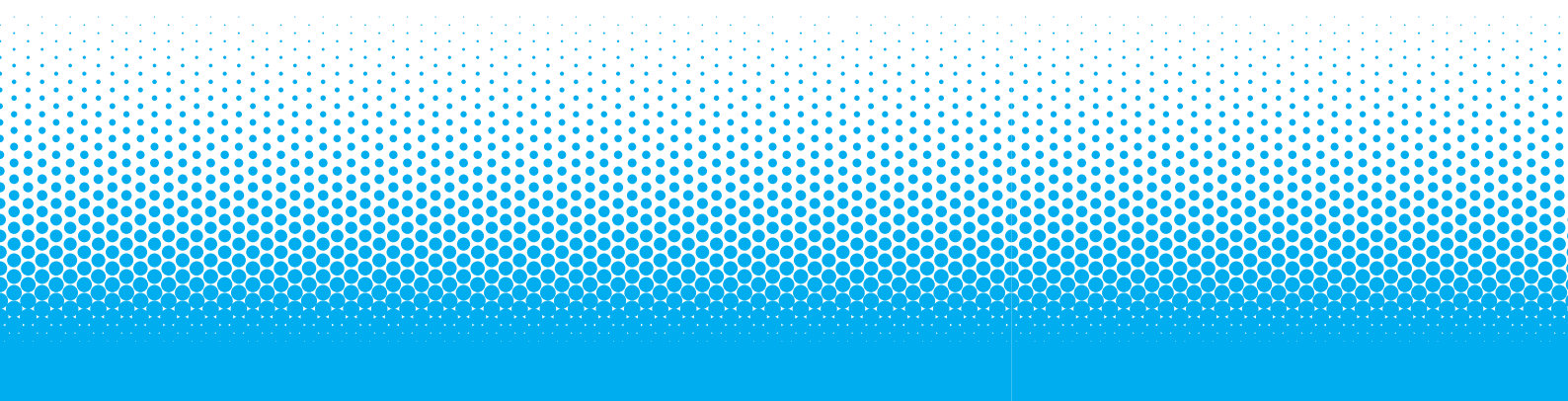




General Liability  
Wording 2023 07



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# WELCOME TO HALO

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## ABOUT HALO

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Halo Underwriting Agency Pty Ltd (ABN 48 008 497 318, AFSL 237267) ('Halo') acts under a binding authority given to it by Us, to administer and issue policies, alterations and renewals. In all aspects of arranging the Policy, Halo acts as an agent for the Insurer(s) and not for You. If You have any queries in relation to this Policy, contact Halo in any of the following ways:

Street Address: Level 3, 85 William Street, Darlinghurst, Sydney NSW 2000

Postal Address: Level 3, 85 William Street, Darlinghurst, Sydney NSW 2000

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## ABOUT THIS POLICY

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Throughout this document certain words are italicised to show that they have a particular defined meaning. You should refer to the Definitions section of this document on page 11, and the relevant cover sections to obtain the full meaning of these terms.

You', 'Your' or 'Yours' means the person(s) or parties shown as the Insured in the schedule, including all subsidiary companies, organisations and entities incorporated in Australia in which you have a controlling interest (exceeding 50%) and are engaged in the business described in the schedule and not for any other purpose or activity. The Insurer of this insurance are Certain Underwriters at Lloyd's (also referred to as "We", "Our" or "Us").

References to the masculine include the feminine, the singular also includes the plural and vice versa.

A reference to any statute, regulation or subordinate legislation includes any amendment, replacement, successor or equivalent to or of that statute, regulation or subordinate legislation.

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## ABOUT LLOYD'S

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Certain underwriters at Lloyd's are authorised by the Australian Prudential Regulation Authority ('APRA') under the provisions of the Insurance Act 1973 (Cth) to conduct insurance business in Australia.

Lloyd's is the world's specialist insurance and reinsurance market. With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress.

Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world - building resilience for businesses and local communities and strengthening economic growth around the world.

You should contact Halo in the first instance in relation to this insurance.

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## GENERAL INSURANCE CODE OF PRACTICE

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The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ('the Code'), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code Governance Committee ('CGC') is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the CGC go to [www.insurancecode.org.au](http://www.insurancecode.org.au)

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## HOW TO APPLY FOR THIS INSURANCE

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Throughout this document when referring to Your insurance broker or adviser, we may simply refer to them as Your intermediary.

If You are interested in buying this product or have any enquiries about it, You should contact Your intermediary who should be able to provide You with all the information and assistance You require.

If You are not satisfied with the information provided by Your intermediary, You can contact us at the address or telephone number shown on the back cover of this document. However, we are only able to provide factual information or general advice about the product. We do not give advice on whether the product is appropriate for Your personal objectives, needs or financial situation.

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## DUTY OF DISCLOSURE

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

You have this duty until We agree to insure You.

You have the same duty before You renew, extend, vary or reinstate an insurance contract. You do not need to tell us anything that:

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

If You do not tell Us something

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if You make a claim, or both.

If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

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## OUR CONTRACT WITH YOU

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Your policy is a contract of insurance between You and Us and contains all the details of the cover that We provide.

Your policy is made up of:

- the policy wording. It tells You what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the proposal, which is the information you provide to Us when applying for insurance cover;
- Your most current policy schedule issued by Us. The policy schedule is a separate document unique to You, which shows the insurance details relevant to You. ; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in your policy schedule are insured.

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

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## COOLING-OFF PERIOD

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After you apply for cover and you have received the policy document, you have 21 days to check that the policy meets your needs. Within this time you may cancel the policy and receive a full refund of any premiums paid, less any tax or duty paid or owing for which we are unable to obtain a refund, unless:

1. you have made a claim or become entitled to make a claim under your policy; or
2. you have exercised any right or power you have in respect of your policy or the policy has ended.

Your request will need to be forwarded to us via your intermediary or to the address shown on the back cover of this document.

You can cancel your policy at any time after the cooling-off period. Please refer to 6.3 'Cancellation' under General Conditions on page 18.

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## HOW TO MAKE A CLAIM

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If you need to make a claim against this policy, please refer to 6.16 'Notice and proof of claim' under General conditions on page 19. If you have any queries, please contact your intermediary or us as soon as possible.

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## PRIVACY

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Halo value the privacy of your personal information and we will ensure the handling of your personal information is dealt with in accordance with the Privacy Act 1988 (Cth) and the relevant Australian Privacy Principles. Our full privacy policy can be accessed from our website [www.halounderwriting.com.au](http://www.halounderwriting.com.au)

When we provide insurance products and/or services, we ask you for the personal information we need to assess applications for insurance policies, to administer and manage insurance policies and to investigate and handle claims. This can include a broad range of information ranging from your name, date of birth, address and contact details to other information about your personal affairs including your profession, financial affairs including financial statements, any criminal convictions or claims.

We may need to disclose personal information that you provide us to contractors, coinsureds, insurers and underwriters (who may be located overseas), lawyers, claims adjusters and others engaged by Halo to enable them to administer policies or handle claims. Regardless of the information shared, we will take all reasonable steps to ensure that the above parties protect your information in the same way that we do.

Our Privacy Policy shown in the above link contains information about how you can access the information we hold about you, ask us to correct it, or make a privacy related complaint.

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## COMPLAINTS AND DISPUTE RESOLUTION PROCESS

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If you have any concerns or wish to make a complaint in relation to this Policy, our services or your claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Halo in the first instance:

Halo Underwriting

Postal Address: Level 3, 85 William St, Darlinghurst, Sydney NSW 2000

Phone: 1800 161 165

Email: [support@halounderwriting.com.au](mailto:support@halounderwriting.com.au)

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within ten (10) business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited

Postal address: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

Phone: +61 2 8298 0783

Email: [idraustralia@lloyds.com](mailto:idraustralia@lloyds.com)

A final decision will be provided to you within thirty (30) calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority ('AFCA'), if your complaint is not resolved to your satisfaction within thirty (30) calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Phone: 1800 931 678

Email: [info@afca.org.au](mailto:info@afca.org.au)

Postal Address: GPO Box 3, Melbourne VIC 3001

Website: [www.afca.org.au](http://www.afca.org.au)

Your complaint must be referred to AFCA within two (2) years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to You.

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia

Suite 1603, Level 16, 1 Macquarie Place, Sydney NSW 2000

who has authority to accept service on the Underwriters' behalf;

- (iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance immediate notice should be given as soon as reasonably practicable to Halo.

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## SEVERAL LIABILITY NOTICE

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The subscribing Insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

# GENERAL LIABILITY INSURANCE

In consideration of the insured having paid or agreed to pay the premium, We, on the basis of all information provided to us, agrees with the insured to provide insurance as follows, subject to the provisions of this policy and on the basis that this policy shall not be in force unless it has been signed by Us.

## 1. Insuring Clause

We, subject to the terms and conditions of this policy, will indemnify the insured for all amounts which the insured becomes legally liable to pay as compensation arising out of:

- 1.1 personal injury;
- 1.2 property damage; or
- 1.3 advertising liability,

happening during the period of insurance within the territorial limits as a result of an occurrence in connection with the business or products.

## 2. Limits of Liability

Our liability, in respect of all compensation for:

- 2.1 Public Liability;
- 2.2 Products Liability; and
- 2.3 Advertising Liability;

under this policy as a result of any one occurrence and in the aggregate where applicable, shall not exceed the Limits of Liability specified in the schedule.

## 3. Extensions of Cover

### 3.1 Additional payments

We will, in addition to the Limits of Liability specified in the schedule, pay additional payments for:

- 3.1.1 legal costs and expenses incurred by Halo, or the insured with Halo's written consent, in the settlement or defence of any claim for compensation in respect of which the insured is entitled to indemnity under this policy, or if sustained, would be so entitled;
- 3.1.2 fees incurred with Our written consent for any solicitor, defence counsel or the equivalent of, for representation at any inquest, fatal inquiry or criminal proceedings relating to an occurrence which gives rise to a claim for compensation under this policy; and
- 3.1.3 the reasonable expenses incurred by the insured for first aid to others at the time of personal injury caused by an occurrence (other than medical expenses prohibited by law).

In respect of occurrences in North America, or occurrences in respect of which a claim for compensation is brought in a court of law in North America, the Limits of Liability specified in the schedule shall be inclusive of all such additional payments.

### 3.2 Automatic acquisition clause

This policy shall extend to apply on a contingency basis to any company or companies acquired or established or created by the insured during the period of insurance, provided that:

- 3.2.1 their business complies with that outlined in the schedule;
- 3.2.2 the turnover of the new company or companies does not exceed 10% of the turnover which was the basis of the premium calculation; and
- 3.2.3 the new company or companies are domiciled in Australia.

This cover applies only for 90 days following the takeover or formation of the company or companies. Unless We expressly confirms coverage, this contingent coverage will expire on the 90th day following the take over or formation of the companies.

We reserve the right to charge an additional premium and/or apply additional terms.



### 3.3 Compensation for court attendance

If an insured attends court as a witness, at Our request, in connection with an occurrence in respect of which the insured is entitled to indemnity under this policy, Halo will provide compensation to the insured at the following rates per day for each day on which attendance is required:

3.3.1 any director, officer or partner of the insured \$250.00 per day;

3.3.2 any employee of the insured \$150.00 per day.

### 3.4 Optional Additional Benefit – Products Exported to North America with Your Knowledge

(Applicable only where this Additional Benefit is shown as ‘Covered’ in the Schedule)

The cover provided by this Policy is extended to include any judgement, award or settlement made within North America or any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part, subject to the following additional terms and exclusions in respect of any such judgment, award or settlement:

3.4.1 cover only applied to Your legal liability in respect of Personal Injury and/or Property Damage that arises out of any Products exported to North America with Your Knowledge;

3.4.2 cover is not provided for:

- i. Personal Injury and/or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, emission, release or escape of Pollutants;
- ii. the cost of removing, nullifying or clean up of Pollutants;
- iii. the cost of preventing the escape of Pollutants;
- iv. any claim for Compensation if in North America You have:
  - any assets other than Products;
  - a related or subsidiary company;
  - any person or entity with power of attorney; and/or
  - any franchisor or franchisee.

## 4. Definitions

When used in this policy, its schedule and its Endorsements, the following definitions shall apply:

### 4.1 Act of terrorism

act of terrorism means any act, or preparation in respect of action, including but not limited to the use of force or violence and/or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

4.1.1 endangers life other than that of the person committing the action;

4.1.2 creates a risk to health or safety of the public or a section of the public; or

4.1.3 is designed to interfere with or to disrupt an electronic system.

### 4.2 Advertising liability

advertising liability means:

4.2.1 infringement of copyright of, or passing off of a title or slogan;

4.2.2 unfair competition, piracy or idea misappropriation contrary to an implied contract;

4.2.3 invasion of privacy; or

4.2.4 defamation, libel, slander,

committed or alleged to have been committed during the period of insurance in any advertisement, publicity article, broadcast or telecast arising out of the insured’s advertising activities or any advertising activities conducted on the insured’s behalf, in the course of advertising the products, goods or services related to those products.

### **4.3 Aircraft**

aircraft shall mean any vessel, craft or thing made, or intended, to fly or move in or through the atmosphere or space.

### **4.4 Business**

business means all activities and operations specified in the schedule and includes:

4.4.1 the provision and management of catering, social, sports, welfare, childcare, theatrical and related facilities including galas for the benefit of employees;

4.4.2 the provision of fire, first aid, ambulance and security services provided by you;

4.4.3 at the insured's discretion, private work carried out by an employee for a director or partner or employee of the insured's;

4.4.4 the ownership, maintenance, repair and occupation of premises or facilities belonging to the insured;

4.4.5 attendance at or participation in trade fairs, shows and exhibitions by any employee or director in connection with their employment;

### **4.5 Compensation**

compensation means monies paid or agreed to be paid by judgment or settlement for:

4.5.1 personal injury;

4.5.2 property damage; and

4.5.3 advertising liability.

### **4.6 Computer virus**

computer virus means an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host, program or other computer code or data, causing undesired program or computer system operation.

### **4.7 Computer System**

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, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

### **4.8 Cyber Act**

cyber act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax involving access to, processing of, use of or operation of any Computer System.

### **4.9 Cyber Incident**

Cyber incident means:

4.9.1 any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or

4.9.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

### **4.10 Data**

data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System,

### **4.11 Deductible**

deductible means the first amount of each occurrence which is payable by the insured as stated in the schedule. The deductible applies to all amounts payable under this policy including the indemnity provided under Additional Payments.

#### **4.12 Employee**

employee means:

- 4.12.1 any person under a contract of service or apprenticeship with the insured;
- 4.12.2 any labour master or person supplied, or any person supplied by a labour only sub-contractor;
- 4.12.3 any self-employed person working under contract with the insured and under its direction;
- 4.12.4 any person hired by the insured from another employer subject to a written agreement under which the person is deemed to be employed by the insured;
- 4.12.5 any student or person undertaking work for the insured under a work experience or similar scheme; or
- 4.12.6 any voluntary helper, whilst engaged in connection with the business.

#### **4.13 Employment practices**

employment practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by the insured.

#### **4.14 Hovercraft**

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

#### **4.15 You, Your, Insured**

You, Your, insured means the Insured named in the schedule, and includes:

- 4.15.1 any of the insured's subsidiary companies (including subsidiaries thereof) and any other entity under the insured's control, and over which the insured exercises active management;
- 4.15.2 any of the insured's directors, officers, employees or partners but only whilst acting within the scope of their duties in such capacity;
- 4.15.3 any person, principal, organisation, trustee or estate to whom or to which the insured is obligated by virtue of a written contract to provide insurance as is afforded by this policy, but only to the extent that is required by such contract and in any event only for such coverage and Limits of Liability as provided in this policy;
- 4.15.4 any social and/or sporting clubs, first aid, fire and ambulance services formed with the insured's consent and includes any office bearer or member thereof in their respective capabilities as such; and
- 4.15.5 any of the insured's directors or senior executives in respect of private work undertaken by the insured's employees for such director or senior executive.
- 4.15.6 any party including joint venture companies and partnerships to whom the insured is 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 Limits of Liability as are provided by this Policy.

#### **4.16 Internet operations**

internet operations means:

- 4.16.1 transfer of computer data or programs by use of electronic mail systems by the insured or the insured's employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within the insured's organisation whether or not such data or programs contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or trojan horse;
- 4.16.2 access through the insured's network to the world wide web or a public internet site by the insured or the insured's employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within the insured's organisation;
- 4.16.3 access to the insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for the insured's customers or others outside the insured's organisation; and
- 4.16.4 the operation and maintenance of the insured's web site.

#### **4.17 Motor vehicle**

motor vehicle means any type of machine and attachments thereto including a trailer designed for use on land only, and which travels on wheels or on self laid tracks and is propelled by other than manual or animal power.

#### **4.18 North America**

North America means:

4.18.1 the United States of America and Canada; and

4.18.2 any state or territory incorporated in, or administered by, the United States of America or Canada.

#### **4.19 Occurrence**

occurrence means an event, including continuous or repeated exposure to conditions, which results in personal injury, property damage or advertising liability neither expected nor intended from the insured's standpoint, during the period of insurance.

With respect to personal injury or property damage, all such exposure to substantially the same general conditions shall be deemed one occurrence.

With respect to advertising liability all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants, shall be deemed to arise out of one occurrence.

#### **4.20 Period of insurance**

period of insurance means the Period of Insurance stated in the schedule.

#### **4.21 Personal injury**

personal injury means:

4.21.1 bodily injury, death, disease, illness, disability, nervous shock, mental anguish or mental injury or loss of consortium;

4.21.2 false arrest, false detention, wrongful imprisonment, malicious prosecution or humiliation;

4.21.3 wrongful entry or wrongful eviction or other invasion of privacy;

4.21.4 defamation, libel or slander; and

4.21.5 assault and/or battery committed by or at the direction of the insured whilst engaged in the business and for the purpose of preventing or eliminating danger to persons or property.

#### **4.22 Pollutants**

pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

#### **4.23 Products**

products means any goods or products manufactured, grown, extracted, produced, processed, treated, altered, handled, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by the insured (including packaging and containers) in connection with the business in or from the territorial limits, and after it has ceased to be the insured's property, or in the insured's custody or legal control.

#### **4.24 Property damage**

property damage means:

4.24.1 physical damage to, or loss of or destruction of tangible property, including the subsequent loss of use of that property;

loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible property.

#### **4.25 Schedule**

schedule means the Schedule attaching to and forming part of this policy, including any Schedule substituted for the original Schedule.

#### 4.26 Territorial limits

territorial limits means anywhere in the world, except North America ;the Democratic People’s Republic of Korea (North Korea); the Islamic Republic of Iran (Iran); the Republic of Cuba (Cuba), Russia, Belarus and Annexed Regions of Ukraine; where the policy will only apply in respect of:

4.26.1 products exported to North America without Your knowledge; and

4.26.2 business visits to North America by directors, officers, employees, partners or executives normally resident in the Commonwealth of Australia or New Zealand, but not where they perform manual work.

#### 4.27 Watercraft

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

### 5. Exclusions

We will not be liable under this policy in respect of:

#### 5.1 Advertising liability

advertising liability directly or indirectly caused by, in connection with or contributed to by or arising from:

5.1.1 failure of performance of contract, but this shall not relate to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;

5.1.2 incorrect description of any article or commodity; or

5.1.3 mistake in advertised price.

#### 5.2 Aircraft products

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any of the insured’s products which, with the insured’s knowledge, are intended for incorporation into any critical part, the structure, machinery or controls of any aircraft.

#### 5.3 Aircraft, watercraft, hovercraft

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the ownership, maintenance, possession, use or operation, loading or unloading, of any aircraft, watercraft or hovercraft (other than watercraft not exceeding 15 metres in length for use on inland or coastal waters).

#### 5.4 Asbestos

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from asbestos or asbestos products or asbestos contained in any products.

However, this Exclusion does not apply to actual or alleged loss, cost, expenses or liability where such loss, cost, expense or liability is not related to asbestos content of goods, materials or products or completed operations.

#### 5.5 Communicable Disease

Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.

As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

## 5.6 Contractual liability

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

- 5.6.1 the liability or obligation would otherwise have been implied by law;
- 5.6.2 the liability or obligation arises from a provision in a contract for lease of real or personal property other than a provision which obliges the insured to effect insurance or provide indemnity in respect of the subject matter of contract;
- 5.6.3 the liability or obligation is assumed by the insured under any warranty under the requirement of Federal or State legislation in respect to product safety;
- 5.6.4 the liability or obligation arises from a provision in a written contract with any public supplier for the supply of water, gas, electricity, fuel, sewerage or waste removal services, telephone and communications services, except contracts with such suppliers for the performance of work by the insured;

## 5.7 Custody and control

property damage to property owned by, hired to or in the custody or control of the insured or any employee or any party acting on behalf of the insured, other than:

- (i) guests', visitors', directors', officers', employees' or partners' personal effects;
- (ii) motor vehicles in a car park, unless the car park is owned or operated by the insured for reward;
- (iii) premises at which the insured is undertaking work in connection with the business;
- (iv) any building (including its fixtures and fittings) leased, hired or rented to the insured provided We shall not be liable in respect of liability assumed by the insured under a tenancy or other agreement which would not have attached in the absence of such agreement; or
- (v) other property in the insured's charge or control (except while undergoing any process or being worked upon) for which the insured has not assumed any responsibility to obtain insurance, subject to a limit of \$250,000 for any one occurrence and in the aggregate during any one period of insurance.

## 5.8 Cyber and Data

- 5.8.1 Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy excludes any CYBER LOSS regardless of any other cause or event contributing concurrently or in any other sequence thereto, unless subject to the provisions of paragraph 2.
- 5.8.2 Subject to the other terms, conditions and exclusions contained in this Policy, this Exclusion will cover losses arising from legal liability of the Insured caused by or arising out of a CYBER ACT or a CYBER INCIDENT which result in Injury to third parties (other than mental injury, mental anguish or mental disease) or physical damage to third party property.
- 5.8.3 This endorsement is applicable to the following classes of business:
  - (i) Products Liability;
  - (ii) Public Liability.
- 5.8.4 Any loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any DATA, including any amount pertaining to the value of such DATA shall not be recoverable hereunder, nor be considered as physical loss or damage for the purposes of this exclusion clause or any other part of this Policy.
- 5.8.5 Any recoveries, collectibles or retention from any other form of insurance or reinsurance, whether specific, general or which may overlap including deductibles or self-insured retention which protects the Insured in respect of any CYBER LOSS (hereinafter "Other Recoveries") shall inure to the benefit of the Underwriters in all cases and this contract shall not respond until all Other Recoveries are exhausted. The liability of the Underwriters in respect of loss or losses covered hereunder shall not be increased by any reason of the inability of the Insured to collect any amounts from Other Recoveries.
- 5.8.6 If the Underwriters allege that by reason of this exclusion any CYBER LOSS sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall fall to the Insured.

## 5.9 Deliberate acts

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any deliberate act or omission of the insured or any employee and which could reasonably have been expected, having regard to the nature and circumstances of such an act or omission.

## 5.10 Electromagnetic fields

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from electromagnetic fields (EMF) or electromagnetic interference (EMI).

## 5.11 Information technology hazards

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

5.11.1 the insured's internet operations; or

5.11.2 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 telecommunication services by the insured or on the insured's behalf; or

(c) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

## 5.12 Injury to employees

any liability to indemnify or pay compensation arising out of:

5.12.1 personal injury where any insured or employee is indemnified or entitled to be indemnified under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not the insured is a party to such contract of insurance;

5.12.2 any scheme created by legislation to provide compensation to persons who sustain personal injury arising out of or in the course of their employment; or

5.12.3 any claim for employment practices.

This policy shall not be drawn into contribution with such insurance or scheme.

This Exclusion does not apply with respect to liability of others assumed by the insured under any written contracts. However, if the insured:

(i) is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or any common law liability (whether limited or not) for personal injury; or

(ii) is not required to so insure or otherwise fund such liability by reason only that the personal injury is to a person who is not a 'worker' or 'employee' within the meaning of the relevant workers' compensation law or the personal injury is not an injury which is subject to such law,

then this policy will cover liability for personal injury to the extent that the insured's liability would not have been covered under any such fund, scheme, policy of insurance or self insurance arrangement had the insured complied with its obligations pursuant to such law.

## 5.13 Liquidated or punitive damages

any liability for any amount in respect of:

5.13.1 fines or penalties; or

5.13.2 liquidated, punitive or exemplary damages or multiplication of awards.

## 5.14 Loss of use

any liability for any amount in respect of loss of use of tangible property which has not been damaged, lost or destroyed as a result of:

5.14.1 a delay in or lack of performance by or on behalf of any insured in respect of any contract or agreement; or

5.14.2 the failure of the products to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by an insured.

### 5.15 Motor liability

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the use of a motor vehicle owned by, or in the physical or legal control of the insured:

5.15.1 which is required by law to be registered; or

5.15.2 in respect of which insurance is required by virtue of any legislation. However, this Exclusion does not apply to:

- (i) a motor vehicle (other than a motor vehicle owned or used by or on behalf of the insured) whilst that motor vehicle is in a car park owned or operated by the insured other than for income or reward as a car park operator;
- (ii) personal injury or property damage occurring during the loading or unloading of a motor vehicle caused by or arising from the collection or delivery of any goods from or to the motor vehicle where such personal injury or property damage occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability;
- (iii) accidental or erroneous failure to maintain such statutory insurance; or
- (iv) personal injury or property damage where insurance is provided by an Underlying Policy specified in the Endorsements, but then only to the extent of the cover provided by such policy.

### 5.16 Pollution

any liability arising out of:

5.16.1 personal injury or property damage directly or indirectly caused by, in connection with or contributed to by or arising from the discharge, seepage, migration, dispersal, release or escape of pollutants into or upon any property, land the atmosphere or any watercourse or body of water (including ground water);

5.16.2 personal injury or property damage directly or indirectly caused by, in connection with or contributed to by or arising from the discharge, seepage, migration, dispersal, release or escape of pollutants caused by any product that has been discarded, dumped, abandoned or thrown away by others;

5.16.3 the cost of removing, nullifying or cleaning up pollutants; or

5.16.4 the cost of preventing the escape of pollutants.

Exclusions 5.16.1 and 5.16.3 only above shall not apply where the claim arises from a sudden identifiable, unintended and unexpected event from the insured's standpoint which takes place in its entirety at a specific time and place during the period of insurance and occurs outside of North America. However the total aggregate Limits of Liability during any one period of insurance shall not exceed the Limits of Liability.

### 5.17 Professional liability

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the rendering or failure to render professional advice or service by the insured, or any error or omission in connection therewith.

However, this Exclusion shall not apply to:

- (i) the insured's liability in respect of personal injury or property damage resulting from the provision of professional advice or services, or any error or omission in connection with the insured's products which is not given for a fee; or
- (ii) the rendering or failure to render professional advice by any employee to provide first aid or other medical services at the insured's premises.

Medical services excludes advice or services provided by a qualified medical practitioner, nurse or first aid attendant.

### 5.18 Radioactive contamination

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

5.18.1 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

5.18.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.



### 5.19 Repair and replacement

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.19.1 the cost of rectifying defective work carried out by or on behalf of the insured;
- 5.19.2 property damage to any of the insured's products causing personal injury or property damage; and
- 5.19.3 the costs or expenses of recalling, removing, repairing, recovering, altering or replacing the insured's products arising from a defect in or an error in connection with the sale or supply of such products or the guaranteed performance of the insured's products or the unsuitability thereof for the use for which they are supplied.

### 5.20 Specific products and substances

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.20.1 urea formaldehyde;
- 5.20.2 silicon based human implants;
- 5.20.3 AIDS, HIV or HIV related illness;
- 5.20.4 contraceptives and RU 486;
- 5.20.5 human biological materials including extracts thereof (e.g. blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- 5.20.6 genetically modified seeds or organisms;
- 5.20.7 vaccines;
- 5.20.8 application or use of polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
- 5.20.9 tobacco and tobacco related products;
- 5.20.10 the manufacture or supply of all pharmaceutical active ingredients including medical implants; or
- 5.20.11 DES and orally taken oxycholine.
- 5.20.12 Manufacturing or cutting of any material that could lead to Silicosis.
- 5.20.13 Use of glyphosate for weed eradication

### 5.21 Terrorism

any injury, loss, 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.

This Exclusion also excludes injury, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

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

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

### 5.22 War

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

## **6. General Conditions**

### **6.1 Action against Us**

We shall not be liable unless the insured has complied fully with all provisions of this policy nor until the amount of compensation has been finally determined, either by judgment against the insured or by written agreement with the insured, the claimant and Us.

The insured shall make a definite claim for any personal injury or property damage for which We may be liable within a reasonable time after such final determination.

### **6.2 Assignment**

No assignment of interest under this policy shall bind Us until our consent is endorsed herein. However, should any insured die or be adjudged bankrupt or insolvent, We will consent to the assignment of this policy to such insured's legal representative provided that written notice is given to us within a reasonable time after the date of such death, bankruptcy or insolvency.

### **6.3 Cancellation**

6.3.1 The insured may cancel this policy at any time by giving notice in writing to us.

6.3.2 We may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (Cth), such cancellation to take effect within 30 days from the time of notification received by the insured.

6.3.3 Upon cancellation by the insured a refund of premium will be allowed pro rata of the premium for the unexpired period of insurance.

6.3.4 Upon cancellation by Us, a refund of premium will be allowed pro rata for the unexpired period of insurance.

### **6.4 Change in risk**

Every change materially affecting the facts or circumstances existing at the commencement of or during the course of this policy, or at any subsequent renewal date, shall be notified to Us as soon as such change comes to the insured's notice.

We reserve the right to accept or deny coverage at the time of such notification and to establish a separate rate and premium for any such coverage.

### **6.5 Claims assistance and cooperation**

The insured must assist and cooperate with Us fully and promptly in relation to a claim, including:

6.5.1 supplying us with all information and assistance we may reasonably require;

6.5.2 allowing us to negotiate, defend or settle the claim:

(a) in the insured's name and on the insured's behalf; or

(b) in the name of and on behalf of any other party covered by the insured's policy;

6.5.3 sending to us any claim, writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest the insured receives or becomes aware of; and

6.5.4 as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until We have had an opportunity of inspection.

### **6.6 Control of claims**

6.6.1 The insured shall not, without Our written consent, admit or repudiate liability, negotiate or make any offer, promise or payment in connection with any claim.

6.6.2 We shall be entitled, but not obligated, to take over and conduct in the insured's name, the defence or settlement of any claim or to prosecute in the name of the insured at its own expense and for its own benefit any claim, for indemnity or damages or otherwise against any persons, and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.

6.6.3 The insured shall give all such information and assistance as We may require.

### **6.7 Cross liability**

Subject to General Condition 6.12 'Joint insured' for the purpose of this policy, when an insured consists of more than one party, the insured shall be considered as a separate insured as though a separate policy had been issued to each of the said parties but nothing herein contained shall operate to increase our Limits of Liability.

## **6.8 Discharge of any liability**

We may at any time pay the Limits of Liability (after deduction of sum or sums already paid), or any lesser sums for which any claim or claims can be settled, and shall then be under no further liability in respect thereof except for the payment under Extension of Cover 3.1 'Additional payments' incurred prior to such payment.

In the event of a claim or series of claims arising from an occurrence resulting in liability of the insured to pay a sum in excess of the Limits of Liability, Our liability for Extension of Cover 3.1 'Additional payments' shall not exceed an amount being in the same proportion as Our payment bears to the total payment made by or on behalf of or to be made by the insured in satisfaction of the claim or claims.

## **6.9 Fraud**

If any claim upon this policy be in any respect fraudulent, or if any fraudulent means or devices be used by the insured, or if any damage be occasioned by a wilful act of the insured or with their connivance, all benefit under this policy shall be forfeited and the policy void.

## **6.10 Headings**

Headings have been included for ease of reference, but do not form part of the policy.

## **6.11 Inspection and audit**

We shall be permitted but not obligated to inspect the insured's property and operations at any reasonable time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an insured or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation.

We may examine and audit the insured's books and records at any time during the period of insurance and within three years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

## **6.12 Joint insured**

Where the insured is comprised of more than one legal entity, information supplied to us shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to us or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such entities.

## **6.13 Joint responsibility and liability**

Any and all insured's and any persons deriving benefit under this insurance are jointly liable and responsible for any breach of any terms of this policy and/or misrepresentation and/or non-disclosure and/or fraud. For the avoidance of doubt this clause survives avoidance of the policy.

## **6.14 Liability not to be admitted**

The insured shall not admit liability for or offer to or agree to settle any claim without Our written consent. We shall be entitled to take over and defend any claim with full discretion in the conduct of that claim.

## **6.15 No cover under this policy**

Where the insured is not entitled to be indemnified under this policy, We owe no duty of any kind and have no liability of any kind to the insured.

## **6.16 Notice and proof of claim**

Upon the discovery of any personal injury, or property damage loss or circumstance giving rise or which may give rise to a claim (whether or not the insured believes the claim amount might fall below the applicable deductible) under this policy, the insured shall:

- 6.16.1** give notice in writing to Us as soon as practicable after the insured becomes aware of such loss or circumstance and within 30 days thereafter provide, at the insured's own expense, a written statement detailing all relevant information;
- 6.16.2** advise of the cause and the amount of loss and any other proof or information with respect to the claim that may be reasonably required;
- 6.16.3** furnish to us details of any other insurance covering or which may cover the same loss;
- 6.16.4** take reasonable steps to prevent further loss; and
- 6.16.5** at all reasonable times permit us or our agents to inquire into, investigate and examine the circumstances of any loss.

### **6.17 Payments in respect to Goods and Services Tax**

When We make a payment under this policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that the insured is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

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

### **6.18 Premium**

Unless otherwise stated, the premium is adjustable. The insured shall, within 60 days after the expiry of each period of insurance, provide such information as We may require to adjust the premium.

Any difference in premium shall be paid by or allowed to the insured, provided that the adjusted premium will not be less than any minimum premium specified in the schedule. The insured shall at all times allow Usto inspect such records.

### **6.19 Proper law and jurisdiction**

**6.19.1** The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with Australian law.

**6.19.2** In the event of any dispute arising under this policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, the insured will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

A reference to any statute, regulation or subordinate legislation includes any amendment, replacement, successor or equivalent to or of that statute, regulation or subordinate legislation.

### **6.20 Reasonable precautions**

It is a condition precedent to Our liability under this policy that the insured shall, at its own expense:

- 6.20.1** take, and cause to be taken, reasonable precautions to prevent personal injury, property damage and/or advertising liability;
- 6.20.2** comply with all statutory or local authority law, obligations and requirements or equivalent;
- 6.20.3** prevent the manufacture, sale or supply of defective products; and
- 6.20.4** withdraw, inspect, repair, replace, trace, recall or modify any of the products containing any defect or deficiency of which the insured has knowledge or has reason to suspect.

### **6.21 Sanctions regulation**

Notwithstanding any other terms or conditions under this policy, We shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any insured or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the insured would violate any applicable trade or economic sanctions, law or regulation.

### **6.22 Subrogation**

We waive all rights of subrogation under this policy against:

- 6.22.1** any corporation or organisation the majority of whose capital stock is owned or controlled by the insured.
- 6.22.2** any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this policy, except that if such corporation, organisation or person is protected from such loss by any other policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other policy.

### **6.23 Valuation and foreign currency**

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in Australian currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of loss under this policy is stated in a currency other than Australian dollars, payment under this policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars as reported in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

## **CONTACT**

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