



# Miramar General and Products Liability Insurance Policy Wording

1 May 2024



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# ABOUT THIS BOOKLET

This booklet contains two separate parts: Important Information and Policy Terms and Conditions.

## IMPORTANT INFORMATION

This part of the booklet contains information You need to know before You take out an insurance Policy. Please read it carefully before taking out this insurance.

## POLICY TERMS AND CONDITIONS

The Policy Terms and Conditions part of this booklet contains the terms, conditions and exclusions relating to the Policy. It forms part of Your legal contract with Us.

If We issue You with an insurance Policy, You will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to Your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule We send to You, along with any Endorsement or other document We tell You forms part of the Policy, form Your legal contract with Us so please keep them in a safe place for future reference. In issuing any Policy We will rely upon information contained in the proposal and/or any written statements made by the Named Insured or anyone authorised to act on their behalf.

If You require further information about this product, please contact Your insurance broker.

# IMPORTANT INFORMATION

## ABOUT LLOYD'S

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

Lloyd's is the world's specialist insurance and reinsurance market.

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

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

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

## GENERAL INSURANCE CODE OF PRACTICE

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

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

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

## ABOUT MIRAMAR

Miramar Underwriting Agency Pty Ltd (ABN 97 111 534 797, AFSL 314176) ('Miramar') acts under a binding authority given to it by Us, to administer and issue policies, alterations and renewals. In all aspects of arranging the Policy, Miramar acts as an agent for the Insurer(s) and not for You.

If You have any queries in relation to this Policy, contact Miramar in any of the following ways:

**Street Address:** Level 4, 97-99 Bathurst Street, Sydney NSW 2000

**Postal Address:** PO Box A2016, Sydney South NSW 1235

**Phone:** +61 2 9307 6600

## OUR CONTRACT WITH YOU

This Policy is a contract of insurance between You and Us and contains all the details of the cover that We provide. The Policy consists of:

- the Policy Terms and Conditions part of this booklet, which tells You what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- Your most current Schedule issued by Us. The Schedule is a separate document unique to You, which shows the insurance details relevant to You. It includes any changes, exclusions, terms and conditions made to suit Your individual circumstances and may amend the Policy;
- any Endorsement; and
- any other document We tell You forms part of the Policy which may vary or modify the above documents.

These documents should be read together as they jointly form the contract of insurance between You and Us.

## YOUR 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.

## COOLING-OFF PERIOD

There is a twenty-one (21) day cooling-off period. If You wish to cancel the Policy, You can cancel it from its date of issue by contacting Miramar in writing within twenty-one (21) days of its date of issue. We will refund Your Premium less any non-refundable charges, taxes and levies We have paid.

You can not exercise this right if:

- You have made a claim or become entitled to make a claim under the Policy; or
- You have exercised any right or power You have in respect of the Policy or the Policy has ended.

Even after this cooling-off period ends, You still have cancellation rights. Please refer to '5. Cancellation of this Policy' under General Conditions.

## RENEWAL PROCEDURE

Before this Policy expires, We will advise You whether We intend to offer renewal and if so on what terms. It is important to check the terms of any renewal before renewing to ensure that the details are correct. This document will apply to any renewal unless We tell You otherwise.

## PRIVACY STATEMENT

In this Privacy Statement the use of "We", "Us" and "Our" means the Insurer(s) and Miramar unless specified otherwise.

We are committed to the safe and careful use of Your personal information in the manner required by the *Privacy Act 1988* (Cth) and the Australian Privacy Principles and the terms of this Policy.

We collect Your personal information in order to assess Your application for insurance and, if Your application is accepted, to administer and manage Your insurance Policy and respond to any claim that You make. To do this, Your personal information may need to be disclosed to reinsurers and service providers and related entities who carry out activities on Our behalf, such as assessors and facilitators, some of whom may be located in overseas countries. See the Privacy Policies/Notices set out below for further information.

Our contractual arrangements generally include an obligation for these reinsurers, service providers and related entities to comply with Australian privacy laws.

By providing Us with Your personal information, You consent to the disclosure of Your personal information to reinsurers, service providers and related entities in overseas countries to enable Us to assess Your application, to administer and manage Your insurance Policy and to respond to any claim that You make. If You consent to the disclosure of Your personal information to overseas recipients, and the overseas recipient handles Your

personal information in a way other than in accordance with the Australian privacy laws, We may not be responsible for the handling of Your personal information by the overseas recipient.

If You choose not to provide Your personal information and/or choose not to consent and/or withdraw Your consent to the disclosure of Your personal information to overseas entities at any stage, We may not be able to assess Your application or administer and manage Your insurance Policy and respond to any claim that You make.

Our privacy policies contain information on how You may access personal information that each of Us hold, or seek correction of Your personal information and information on how to make a complaint about the handling of Your personal information and how complaints are handled. If You require more information, You can access certain underwriters at Lloyd's Privacy Notice at <https://www.lloyds.com/help/privacy> and Miramar's Privacy Policy at [miramaruw.com.au](http://miramaruw.com.au)

## COMPLAINTS AND DISPUTE RESOLUTION PROCESS

If You have any concerns or wish to make a complaint in relation to this Policy, our services or Your claim, please let us know and we will attempt to resolve Your concerns in accordance with our Internal Dispute Resolution procedure.

Please contact Miramar in the first instance:

Miramar Underwriting Agency

**Postal Address:** PO Box A2016, Sydney South NSW 1235

**Phone:** +61 2 9307 6653

**Email:** [servicefeedback@steadfastagencies.com.au](mailto:servicefeedback@steadfastagencies.com.au)

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

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

Lloyd's Australia Limited

**Email:** [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)

**Phone:** +61 2 8298 0783

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

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

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

**Phone:** 1800 931 678

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

**Postal Address:** GPO Box 3, Melbourne VIC 3001

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

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

## CHANGES OF LAW

If any statute, Act or legislation relevant to the construction of this Policy is amended or replaced, this Policy shall be read as though the amended or new statute, Act or legislation were incorporated in it. If this produces any ambiguity, this document shall be construed so as to give effect to the intentions of the parties at the time it was executed.

## LIABILITY ASSUMED BY YOU UNDER AN AGREEMENT

It is not possible for You to transfer to Us the entire spectrum of legal liabilities which You may be compelled to bear under the terms of a wide variety of indemnity and/or hold harmless clauses frequently inserted into commercial business contracts by principals, lessors or other parties.

Liability assumed by You under an agreement is covered only to the extent described in the Policy.

# POLICY TERMS AND CONDITIONS

## Our Agreement

Subject to all of the terms, conditions and exclusions contained in the Policy and Your payment of or agreement to pay the Premium:

- a. We will provide You with the cover shown in the Sections of the Policy which are shown as covered in the Schedule;
- b. the insurance cover is in force for the Period of Insurance set out in the Schedule;
- c. We will cover You to the extent described in the Policy.

We will not pay more than the Limit of Liability which is shown in the Schedule or as provided in the Policy.



# 1. GENERAL DEFINITIONS

The following definitions apply to this Policy. If a word or expression has a special meaning, it begins with a capital letter:

## **Act of Terrorism**

An Act of Terrorism means an act, including but not limited to the use of force or violence and/or the threat, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes with the intention of influencing any government and/or putting the public, or any section of the public, in fear.

## **Advertising Injury**

Advertising Injury means injury arising out of:

- a. defamation; or
- b. misleading or deceptive conduct in breach of provisions of consumer protection laws, including the *Competition and Consumer Act 2010* (Cth), *Corporations Act 2001* (Cth), *Australian Securities and Investments Commission Act 2001* (Cth), state Fair Trading Acts or similar legislation of any country, state or territory; or
- c. any infringement of copyright or passing off of title or slogan; or
- d. unfair competition, piracy, misappropriation of advertising ideas or style of doing business; or
- e. invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of Your advertising activities.

## **Aircraft**

Aircraft means any craft or object designed to travel through air or space, other than model aircraft or unmanned inflatable balloons used for advertising or promotional purposes.

## **Business**

Business means the Business as described in the Schedule.

## **Compensation**

Compensation means monies paid or agreed to be paid by judgment, award or settlement in respect of Personal Injury and/or Property Damage and/or Advertising Injury.

Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies.

## **Computer System**

Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

## **Cyber Act**

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

## **Cyber Incident**

Cyber Incident means:

- a. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
- b. any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

## **Data**

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

## **Employment Practices**

Employment Practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect to the employment or prospective employment of Your employees.

## **Endorsement**

Endorsement means an individual endorsement document that We give You that attaches to and forms part of the Policy. This document varies the terms and conditions of the Policy.

## **Excess**

Excess means the first amount of each claim or series of claims arising out of any one Occurrence for which You are responsible. The Excess applicable to this insurance appears in the Schedule.

The Excess applies to all amounts for which We will be liable, including the indemnity provided by Insuring Clause '2. Defence Costs and Supplementary Payments'.

Where an Excess is shown in the Schedule for Personal Injury to Contracted Employees or Workers that amount shall apply to each and every Occurrence in respect of Personal Injury to Contracted Employees and/or Workers' Compensation Subrogation Claims inclusive of Defence Costs and Supplementary Payments.

For the purpose of the application of this Excess the term Contracted Employee or Worker means Your employees and any hired labourers, contractors or sub-contractors, or any employee of any hired labourers, contractors or sub-contractors, whilst engaged by You to replace or supplement Your workforce thus performing work on Your behalf or for Your benefit.

The term Contracted Employee or Worker does not include occasional maintenance or repair contractors specifically engaged for such occasional maintenance or repair.

## **General Liability**

General Liability means Your legal liability in respect of Personal Injury and/or Property Damage and/or Advertising Injury happening in connection with the Business and caused by or arising out of an Occurrence other than Products Liability.

## **Geographical Limits**

Geographical Limits means:

- a. anywhere in the world except North America; the Democratic People's Republic of Korea (North Korea); the Islamic Republic of Iran (Iran); the Republic of Cuba (Cuba), Russia, Belarus and Annexed Regions of Ukraine;
- b. North America, but only with respect to:
  - i. overseas business visits by any of Your directors, partners, officers, executives or employees, who are non-resident in North America, but not where they perform manual work in North America;
  - ii. Products exported to North America without Your knowledge.

## **Hovercraft**

Hovercraft means any vessel, craft or thing made or intended to transport persons or property over land or water supported on a cushion of air.

## **Incidental Contracts**

Incidental Contracts means:

- a. any written rental and/or lease and/or hiring agreement of real and/or personal property, other than with respect to any term or condition contained in such rental, lease and/or hiring agreement that requires You to insure such property;
- b. any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;

- c. any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings;
- d. those contracts designated in the Schedule.

### **Limit(s) of Liability/Sub-limit(s) of Liability**

Limit(s) of Liability/Sub-limit(s) of Liability means the limit(s) and sub-limit(s) of liability shown in the Policy document and the Schedule.

### **Named Insured**

Named Insured means:

- a. the person(s), corporations and/or other organisations specified in the Schedule;
- b. all existing subsidiary and/or controlled corporations (including subsidiaries) of the Named Insured incorporated in the Commonwealth of Australia and/or any other organisations under the control of the Named Insured;
- c. all subsidiary and/or controlled corporations (including subsidiaries) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Named Insured during the Period of Insurance;
- d. every subsidiary and/or controlled corporation and/or other organisation under the control of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to the date of divestment.

### **North America**

North America means:

- a. the United States of America and the Dominion of Canada;
- b. any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and
- c. any country or territory subject to the laws of the United States of America or the Dominion of Canada.

### **Occurrence**

Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended from Your standpoint.

With respect to Personal Injury and/or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

All Advertising Injury 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.

### **Period of Insurance**

Period of Insurance means the Period of Insurance specified in the Schedule or any subsequent period for which We have agreed in writing to extend the cover.

### **Personal Injury**

Personal Injury means:

- a. bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services;
- b. false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- c. wrongful entry or wrongful eviction;
- d. defamation or invasion of privacy, unless arising out of Advertising Injury;
- e. discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance is prohibited by law) not committed by You or at Your direction, but only with respect to liability other than fines and penalties imposed by law;

- f. assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability, such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

### **Policy**

Policy means:

- a. this Policy wording;
- b. the Schedule;
- c. any Endorsement;
- d. any other document We tell You forms part of the Policy which may vary or modify the above documents.

### **Pollutants**

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material. 'Waste material' includes materials that are intended to be recycled, reconditioned or reclaimed.

### **Premium**

Premium means the amount(s) shown in the Schedule that is payable by You in respect of the Policy.

### **Products**

Products means any goods or products manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by You or on Your behalf (including Your predecessors in the Business), including any packaging or containers, including the design, formula or specification, directions, markings, instructions, advice or warnings 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 always that for the purpose of this insurance the term 'Products' shall not be deemed to include:

- a. food and beverages supplied by You or on Your behalf primarily to Your employees as a staff benefit; or
- b. any vending machine or any other property rented to or located for use of others but not sold by You;

and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection with (a.) and (b.) shall be regarded as General Liability claims.

### **Products Liability**

Products Liability means Your legal liability in respect of Personal Injury and/or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such Products; but only where such Personal Injury and/or Property Damage occurs away from premises owned or leased by or rented to You and after physical possession of such Products has been relinquished to others.

### **Property Damage**

Property Damage means:

- a. physical loss, destruction of or damage to tangible property, including the loss of use at any time; and/or
- b. loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence.

### **Proposal**

Proposal means the Proposal document You complete for this insurance that attaches to and forms part of the Policy.

## **Schedule**

Schedule means the most current Schedule issued by Us that attaches to and forms part of the Policy.

## **Tool of Trade**

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 premises or on any Worksite. Tool of Trade does not include any Vehicle whilst travelling to or from a Worksite or Vehicles that are used to carry goods to or from any premises.

## **Vehicle**

Vehicle means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

## **Watercraft**

Watercraft means any vessel, craft or thing made or intended to float on or in or travel on or through water, other than model boats.

## **We, Us, Our, the Insurer(s)**

We, Us, Our, the Insurer(s) means certain underwriters at Lloyd's.

Note: You can obtain further details of the Insurer(s) from Miramar upon request.

## **Worksite**

Worksite means any premises or site where any work is performed for and/or in connection with the Business together with all areas surrounding such premises or site and/or all areas in between such premises or site that You shall use in connection with such work.

## **You, Your, the Insured**

You, Your, the Insured means:

- a. the Named Insured;
- b. every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the Named Insured (including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the Business) while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities;
- c. any employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any such employee superannuation fund or pension scheme which is not administered by corporate fund managers;
- d. every principal in respect of the principal's liability arising out of:
  - i. the performance by or on behalf of the Named Insured of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this Policy;
  - ii. any Products sold or supplied by the Named Insured, but only in respect of the Named Insured's own acts or omissions in connection with such Products and in any event only for such coverage and Limits of Liability as are provided by this Policy;
- e. every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of any law, agreement or permit (whether written or implied) to provide insurance such as is afforded by this Policy, but only to the extent required by such law, agreement or permit and in any event only for such coverage and Limits of Liability as are provided by this Policy;
- f. every officer, member, employee or voluntary helper of the Named Insured's canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, educational, welfare and/or child care facilities, while acting in their respective capacities as such;
- g. any director, partner, proprietor, officer or executive of the Named Insured in respect of private work undertaken by the Named Insured's employees for such person and any employee whilst actually undertaking such work;

- h. the estates, legal representatives, heirs or assigns of:
  - i. any deceased or insolvent persons; or
  - ii. persons who are unable to manage their own affairs by reason of mental disorder or incapacity; who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such persons as described in clauses (h.)(i.) and (h.)(ii.) above;
- i. every party including joint venture companies and partnerships to whom the Named Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this Policy.

## 2. INSURING CLAUSES

### 1. What We Cover

We agree (subject to the provisions of the Policy) to pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation in respect of:

- a. Personal Injury; and/or
- b. Property Damage; and/or
- c. Advertising Injury;

happening during the Period of Insurance within the Geographical Limits, in connection with the Business or Your Products and/or work performed by You or on Your behalf and caused by or arising out of an Occurrence.

### 2. Defence Costs and Supplementary Payments

With respect to the indemnity provided by this Policy, We will:

- a. defend, in Your name and on Your behalf, any claim or suit against You alleging such Personal Injury and/or Property Damage and/or Advertising Injury and seeking damages (on account), even if any of the allegations of such claim or suit are groundless or false;
- b. pay all charges, expenses and legal costs incurred by Us and/or by You at Our written request or with Our written consent (which consent shall not be unreasonably withheld):
  - i. in the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of Your attendance at hearings or trials at Our request; and
  - ii. in bringing or defending appeals in connection with such claim or suit;
- c. pay:
  - i. all charges, expenses and legal costs recoverable from or awarded against You in any such claim or suit;
  - ii. pre-judgment interest awarded against You on that part of the judgment payable by Us; and
  - iii. all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability;
- d. pay premiums on:
  - i. bonds to release attachments for amounts not exceeding the applicable Limit of Liability of this Policy but We shall have no obligation to apply for or furnish any such bond; and
  - ii. appeal bonds and/or security for costs required in any suit but We shall have no obligation to apply for or furnish any such bonds and/or security for costs;
- e. pay expenses incurred by You for:
  - i. rendering first aid to others at the time of any Personal Injury (other than any medical expenses, which we are prevented from paying by any law);
  - ii. temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or underpinning; and
  - iii. purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in compliance with the requirements of any government, local government or other Statutory Authority;
- f. pay all reasonable legal costs incurred by You with Our consent for representation of You at:
  - i. any Coronial Inquest or Inquiry;
  - ii. any proceedings in any court or tribunal in connection with liability insured against by this Policy;
  - iii. any Royal Commission or Government Enquiry arising out of any alleged breach of statutory duty, or other similar judicial enquiry into circumstances relating to any Occurrence, claim or potential claim which would be the subject of indemnity under this insurance; and
  - iv. any enquiry, prosecution or hearing of a disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like.

Provided that Our liability under clauses 2.(f).(iii.) and 2.(f).(iv.) shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one Occurrence.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by Us in addition to the applicable Limit of Liability of this Policy.

However, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all Defence Costs and Supplementary Payments.

In jurisdictions where We may not legally be permitted to, or cannot for any other reason, defend any claim or suit against You, We will reimburse You for the reasonable charges, expenses and legal costs of such defence incurred with Our written consent.

In all cases where You expect to incur charges, expenses or legal costs that may be covered under this Insuring Clause '2. Defence Costs and Supplementary Payments', You must inform us before doing so, so that We can inform You whether We agree the charges, expenses or legal costs are reasonable.

### **3. Limits of Liability and Excess**

Subject to Insuring Clause '2. Defence Costs and Supplementary Payments' above and Insuring Clause '4. Additional Benefit – Claims Preparation Costs' below:

- a. for General Liability, the Limit of Liability specified in the Schedule for General Liability represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims arising out of any one Occurrence; and
- b. for Products Liability, the Limit of Liability specified in the Schedule for Products Liability represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one Period of Insurance.

The applicable Limit of Liability will not be reduced by the amount of any Excess payable by You.

### **4. Additional Benefit - Claims Preparation Costs**

In addition to the amount of cover provided by this Policy, We will pay up to \$25,000 in respect of each claim or series of claims arising out of any one Occurrence for reasonable professional fees and other expenses incurred by You for the preparation of a claim under this Policy.

The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under Insuring Clause '2. Defence Costs and Supplementary Payments' above of this Policy.

### **5. Optional Additional Benefit - Products Exported to North America with Your Knowledge (Applicable only where this Additional Benefit is shown as 'Covered' in the Schedule)**

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

- a. cover only applies to Your legal liability in respect of Personal Injury and/or Property Damage that arises out of any Products exported to North America with Your knowledge;
- b. cover is not provided for:
  - i. Personal Injury and/or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, emission, release or escape of Pollutants;
  - ii. the cost of removing, nullifying or clean up of Pollutants;
  - iii. the cost of preventing the escape of Pollutants;
  - iv. any claim for Compensation if in North America You have:
    - any assets other than Products;
    - a related or subsidiary company;
    - any person or entity with power of attorney; and/or
    - any franchisor or franchisee.



### 3. GENERAL EXCLUSIONS

The following exclusions apply to this Policy. If any portion of the exclusions are found to be invalid or unenforceable, the remainder shall remain in full force and effect.

We will not indemnify You for any liability:

#### 1. Advertising Injury

for Advertising Injury:

- a. resulting from statements made at Your direction with knowledge that such statements are false; or
- b. resulting from failure of performance of a contract, but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract; or
- c. resulting from any incorrect description of Your Products or services; or
- d. resulting from any mistake in the advertised price of Your Products or services; or
- e. failure of Your Products or services to conform with advertised performance, quality, fitness or durability; or
- f. incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

#### 2. Aircraft, Hovercraft or Watercraft

for Personal Injury and/or Property Damage arising from:

- a. the ownership, maintenance, operation or use by You of any Aircraft; or
- b. the ownership, operation or use by You of any Watercraft or Hovercraft exceeding ten (10) metres in length, whilst such Watercraft or Hovercraft is on, in or under water.

Provided that this General Exclusion 2.(b.) shall not apply with regard to claims arising out of:

- i. Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable; or
- ii. Hovercraft owned and operated by others and used by You for Business; entertainment; or
- iii. Watercraft owned by others and used by You for Business entertainment; or
- iv. hand propelled or sailing craft exceeding ten (10) metres in length, whilst such craft is in territorial waters.

#### 3. Aircraft Products

arising out of Your Products that are Aircraft or Aircraft component parts used for maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery which to Your knowledge are incorporated in an Aircraft.

#### 4. Asbestos

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

#### 5. Breach of Professional Duty

arising out of any breach of duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable, but this exclusion shall not apply to claims:

- a. in respect of Personal Injury and/or Property Damage arising from such breach of duty; or
- b. arising out of advice or a service which is not given for a fee; or
- c. arising out of advice given in respect of the use or storage of Your Products.

## **6. Biosecurity Risk, Listed Human Disease, or Other Infectious Disease Exclusion**

directly or indirectly caused by or contributed to by or arising from any biosecurity risk or listed human disease or other infectious human disease under the *Biosecurity Act 2015* (Cth) including any subsequent amendments, replacement, re-enactment, successor or equivalent legislation.

## **7. Communicable Disease**

for Personal Injury arising out of or caused by or in connection with the contraction of, or transmission of any communicable disease.

## **8. Contractual Liability**

which has been assumed by You under any contract or agreement to the extent it requires You to:

- a. effect insurance over property, either real or personal; or
- b. assume liability for, Personal Injury and/or Property Damage regardless of fault. Provided this exclusion shall not apply with regard to:
  - i. liabilities which would have been implied by law in the absence of such contract or agreement; or
  - ii. liabilities assumed under Incidental Contracts; or
  - iii. terms regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute; or
  - iv. liabilities assumed under the contracts specifically designated in the Schedule or in any Endorsement(s) to this Policy.

## **9. Cyber and Data**

directly or indirectly caused by or contributed to by or arising out of or in connection with any:

- a. Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident; or
- b. loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any Data, including any amount pertaining to the value of such Data;

regardless of any other cause or event contributing concurrently or in any other sequence to such liability.

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

## **10. Damage to Products caused by Fault or Defect**

for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to damage to that part and only that part of such product to which the damage is directly attributable.

## **11. Defamation**

for defamation:

- a. resulting from statements made prior to the commencement of the Period of Insurance; or
- b. resulting from statements made at Your direction with knowledge that such statements are false; or
- c. incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

## **12. Employers Liability**

- a. for Bodily Injury to any Worker in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance required by any legislation relating to Workers' Compensation or Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected.

However, this Policy will respond to the extent that Your liability would not be covered under any such policy, fund, scheme or self insurance arrangement had You complied with Your obligations pursuant to such law.

- b. imposed by:
  - i. the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement; or
  - ii. any law relating to Employment Practices.

Notwithstanding General Exclusion '8. Contractual Liability', this General Exclusion 12.(a.) and 12.(b.) shall not apply with respect to liability of others assumed by the Named Insured under a written contract or agreement.

For the purpose of this General Exclusion 12.(a.) and 12.(b.) above:

- i. the term 'Worker' means any person deemed to be employed by You pursuant to any Workers' Compensation Law, provided that voluntary workers, secondees and work experience students (if any) shall not be deemed to be Your Workers; and
- ii. the term 'Bodily Injury' means bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services.

### **13. Faulty Workmanship**

for the cost of performing, completing, correcting or improving any work undertaken by You.

### **14. Fines, Penalties, Punitive, Exemplary or Aggravated Damages**

for any fines, penalties, punitive, exemplary or aggravated damages.

### **15. Liquidated Damages**

arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

### **16. Loss of Use**

for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:

- a. a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- b. failure of any Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You. However this General Exclusion 16.(b.) shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any 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.

### **17. Pollution**

- a. for Personal Injury and/or Property Damage directly or indirectly 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; or
- b. for any costs and expenses incurred in preventing the discharge, dispersal, release, seepage, migration or escape of, or, testing and monitoring for, containing, removing, nullifying, or cleaning up of, Pollutants.

However, with respect to any such liability which may be incurred anywhere other than North America, General Exclusions 17.(a.) and 17.(b.) shall not apply where such discharge, dispersal, release, seepage, migration or escape is caused by a sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

### **18. Product Guarantee**

for any Products warranty or guarantee given by You or on Your behalf. However, this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

### **19. Product Recall**

for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by the Named Insured because of any known, alleged or suspected defect or deficiency in such Products.

## 20. Property in Your Care, Custody or Control

for Property Damage to property in Your physical or legal care, custody or control; however this exclusion shall not apply with regard:

- a. to the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of Your visitors; or
- b. to premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of the Business, but no cover is provided by this Policy if You have assumed the responsibility to insure such premises; or
- c. to:
  - i. premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Business; or
  - ii. any other property temporarily in Your possession for the purpose of being worked upon; but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work;
- d. to any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or used by You, whilst any such Vehicle is in a car park owned or operated by You; provided that You do not operate the car park for reward, as a principal part of Your Business; or
- e. notwithstanding General Exclusion '8. Contractual Liability', any property (except property that You own) not mentioned in General Exclusions 20.(a.) to 20.(d.) above whilst in Your physical or legal care, custody or control whether or not You have accepted or assumed legal liability for such property. Provided that Our liability under this General Exclusion 20.(e.) shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one Occurrence.

Provided that Our liability under General Exclusions 20.(a.) to 20.(d.) shall not exceed the Sub-Limit of Liability shown in the Schedule.

## 21. Property owned by You

for Property Damage to property owned by You.

## 22. Radioactive Contamination and Explosive Nuclear Assemblies

directly or indirectly caused by or contributed to by or arising from:

- a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component.

Provided that General Exclusion 22. 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 or research pursuits.

## 23. Terrorism

- a. 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; or
- b. 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.

## 24. Vehicles

for Personal Injury and/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 legislation (whether or not that insurance is effected).

However, General Exclusions 24.(a.) and 24.(b.) shall not apply to:

- i. Personal Injury where:
  - that compulsory liability insurance or statutory indemnity does not provide indemnity; and
  - the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles;
- ii. any Vehicle (including any tool, implement, machinery or plant forming part of or attached to or used in connection with such vehicle) whilst being operated or used by You or on Your behalf as a Tool of Trade at Your premises or on any Worksite; or
- iii. the delivery or collection of goods to or from any Vehicle; or
- iv. the loading or unloading of any Vehicle; or
- v. any Vehicle temporarily in Your custody or control for the purpose of parking; or
- vi. 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.

## **25. War and Civil War**

directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

## 4. CLAIMS CONDITIONS

If You do not comply with the following Claims Conditions, We may refuse to pay a claim in whole or in part.

### 1. Notification of Occurrence, Claim or Suit

You shall give:

- a. written notice to Us, as soon as reasonably practicable, of any claim made against You or any Occurrence that may give rise to a claim being made against You and which is covered by this Policy; and
- b. every demand, writ, summons, proceedings, notice of prosecution or notice of inquest, as soon as reasonably practicable after they are received by You; and
- c. all such additional documents or information relating to the claim or Occurrence that We reasonably require, as soon as reasonably practicable after they are requested by Us.

### 2. Your Duties on the Event of an Occurrence, Claim or Suit

- a. You shall not, without Our written consent (which consent shall not be unreasonably withheld), make any admission, offer, promise or payment in connection with any claim made against You or Occurrence that may give rise to a claim being made against You which is covered by this Policy.
- b. You shall, as far as reasonably practicable, preserve (without alteration or repair) all property, products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation until We have had an opportunity of inspection.

### 3. Our Rights Regarding Claims

- a. Following the happening of any Occurrence in respect of which a claim is, or may be, made under this Policy, We shall have full discretion in the conduct of any proceedings in connection with any claim, whilst at all times having regard to Your interests. You shall give such information and assistance that We reasonably require in the prosecution, defence or settlement of any claim.
- b. We may at any time pay to You, in respect of all claims against You arising directly or indirectly from one source or original cause:
  - i. the amount of the Limit of Liability or any applicable Sub-Limit of Liability specified (after deduction of any sum(s) already paid by Us, which sum(s) would reduce the amount of Our unfulfilled liability); or
  - ii. any lesser sum for which the claim(s) can be settled.
- c. Upon making such payment, We shall relinquish conduct and control of, and be under no further liability under this Policy in connection with, such claim(s) except for Defence Costs and Supplementary Payments:
  - i. recoverable from You in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or
  - ii. incurred by Us, or by You with Our written consent (not being unreasonably withheld), prior to the date of such payment.

### 4. Goods & Services Tax

You must inform Us of the extent to which You are entitled to an input tax credit for the Premium each time that You make a claim under this Policy. No payment will be made to You for any GST liability that arises on the settlement of a claim under this Policy when You have not informed Us of Your entitlement or correct entitlement to an input tax credit.

Our liability will be calculated after taking into account:

- a. any input tax credit to which You, or any claimant against You, is entitled for any acquisition relevant to a claim paid under this Policy; and
- b. any input tax credit to which You, or any claimant against You, would have been entitled were You or the claimant to have made a relevant acquisition; and
- c. the GST exclusive amount of any supply made by You which is relevant to Your claim.

If the applicable Limit of Liability is not sufficient to cover Your claim, We will only pay GST (less any relevant input tax credit) that relates to Our proportion of Your claim.

The terms 'GST', 'input tax credit', 'acquisition' and 'supply' have the meanings ascribed to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## **5. Other Insurance**

If at the time any claim arises under this Policy there is any other insurance in force covering the same liability, in part or in full, You must promptly notify Us of full details of such other insurance, including the identity of the insurer(s) and the policy number(s), and such further information as We reasonably require.

Subject to the *Insurance Contracts Act 1984* (Cth), We reserve the right to seek a contribution from the other insurer(s).

## **6. Fraudulent Claims**

If any claim under this Policy is in any respect fraudulent or if any fraudulent means or devices are used by You or anyone acting on Your behalf to obtain any benefit under this Policy, or if any loss is occasioned by the wilful act or with the connivance of You, We, without prejudice to any other right(s) We might have under this Policy, shall be entitled to refuse to pay such claim.

## 5. GENERAL CONDITIONS

If You do not comply with the following General Conditions, We may refuse to pay a claim in whole or in part or in some circumstances in accordance with the law, cancel the Policy.

### 1. Adjustment of Premium

If the first Premium or any renewal Premium for this Policy in whole or in part shall have been calculated on estimates provided by You, You shall keep an accurate record containing all particulars and shall at all reasonable times allow Us to inspect such record.

You shall, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information relating to estimates provided by You in connection with the calculation of the Premium as We reasonably require as soon as reasonably practicable. The Premium for each Period of Insurance shall be adjusted based on Our rating principles effective at inception or the last renewal date of the Policy, as appropriate, and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum Premium that may have been agreed upon between Us and You at inception or the last renewal date of this Policy.

### 2. Alteration of Risk

Every change which substantially varies any material facts or circumstances affecting the risks covered by this Policy, existing at the commencement of each Period of Insurance, that shall come to the knowledge of Your officer responsible for insurance matters, shall be notified to Us as soon as reasonably practicable. Cover under this Policy with respect to the change shall be subject to payment by You (if requested) of such reasonable additional Premium that We require.

### 3. Bankruptcy or Insolvency

In the event that You should become bankrupt or insolvent, We shall not be relieved of the payment of any claims because of such bankruptcy or insolvency.

### 4. Breach of Condition or Warranty

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

- a. breach of a 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 General Definition 'You, Your, the 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 circumstances referred to above, Your officer responsible for insurance matters shall give written notice to Us as soon as reasonably practicable and cover under this Policy with respect to any change which substantially varies any material facts or circumstances affecting the risks covered by this Policy shall be subject to payment by You (if requested) of such reasonable additional Premium that We require.

### 5. Cancellation of this Policy

#### By You

You may cancel the Policy at any time by notifying Us in writing. The cancellation will take effect from 4pm on the day We receive Your written notice of the cancellation or such time as may be otherwise agreed.

#### By Us

We may cancel this Policy for any of the reasons set out in Section 60 of the *Insurance Contracts Act 1984* (Cth). Such cancellation shall take effect at the earlier of the following times:

- a. the time when another policy of insurance between You and Us or You and some other insurer, being a policy that is intended by You to replace this Policy, is entered into;
- b. at 4.00pm on the thirtieth (30th) business day after the date on which notification in writing was given to You.

In the event of cancellation of this Policy by either party, You shall be entitled to a proportionate refund of Premium subject to any minimum Premium that may have been agreed upon between Us and You and less



any non-refundable government changes, taxes and levies and any agency fee applied by Miramar to the Policy, provided that no event has occurred where liability arises under the Policy. Miramar may charge a reasonable cancellation fee.

If the Premium is subject to adjustment, cancellation will not affect Your obligation to supply Us with such information as is necessary to permit the Premium adjustment to be calculated.

## **6. Cross Liabilities**

This insurance extends to indemnify:

- a. each of the parties comprising the Named Insured; and
- b. each of the Insureds;

separately in the same manner and to a like extent as though policies had been issued in their separate names.

In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in General Conditions 6.(a.) and 6.(b.) above in respect of claims made by any other of such parties.

Provided always that:

- i. each of such parties shall be separately subject to the terms, Claims Conditions, General Conditions, General Exclusions and General Definitions of this Policy in the same manner and to a like extent as though separate policies had been issued; and
- ii. in no case shall the amount payable by Us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

## **7. Inspection & Audit**

We shall be permitted, but not obligated, to inspect Your premises and operations at any reasonable time after giving reasonable notice to you, during the currency of this Policy, but only with regard to matters which are relevant to this Policy. Neither Our right to make inspections, nor Our failure to make inspections, nor the making of inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

We may examine and audit Your books and records at any reasonable time after giving reasonable notice to you, during the currency of this Policy and within three (3) years after the final termination of this Policy, but only with regard to matters which are relevant to this Policy.

## **8. Premium Funders**

If the Premium has been funded by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney, then subject to Section 60 of the *Insurance Contracts Act 1984* (Cth), We may cancel this Policy at the request of the premium funding company, after substantiation of the debt and default in payment by You has been provided to Us, by giving You not less than three (3) business days written notice to that effect, following which a refund will be made to the premium funding company of the proportionate part of the Premium, less any non-refundable government changes, taxes and levies and any agency fee applied by Miramar to the Policy, applicable to the unexpired Period of Insurance.

## **9. Reasonable Precautions**

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 conditions; and
- b. take reasonable precautions:
  - i. to prevent Personal Injury and/or Property Damage and/or Advertising Injury; and
  - ii. to prevent the manufacture, sale or supply of defective Products; and
  - iii. to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
- c. at Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency You have knowledge of or have reason to suspect.

## 10. Release

Where You are required by contractual agreement to release any government or public or local authority or other Statutory Authority or any landlord from liability in respect of loss, destruction or damage or legal liability insured against under this Policy, such release is allowed without prejudice to this insurance.

Notwithstanding General Condition '13. Subrogation and Allocation of the Proceeds of Recoveries' of this Policy, We agree to waive all Our rights of subrogation against any such Authority or landlord in the event of any Occurrence for which a claim for indemnity may be made under this Policy.

## 11. Non-Imputation

Where this insurance is arranged in the joint names of more than one Insured, as described in General Definition 'Named Insured', it is declared and agreed that:

- a. each Insured shall be covered as if it made its own Proposal for this insurance; and
- 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).

## 12. Foreign Currency

All amounts referred to in this Policy are in Australian Dollars.

If You incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by Us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date on which We pay to You (or some other person or party as directed by You) the indemnity in respect of such award or settlement; subject always to the applicable Limit of Liability.

## 13. Subrogation and Allocation of the Proceeds of Recoveries

Subject to General Condition '14. Subrogation Waiver', any corporation, organisation or person claiming under this insurance shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by Us for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which We shall be or would become entitled upon Us paying for or indemnifying You in respect of legal liability under this insurance.

Should You incur any legal liability which is not covered by this insurance:

- a. due to the application of an Excess; and/or
- b. where the amounts of any judgments or settlements exceed the applicable Limit of Liability;

You will be entitled to the first call on the proceeds of all recoveries made, by either You or Us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by Us) and any remaining amount(s) will be applied to reimburse Us.

## 14. Subrogation Waiver

Notwithstanding General Condition '13. Subrogation and Allocation of the Proceeds of Recoveries' We agree to waive all Our rights of subrogation under this Policy against:

- a. each of the parties described under General Definition 'You, Your, the Insured';
- 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 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.

## 15. Policy Interpretation

We have capitalised words with special meaning wherever they appear in the Policy, to show that those words have a particular defined meaning. These words are defined in the General Definitions section of the Policy. Where any word is defined every derivative of that word has a corresponding meaning.

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

The headings are included for descriptive purposes only and do not form part of the Policy for the purpose of its construction or interpretation.

Any reference to any legislation in this Policy shall include any subsequent amendments, replacement, re-enactment, successor or equivalent legislation.

## 16. Sanctions Suspension Clause

It is a condition of this insurance, and the Insured agrees, that the provision of any cover, the payment of any claim and the provision of any benefit hereunder shall be suspended, to the extent that the provision of such cover, payment of such claim or provision of such benefit by the Insurer(s) would expose that Insurer(s) to any sanction, prohibition or restriction under any:

- a. United Nations' resolution(s); or
- b. the trade or economic sanctions, laws or regulations of the European Union, Australia, New Zealand, United Kingdom or United States of America.

Such suspension shall continue until such time as the Insurer(s) would no longer be exposed to any such sanction, prohibition or restriction.

## 17. Several Liability

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

## 18. Service of Suit

The Insurer(s) agree that:

- a. if a dispute arises under this insurance, this insurance will be subject to Australian law and practice and the Insurer(s) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b. any summons, notice or process to be served upon the Insurer(s) may be served upon:  
Lloyd's Underwriters' General Representative in Australia  
Suite 1603, Level 16, 1 Macquarie Place, Sydney NSW 2000  
**Phone:** (02) 8298 0700  
who has authority to accept service on behalf of the Insurer(s);
- c. if a suit is instituted against any of the Insurer(s), all Insurer(s) participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this insurance NOTICE should be given as soon as reasonably practicable to Miramar.

## 19. Failure to pay Your Insurance Premium

We may cancel Your Policy if You fail to pay Your Premium by the due date.



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