



Claims Made Combined General Liability Insurance

Policy Wording



Important

Statutory Notice – Section 40 Insurance Contracts Act 1984 (Cth)

This notice is provided in connection with but does not form part of the policy.

This policy is a 'Claims Made' liability insurance policy. It only provides cover if:

1. a *claim* is made against an *insured*, by some other person, during the period when the policy is in force; and
2. The *claim* arises out of circumstances committed, attempted or alleged to have been committed or attempted after the Retroactive Date stipulated in the *schedule*.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if an *insured* becomes aware, during the period when the policy is in force, of any occurrence or fact which might give rise to a *claim* against them by some other person, then provided that the *insured* notifies Zurich of the matter before this policy expires, Zurich may not refuse to indemnify merely because a *claim* resulting from the matter is not made against the *insured* while the policy is in force.

If an *insured*, inadvertently or otherwise, does not notify the relevant occurrence or facts to Zurich before the expiry of the policy, the *insured* will not have the benefit of section 40(3) and Zurich may refuse to pay any subsequent *claim*, notwithstanding that the events giving rise to it or the circumstances alleged in it may have taken place during the *period of insurance*.

If a *claim* is actually made against the *insured* by some other person during the *period of insurance* but is not notified to Zurich until after the policy has expired, Zurich may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.

Contents

Welcome to Zurich

- About Zurich 2
- Duty of Disclosure..... 2
- Our contract with you..... 2
- Privacy..... 2
- General Insurance Code of Practice..... 3
- Complaints and Disputes Resolution process..... 3

Claims Made Combined General Liability Insurance – Policy Wording

- 1. Insuring Clause 4
- 2. Limits of Liability 4
- 3. Extensions of Cover 4
- 4. Definitions..... 6
- 5. Exclusions..... 10
- 6. General Conditions 15

Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507, a subsidiary of Zurich Financial Services Australia Limited (ZFSA). In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, mid-sized and large companies, including multinational corporations.

Duty of Disclosure

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

You have this duty until we agree to insure you.

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

You do not need to tell us anything that:

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

If you do not tell us something

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

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

Our contract with you

Your Policy is a contract of insurance between you and Zurich 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 *schedule* issued by us. The *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the Policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.
- 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.

Privacy

Zurich is bound by the Privacy Act 1988 (Cth). We collect, disclose and handle information, and in some cases personal or sensitive (eg health) information, about you ('your details') to assess applications, administer policies, contact you, enhance our products and services and manage claims ('Purposes'). If you do not provide your information, we may not be able to do those things. By providing us, our representatives or your intermediary with information, you consent to us using, disclosing to third parties and collecting from third parties your details for the Purposes.

We may disclose your details, including your sensitive information, to relevant third parties including your intermediary, affiliates of Zurich Insurance Group Ltd, other insurers and reinsurers, our banking gateway providers and credit card transactions processors, our service providers, our business partners, health practitioners, your employer, parties affected by claims, government bodies, regulators, law enforcement bodies and as required by law, within Australia and overseas.

We may obtain your details from relevant third parties, including those listed above. Before giving us information about another person, please give them a copy of this document. Laws authorising or requiring us to collect information include the Insurance Contracts Act 1984 (Cth), Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), Corporations Act 2001 (Cth), Autonomous Sanctions Act 2011 (Cth), A New Tax System (Goods and Services Tax) Act 1999 (Cth) and other financial services, crime prevention, trade sanctions and tax laws.

Zurich's Privacy Policy, available at www.zurich.com.au or by telephoning us on 132 687, provides further information and lists service providers, business partners and countries in which recipients of your details are likely to be located. It also sets out how we handle complaints and how you can access or correct your details or make a complaint.

General Insurance Code of Practice

We are signatories to the General Insurance Code of Practice (the Code) and support the Code.

The objectives of the Code are:

- to commit us to high standards of service;
- to promote better, more informed relations between us and you;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes you make about us; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers compliance with the Code.

Further information about the Code or the Code Governance Committee and your rights under it is available at <https://insurancecouncil.com.au/cop/> or by contacting us.

Complaints and Disputes Resolution process

If you have a complaint about an insurance product we have issued or the service you have received from us, please contact your intermediary to initiate your complaint with us. If you are unable to contact your intermediary, you can contact us directly on 132 687. We will acknowledge receipt of your complaint within 24 hours or as soon as practicable.

If you are not satisfied with our initial response, you may access our internal dispute resolution process. Please refer to the general insurance fact sheet available on our website for details of our internal dispute resolution process.

We expect that our internal dispute resolution process will deal fairly and promptly with your complaint, however, you may take your complaint to the Australian Financial Complaints Authority (AFCA) at any time.

AFCA is an independent external dispute resolution scheme. We are a member of this scheme and we agree to be bound by its determinations about a dispute. AFCA provides fair and independent financial services complaint resolution that is free to you.

Their contact details are:

Website: www.afca.org.au

Email: info@afca.org.au

Freecall: 1800 931 678

In writing to: The Australian Financial Complaints Authority, GPO Box 3, Melbourne, Victoria 3001.

If your complaint or dispute falls outside the AFCA Rules, you can seek independent legal advice or access any other external dispute resolution options that may be available to you.

Claims Made Combined General Liability Insurance

In consideration of the *insured* having paid or agreed to pay the premium, Zurich, 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 an authorised Zurich official.

1. Insuring Clause

Zurich, 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 a *claim* in connection with the *business* or *products*.

2. Limits of Liability

Zurich's 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 *claim* 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

Zurich 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 Zurich, or the *insured* with Zurich'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; and
- 3.1.2 fees incurred with Zurich's written consent for any solicitor, defence counsel or the equivalent of, for representation at any inquest, fatal inquiry or criminal proceedings relating to a *claim* which may give rise to a *claim* for *compensation* under this policy.

In respect of *claims* in *North America*, or *claims* 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 Zurich expressly confirms coverage, this contingent coverage will expire on the 90th day following the takeover or formation of the companies.

Zurich reserves the right to charge an additional premium and/or apply additional terms.

3.3 Care, custody and control

Zurich will indemnify the *insured* for property in their care, custody and control, to where Exclusion 5.6 'Care, custody and control' shall not apply with regard to:

- 3.3.1 the personal property, tools and effects of any of your directors, partners, proprietors, officers, executives or *employees*, or the clothing and personal effects of any of *your* visitors;
- 3.3.2 premises or part(s) of premises (including their contents) leased or rented, or temporarily occupied by, *you* for the purpose of the *business*, but no cover is provided by this policy if *you* have assumed the responsibility to insure such premises;
- 3.3.3 (i) premises (and/or) their contents temporarily occupied by *you* for the purpose of carrying out work in connection with *your business*; or
(ii) any other property temporarily in *your* possession for the purpose of being worked upon, but no indemnity is granted for damage to that part of any property upon which you are or have been working if the damage arises solely out of such work.
- 3.3.4 any *vehicle* (including its contents, spare parts and accessories while they are in or on such vehicle) not belonging to or used by *you*, whilst any such *vehicle* is in a car park owned or operated by *you* provided that *you* do not operate the car park for reward, as a principal part of *your business*;
- 3.3.5 notwithstanding Exclusion 5.7 'Contractual liability', any property (except property that you own) not mentioned in paragraphs 3.3.1 to 3.3.4 above whilst in your physical or legal care, custody or control whether or not you have accepted or assumed legal liability for such property, provided that our liability under this Extension of Cover shall not exceed \$500,000 or the amount specified in the *schedule*, if higher, in respect of any one *claim* or series of *claims* arising out of the same event or any other greater amount set out in the *schedule*.

3.4 Claims series clause

- 3.4.1 A *claim* or series of *claims* which are attributable directly or indirectly or allegedly to the same event, condition, defect or hazard, or failure to warn shall be added together and treated as one *claim*, irrespective of the period of time after the commencement of the *period of insurance* or the number of persons or entities that sustain *property damage* and/or *personal injury*.
- 3.4.2 All such *claims* shall be deemed to have occurred on the day of the first of such *claims*.
- 3.4.3 The Limits of Liability specified in the *schedule* are non-cumulative.
- 3.4.4 We shall not indemnify the *insured* for any liability of whatsoever nature in connection with *personal injury* or *property damage* where such *personal injury* or *property damage* is in any way connected with or related to a *claim* or events or circumstances, whether of a continuous, intermittent or repeated exposure, which had occurred or commenced or existed prior to the date of inception of this policy.

3.5 Compensation for court attendance

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

- 3.5.1 any director, officer or partner of the *insured* \$500.00 per day;
- 3.5.2 any *employee* of the *insured* \$250.00 per day.

3.6 Joint venture

Zurich will indemnify the *insured* in the event of any *claim* caused by or arising out of any joint venture in which the *insured* has an interest limited to the Limits of Liability stated in the *schedule*.

Where the percentage of interest of the *insured* in the joint venture is not set forth in writing, the percentage to be applied shall be that which is imposed by law at the inception of the joint venture and shall not be increased by the insolvency of the others interested in the joint venture.

The indemnity will not apply:

- 3.6.1 to *claims* of the partners in the joint venture against one another;
- 3.6.2 to *claims* by the joint venture against the *insured*; or
- 3.6.3 resulting from non-disclosure of a material fact.

3.7 Overseas personal liability

Zurich will indemnify the *insured* for legal liability incurred in connection with the *business* which may be deemed to include any liability incurred in a personal capacity by an *employee* or director (including the spouse or any family member of any such person while accompanying such *employee* or director) whilst travelling outside his or her country of domicile in connection with the *business*, provided that the *employee* or director is not entitled to indemnity under any other policy of insurance, self insurance or deductible programme effected in the *insured's* name.

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, 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 involves violence against one or more persons;
- 4.1.2 involves damage to property;
- 4.1.3 endangers life other than that of the person committing the action;
- 4.1.4 creates a risk to health or safety of the public or a section of the public; or
- 4.1.5 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;
- 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;
- 4.4.6 provision of sponsorship.

4.5 Claim

claim means any writ, summons, application or other originating legal or arbitral process, cross claim, or counter claim or appeal served upon an *insured* alleging *personal injury*, *property damage* or *advertising liability*.

4.6 Compensation

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

- 4.6.1 *personal injury*;
- 4.6.2 *property damage*; and
- 4.6.3 *advertising liability*.

4.7 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 Cyber event

cyber event means any *claim* in any way connected with:

- 4.7.1 an *IT Network*; or
- 4.7.2 *computer virus*.

4.9 Deductible

deductible means the first amount of each *claim* 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.

4.10 Employee

employee means:

- 4.10.1 any person under a contract of service or apprenticeship with the *insured*;
 - 4.10.2 any labour master or person supplied, or any person supplied by a labour only sub-contractor;
 - 4.10.3 any self-employed person working under contract with the *insured* and under its direction;
 - 4.10.4 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*;
 - 4.10.5 any student or person undertaking work for the *insured* under a work experience or similar scheme; or
 - 4.10.6 any voluntary helper,
- whilst engaged in connection with the *business*.

4.11 Employment Practices

employment practices mean 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*.

4.12 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 force.

4.13 Insured

insured means the Insured named in the *schedule*, and includes:

- 4.13.1 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;
- 4.13.2 any of the *insured's* directors, officers, *employees* or partners but only whilst acting within the scope of their duties in such capacity;
- 4.13.3 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;
- 4.13.4 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
- 4.13.5 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.

4.14 Internet operations

internet operations means:

- 4.14.1 transfer of computer data or programmes 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 programmes contain any malicious or damaging code, including but not limited to *computer virus*, worm, logic bomb, or trojan horse;
- 4.14.2 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;
- 4.14.3 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
- 4.14.4 the operation and maintenance of the *insured's* web site.

4.15 IT network

IT network means any computer hardware (or components thereof), software (or components thereof), communication system networks, *internet operations*, websites whosoever hosted, online or offline media libraries, data, or any other peripheral devices.

4.16 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.

4.17 North America

North America means:

4.17.1 the United States of America and Canada; and

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

4.18 Period of insurance

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

4.19 Personal injury

personal injury means:

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

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

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

4.19.4 defamation, libel or slander; and

4.19.5 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.

4.20 Pollutants

pollutants mean 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.

4.21 Products

products mean 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.

4.22 Property damage

property damage means:

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

4.22.2 loss of use and/or loss of value of tangible property that has not been physically damaged, physically lost or physically destroyed provided such loss of use and/or loss of value is caused by physical damage to, physical loss of or physical destruction of other tangible property; and includes denial of access to property, premises, services or facilities, interference with or stoppage of vehicular or pedestrian traffic; and

4.22.3 trespass, nuisance or interference with right of way or right to light air or water, easement or quasi-easement.

4.23 Schedule

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

4.24 Silica

silica means silicon dioxide, (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

4.25 Silica related dust

silica related dust means a mixture or combination of silica and other dust or particles.

4.26 Territorial limits

territorial limits means anywhere in the world, except *North America*, where the policy will only apply in respect of:

4.26.1 *products* exported to *North America*; and

4.26.2 *business* visits to *North America* by executives or sales persons normally resident in the Commonwealth of Australia or New Zealand.

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

Zurich 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 Care, custody and control

any liability arising out of or *property damage* to:

- 5.5.1 property leased or rented to the *insured*;
- 5.5.2 property not belonging to the *insured*, but which is in the care, custody and control of the *insured*, other than the property described in Extension of Cover – ‘Care, custody and control’

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; or
- 5.6.4 the liability or obligation is assumed under those agreements specified in the *schedule*.

5.7 Cyber risks

any liability of whatsoever nature in connection with or contributed to, or from a *cyber event*.

5.8 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.

5.9 Injury to employees

any liability to indemnify or pay *compensation* arising out of:

- 5.9.1 *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;
- 5.9.2 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
- 5.9.3 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.

5.10 Liquidated or punitive damages

any liability for any amount in respect of:

5.10.1 fines or penalties; or

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

5.11 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:

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

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

However, Exclusion 5.11.2 above does not apply to loss of use of other tangible property resulting from the sudden and accidental damage to or destruction of the *products* after such *products* have been put to use by any person or organisation other than the *insured*.

5.12 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*:

5.12.1 which is required by law to be registered; or

5.12.2 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.

5.13 North America

any liability in *North America* directly or indirectly caused by, in connection with or contributed to by or arising from:

5.13.1 the manufacture in or supply to *North America* of:

(a) any alcohol products;

(b) firearms;

(c) any product containing or made of latex;

(d) helmets and bicycles and critical bicycle parts;

(e) welding material and equipment including and not limited to welding machinery or other welding process equipment, electrodes and welding rods products;

- (f) pesticides and/or biocides that contains substances which are mentioned on the Rotterdam Convention for Prior Informed Consent (PIC) effective 2004, or any of its subsequent Annexes and/or any persistent organic pollutants (POPs) which are mentioned on the Stockholm Convention list under Annex A; B and C, or any of its subsequent Annexes; or
 - (g) herbal remedies active ingredients including Aristolochia, Country Mallow (heartleaf), Ephedra, Ma Huang, Amsania, Brigham tea, Garcinia, Kava Kava, Piper, Methysticum, Ava root, Ava pepper shrub, Khat (catha edulis, Cat, Chat, Gad, Kaht, Miraa and Tschut) and Usnea.
- 5.13.2 the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to existence of, or presence of any:
- (a) fungi or bacteria;
 - (b) substance, vapour or gas produced by or arising out of any fungi or bacteria.
- 5.13.3 the costs or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposing of, or in any way responding to, or assessing the effects of, fungi or bacteria, by the *insured* or by any other person or entity.

5.14 Pollution

any liability arising out of:

- 5.14.1 *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);
- 5.14.2 *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;
- 5.14.3 the cost of removing, nullifying or cleaning up *pollutants*; or
- 5.14.4 the cost of preventing the escape of *pollutants*.

Exclusions 5.14.1 and 5.14.3 above shall not apply to a sudden identifiable, unintended and unexpected event from the *insured's* standpoint which takes place in its entirety at a specific time and place, resulting from a *claim* first made against the *insured* 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.

5.15 Prior and pending

- 5.15.1 any *claim* made, threatened or intimated against an *insured* prior to the *period of insurance*.
- 5.15.2 any *claim* or liability based upon, whether directly or indirectly, any fact or circumstance:
 - (a) which the *insured* was aware of prior to the *period of insurance* and which the *insured* knew or ought reasonably to have known might give rise to a *claim* or liability;
 - (b) of which written notice has been given or ought reasonably to have been given by the *insured* under any prior policy (whether or not such policy was issued by any member of the Zurich Insurance Group);
 - (c) disclosed in the proposal or other information provided to us for the purposes of obtaining this policy.

5.16 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.

5.17 Radioactive contamination

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

- 5.17.1 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 5.17.2 the radioactive, toxic, explosive or other hazardous properties of any explosive 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, scientific or research pursuits.

5.18 Repair and replacement

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

- 5.18.1 the cost of rectifying defective work carried out by or on behalf of the *insured*;
- 5.18.2 *property damage* to any of the *insured's products* causing *personal injury* or *property damage*; and
- 5.18.3 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.

5.19 Retroactive date

any liability arising from or attributable to any *personal injury*, *property damage* or *advertising liability* first occurring prior to the Retroactive Date, if any, specified in the *schedule*.

5.20 Silica

any liability directly or indirectly caused by, or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, actual, alleged, threatened or suspected inhalation or absorption of *silica* or *silica related dust*.

5.21 Specific products and substances

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

- 5.21.1 urea formaldehyde;
- 5.21.2 silicon based human implants;

- 5.21.3 AIDS, HIV or HIV related illness;
- 5.21.4 contraceptives and RU 486;
- 5.21.5 human biological materials including extracts thereof (e.g. blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- 5.21.6 genetically modified seeds or organisms;
- 5.21.7 vaccines;
- 5.21.8 application or use of:
 - (a) polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
 - (b) per- and poly-fluoroalkyl substances (PFSA) including perfluorooctanoic acid (PFOA) and perfluorooctane sulphonic acid (PFOS); or
 - (c) any product containing glyphosate, atrazine, dicamba, neonicotinoids, paraquat and chlorpyrifos;
- 5.21.9 tobacco, tobacco related products or tobacco substitute products (e.g. filters, paper for cigarettes, e-cigarettes, vaping products and the like);
- 5.21.10 the manufacture or supply of all pharmaceutical active ingredients including medical implants; or
- 5.21.11 DES and orally taken oxycholine.

5.22 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 Zurich alleges 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.

5.23 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 Zurich

Zurich 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 Zurich.

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

6.2 Assignment

No assignment of interest under this policy shall bind Zurich until our consent is endorsed herein. However, should any *insured* die or be adjudged bankrupt or insolvent, Zurich 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 Zurich 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 (a) After cancellation by the *insured*, we will be entitled to retain:
- (i) the pro rata premium for the period during which the policy has been in force; and
 - (ii) any tax or duty paid or owing for which we are unable to obtain a refund.
- (b) After cancellation by us, you will be entitled to a refund on a pro rata basis in relation to the unexpired *period of insurance*, excluding any tax or duty paid or owing for which we are unable to obtain a refund.

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 Zurich 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 Zurich 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* 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 Zurich has had an opportunity of inspection.

6.6 Control of claims

- 6.6.1 The *insured* shall not, without Zurich's consent, admit or repudiate liability, negotiate or make any offer, promise or payment in connection with any *claim*.
- 6.6.2 Zurich 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 Zurich 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

Zurich 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 resulting in liability of the *insured* to pay a sum in excess of the Limits of Liability, Zurich's liability for Extension of Cover 3.1 'Additional payments' shall not exceed an amount being in the same proportion as Zurich's 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

Zurich 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.

Zurich 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 *insureds* 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 Zurich's consent. Zurich 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, Zurich owes no duty of any kind and has 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 Zurich 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 Zurich makes a payment under this policy for the acquisition of goods, services or other supply, Zurich 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 (Cth), in relation to that acquisition, whether or not that acquisition is actually made.

When Zurich makes 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 (Cth) 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 90 days after the expiry of each *period of insurance*, provide such information as Zurich 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 Zurich to inspect such records.

6.19 Proper law and jurisdiction

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

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 Zurich's 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, Zurich 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

Zurich waives 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, Zurich's 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.

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