product** has not previously been exported;
- (f) The **Named Insured** being acquired by another entity; or
- (g) The **Insured** losing or having conditions imposed upon any licence or authority required by the **Insured** to operate their **Business**.

What happens when the Named Insured contacts the Insurer

Following notification of the change to the **Insured's Business**, the **Insurer** will advise the **Named Insured** as to whether it is willing to provide additional cover or continue offering cover, and if so, on what terms (for example, any endorsements or additional excess) and for what additional **Premium** (if any). This will be based on the **Insurer's** risk appetite and underwriting guidelines.

If the change to the **Insured's Business** means that the risk is no longer acceptable under the **Insurer's** risk appetite or underwriting guidelines, the **Insurer** may cancel the **Policy**.

Any offer by the **Insurer** to cover the changes to the **Insured's Business** is not effective until the **Insurer** receives the **Named Insured's** written acceptance of the **Insurer's** offer and the **Named Insured** has paid the additional **Premium** relevant. Until that time, the changes to the **Insured's Business** are not covered.

The **Named Insured** is entitled to cancel the **Policy** at any time, including where the **Insurer** does not offer to cover the changes to the **Insured's Business**, or the **Named Insured** does not accept the **Insurer's** offer to cover the changes to the **Insured's Business**.

If a claim arises from the changes to the **Insured's Business** which are not yet covered or the **Insurer** does not agree to provide cover, the **Insurer** may reduce or refuse to pay such claim to the extent it arises from the change in risk.

If the **Named Insured** does not contact the **Insurer** as required, it may lead to the **Insurer** reducing or refusing a claim and/or cancelling this **Policy**.

9.8 Endorsements

An endorsement does not affect or increase the **Limit of Liability** or any other term of this **Policy**, except to the extent specifically provided in the endorsement. For the avoidance of doubt, each endorsement is otherwise subject to the all the terms, conditions, exclusions, definitions and **Limits of Liability** of this **Policy**.

9.9 Payment of premium

The **Named Insured** must pay the **Premium** specified in the **Schedule** for the **Period of Insurance** to the **Insurer** by the due date. If the **Named Insured** does not pay the **Premium** by the due date, the **Insurer** is entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

9.10 Other insurance

In the event of any claim being made under this **Policy**, the **Insured** must notify and give details of to the **Insurer** of any other insurance policy or policies insuring the same risk insured under this **Policy**. This is to enable the **Insurer** to exercise its right to seek contribution from the insurer of that other insurance.

