Claims Made Combined General Liability Insurance

Corporate 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:

A claim is made against an insured, by some other person, during the period when the policy is in force; and

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.
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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 insurance provider with a global network of subsidiaries and offices. With about 60,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

Duty of Disclosure
Before the insured enters into a contract of general insurance with us, the insured has a duty under the Insurance Contracts Act 1984 (Cth) to disclose to us every matter they know, or could reasonably be expected to know, is relevant to our decision whether to insure the insured and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

The insured has the same duty to disclose those matters to us before they renew, extend, vary or reinstate a contract of general insurance. This duty however, does not require disclosure of a matter that:

• diminishes the risk to be insured;
• is of common knowledge;
• we know or in the ordinary course of our business we ought to know;
• we indicate to the insured that we do not want to know.

Non-disclosure or Misrepresentation
If the insured makes a misrepresentation to us, or if they do not comply with this duty of disclosure and we issue the policy with terms and conditions that are different to the terms and conditions that would have been issued had there not been any misrepresentation, or the insured’s duty of disclosure had been complied with, then:

• we may reduce the cover provided so that we are placed in the same position as we would have been in, had there not been any misrepresentation and the insured’s duty of disclosure had been complied with, and
• we may also cancel the policy; or
• we may treat the policy as if it never existed if the misrepresentation or the non-compliance with the insured’s duty of disclosure was fraudulent.

Our contract with you
This policy is a contract of insurance between the insured and Zurich and contains all the details of the cover that we provide.

This policy is made up of:

• the policy wording. It states what is covered, sets out the claims procedure, Exclusions and other terms and conditions of cover;
• the submission which is the information you provide to us when applying for insurance cover;
• the most current policy schedule issued by us. The policy schedule is a separate document unique to the insured, which shows the insurance details relevant to the insured. It includes any changes, Exclusions, terms and conditions made to suit the 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.

Please note, only those covers shown in the policy schedule are insured. Please keep this policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.
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,
   in connection with your business or products as a result of a claim first made during the period of insurance within the territorial limits.

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;
   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 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 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 Claims series clause

3.3.1 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.

3.3.2 All such claims shall be deemed to have occurred on the day of the first of such claims.

3.3.3 The Limits of Liability specified in the schedule are non-cumulative.

3.3.4 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.

3.4 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:

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

3.4.2 any employee of the insured $150.00 per day.

3.5 Difference in conditions / Difference in limits

Where the insured requires a local policy or policies to be issued or where a local policy is issued to comply with local legal requirements, the insured shall agree with Zurich as to which insurer will issue the local policy which, if possible, will be Zurich.

Should any such local policy, by virtue of its scope of Cover, Definitions, Terms, Conditions or Limits of Liability, not indemnify the insured in whole or in part in respect of such insured's legal liability for compensation and additional payments as outlined, then this policy shall provide indemnity to the extent that such indemnity is not provided by the local policy, but which would have been provided had such local policy followed the terms and conditions of this policy.

Provided that:

3.5.1 the local policies, as agreed with Zurich, shall be maintained in force;

3.5.2 all payments made under this policy and under local policies shall be counted in diminution of the Limits of Liability specified in the schedule;

3.5.3 the insured shall reimburse to Zurich within 28 days any losses or payments paid by Zurich or its authorised representative, in excess of the Limits of Liability specified in the schedule.

For the avoidance of doubt it is the intention of the parties that no local policy or combination of local policies will give a monetary benefit greater than this policy; and

3.5.4 this policy shall not indemnify the insured in respect of any deductible or excess applying in any local policy, and it is further understood and agreed that if the local policy has not been issued as part of the insured's structured insurance arrangements as agreed by Zurich, then the Deductible specified in the schedule will be the applicable deductible.
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 Master program

3.7.1 This policy acts as a master public and products liability programme to operate where local policies have been issued at Zurich’s request for the Limits of Liability, and in countries specified in the schedule and reinsured by Zurich;
3.7.2 The Limits of Liability for this policy are the Limits of Liability for all policies that form part of the programme;
3.7.3 The total limits of liability of all local policies and this policy shall not exceed the Limits of Liability specified in the schedule;
3.7.4 Any payments made by Zurich under any local policies shall be deducted from the Limits of Liability under this policy. If the Limits of Liability under this policy are exhausted, Zurich will not be liable for any further payments under any of the local policies;
3.7.5 The notice of cancellation of this policy as per clause 6.3 ‘Cancellation’ causes the automatic cancellation of all policies that form part of the programme at the same effective date without the necessity of any additional notice of cancellation.

3.8 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 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.

4.8 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.
4.9 Employee

employee means:

4.9.1 any person under a contract of service or apprenticeship with the insured;
4.9.2 any labour master or person supplied, or any person supplied by a labour only sub-contractor;
4.9.3 any self-employed person working under contract with the insured and under its direction;
4.9.4 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;
4.9.5 any student or person undertaking work for the insured under a work experience or similar scheme; or
4.9.6 any voluntary helper,
whilst engaged in connection with the business.

4.10 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.

4.11 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.

4.12 Insured

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

4.12.1 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;
4.12.2 any of the insured's directors, officers, employees or partners but only whilst acting within the scope of their duties in such capacity;
4.12.3 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;
4.12.4 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
4.12.5 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.

4.13 Internet operations

internet operations means:

4.13.1 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;
4.13.2 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;
4.13.3 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
4.13.4 the operation and maintenance of the insured's web site.
4.14 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.

4.15 North America

*North America* means:

4.15.1 the United States of America and Canada; and

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

4.16 Period of insurance

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

4.17 Personal injury

*personal injury* means:

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

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

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

4.17.4 defamation, libel or slander; and

4.17.5 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.

4.18 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.

4.19 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.

4.20 Property damage

*property damage* means:

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

4.20.2 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

4.20.3 trespass, nuisance or interference with right of way or right to light air or water, easement or quasi-easement.
4.21 **Schedule**

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

4.22 **Territorial limits**

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

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

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

4.23 **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 **Contractual liability**

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

5.5.1 the liability or obligation would otherwise have been implied by law;

5.5.2 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;

5.5.3 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;
5.5.4 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;

5.5.5 the liability or obligation arises from a provision in a written contract with any railway authority, railway company or other independent carrier for the loading, unloading and/or transport of the insured’s products, including any such contracts relating to the operation of railway sidings; or

5.5.6 the liability or obligation is assumed under those agreements specified in the schedule.

5.6 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:

5.6.1 guests’, visitors’, directors’, officers’, employees’ or partners’ personal effects;

5.6.2 motor vehicles in a car park, unless the car park is owned or operated by the insured for reward;

5.6.3 premises at which the insured is undertaking work in connection with the business;

5.6.4 any building (including its fixtures and fittings) leased, hired or rented to the insured provided Zurich 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

5.6.5 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 $500,000 for any one claim and in the aggregate during any one period of insurance.

5.7 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.

5.8 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).

5.9 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 Information technology hazards

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

5.10.1 the insured’s internet operations; or

5.10.2 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.

However, this Exclusion does not apply to:

(i) personal injury, property damage or advertising liability arising out of any material which is already in print by the manufacturer in support of any of its products, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site; or

(ii) liability which arises irrespective of the involvement of the insured’s internet operations.

5.11 Liquidated or punitive damages

any liability for any amount in respect of:

5.11.1 fines or penalties; or

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

5.12 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:

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

5.12.2 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 5.12.2 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.
5.13 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:

5.13.1 which is required by law to be registered; or

5.13.2 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.

5.14 North America

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

5.14.1 the manufacture in or supply to North America of:

(a) any alcohol products;
(b) firearms;
(c) any product containing or made of latex;
(d) silica or any product containing silica;
(e) welding rod products.

5.14.2 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.

5.14.3 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.

5.15 Pollution

any liability arising out of:

5.15.1 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);

5.15.2 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;

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

5.15.4 the cost of preventing the escape of pollutants.
Exclusions 5.15.1 and 5.15.3 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.

5.16 Prior and pending
5.16.1 any claim made, threatened or intimated against an insured prior to the period of insurance.
5.16.2 any claim or liability based upon, whether directly or indirectly, any fact or circumstance:
5.16.2.1 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;
5.16.2.2 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);
5.16.2.3 disclosed in the proposal or other information provided to us for the purposes of obtaining this policy.

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.

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.
5.19 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 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.

5.21 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 polychlorinated biphenyls including polychlorinated biphenyl generated dibenyo furans and dioxins;

5.21.9 tobacco and tobacco related products;

5.21.10 the manufacture or supply of all pharmaceutical active ingredients including medical implants; or

5.21.11 DES and orally taken oxychinoline.

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 Upon cancellation by the insured a refund of premium will be allowed pro rata of 80% of the premium for the unexpired period of insurance.

6.3.4 Upon cancellation by Zurich, 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 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 written 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 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 Zurich's written 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, 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 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 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
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.
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.