Austbrokers Broadform Liability Insurance

Policy Wording

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About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507. 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 55,000 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.

About Austbrokers

The Policy is distributed by insurance brokers from the Austbrokers Network who are licensed Partners of AUB Group Limited ABN 60 000 000 715.

The Austbrokers Network was established in 1985 to give individual insurance brokers the opportunity to enjoy the benefits of a larger group, yet still maintain that all important feel of independence. With a total turnover of over $2.6 billion in general insurance premiums the Austbrokers Network ranks within the top general insurance broking groups in Australia.

AUB Group Limited ("Austbrokers") has entered into an arrangement with Zurich to develop financial products and services that are distributed by Austbrokers Partners .

For further information about Austbrokers Network please visit www.aubgroup.com.au

Important information about Austbrokers advice

Any advice Austbrokers gives about this policy does not take into account any of *your* particular objectives, financial situation or needs. For this reason, before *you* act on Austbrokers advice, *you* should consider the appropriateness of the advice taking into account *your* own objectives, financial situation and needs. Before *you* make any decisions about whether to acquire this policy we recommend *you* should read this insurance policy.

How to apply for this insurance

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

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

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

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 *policy schedule* issued by us. The *policy 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 changes 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.

If *you* want more information about any part of *your policy*, please ask us, or *your* intermediary.

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, Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Corporations Act 2001, Autonomous Sanctions Act 2011, A New Tax System (Goods and Services Tax) Act 1999 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 which was developed by the Insurance Council of Australia to further raise standards of practice and service across the insurance industry.

You can obtain more information on the Code and how it assists *you* by contacting us.

Other party's interests

You must tell us of the interests of all parties (e.g. financiers, owners, lessors) who will be covered by this insurance. We will protect their interests only if *you* have told us about them and we have noted them on *your policy schedule*.

Paying your premium

You must pay *your* premium by the due date. If we do not receive *your* premium by this date or *your* payment is dishonoured this *policy* will not operate and there will be no cover.

Complaints and Disputes Resolution process

If *you* have a complaint about an insurance product we have issued or service *you* have received from us, please contact *your* intermediary to initiate the complaint with us. If *you* are unable to contact *your* intermediary, *you* can contact us directly on 132 687.

We will respond to *your* complaint within 15 working days. If *you* are not satisfied with our response, *you* may have the matter reviewed through our internal dispute resolution process, which is free of charge.

If *you* are not satisfied with the outcome of the dispute resolution process and would like to take the complaint further, *you* may refer the matter to the Australian Financial Complaints Authority (AFCA). 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

Preventing our right of recovery

If *you* have agreed not to seek compensation from another person who is liable to compensate *you* for any loss, damage or liability which is covered by this *policy*, we will not cover *you* under this *policy* for that loss, damage or liability except where we agree otherwise under the 'Contractual liability' Exclusion 5.4, including 'Incidental contracts' Definition 4.10, or under the 'Subrogation waiver' General Condition 6.17 or in writing.

How Goods and Services Tax affects any payments we make

The amount of premium payable by *you* for this *policy* includes an amount on account of the GST on the premium.

When we pay a claim, *your* GST status will determine the amount we pay. When *you* are:

- not registered for GST, the amount we pay is the *limit of liability* or the other limits of insurance cover including GST.
- registered for GST, we will pay the *limit of liability* or the other limits of insurance and where *you* are liable to pay an amount for GST in respect of an acquisition relevant to *your* claim, we will pay for the GST amount.

We will reduce the GST amount we pay for by the amount of any input tax credits to which *you* are or would be entitled if *you* made a relevant acquisition. In these circumstances, the input tax credit may be claimable through *your business* activity statement (BAS). *You* must advise us of *your* correct Australian business number and taxable percentage.

Any GST liability arising from *your* incorrect advice is payable by *you*. Where the settlement of *your* claim is less than the *limit of liability* or the other limits of insurance cover, we will only pay an amount for GST (less *your* entitlement for input tax credit) applicable to the settlement. This means that if these amounts are not sufficient to cover *your* loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay *you* on *your* claim by reference to the GST-exclusive amount of any supply made by any *business* of *yours* which is relevant to *your* claim.

GST, input tax credit (ITC), business activity statement (BAS) and acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable percentage is *your* entitlement to an input tax credit on *your* premium as a percentage of the total GST on that premium.

Our Agreement with You

This *policy* is a legal contract between *you* and us. *You* pay us the premium, and we provide *you* with the cover *you* have chosen as set out in the *policy*, occurring during the *period of insurance* shown on *your policy schedule* or any renewal period.

Words importing persons shall include corporations and other legal entities. The singular includes references to the plural and vice versa. Headings, wherever appearing in this *policy*, have been included for ease of reference and shall not be used for interpretation purposes.

You (being the insured party named first in the *policy schedule*) having submitted a *proposal* containing particulars for the purpose of obtaining this insurance and having paid or agreed to pay the premium specified in the *policy schedule*, we agree, subject to the terms, provisions, limitations, exclusions, and conditions contained in or endorsed on or otherwise expressed in the *policy*, to provide insurance in the manner and to the extent hereinafter provided.

The amount of any *deductible* that applies to *your policy* will be shown on *your policy schedule*.

The exclusions in the section(s) headed 'When you are not covered' and conditions in the section headed 'General Conditions' apply to all sections of this *policy*.

1. What you are insured against

1.1 Liability

We will cover *you* for *your* legal liability to pay all sums by way of compensation, and all charges, expenses and legal costs recoverable from or awarded against *you* in respect of:

- personal injury;
- property damage;
- advertising liability,

happening during the *period of insurance* and caused by an *occurrence* within the *territorial limits* in connection with *your business* or *your products*.

1.2 Additional Payments

If we agree to cover *you* we will:

(a) defend in *your* name and on *your* behalf any claim or legal action against *you* seeking damages for *personal injury* or *property damage* even if the action is groundless, false or fraudulent, and we will investigate, negotiate and settle any claim or legal action as we see fit;

(b) pay all legal costs and expenses incurred by us and all interest accruing after entry of judgment until we have paid, tendered or deposited in court such part of the judgement as does not exceed the *limit of liability*;

(c) reimburse *you* for all reasonable expenses, including salaries and wages incurred by *you* with our consent which shall not be unreasonably withheld in connection with the defence of a claim or legal action;

(d) pay all legal costs incurred by *you* with our consent for any solicitor, defence counsel or the equivalent thereof for representation at any inquest, fatal inquiry or criminal proceedings relating to an *occurrence* which may give rise to a claim for compensation under this *policy*;

(e) pay premiums on:

(i) bonds to release attachments for amounts not exceeding the applicable *limits of liability* of this *policy*, but we shall have no obligation to apply for or furnish any such bond;

(ii) appeal bonds and/or security for costs required in any suit, but we shall have no obligation to apply for or furnish such bonds and/or security for costs;

(f) pay reasonable expenses incurred by *you* for first aid to others at the time of *personal injury* caused by an *occurrence* (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973);

(g) all costs incurred by *you* for temporary repairs, shoring up or protection of property of others that has been damaged as a result of an *occurrence* which may be the subject of indemnity under this *policy*.

We will do this, provided that:

(h) we will not be obliged to pay any claim or judgment or to defend any claim or legal action after the *limit of liability* has been exhausted by payment of judgments or settlements;

(i) if a payment exceeding the *limit of liability* has to be made to dispose of a claim, our liability to pay any costs, expenses and interest under Clauses 1.2 (a) to 1.2 (g) in 'Additional Payments' above will be limited to that proportion of those costs, expenses and interest as the *limit of liability* bears to the amount paid to dispose of the claim.

Any amount we pay, as an Additional Payment are payable by us over and above the *limit of liability* set out in the *policy schedule* except as stated in Clause 5.18 'Territorial Limits'.

2. What we will pay

2.1 Limits of Liability

Subject to Clauses 1.2 and 2.2:

(a) Our maximum liability in respect of any claim or any series of claims for *personal injury*, *property damage* or *advertising liability* caused by or arising out of one event will not exceed the *limit of liability* shown on *your policy schedule*.

(b) Our total aggregate liability during any one *period of insurance* for all claims arising out of *your products* will not exceed the *limit of liability* shown on *your policy schedule*.

The applicable *limit of liability* will not be reduced by the amount of any *deductible* paid by *you*.

2.2 Claims preparation expenses

In addition to the Limits of Indemnity shown in Clause 2.1, we will also pay up to $25,000 for reasonable professional fees and other expenses incurred by *you* in the preparation of *your* claim following an *occurrence* covered by this *policy*.

The cover under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under Clause 1.2 of this *policy*.

3. What you must pay if you make a claim

3.1 Deductible

For claims *you* make on this *policy*, *you* will have to pay the *deductible* which is shown on *your policy schedule*. If more than one *deductible* is payable under this *policy* for any claim or series of claims arising from the one *occurrence you* must pay the highest *deductible*, but *you* pay only one *deductible*.

4. Definitions

Some key words and terms used in this *policy* have a special meaning. Wherever the following words or terms are used in the *policy*, they mean what is set out below:

4.1 Act of Terrorism

act of terrorism means an act, and includes 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:

(a) involves violence against one or more persons; or

(b) involves *property damage*; or

(c) endangers life other than that of the person committing the action; or

(d) creates a risk to health or safety of the public or a section of the public; or

(e) is designed to interfere with or to disrupt an electronic system.

4.2 Advertising liability or Advertisement

advertising liability or *advertisement* means liability arising out of one or more of the following in advertising *your products* or services:

(a) defamation;

(b) infringement of copyright, title or slogan;

(c) unfair competition, misappropriation of advertising ideas or style of doing business;

(d) any breach of the misleading or deceptive conduct provisions of the Competition and Consumer Act 2012 (Cth) or any Fair Trading or similar legislation of any Country, State or Territory; or

(e) invasion of privacy committed or alleged to have been committed in any *advertisement* and arising out of any advertising activities conducted by *you* or on *your* behalf, in the course of carrying out *your business*.

For the purposes of this definition, *advertisement* means any manner of communication given to the public including by way of any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet, world wide web or exhibit.

4.3 Aircraft

aircraft means any vessel, craft or thing made or intended to fly or move through the atmosphere or space other than model aircraft or unmanned inflatable balloons used for advertising or promotional purposes.

4.4 Business

business means the Business described in the *policy schedule* including:

(a) ownership or occupation of premises and the repair or maintenance of property owned or for which such responsibilities exist, the installation and maintenance of plant and equipment and all other activities incidental to the conduct of *your* occupation or trade;

(b) any prior operations or activities which have ceased or have been disposed of but for which *you* may retain legal liability;

(c) participation in exhibitions;

(d) construction, erection, demolition, alteration or addition, not exceeding in cost the sum of $500,000, of or to buildings owned by *you*;

(e) the provision and management of canteens, social, sports and welfare organisations primarily for the benefit of *your employees*, first aid, fire and ambulance services;

(f) private work undertaken by any *employee* of *yours*, for any of *your* directors or senior executives;

(g) hire or loan of plant, equipment or goods to other parties;

(h) conducted tours of *your* premises; and

(i) the erection, use and/or maintenance by *you* or on *your* behalf of advertising and directional signs, their frames, supports and appurtenances.

4.5 Deductible

deductible means the amount *you* first bear in relation to each *occurrence*. The *deductible* applies to all amounts payable under this *policy* including the indemnity provided under 'Additional Payments'.

4.6 Employee

employee means any person engaged under a contract of service or apprenticeship with *you*, but does not include any person employed under such contract who is excluded from the definition of 'worker' under any workers' compensation legislation while working for *you* in connection with the *business*.

4.7 Employment practices

employment practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to or in respect of employment or prospective employment of any person or persons by *you*.

4.8 Endorsement

endorsement means any document so designated and issued to *you*, that amends the *policy* wording or any details specified in the *policy schedule*.

4.9 Hovercraft

hovercraft means any vessel, craft or thing made or intended to float on water and travel over water or land supported on a cushion of air.

4.10 Incidental contracts

incidental contracts means:

(a) any written agreement for the lease and/or hire of real and/or personal property which does not impose upon *you* as lessee or hirer an obligation to insure such property;

(b) any 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 *you*; and

(c) any written contract with any railway authority, railway company or other independent carrier for the loading, unloading and/or transport of *your products*, including any such contracts relating to the operation of railway sidings.

4.11 Internet operations

internet operations means:

(a) transfer of computer data or programs by use of electronic mail systems by *you* or *your employees*, including part-time and temporary staff, contractors and others within *your* organisation whether or not such data or programs contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or trojan horse;

(b) access through *your* network to the world wide web or a public internet site by *your employees*, including part-time and temporary staff, contractors and others within *your* organisation;

(c) access to *your* intranet (meaning internal company information and computing resources) which is made available through the world wide web for *your* customers or others outside *your* organisation; and

(d) the operation and maintenance of *your* website.

4.12 Limit of liability

limit of liability means the applicable Limit of Liability specified in the *policy schedule*.

4.13 Medical persons

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

4.14 North America

North America means:

(a) the United States of America and Canada;

(b) any state or territory incorporated in or administered by, the United States of America or Canada; and

(c) any other country or territory subject to the laws of the States of America or Canada.

4.15 Occurrence

occurrence means an event which results in *personal injury*, *property damage* or *advertising liability*, neither expected nor intended from *your* standpoint.

All *personal injury* or *property damage* arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one *occurrence*.

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

4.16 Period of insurance

period of insurance means the period shown in the *policy schedule* or any renewal period, during which the insurance by this *policy* is in force.

4.17 Personal injury

personal injury means:

(a) bodily injury (and this expression includes death, disease and illness), disability, shock, fright, mental anguish, mental injury or loss of consortium;

(b) false arrest, wrongful detention, false imprisonment, malicious prosecution or humiliation;

(c) discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by *you* or at *your* direction;

(d) wrongful entry upon, wrongful eviction from or other invasion of right to private occupancy of property;

(e) a publication or utterance of defamatory or disparaging material; and

(f) assault and battery not committed by *you* or at *your* direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

Personal injury, if relating to a latent injury, a latent illness, a latent disease or a latent disability, shall be deemed to have happened at the time when such injury, illness, disease or disability was first medically diagnosed.

4.18 Policy

policy means this *policy* wording, *your proposal*, the *policy schedule* and any *endorsements* we issue to *you* which amend this *policy* wording or the *policy schedule*.

4.19 Policy schedule

policy schedule means the document so designated that we issue to *you*, whether for the first *period of insurance* or on any renewal of the contract or variation by way of *endorsement*, that specifies the *policy* number and other details of the cover provided by this *policy*.

4.20 Pollutants

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

4.21 Property damage

property damage means:

(a) physical damage to or loss or destruction of tangible property including any resulting loss of use at any time of that property; or

(b) loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an *occurrence*.

4.22 Proposal

proposal means the signed proposal form and other information supplied by *you* or on *your* behalf when applying for this insurance upon which we relied when agreeing to grant this insurance cover.

4.23 Subsidiary

subsidiary means:

(a) any entity which by virtue of any applicable legislation or law is deemed to be *your subsidiary* (where *you* are a company);

(b) any entity over which *you* (where *you* are a company) are in a position to exercise effective direction or control.

4.24 Territorial limits

territorial limits means anywhere in the world subject to Exclusions 5.18 (Territorial limits).

4.25 Vehicle

vehicle means any type of machine on wheels or self laid tracks or on skis, made or intended to be propelled by other than manual or animal power and any trailers or other attachment made or intended to be drawn by any such machine.

4.26 Watercraft

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

4.27 We, Our, Us

we, our, us means Zurich Australian Insurance Limited, ABN 13 000 296 640, AFS Licence Number 232507.

4.28 Worksite

worksite means any premises or site where work is performed by *you* in connection with the *business* and includes any surrounding area or premises used by *you* to undertake such work.

4.29 You, Your, Yours or Insured

you, your, yours, insured means:

(a) the person(s), companies or firms named on the current *policy schedule* as the *insured*;

(b) all the *subsidiary* companies (including *subsidiaries* thereof) and/or controlled corporations (including *subsidiaries* thereof) of the parties shown in Clause 4.29 (a), now or subsequently constituted, provided their places of incorporation are within Australia or any Territory of Australia;

(c) every past, present or future director, executive officer, *employee*, partner, shareholder or voluntary worker of parties shown in Clauses 4.29 (a) and 4.29 (b) (including the spouse or family member of any such person performing a designated role in connection with the *business*) while acting within the scope of their duties in such capacity;

(d) every principal, in respect of that principal's vicarious liability for the acts or omissions of the parties shown in Clauses 4.29 (a) and 4.29 (b) in the performance by them of work for that principal, but subject always to the extent of coverage and the *limit of liability* provided by this *policy*;

(e) each partner, joint venturer, co-venturer or joint lessee of the *insured* named in the *policy schedule* but only if we agree to insure them and the *insured* named in the *policy schedule* agrees to pay the premium we require;

(f) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with *your* consent (other than one of the parties shown in Clauses 4.29 (c) or 4.29 (d) above) in respect of claims arising from their duties connected with the activities of any such club, organisation or service;

(g) any director or senior executive or partner of the parties shown in Clauses 4.29 (a) and 4.29 (b) above in respect of private work undertaken by an *employee* of those parties for such director or senior executive;

(h) if a party named in the *policy schedule* as an *insured* party is an individual, the personal representative of that individual in the event of the death of that individual, but only in respect of liability incurred by that individual;

(i) any person whilst working for a party any organisation or entity designated in Clauses 4.29 (a) and 4.29 (b) of this definition, for the purpose of gaining work experience.

However, *you* / *your* does not include the interest of any other person other than as described in this definition.

4.30 Your product

your product means anything (after it has ceased to be in *your* possession or under *your* control), which is or is deemed to have been manufactured, grown, extracted, produced, processed, imported, exported, constructed, assembled, erected, installed, repaired, serviced, renovated, treated, sold, supplied or distributed by *you* or on *your* behalf (including *your* predecessors in the *business*) including labels, packaging or any container thereof the design, specification or formula of the products and directions, instructions or advice given or omitted to be given in connection with such products and anything which by law or otherwise *you* are deemed to have manufactured in the course of the *business* including discontinued products.

Provided that for the purpose of this insurance, the term *your product* shall not be deemed to include food and beverages:

(a) sold or supplied by *you* or on *your* behalf from any canteen or vending machine primarily for use by *your employees*; or

(b) served in any dining room or at any function to *employees* or guests for consumption at *your* premises;

and any claims for compensation against *you* arising out of any *occurrence* shall be deemed to be General Liability claims to which the *limit of liability* specified in Clause 2.1 (a) of the *policy* shall apply.

5. When you are not covered – Exclusions applicable to this Policy

We will not cover liability in respect of:

5.1 Advertising liability

claims for *advertising liability* caused by or resulting from:

(a) circumstance where the acts committed or alleged to have been committed prior to the inception date of this *policy*;

(b) statements made at *your* direction with knowledge that such statements are false;

(c) failure of performance of contract. However this Exclusion 5.1(c) shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;

(d) any incorrect description of *products* or services;

(e) any mistake in advertised price of *products* or services;

(f) the failure of *your products* or services to conform with advertised performance, quality, fitness or durability;

(g) liability incurred by *you* if *your business* is advertising, broadcasting, publishing or telecasting.

5.2 Aircraft, Aircraft products, watercraft and hovercraft

claims arising out of:

(a) the ownership, maintenance, operation, possession, or use by *you* of any *aircraft*;

(b) the ownership, operation or use by *you* of any *watercraft* or *hovercraft* exceeding 15 metres in length, while such *watercraft* or *hovercraft* is on, in or under water.

Provided that Exclusion 5.2 (b) shall not apply to claims arising out of:

(i) *watercraft* used in operations carried out by any independent contractors for whose conduct you may be held liable;

(ii) *hovercraft* owned and operated by others and used by *you* for *business* entertainment;

(iii) *watercraft* or are owned and operated by others and used by *you* for *business* entertainment;

(iv) sailing craft and other non-powered craft exceeding 15 metres in length while in Australian territorial water.

(c) *your products* that are *aircraft* component parts used for maintaining an *aircraft* in flight or moving along the group, or used in the construction of an *aircraft* hull or machinery, which to *your* knowledge are incorporated in an *aircraft*.

5.3 Asbestos

claims directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

5.4 Contractual liability

any liability expressly assumed by *you* under a contract, warranty or unless such liability would have attached to *you* notwithstanding such contract, warranty or agreement.

Provided that Exclusion 5.4 does not apply to:

(a) liability under any warranty of goods implied by law, or liability assumed by *you* under a warranty of fitness or quality as regards *your products*;

(b) liabilities assumed by *you* under *incidental contracts*;

(c) liabilities assumed by *you* under those written contracts specified in the *schedule*.

5.5 Defamation

the publication or utterance of defamatory or disparaging material:

(a) made prior to the effective date of this *policy*; or

(b) made by *you* or at *your* direction with knowledge of its falsity; or

(c) related to advertising, broadcasting or telecasting activities conducted by *you* or on *your* behalf.

5.6 Employment liability

(a) *personal injury* to any of *your employees* arising out of, or in the course of their employment in *your business*;

(b) *personal injury* to any person who is deemed to be *your employee* pursuant to any legislation relating to workers' compensation;

(c) claims which *you* are entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not *you* are a party to such policy of insurance;

(d) liability imposed by the provisions of any workers' compensation legislation or any industrial award or agreement or determination;

(e) any liability howsoever or whatsoever for claims related to or arising from *employment practices*.

Provided that Exclusions 5.6 (a), 5.6 (b) and 5.6 (c) above, do not apply to the extent that *your* legal liability would not be covered under any such policy of insurance taken out pursuant to or required by any legislation relating to worker's compensation had *you* complied with *your* obligations pursuant to such law.

5.7 Faulty workmanship

the cost of re-performing, correcting or improving any work undertaken by *you*.

5.8 Fines and penalties

fines, penalties or liquidated damages.

5.9 Information technology hazards, computer data, program and storage media

(a) *personal injury* or *property damage* arising, directly or indirectly, out of, or in any way involving *your internet operations*; or

(b) *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:

(i) the use of any computer hardware or software;

(ii) the provision of computer or telecommunication services by *you* or on *your* behalf; or

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

Provided that Exclusion 5.9 does not apply to:

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

(d) liability which arises irrespective of the involvement of *your internet operations*.

5.10 Loss of use

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

(a) a delay in or lack of performance by *you* or on *your* behalf of any contract or agreement; or

(b) the failure of *your products* to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by *you*, but this Exclusion 5.10 (b) does not apply to the loss of use of other tangible property resulting from the sudden, unexpected and unintended physical damage to or loss or destruction of *your products* or work performed by *you* or on *your* behalf after such *products* or work have been put to use by any person or organisation other than *you* as defined under the definition of '*you*', '*your*', '*yours*' or '*insured*'.

5.11 Pollution

(a) *personal injury* or *property damage* caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of *pollutants* into or upon land, the atmosphere, or any water course or body of water, but this Exclusion 5.11 (a) does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place;

(b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution, but this Exclusion 5.11 (b) does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in *personal injury* and/or *property damage*;

(c) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of *pollutants* caused by any *product* that has been discarded, dumped, abandoned or thrown away by others;

(d) the actual, alleged or threatened discharge, dispersal, release, seepage, migration 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.

5.12 Product defect

property damage to *your products* if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

This Exclusion 5.12 is restricted to the defective or harmful or unsuitable part of a damaged *product* and does not apply to any resultant damage caused to the remainder of the *product*.

5.13 Product recall

claims arising out of or resulting from any loss, cost or expense incurred by *you* for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of *your products* or of any property of which they form a part, if such *products* or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

5.14 Professional liability

the rendering of or failure to render professional advice or service by *you*.

Provided that Exclusion 5.14 does not apply to:

(a) the rendering of or the failure to render professional medical advice by *medical persons* employed by *you* to provide first aid and other medical services on *your* premises;

(b) *personal injury* or *property damage* arising from the rendering of or failure to render professional advice or service, providing such professional advice of service is not given for a fee;

(c) free advice provided by *you* in the course of the *business*; or

(d) advice given in respect of the use or storage of *your products*.

5.15 Property in custody or control

property damage to property owned by or leased or rented to *you*, or property in *your* physical or legal control.

Provided that Exclusion 5.15 does not apply to liability for *property damage* to:

(a) premises or part of premises (including landlord's fixtures and fittings) which are leased, rented or loaned to *you* for the purposes of the *business*;

(b) premises (or their contents) not owned or leased by *you* but temporarily occupied by *you* for the purpose of carrying out work, and other property (including products previously sold, supplied, delivered, installed or erected) temporarily in *your* possession for work thereon;

(c) *vehicles* (including their contents, spare parts and accessories while they are in or on any such *vehicle*) not belonging to or used by *you*, while the *vehicles* are in a car park owned or operated by *you*, provided *you* do not operate the car park for reward as a principal part of *your business*;

(d) the property of an *employee* of the parties shown in Clauses 4.29 (a) and 4.29 (b) of Definitions of '*you*', '*your*', '*yours*' or '*insured*';

(e) other property temporarily in *your* physical or legal control provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which *you* are or have been working and our limit under this Clause 5.15 (e) does not exceed $250,000 (unless a different amount is stated in the *policy schedule*) for any one *occurrence* and in the aggregate for any one *period of insurance*.

5.16 Punitive damages

punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

5.17 Radioactivity

claims arising directly or indirectly caused by, or contributing to or arising from:

(a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the Combustion of nuclear fuel. For the purpose of Exclusion 5.17 only, 'Combustion' shall include any self-sustaining process of nuclear fission;

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

Provided this Exclusion 5.17 shall not apply to liability resulting from the use of radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

5.18 Territorial limits

(a) claims made or actions instituted within any country, state or territory (outside Australia) that require insurance to be arranged or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance.

(b) claims made and actions instituted within *North America* or any other territory coming within the jurisdiction of the courts of *North America*.

(c) claims and actions to which the laws of *North America* apply.

Provided that:

(d) Exclusions 5.18 (b) and 5.18 (c) above do not apply to claims and actions arising from:

(i) the presence outside Australia of any of *your employees* and/or directors, partners or proprietors who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in *North America*.

(ii) *products* exported to *North America* without *your* knowledge.

The *limit of liability* in respect of coverage provided under Clause 5.18 (d) is inclusive of all costs, expenses and interest as set out in 'Additional Payments' of this *policy*.

5.19 Terrorism

loss, damage, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of 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 5.19 also excludes loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to any *act of terrorism*.

5.20 Vehicle

personal injury or *property damage* arising out of the ownership, possession, or use by *you* of any *vehicle*:

(a) which is registered or which is required under any legislation to be registered; or

(b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).

Provided that Exclusions 5.20 (a) and 5.20 (b) above do not apply to claims:

(c) for *personal injury* where:

(i) that compulsory liability insurance or statutory indemnity does not provide indemnity; and

(ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by *you* of legislation relating to *vehicles*;

(d) arising out of and during the loading or unloading of goods to or from any *vehicle*;

(e) caused by or arising from the operation or use of any *vehicle* which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by *you* or on *your* behalf within the confines of *your* premises;

(f) caused by or arising out of the use of:

(i) any *vehicle* whilst being used as a tool; or

(ii) plant forming part of any *vehicle* being used as a tool within the confines of *your* premises or at any *worksite*;

(g) for *property damage* arising out of the movement by *you* or by any *employees* of *yours* of any *vehicle* or trailer not belonging to *you* which is interfering with access to or from *your* premises or any site where *you* are carrying out work; or

(h) for *property damage* caused by or arising out of the movement of any *vehicle* (which is required to be conditionally registered in accordance with the law of any State or Territory in Australia) in the event of *your* inadvertent and unintentional failure to effect conditional registration.

5.21 War

war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.

6. General Conditions

6.1 Additions and/or Alterations to buildings and plant

Where additions and/or alterations to buildings or plant are being performed at the location by any contractor employed by *you*, notwithstanding the Definition of *business* (Clause 4.4), this *policy* extends to indemnify *you* against any claim for *your* legal liability to pay compensation for *personal injury* or *property damage* arising from an *occurrence* happening in connection with the conduct of the *business* during the period of the contract works, that is independent of the contractor's performance.

Provided also that nothing in this clause will result in an increase in our *limit of liability* in respect of any *occurrence* or *period of insurance*.

6.2 Adjustment of premium

Where the *policy schedule* shows premium for the *policy* has wholly or partly been calculated on estimates *you* must, within sixty (60) days after the expiry of each *period of insurance*, provide to us such matters, particulars and information relevant to the *policy* as we may reasonably require. The premium for the *period of insurance* will then be adjusted and any difference paid by or allowed to *you*, as the case may be, provided that the adjusted premium will not be less than any minimum premium specified in the *policy schedule*.

You must keep a record of all matters, particulars and information requested by us and must on reasonable notice allow us or our nominee to inspect and make copies of those records.

6.3 Breach of condition or Warranty

Your rights under this *policy* shall not be prejudiced by any unintentional and/or inadvertent:

(a) breach of condition or warranty without *your* knowledge or consent; or

(b) error in the name or title of any person(s), corporation and/or other organisation which forms part of the Definition of '*you'*, '*your'*, '*yours'* or '*insured'*; or

(c) error in name, description or situation of property; or

(d) failure to report any property and/or entity and/or insurable exposure in which *you* have an interest.

Provided always, that upon discovery of any such fact or circumstance referred to above, *your* officer responsible for insurance matters shall give written notice thereof to us as soon as reasonably practicable thereafter and *you* shall (if requested) pay such reasonable additional premium that we may require.

6.4 Cancelling your policy

How you may cancel this policy

(a) *You* may cancel this *policy* at any time by telling us in writing that *you* want to cancel it.

(b) Where '*you*' involves more than one person, we will only cancel the *policy* when a written agreement to cancel the *policy* is received from all persons named as the *insured*.

How we may cancel this policy

(a) We may cancel this *policy* in any of the circumstances permitted by law by informing *you* in writing.

(b) We will give *you* this notice in person or send it to *your* address last known to us.

The premium

We will refund to *you* the proportion of the premium for the remaining *period of insurance*, provided we shall be entitled to retain the agreed minimum premium. When the premium is subject to adjustment, cancellation will not affect *your* obligation to supply to us such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

Premium funders

If the premium has been funded by a premium funding company which holds a legal right over the *policy* by virtue of a notice of assignment and irrevocable power of attorney, a refund of any return premium due on cancellation of this *policy*, will be made to the premium funding company but only to the extent of any remaining financial interest in the *policy* held by that party.

6.5 Changes to information previously advised

(a) *You* must tell us as soon as possible if circumstances occur, or if changes or alterations are intended or made which increase the risk of loss, damage or injury.

(b) *You* must tell us immediately in writing of:

(i) every *occurrence*, claim, writ, summons, proceeding, impending prosecution, and inquest together with all relevant information which may result in a claim under this *policy*, whether or not *you* believe any claim amount might fall below the *deductible*; and

(ii) every change that comes to *your* knowledge which materially varies any of the facts or circumstances existing at the commencement of this *policy*.

6.6 Changing your policy

If *you* want to make a change to this *policy*, the change becomes effective when we agree to it in writing.

6.7 Discharge of liabilities

At any time we can pay to *you* or on *your* behalf, for all claims made against *you* for any one *occurrence*:

(a) the *limit of liability*, after deducting any amounts already paid; or

(b) any lower sum for which the claim can be settled.

If we do so:

(c) the conduct of any outstanding claim(s) will become *your* responsibility; and

(d) we will not be liable to pay any further amounts other than costs, charges, or expenses that we agreed to pay before we made the payment referred to above.

6.8 Inspection of property

We will be permitted but not obligated to inspect *your* property and operations at any reasonable time.

(a) Neither our right to inspect nor our failure to inspect nor the making of any inspection nor any report of an inspection may be used by *you* or others in any action or proceeding involving us.

(b) We may examine and audit *your* books and records at any time during the *period of insurance* and within one year thereafter but that examination and audit will be restricted to matters which in our opinion are relevant to the *policy*.

6.9 Joint insureds / Cross liability

Where more than one party comprises the *insured* each of the parties will be considered as a separate and distinct unit and the words '*you*', '*your*', '*yours'* or '*insured*' will be considered as applying to each party in the same manner as if a separate *policy* had been issued to each of them, provided that nothing in this clause will result in an increase of our *limit of liability* in respect of any *occurrence* or *period of insurance*.

6.10 Jurisdiction

All disputes arising out of or under this *policy* will be subject to determination by any Court of a competent jurisdiction within Australia.

6.11 Non-imputation

Where this insurance is arranged in the joint names of more than one *insured*, as described in Clause 4.29 (a), it is hereby agreed that:

(a) each *insured* shall be covered as if it made its own *proposal* for this insurance;

(b) any declaration, statement or representation made in any *proposal* shall be construed as a separate declaration, statement or representation by each *insured*; and

(c) any knowledge possessed by any *insured* shall not be imputed to the other *insured(s)*.

6.12 Notices

Any notice we give *you* will be in writing, and it will be effective:

(a) if it is delivered to *you* personally; or

(b) if it is delivered or posted to *your* address last known to us.

It is important for *you* to tell us of any change of address as soon as possible.

6.13 Observance of terms and conditions

Any failure by *you* to observe obligations of disclosure, good faith and/or compliance with the terms and conditions of the *policy* shall not prejudice the rights of any other of *you* under the *policy*.

6.14 Other interests

You cannot transfer any interests in this *policy* without our written consent.

Any person whose interests *you* have told us about and whom we have noted on *your policy schedule* is bound by the terms of this *policy*.

6.15 Reasonable care

You must:

(a) exercise reasonable care that only competent *employees* are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;

(b) take all reasonable precautions to prevent *personal injury* and *property damage*, to prevent the manufacture, sale or supply of defective *products*, and to comply with and to ensure that *your employees*, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:

(i) safety of persons or property;

(ii) disposal of waste products; and

(iii) handling, storage or use of flammable liquids or substances, gases or toxic chemicals; and

(c) at *your* own expense take reasonable action to trace, recall or modify any of *your products* containing any defect or deficiency of which *you* have knowledge or have reason to suspect, including (but not limited to) any of *your products* subject to governmental or statutory ban.

6.16 Sanctions regulation

Notwithstanding any other terms or conditions under this *policy*, we shall not be deemed to provide coverage or will not make any payments or 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.

6.17 Subrogation waiver

We hereby agree to waive all our rights of subrogation under this *policy* against:

(a) each of the parties described under the Definition of '*you*', '*your*', '*yours*' or '*insured*'; and

(b) 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*.

Where such corporation, organisation or person is protected from liability insured against hereunder by any other *policy* of indemnity or insurance, our right of subrogation is not waived to the extent and up to the amount of such other *policy*.

7. Claims

7.1 What you must do

If an event happens which may give rise to a claim under this *policy you* must:

(a) tell us or *your* intermediary as soon as possible. *You* will be provided with advice on the procedure to follow;

(b) supply us with all information we require to settle the claim;

(c) send us the details of any verbal or written claims made upon *you* without delay for our attention;

(d) take all reasonable precautions to prevent further loss or damage;

(e) not negotiate, admit, repudiate or pay any claim by any person;

(f) co-operate fully with us in any action we take if we have a right to recover any money payable under this *policy* from any other person.

If in doubt at any time, contact us or *your* intermediary for advice *your* failure to notify us promptly of *personal injury* or *property damage* of others could affect the amount of *your* claim.

7.2 What you must not do

You must not:

(a) admit liability if an incident occurs which is likely to result in someone claiming against *you*; or

(b) make any admission of guilt or promise or offer of payment in connection with any such claim, unless we first agree in writing. This applies to *you* or any other person making a claim under this *policy*.

7.3 What we do

We may take over and conduct the defence or settlement of any claim or issue legal proceedings for damages. If we do this we will do it in *your* name. We have full discretion in the conduct of any legal proceedings and in the settlement of any claim.

You must co-operate by giving us any statements, documents or assistance we require. This may include giving evidence in any legal proceedings.

Any amount recovered by us from a third party shall be applied in the following order of priority:

(a) first to the uninsured proportion of the loss;

(b) second to reimburse us to the extent of our actual payment in respect of the claim; and

(c) third, to reimburse *you* for any *deductible* borne by *you*.

The expenses of such recovery proceedings shall be apportioned between *you* and us proportionately in accordance with the apportionment formula set out above. If there is no such recovery by us, the expenses shall be borne by us.

7.4 What can affect a claim

We will reduce the amount of a claim by the *deductible* shown in the *policy* Terms and Conditions or on the *policy schedul*e. We may refuse to pay a claim if *you* are in breach of *your* duty of disclosure or any of the conditions of this *policy*, including any *endorsements* noted on or attached to the *policy schedule*.

We pay only once for loss or damage from the same event covered by this *policy* even if it is covered under more than one section of the *policy*.

We may be entitled to refuse to pay or to reduce the amount of a claim if:

(a) it is in any way fraudulent; or

(b) any fraudulent means or devices are used by *you* or anyone acting on *your* behalf to obtain any benefits under this *policy*.

If any liability insured under this *policy* arises from a contract or agreement between *you* and a third party and if the contract or agreement provides for the appointment of an arbitrator, we will be entitled to exercise all of *your* rights in the choice of arbitrator and in the conduct of any arbitration proceedings.

An *insured's* insolvency or bankruptcy or the insolvency or bankruptcy of an *insured's* estate will not relieve us of any of our obligations under this *policy*.

8. Optional Endorsement

The following *endorsement* applies, but only if the number and title of the *endorsement* shown below is described in the *policy schedule* as having been selected for cover under this *policy*.

8.1 Exports to North America

The cover provided by this *policy* is extended to indemnify *you* for *your* legal liability to pay all sums by way of compensation, and all charges, expenses and legal costs recoverable or awarded against *you* within *North America* in respect of *personal injury*, *property damage* and/or *advertising liability* happening during the *period of insurance* caused by an *occurrence* in connection with *your products* knowingly exported to *North America*.

Provided that:

(a) cover is not provided for any claim for compensation if in *North America you* have:

  (i) any assets other than *products*;

  (ii) a related or *subsidiary* company;

  (iii) any person or entity with power of attorney; and/or

  (iv) any franchisor or franchisee.

(b) the cover we provide does not extend to include contract work or services performed by *you*, *your employees* or agents within *North America*;

(c) Pollution Exclusion – Clause 5.11 (d) and General Condition – 'Jurisdiction' – Clause 6.10 of the *policy* are not varied and apply to this *endorsement*;

(d) claims under this *endorsement* are subject to the *deductible* specified in the *policy schedule* for each *occurrence*; and

(e) the Limits of Liability under Clause 2.1 of 'What we will pay' applicable to this *endorsement* shall be inclusive of all payments for costs, expenses and interest described as 'Additional Payments' under Clause 1.2 of the *policy*.

Territorial Limits Exclusion 5.18 of the *policy* is varied to give effect to this *endorsement*.

Zurich Australian Insurance Limited
ABN 13 000 296 640, AFS Licence No: 232507
Head Office: 5 Blue Street, North Sydney NSW 2060

Client enquiries
Telephone: 132 687
www.zurich.com.au

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