

LIABILITY INSURANCE

**BROADFORM
POLICY**



EXTRACT FROM THE INSURANCE CONTRACTS ACT 1984

Under the terms of the Act we must advise you about the following:

Your Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter:

- that diminishes the risk to be undertaken by the insurer,
- that is of common knowledge,
- that your insurer knows, or, in the ordinary course of its business, ought to know
- as to which compliance with your duty is waived by the insurer

Non-Disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

IMPORTANT NOTES

1. Claims

This Policy only provides cover in relation to Personal Injury or Damage to Property that occurs during the Period of Insurance.

2. Excess

An excess is an amount of money we will not pay in respect of a claim. The Schedule, Policy and endorsements will detail the excesses which may be applicable.

3. Liability Assumed Under Agreement

This policy does not cover liability which you have agreed to accept unless you would have been so liable in the absence of such agreement.

4. Acceptance of the Application

This insurance will not be in force until the completed Application has been received and the risk accepted by us. We reserve the right to decline any Application.

5. Alterations to your Business

It is important that you advise us immediately of any changes to your Business, that may result in an increased chance of liability to third parties. Some examples of changes of which you should notify us are:

- a) changes in your name or directors or partners
- b) change of address or location of your business
- c) changes in the nature of your business or trade or occupation
- d) alterations in construction of the premises
- e) new Products not previously disclosed to us

When we receive notification of a change we may decide to adjust the premium or terms of the Policy, or to cancel the Policy in accordance with the provisions of the Insurance Contracts Act 1984.

LIABILITY INSURANCE
The Agreement

The Policy, Schedule (which expression includes any Schedule substituted for the original Schedule), Application and endorsements (if any) together form the agreement.

In return for you having paid or agreed to pay the premium to us, subject to the terms, conditions, exclusions and limitations contained in, or endorsed on or otherwise expressed in this Policy or the Schedule, we will indemnify you in the manner and to the extent described in this Policy.

Public and Products Liability Cover Section

Words with special meaning

Wherever the following words appear in the Public and Products Liability Cover Section, they have the following special meaning.

“**Employee**” means any person who is employed by **You** and/or in respect of whom **You** are required to have cover for workers compensation or similar cover by any workers compensation legislation.

“**Employment Practices**” means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of employment by **You**.

“**Excess**” means the amount **You** must pay towards each and every claim for **Property Damage** and is shown on **the current schedule**.

“**Compensation**” means compensatory damages, all legal costs awarded against **You** and interest accruing after entry of judgement against **You** until **We** have paid the amount outstanding.

“**Geographical Limit**” means;

1. anywhere within the Commonwealth of Australia and its external territories;
2. elsewhere in the world but only:
 - a. arising from the presence outside Australia of any travelling executives, **Non-Manual Salesmen** or other non-manual **Employees** who are normally resident in Australia;
 - b. any part of the world to which **Your Products** are exported except **Products You** know have been exported to the United States of America or the Dominion of Canada or any country, territory or protectorate where the laws of these countries are applied.

“**Limit Of Liability**” means the amount(s) stated in the current schedule as the sum insured or any lesser limit shown in **the current schedule** or in this Section. The **Limit Of Liability** is inclusive of and not additional to any applicable **Excess**.

“**Non-Manual Salesmen**” means **Your** agents, servants or **Employees** who are involved solely in the marketing of **Your Products** but does not mean any such person who undertakes the manufacturing, maintenance or repair of **Your Products** whether or not such activities are incidental to marketing of **Your Products**.

“**Personal Injury**” means:

1. bodily injury, sickness, disease, disablement, loss of consortium, shock, fright, mental anguish and mental injury, including death at any time resulting from any of these;
2. wrongful entry, wrongful eviction, false arrest, wrongful detention, false imprisonment, malicious prosecution and humiliation;
3. assault, provided **You** did not commit the assault or direct the assault unless reasonably committed for the purpose of preventing **Personal Injury** or **Property Damage**;
4. libel, slander, defamation of character;
5. invasion of right of privacy;

which occurs during the **Period Of Cover**.

“**Pollutants**” means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals, material to be recycled, reconditioned or reclaimed or wastes.

“**Products**” means anything after it is no longer in **Your** possession or control that **You** manufactured, grew, extracted, processed, assembled, constructed, erected, installed, repaired, serviced, treated, imported, exported, sold, supplied or distributed including the packaging materials, labels, containers (other than a **Vehicle**), the design formula or specification, directions, instructions or advice given or omitted in connection with such **Products**. The term includes anything which by operation of a law of the Commonwealth of Australia **You** are deemed to have manufactured.

“**Professional Service**” means service, advice, counselling, diagnosis, treatment of persons or animals, prescription, or service provided by **You** which is normally provided for a fee by professional persons.

"Property Damage" means physical loss or damage that occurs during the **Period Of Cover** to tangible property and loss of use of tangible property arising out of physical loss or damage to other tangible property

"Tool Of Trade" means a **Vehicle** that has tools, implements, machinery or plant attached to or towed by the **Vehicle** and is being used by **You** at **Your Business Premises** or a work site **You** have been contracted to work at. **Tool Of Trade** does not include **Vehicles** whilst travelling to or from a work-site or **Vehicles** that are used to carry goods to or from any premises.

"You", "Your", "Yours", where used in this Section, mean:

- (a) the persons or organisations shown in the current schedule;
- (b) any subsidiary companies of (a) above, existing at the effective date of the **Period Of Cover** as shown in the current schedule, whose places of incorporation are within Australia or its external territories;
- (c)
 - (i) any company acquired by, and whose operations are controlled and managed by, a person or organisation shown in the current schedule or a company referred to in (b) above during the **Period Of Cover** as a result of consolidation, merger or purchase;
 - (ii) any subsidiary entity that is incorporated by a person or organisation shown in the current schedule or by a company referred to in (b) above, during the **Period Of Cover**;

Provided that any such acquisition or incorporation:

- (i) must be notified to **Us** within **90 days** of it being effected;
 - (ii) must be of the same type of business as **Your Business**; and
 - (iii) must be **incorporated within Australia** or its external territories;
- (d)
 - (i) any director, executive officer, **Employee** or partner of a person or organisation shown in the current schedule or a company referred to in (b) or (c) above, but only while acting within the scope of their duties in such capacity; and
 - (ii) any shareholder of a company referred to in (a), (b) or (c) above, but only while acting within the scope of their capacity as shareholders of such company;
- (e) any office bearer or member of a canteen, social and/or sporting club, welfare or child care organisation, first aid, fire or ambulance service, all or any of which has been formed with the consent of any of the parties in (a), (b) or (c) above.

"Your Business", for the purposes of this Section, means **Your** occupation shown on **the current schedule** and all ancillary or incidental operations including the ownership and tenancy of premises, private work carried out with **Your** consent by any of **Your Employees** for any director or senior official of **Yours** and the provision and management of canteen, social, sports, welfare or child care organisations for **Your Employees** and internal first aid, fire and ambulance services.

What you are covered for

We cover **Your** legal liability to pay **Compensation** for **Personal Injury** or **Property Damage** occurring within the **Geographical Limit** as a result of an **Occurrence** arising out of **Your Business**. **We** will not pay more than the **Limit Of Liability** shown on the current schedule under the Public and Products Liability Cover Section in respect of any one claim or series of claims arising out of any one **Occurrence** or, for **Products** liability, in respect of all claims during the **Period Of Cover**.

Additional Payments

We will pay the following amounts in addition to the **Limit Of Liability**:

1. all charges, expenses and legal costs incurred by **Us** or by **You** with **Our** consent for the defence or negotiation or settlement of any claim for which **You** are covered by the Public and Products Liability Cover Section;
2. all charges, expenses and legal costs for which **You** are covered by the Public and Products Liability Cover Section, necessarily incurred by **You** in relation to any coroner's inquest into matters that happened during the **Period Of Cover**;
3. for the cost of emergency first aid to other persons and for costs incurred with **Our** consent for temporary repairs, shoring up or protection of damaged property of others.

Provided that such amounts shall not be payable in addition to the **Limit Of Liability** if the claim is subject to or determined by the law of the United States of America or the Dominion of Canada or any country, territory or protectorate where the laws of these countries are applied.

Additional Payments you have to pay for

1. If **We** pay the full **Limit Of Liability**, then **You** must pay **Your** proportion of “Additional Payments.” **Your** proportion is calculated by dividing the total of the **Limit Of Liability** by the cost of the total amount required to dispose of or settle the claim (but not the cost of additional payments) against **You**.

Products Liability Limit Aggregated

We will not pay more than the **Limit Of Liability** shown on **the schedule**, for all legal liability from all **Occurrences**, that is caused by **Your Products** during the **Period Of Cover**.

Exclusions

We will not cover **You** for any liability:

1. Aircraft, Hovercraft

caused by or arising from:

- a. ownership, possession, maintenance, operation or use by **You** or on **Your** behalf;
- b. any of **Your Products** which are with **Your** knowledge incorporated into the structure, machinery or instruments;

of any **Aircraft** or **Hovercraft**.

2. Asbestos

caused directly or indirectly by or arising out of:

- a. mining, processing, transport, distribution, and/or storage of asbestos;
- b. manufacture of asbestos **Products** or **Products** containing asbestos;
- c. any processes or removal, decontamination, control or treatment of asbestos;

Provided that Exclusion 2c only applies to claims arising out of:

- i. the inhalation, ingestion or digestion of asbestos fibre(s); or
- ii. any illness injury or disease caused or contributed to by exposure to asbestos; or
- iii. damage to or loss of use or reduction in value of property due to the presence of asbestos.

3. Contractual Liability

- a. assumed under a contract or agreement other than liability for **Personal Injury** and **Property Damage** that **You** would have been liable for by law if the contract or agreement had never existed.
- b. for delay in or lack of performance by **You** or on **Your** behalf arising from any contract or agreement.

This exclusion 3 does not apply to:

- (i) liability assumed by **You** under a warranty of fitness or quality as regards **Your Products**,
- (ii) liability assumed by **You** under any lease of real or personal property but this exemption does not extend to any obligation to insure such property.

4. Employer's liability (Workers' Compensation)

- (a) for **Personal Injury** to any person arising out of, or sustained in the course of, the employment of such person in **Your** service, or through the breach of any duty owed to that person, where **You**:
 - (1) are indemnified or entitled to be indemnified (either in whole or in part) in respect of claims for damages under a policy of insurance (which expression includes arrangements made by **You** to provide accident insurance for **Your** workers under a licence to self insure) arranged (whether required by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
 - (2) would have been indemnified or entitled to be indemnified had **You** arranged a policy of insurance as required by such legislation.

- (b) for **Personal Injury** to any person arising out of, or sustained in the course of, the employment of such person in **Your** service in Western Australia, other than a person of whom **You** are deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Rehabilitation Act 1981 (WA).
- (c) for mental anguish suffered by any person arising out of, or in the course of, that person's employment by, or service to, **You**.
- (d) for **Personal Injury** arising out of **Employment Practices** or out of the libel, slander or humiliation of any person while in **Your** service or while employed by **You**.
- (e) any other liability imposed by the provisions of any workers' compensation legislation or accident compensation legislation or any industrial award, agreement or determination.

5. Erections, alterations and additions

directly or indirectly arising out of the construction, erection, alteration, demolition of and/or addition to buildings by **You** or on **Your** behalf

This exclusion 5 will not apply to alteration of or addition to buildings owned and/or occupied by **You** where the cost of such alterations or additions does not exceed **\$500,000 or 10% of the Limit Of Liability, whichever is the lesser**.

6a. Faulty workmanship

arising directly or indirectly from or in connection with the cost of performing, completing, reworking, correcting or improving any service or work done or promised to be done by **You** or someone else on **Your** behalf;

6b. Product Defect

for damage to **Your Products** if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

7. Libel, slander, defamation

arising from the publication or utterance of libellous, slanderous or defamatory material:

- a. made prior to the effective date of this insurance; or
- b. that **You** knew to be false and the material was approved to be released by **You**;
- c. arising from publishing of books, newspapers, magazines and similar material;
- d. arising from publishing of any political or social material;
- e. arising from radio or television broadcasting or any other medium of public transmission such as internet, telephone or dedicated landlines.

8. Loss of use of property

for loss of use of tangible property that has not been physically damaged or destroyed and is caused by:

- a. delays, non completion or poor performance by **You** or any other person acting on **Your** behalf in relation to any contract or agreement; or
- b. the failure of **Your Products** to meet the level of performance, quality, fitness or durability that **You** have implied or promised but this exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss or destruction of **Your Products** after they have been put to use by any person or organisation other than **You**.

9. Penalties

- a. for fines or penalties imposed on **You** due to the application of government legislation or order of a court of law; or
- b. for punitive, exemplary or aggravated damages; or
- c. for any additional damages resulting from the multiplication of compensatory damages against **You**; or
- d. for liquidated damages.

10. Pollution

arising directly or indirectly out of:

(a) the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**;

Exclusion 10 (a) will not apply to liability for **Personal Injury** or **Property Damage** where such discharge, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected happening which takes place in its entirety at a specific time and place;

(b) testing, monitoring, clean-up, removal, containment, treatment, detoxification or neutralisation of **Pollutants** whether or not any of the foregoing are or should be performed by **You** or by others;

(c) the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** caused by any **Products** that have been discarded, dumped, abandoned or thrown away by others;

(d) the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** in the United States of America or Canada or in any country to which the laws of the United States of America or Canada apply.

11. Product Recall

for the costs incurred by **You** in recalling, withdrawal, removal, inspection, repair, reconditioning, loss of use or replacement of **Your Products**.

12. Professional Liability

arising out of **Your Professional Service** or failure to provide **Professional Service** or any act, mistake or omission **You** make relating to or from **Your Professional Service** if such service or act is of a kind ordinarily undertaken for a fee.

Emergency first aid is not a **Professional Service** unless **You** are a qualified medical person and **You** have insurance for **Your Professional Services** liability.

13. Property in your physical or legal control

a. for damage to property owned by, leased or rented to **You**;

b. for damage to property not belonging to **You** but in **Your** physical and legal control other than the property described in Additional benefits - Property in Physical and Legal Control.

14. Vehicles

caused by or arising from the use of, ownership or possession of any **Vehicle** which is:

a. registered or required by law to be registered;

b. insured for compulsory injury insurance or required by any government legislation to be insured for injury liability.

15. Watercraft

caused by or arising from the use, ownership, or possession of any **Watercraft** which exceeds **8 metres** in length, but this exclusion shall not apply in regard to such **Watercraft** operated by independent contractors whilst being used by **You** for business entertainment.

Additional benefits applicable to this Section

Property in Your Physical and Legal Control

Exclusion 13 will not apply to the following property:

1. buildings including landlords' fixtures and fittings used by **You** for **Your Business** (including permanent fixtures) which are leased or rented to **You** and which **You** are not required to insure for **Property Damage**;

2. buildings, (including permanent fixtures and contents) which are not owned by or leased to **You** and which **You** have temporarily occupied for **Your Business** purposes;

3. **Vehicles** not belonging to or used by **You** whilst temporarily contained in a **Vehicle** parking area owned or controlled by **You** provided **You** do not require payment from the drivers or owners of the **Vehicles** parked;

4. property that is being stored, used or repaired by **You** other than property that **You** are transporting in a **Vehicle** or storing where **You** are receiving payment for the transportation or storage.
5. property belonging to visitors or to **Your Employees**.

The maximum **We** will pay for **Your** legal liability for additional liability benefit - property in **Your** physical and legal control benefits - paragraph 4 - is the **Limit Of Liability** for goods in physical legal control shown on the current schedule.

Vehicles used as a tool of trade

Exclusion 14 (vehicles) will not apply to liability for **Personal Injury** (not covered by compulsory liability insurance) or **Property Damage** caused by the use of a **Vehicle** as a **Tool Of Trade**.

Vehicles unloading or loading goods

Exclusion 14 (vehicles) will not apply to liability incurred because goods are being unloaded or loaded from the **Vehicle** provided the **Vehicle** is not being driven or towed during unloading or loading. For the purpose of this additional benefit the term "loading or unloading" shall mean the single action of transferring the weight of the goods.

Cross liability

Where **You** are comprised of more than one entity, the term "**You**" will be considered as applying to each entity in the same manner as though a separate policy had been issued to each entity, provided that **Our** total liability will apply as though there were no separate policies issued to each entity. **We** agree to waive all rights of subrogation or action which **We** may have against any such entity in relation to matters covered by this Section.

Indemnity to principal

The insurance by the Public and Products Liability Cover Section extends to indemnify any principal but only for liability as principal arising out of work performed by **You** under a contract for that principal. **Our** liability is limited to the lesser of the **Limit Of Liability** by this Section or the amount of liability cover required under the contract to perform work.

Optional Benefit applicable to this Section

Products exported to the continent of North America

The indemnity granted by this Section is extended to include any judgment, award or settlement made within countries which operate under the laws of the United States of America or Canada or any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part, subject to the following additional terms and exclusions in respect of any such judgment, award or settlement:

1. Cover only applies in respect of **Your** legal liability for **Personal Injury** or **Property Damage** that arises out of **Your Products** exported to North America,
2. Cover is not provided for:
 - (a) **Personal Injury** or **Property Damage** arising out of the discharge, dispersal, emission, release or escape of **Pollutants**,
 - (b) the cost of removing, nullifying or cleaning up **Pollutants**,
 - (c) the cost of preventing the escape of **Pollutants**,
 - (d) **Personal Injury** or **Property Damage** arising from the existence of asbestos,
 - (e) any claim for compensation if in North America **You** have:
 - (i) any assets other than **Your Products**,
 - (ii) a related or subsidiary company,
 - (iii) any person or entity with power of attorney,
 - (iv) any franchisor.

Special Conditions Applicable to this Section

1. Claims

You must provide as soon as practicable written notice of:

- a. any claim made against **You**,
- b. the receipt of written notice from anyone that it is their intention to make a claim against **You**,
- c. every **Occurrence** or circumstance known to **You** which **You** believe could give rise to a claim under this Section.

2. Discharge of liabilities

We may at any time pay **You** for all claims against **You** under this Section which arise out of one **Occurrence** or a series of **Occurrences** or where the **Limit Of Liability** is subject to an aggregate limit (such as liability caused by **Your Products**):

1. the **Limit Of Liability** (after amounts already paid by **Us** have been deducted); or
2. any lower amount for which the claim(s) can be settled.

When **We** have made payment to discharge **Our** liability:

1. **We** will relinquish conduct of and control of the claims(s); and
2. **We** will not pay further amounts under the Public and Products Liability Cover Section in connection with the claim(s).

If **We** have made payment to discharge **Our** liability:

1. **You** will pay **Us** costs, charges and expenses **We** are entitled to from **You** that were incurred prior to the date of **Our** payment which discharged **Our** liability;
2. **We** will pay **You** costs, charges and expenses incurred by **You** (with **Our** written permission) prior to the date of **Our** payment which discharged **Our** liability;

3. Premium adjustment

If the premium for this policy has been calculated on any estimates given by **You**, **You** must keep accurate records containing all relevant particulars and at any reasonable time allow **Us** to inspect such records.

Following the expiry of each **Period Of Cover** **You** must supply **Us** with such records as **We** may reasonably require so that the premium for that period may be calculated. Subject to any minimum premium applicable, the difference must be paid by or will be allowed to **You** as the case may be.