

Commercial Liability Insurance Policy



**CMAA MEMBERS PUBLIC
LIABILITY INSURANCE POLICY**

Managed by



Ken Killen ANZIIF(Assoc.), QPIB

OzPrize & Weather Insurance Specialists Pty Limited

Corporate Authorised Representative of Leckie & Wilkinson and

Warren Saunders Insurance Brokers (Aust) P/L AFS Lic No 240939

PO Box 444, Hurstville BC NSW 1481

Cnr Forest Road & Botany St, Hurstville NSW 2220

Direct Phone: 61-2-9785 3413 **Fax:** 61-2-9774 5672 **Mobile:** 0423 312 071

Email: kenkillen@ozprize.com.au **Web:** www.ozprize.com.au

Underwritten by



Commercial Liability Insurance Policy

Table Of Contents

IMPORTANT INFORMATION	2
SCHEDULE	as per attached certificate provided
COVERAGES	3
INVESTIGATION, DEFENCE AND SETTLEMENTS	4
WHO IS AN INSURED	4
LIMITATIONS ON WHO IS AN INSURED	5
LIMITS OF INSURANCE	6
EXCLUSIONS	7
CONDITIONS	12
DEFINITIONS	16
SPECIAL CONDITIONS AND ENDORSEMENTS	As per attached

Commercial Liability Insurance Policy

IMPORTANT INFORMATION

Please read the following important information relating to this insurance carefully. If you do not understand any of the matters detailed below please contact your insurance broker.

INSURANCE CONTRACTS ACT

The terms and conditions of this insurance shall be governed by and construed in accordance with the laws of Australia, and as such shall be subject to the Insurance Contracts Act 1984 (Commonwealth of Australia). Nothing contained in this insurance is to be construed to reduce or waive either the insured's or Chubb's privileges, rights or remedies available under the Insurance Contracts Act 1984 (Commonwealth of Australia).

THE INSURED'S DUTY OF DISCLOSURE

Before entering into a contract of insurance the insured has a duty, under the Insurance Contracts Act 1984 (Commonwealth of Australia), to disclose every matter that they know, or could be reasonably expected to know, is relevant to Chubb's decision on whether to accept the risk of the insurance, and if so, on what terms.

The insured has the same duty to disclose these matters to Chubb before renewing or changing this insurance.

The insured's duty, however, does not require disclosure of any matter:

- that diminishes the risk;
- that is of common knowledge;
- that Chubb knows, or in the ordinary course of their business as an insurer, ought to know; or
- as to which compliance with the duty of disclosure is waived by Chubb.

CONSEQUENCES OF NON-DISCLOSURE

If the insured fails to comply with their duty of disclosure Chubb may be entitled to reduce their liability under this insurance in respect of a claim or may cancel this insurance. If the insured's non-disclosure is fraudulent Chubb may also have the option of avoiding this insurance from the beginning.

NOTIFICATION OF FACTS THAT MIGHT GIVE RISE TO A CLAIM

Section 40(3) of the Insurance Contracts Act 1984 (Commonwealth of Australia) only applies to the claims-made and notified coverages available under this insurance, specifically the **Products Hazard** Liability Coverage and the Errors Or Omissions Liability Coverage.

Pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Commonwealth of Australia), and only pursuant to that section, if the insured gives notice in writing to Chubb of facts that might give rise to a claim against the insured as soon as reasonably practicable after the insured becomes aware of those facts but before the insurance cover provided by this insurance expires, then Chubb is not relieved of liability under this insurance in respect of the claim, when made, by reason only that it was made after the expiration of the period of the insurance cover provided by this insurance.

CONFIDENTIALITY

Chubb acknowledges that the insured may disclose information of a commercially sensitive and confidential nature. Chubb undertakes to restrict use of this information to matters related to the coverage provided and will not disclose this information to other parties.

Commercial Liability Insurance Policy

Insurance Contract

Please read the entire policy carefully. The terms and conditions of this insurance include the various sections of this insurance: Coverages; Investigation, Defence And Settlements; Territorial Limits; Who Is An Insured; Limits Of Insurance; Exclusions; Conditions; and Definitions, as well as the Schedule and any Endorsements made a part of this insurance.

Throughout this insurance the words "you" and "your" refer to the Named **Insured** shown in the Schedule and other persons or organisations qualifying as a Named **Insured** under this insurance. The words "we," "us" and "our" refer to the Company providing this insurance.

In addition to the Named **Insured**, other persons or organisations may qualify as **insureds**. Those persons or organisations and the conditions under which they qualify are identified in the Who Is An Insured section of this insurance.

Words and phrases that appear in **bold** print have special meanings and are defined in the Definitions section of this insurance.

Coverages

Bodily Injury And Property Damage Liability

- A. Subject to all of the terms and conditions of this insurance, we will pay damages that the **insured** becomes legally obligated to pay by reason of liability:
1. imposed by law; or
 2. assumed under an **insured contract**;
- for **bodily injury** or **property damage** that happens:
- within the Territorial Limits; and
 - in connection with your Business;
- as described in the Schedule, caused by an **occurrence** to which this coverage applies.
- B. This coverage applies only to such **bodily injury** or **property damage** that happens during the Policy Period.

Other than as provided under the Investigation, Defence And Settlements section of this insurance, we have no other obligation or liability to pay sums or perform acts or services under this coverage.

The most we will pay hereunder is fixed as set forth in the Limits Of Insurance section of this insurance.

Our obligations hereunder end when the applicable Limits Of Insurance have been used up.

Advertising Injury And Personal Injury Liability

- A. Subject to all of the terms and conditions of this insurance, we will pay damages that the **insured** becomes legally obligated to pay by reason of liability:
1. imposed by law; or
 2. assumed under an **insured contract**;
- for **advertising injury** or **personal injury** caused by an act, provided that such act happens:
- within the Territorial Limits; and
 - in connection with your Business;
- as described in the Schedule, to which this coverage applies.
- B. This coverage applies only to such **advertising injury** or **personal injury** caused by an act first happening during the Policy Period.

Commercial Liability Insurance Policy

Coverages (Continued)

Other than as provided under the Investigation, Defence And Settlements section of this insurance, we have no other obligation or liability to pay sums or perform acts or services under this coverage.

The most we will pay hereunder is fixed as set forth in the Limits Of Insurance section of this insurance.

Our obligations hereunder end when the applicable Limits Of Insurance have been used up.

Investigation, Defence And Settlements

Subject to all of the terms and conditions of this insurance, we have the right, but no obligation, to defend the **insured**. We may exercise such right at our sole discretion.

If we are defending the **insured** against a claim or part of a claim, to which this insurance applies, then we will pay **claim defence expenses** in connection with such claim or part of such claim to defend the **insured**.

If the **insured** is defending against a claim or part of a claim, to which this insurance applies, then we will reimburse you for **claim defence expenses** in connection with such claim or part of such claim that the **insured** pays in such defence.

We may, at our discretion, investigate any **loss events** and make any settlement, regardless of whether any claim has been made.

We may, at our discretion, pay at any time:

- any amount for which any claim can be settled; or
- the applicable Limit Of Insurance (after deduction of any amounts already paid);

and then we shall be under no further obligation or liability in respect of any claims.

The most we will pay (including reimbursements) hereunder is fixed as set forth in the Limits Of Insurance section of this insurance.

Our obligations hereunder end when we have used up the applicable Limits Of Insurance.

Who Is An Insured

Each of the following qualify as an **insured** under this insurance.

First Named Insured

The first person or organisation shown in the Schedule qualifies as a Named **Insured**.

Subsidiaries

Organisations that are a **subsidiary** of yours at commencement of the Policy Period qualify as a Named **Insured**.

Acquired Or Created Subsidiaries

A **subsidiary** acquired or created during the Policy Period by you qualifies as a Named **Insured**, but only if its total gross assets at the time of such acquisition or creation do not exceed A\$10,000,000 or 20% of the **group assets**, whichever is the lesser, and its business is the same as the Business as described in the Schedule.

However, unless we agree to extend coverage for an additional period (in accordance with the provisions of paragraph C. under Limitations On Who Is An Insured), coverage under this provision is afforded only for:

- **bodily injury** or **property damage** that did not happen; or
- **advertising injury** or **personal injury** caused by an act that did not first happen;

later than:

- 90 days after such acquisition or formation is executed; or
- the end of the Policy Period;

whichever comes first.

Commercial Liability Insurance Policy

Who Is An Insured (continued)

Directors, Officers Or Employees

Directors, **officers**, employees, work experience persons and voluntary workers of yours are **insureds**, but only while acting within the scope of their duties in such capacity.

Social Or Sporting Clubs

Officers and members of your social or sporting clubs are **insureds**, but only while acting in their respective capacities as such officers or members.

Partnerships Or Joint Ventures

Partners or members of a partnership or joint venture shown in the Schedule qualify as **insureds**, but only with respect to the operation of such partnership or joint venture.

Limitations On Who Is An Insured

- A. Except to the extent provided under the Acquired Or Created Subsidiaries provision above, no person or organisation is an **insured** with respect to the conduct of any person or organisation that is not shown as a Named **Insured** in the Schedule.
- B. No person or organisation is an **insured** with respect to the:
1. ownership, maintenance or use of any assets; or
 2. conduct of any person or organisation whose assets, business or organisation; you acquire, either directly or indirectly, for any damages, loss, cost or expense arising out of any injury, damage or act that happens, in whole or in part, before such acquisition is executed, including any continuation or resumption of any such injury, damage or act at any time.
- C. No person or organisation is an **insured** with respect to the:
1. ownership, maintenance or use of any assets you acquire;
 2. conduct of any person or organisation whose assets, business or organisation you acquire; or
 3. conduct of any organisation you form;
- during the Policy Period, either directly or indirectly, for any damages, loss, cost or expense arising out of any injury, damage or act happening, in whole or in part (including any continuation or resumption thereof at any time), later than:
- 90 days after such acquisition or formation is executed; or
 - the end of the Policy Period;
- whichever comes first, unless:
- you give us written notice describing the acquisition or formation for which you are requesting an extension of coverage for an additional period;
 - we agree to issue an endorsement to extend coverage for an additional period (up to the end of the policy period) in connection with the acquisition or formation, in accordance with the terms, conditions and additional premiums determined by us; and
 - you accept such terms and conditions.
- D. If an organisation ceases to be a **subsidiary**, then coverage with respect to such organisation shall only apply to injury or damage or the act giving rise to such injury or damage happening prior to the date such organisation ceased to be a **subsidiary**.

Commercial Liability Insurance Policy

Limits of Insurance

The Limits Of Insurance shown in the Schedule and the rules below fix the most we will pay, regardless of the number of:

- **insureds;**
- claims or **loss events;** or
- persons or organisations making claims.

The Limits Of Insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the Policy Period shown in the Schedule, unless the Policy Period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

Each Occurrence Limit

The Each **Occurrence** Limit is the most we will pay for the sum of amounts described as reducing the Limits Of Insurance in the provision titled Payments That Reduce The Limits Of Insurance for **bodily injury** and **property damage** arising out of any one **occurrence** or series of **occurrences**. All related **occurrences** and all series of continuous, repeated or related **occurrences** shall be deemed one **occurrence**.

Any such sums we pay will reduce the amount of the applicable aggregate limit available for any other payment.

If the applicable aggregate limit has been reduced to an amount that is less than the Each **Occurrence** Limit, then the remaining amount of such aggregate limit is the most that will be available for any other payment.

Each Act (Advertising Injury And Personal Injury) Limit

The Each Act (**Advertising Injury** And **Personal Injury**) Limit is the most we will pay for the sum of amounts described as reducing the Limits Of Insurance in the provision titled Payments That Reduce The Limits Of Insurance for **advertising injury** and **personal injury** arising out of any one act or series of acts. All related acts and all series of continuous, repeated or related acts shall be deemed one act.

Any such sums we pay will reduce the amount of the applicable aggregate limit available for any other payment.

If the applicable aggregate limit has been reduced to an amount that is less than the Each Act (**Advertising Injury** And **Personal Injury**) Limit, then the remaining amount of such aggregate limit is the most that will be available for any other payment.

Products Hazard Aggregate Limit

Subject to the Each **Occurrence** Limit, the **Products Hazard** Aggregate Limit is the most we will pay for the sum of amounts described as reducing the Limits Of Insurance in the provision titled Payments That Reduce The Limits Of Insurance, in connection with **bodily injury** and **property damage** included in the **products hazard**.

Any such sum we pay will reduce the amount of the aggregate limit available for any other payment. The remaining amount of such aggregate limit is the most that will be available for any other payment.

Advertising Injury Aggregate Limit

Subject to the Each Act (**Advertising Injury** And **Personal Injury**) Limit, the **Advertising Injury** Aggregate Limit is the most we will pay for the sum of amounts described as reducing the Limits Of Insurance in the provision titled Payments That Reduce The Limits Of Insurance, in connection with **advertising injury**.

Any such sum we pay will reduce the amount of the aggregate limit available for any other payment. The remaining amount of such aggregate limit is the most that will be available for any other payment.

Commercial Liability Insurance Policy

Limits of Insurance (continued)

Pollution Aggregate Limit

Subject to the Each **Occurrence** Limit and all other limits, the Pollution Aggregate Limit is the most we will pay for the sum of amounts described as reducing the Limits Of Insurance in the provision titled Payments That Reduce The Limits Of Insurance in connection with **pollutants**.

Any such sum we pay will reduce the amount of the aggregate limit available for any other payment. The remaining amount of such aggregate limit is the most that will be available for any other payment.

Payments That Reduce The Limits Of Insurance

- A. Any damages we pay will reduce the Limits Of Insurance.
- B. Payments we make under the Investigation, Defence And Settlements section of this insurance for **claim defence expenses** will not reduce the Limits Of Insurance.

Exclusions

The use of the words damages, loss, cost or expense in any exclusion does not expand any coverage(s) under this insurance.

Advertising Injury Or Personal Injury - Various

This insurance does not apply to any damages, loss, cost or expense for **advertising injury** or **personal injury** arising out of any:

- A. breach of contract.
- B. failure of goods, products or services to conform with any electronic, oral, written or other representation or warranty of durability, fitness, performance, quality or use.
- C. act happening, in whole or in part, before the beginning of the Policy Period, including any continuation or resumption of any such act at any time.
- D. wrong description of the price of goods, products or services.
- E. electronic, oral, written or other publication of content or material by or with the consent of the **insured**:
 - 1. with knowledge of its falsity; or
 - 2. if a reasonable person in the circumstances of such **insured** should have known such content or material to be false.
- F. continuation or resumption of any act after:
 - 1. such act is **deemed known** to have happened or to have begun.
 - 2. the later of the end of the policy period of:
 - a. this insurance; or
 - b. a subsequent, continuous renewal or replacement of this insurance:
 - i) that is issued to you by us or by an affiliate of ours; and
 - ii) which would otherwise apply to **advertising injury** or **personal injury**.

Aircraft or Watercraft

This insurance does not apply to any damages, loss, cost or expense arising out of the ownership, possession, maintenance, use (use includes operation and **loading or unloading**) or entrustment to others of any:

- **aircraft**; or
- **watercraft**;

by or on behalf of any **insured**.

Commercial Liability Insurance Policy

Exclusions

(Continued)

With respect to **bodily injury** or **property damage** only, this exclusion does not apply to a **watercraft**:

- while ashore on premises owned by or rented to you;
- under 8 metres in length; or
- operated by an independent contractor.

Aircraft Products

This insurance does not apply to any damages, loss, cost or expense arising out of any **aircraft** product or any missile or spacecraft, including any:

- article, equipment, material, part or spare part installed or otherwise incorporated in, on or under any **aircraft**, missile or spacecraft, or furnished or used in connection therewith;
- air or space communication, guidance or navigation system;
- ground control, handling or support equipment or tools furnished or used in connection therewith;
- equipment or tools furnished or used in connection with manufacturing, repairing or servicing any of the foregoing;
- blueprints, designs, drawings, information, instructions, manuals, maps, opinions, reports, representations, software, specifications, surveys, training aids, warnings or warranties or engineering or other data furnished or used in connection with any of the foregoing; or
- engineering or other advice, instruction, labour or service relating to any of the foregoing.

Antitrust, Restraint Of Trade, Including Trade Practices Act

This insurance does not apply to any damages, loss, cost or expense arising out of any actual or alleged:

- A. anti-competition, interference with economic relations (including interference with contractual relations or with prospective advantage), monopolization, predatory unfair business or trade practice, or other similar practices.
- B. violation of any judicial, regulatory or statutory law:
 - 1. relating to any practice described in subparagraph A. above; or
 - 2. designed, in whole or in part, to:
 - a. ensure or maintain competition within a marketplace; or
 - b. prevent or prohibit any practice that adversely affects a marketplace.
- C. violation of any judicial, regulatory or statutory law designed, in whole or in part, to ensure or maintain marketplace integrity against practices of persons or organizations who participate or conspire to participate in racketeering.
- D. breach of the Trade Practices Act 1974 (Commonwealth of Australia) or similar legislation enacted by the Commonwealth of Australia or its States or Territories, provided that this exclusion will not apply to a claim resulting from unintentional breach of Part V of the Trade Practices Act 1974 (Commonwealth of Australia) or equivalent provisions contained in similar legislation enacted by the Commonwealth of Australia or its States or Territories.

Commercial Liability Insurance Policy

Exclusions

(Continued)

Asbestos

- A. This insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of **asbestos**.
- B. This insurance does not apply to any damages, loss, cost or expense arising out of any:
1. demand, order, request or regulatory or statutory requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **asbestos**; or
 2. claim or proceeding by or on behalf of any regulatory, statutory or governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **asbestos**.

Contracts

This insurance does not apply to any damages, loss, cost or expense for which the **insured** is obligated by reason of assumption of liability in a contract or agreement.

This exclusion does not apply to the liability for damages to which this insurance applies:

- that such **insured** would have in the absence of such contract or agreement; or
- assumed in an **insured contract**.

Damage To Owned Property

This insurance does not apply to any damages, loss, cost or expense arising out of **property damage** to any property owned by the **insured**.

Damage To Various Property Of Others (Care, Control Or Custody)

This insurance does not apply to any damages, loss, cost or expense arising out of **property damage** to any property in the **insured's** physical custody or under the **insured's** legal control.

This exclusion does not apply to **property damage** to:

- premises that are rented or leased to you; or
- **vehicles** (not used by any **insured** or on any **insured's** behalf) that happens in your car park, unless arising out of any part of any **insured's** business of ownership or operation of a car park for reward.

Damage To Your Product

This insurance does not apply to any damages, loss, cost or expense arising out of **property damage** to **your product** or any part of it.

Employer's Liability, Statutory Obligations To Employees Or Employment-Related Practices

- A. This insurance does not apply to any damages, loss, cost or expense arising out of any injury or damage sustained by any employee of the **insured** arising out of and in the course of:
1. employment by the **insured**; or
 2. performing duties related to the conduct of the **insureds'** Business.
- B. This insurance does not apply to any damages, loss, cost or expense arising out of any obligation for which any **insured** may be held liable under any Workers Compensation Act enacted by the Commonwealth of Australia or its States or Territories, or any act, law, ordinance, regulation, industrial award or agreement or determination, similar to any of the foregoing anywhere in the world.

Commercial Liability Insurance Policy

Exclusions

(Continued)

- C. This insurance does not apply to any damages, loss, cost or expense arising out of any injury or damage sustained at any time by any person, whether or not sustained in the course of employment by any **insured**, arising out of any employment-related act, omission, policy, practice or representation directed at such person, happening in whole or in part at any time.

Paragraph A. above does not apply to the liability for damages to which this insurance applies for:

- **bodily injury** assumed by the **insured** in an **insured contract**; or
- **bodily injury** or **personal injury** to a person in the service of the **insured** in Western Australia where the **insured** is deemed the employer of such person by reason only of Section 175 of the Workers' Compensation and Injury Management Act 1981 (WA).

Exemplary or Punitive Damages, Or Penalties

This insurance does not apply to any:

- exemplary or punitive damages;
- fine or other penalty; or
- multiple portion of any multiplied damages award.

Expected Or Intended Injury Or Damage

This insurance does not apply to any damages, loss, cost or expense arising out of any **occurrence**, act or failure to act:

- intended by the **insured**; or
- that would be expected from the standpoint of a reasonable person in the circumstances of the **insured**;

to cause injury or damage, even if the actual injury or damage is of a different degree or type than intended or expected.

This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or tangible property.

Information Distribution Laws

This insurance does not apply to any damages, loss, cost or expense arising out of any actual or alleged violation of:

- the Spam Act 2003 (Commonwealth of Australia) or similar legislation enacted by the Commonwealth of Australia or its States or Territories; or
- any other statute, law, ordinance or regulation enacted anywhere in the world relating to communicating, distribution, publication, sending or transmitting of content, information or material.

Intellectual Property Laws Or Rights

This insurance does not apply to any actual or alleged damages, loss, cost or expense arising out of, giving rise to or in any way related to any actual or alleged:

- assertion; or
- infringement or violation;

by any person or organisation (including any **insured**) of any **intellectual property law or right**, regardless of whether this insurance would otherwise apply to all or part of such actual or alleged damages, loss, cost or expense in the absence of any such actual or alleged assertion, infringement or violation.

Commercial Liability Insurance Policy

Exclusions

(Continued)

Intellectual Property

Laws Or Rights

(continued)

This exclusion applies, unless such injury is **advertising injury** that:

- is caused by an act described in the definition of **advertising injury**, and
- does not arise out of, give rise to or in any way relate to any actual or alleged assertion, infringement or violation of any **intellectual property law or right**, other than one as described in the definition of **advertising injury**.

Nuclear Energy

This insurance does not apply to any damages, loss, cost or expense arising out of any:

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

Pollution

A. This insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**.

B. This insurance does not apply to any damages, loss, cost or expense arising out of any:

1. demand, order, request or regulatory or statutory requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
2. claim or proceeding by or on behalf of any regulatory, statutory or governmental authority or others for any damages, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

Paragraphs A. and B. above do not apply to the liability for damages for **bodily injury** or **property damage** if caused by a discharge, dispersal, release or escape that is sudden and accidental and which happens in its entirety at a specific place and time.

Notwithstanding the above, this insurance does not apply to any damages, loss, cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:

- happening in the United States of America or Canada, or their territories or possessions; or
- in respect of which an action for damages is brought in the courts of the United States of America or Canada, or their territories or possessions.

Professional Services

This insurance does not apply to any damages, loss, cost or expense arising out of:

- the rendering of or failure to render any professional advice, service or instruction or any error or omission connected therewith; or
- any advice, design, formula or specification given for a fee;

regardless of whether or not:

- a claim is made by any client or other person or organisation; or
- any of the foregoing is ordinary to any **insured's** profession.

This exclusion does not apply to:

- first aid rendered to others as a result of **bodily injury**; or
- liability for damages for **bodily injury** or **property damage** resulting from advice provided by you in respect of the use of **your product**;

to which this insurance applies.

Commercial Liability Insurance Policy

Exclusions

(Continued)

Recall Of Products

This insurance does not apply to any damages, loss, cost or expense incurred by any **insured** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of **your product** or any property of which such product forms a part, if such product or property is withdrawn or recalled from the market or from use by any person or organisation because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

Terrorism

This insurance does not apply to any damages, loss, cost or expense arising out of **terrorism** or any action in controlling, preventing, suppressing or in any way relating to **terrorism**.

If we allege that, by reason of this exclusion, any damages, loss, cost or expense is not covered by this insurance, then the burden of proving the contrary shall be upon the **insured**.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall continue to apply.

Vehicles

This insurance does not apply to any damages, loss, cost or expense arising out of the ownership, possession, maintenance or use of any **vehicle** in respect of which there is required by law to be in force a policy of compulsory liability insurance or contribution to a statutory fund for that purpose.

A. This exclusion does not apply to **bodily injury** that is not covered by compulsory liability insurance or any statutory fund unless by reason of any:

1. breach of legislation relating to **vehicles**;
2. failure to effect compulsory liability insurance or contribute to any statutory fund; or
3. financial inadequacy of a provider of compulsory liability insurance or any statutory fund.

B. In the absence of any such insurance or fund, this exclusion will not apply to **bodily injury** or **property damage**:

1. that happens beyond the limits of a carriageway or thoroughfare;
2. caused by the **loading or unloading** of a **vehicle**;
3. resulting from the use of a **vehicle** (not owned, hired, leased or supplied by any **insured** and not required to be insured by any **insured** by virtue of any legislation governing its use); or
4. resulting from the use of a **vehicle** as a tool of trade on a site where you are undertaking work or at your premises.

However, this insurance does not apply to **property damage** to any **vehicle** described in subparagraphs B.2., B.3. or B.4. above.

Conditions

Audit Of Books And Records

We may audit any **insured's** books and records as they relate to this insurance at any time during the term of this insurance and up to 3 years afterwards.

Commercial Liability Insurance Policy

Conditions

(Continued)

Cancellation

The first Named **Insured** may cancel this insurance or any of its individual coverages at any time by sending us a written request or by returning the policy and stating when thereafter cancellation is to take effect.

If the first Named **Insured** cancels the Policy we will refund 75% of the unearned premium. The unearned premium will be computed on a pro rata basis.

We may cancel this policy within 30 days after receipt by you at the address of the first Named **Insured** shown in the Schedule of a written notice of cancellation from us, under the grounds specified in Sections 60 and 61 of the Insurance Contracts Act 1984 (Commonwealth of Australia) and in accordance with the provisions of Section 59 and 77 thereof, or, if a later time is specified in such notice, at such later time.

If we cancel this insurance, then we will refund the full amount of unearned premium. The unearned premium will be computed on a pro rata basis.

Changes

This insurance can only be changed by a written endorsement that becomes part of this insurance. The endorsement must be signed by one of our authorised employees.

Changes In Exposure Through Asset Acquisition

If you acquire assets from another person or organisation that exceed A\$10,000,000 or 20% of the **group assets**, which ever is the lesser, then you must report such acquisition to us within 60 days after it is executed and provide such information that we may ask for and pay any additional premium we may require.

Compliance By Insureds

We have no duty to provide coverage under this insurance unless you and any other **insured** have fully complied with all of the terms and conditions of this insurance.

Our rights to apply this condition in the Commonwealth of Australia shall be subject to Section 54 of the Insurance Contracts Act 1984 (Commonwealth of Australia).

Compliance With Applicable Trade Sanction Laws

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance.

Conformance

In the event any term or condition of this insurance is found to be invalid, illegal or unenforceable, in whole or in part, such term or condition or part thereof shall be deemed not to apply to this insurance. However, the validity, legality and enforceability of all other terms and conditions remains unchanged.

Currency

All premiums, limits, deductibles, retentions, loss and other amounts under this insurance are deemed to be expressed and payable in Australian dollars. If judgment is rendered, settlement is denominated or another element of loss is expressed in currency other than Australian dollars, then the payment under this insurance shall be made in Australian dollars at the standard rate of exchange published by the Reserve Bank of Australia on the date that the final judgment is rendered, the amount of the settlement is agreed upon or the other element of loss is due, respectively.

If the Reserve Bank of Australia does not publish the applicable standard rate of exchange, then we will use the standard rate of exchange published on the Oanda web site (<http://www.oanda.com>) on the date that the final judgment is rendered, the amount of the settlement is agreed upon or the other element of loss is due, respectively.

Commercial Liability Insurance Policy

Conditions

(Continued)

Duties In The Event Of An Act, Claim, Occurrence, Or Other Loss Situation

- A. You must ensure that we are notified as soon as practicable, but in no event later than 30 days after you receive notice of any **loss event** that may involve us. Notice must include:
1. how, when and where the **loss event** happened;
 2. the names and addresses of any injured persons and organisations and any witnesses;
 3. the nature and location of any injury or damage in connection with the facts; and
 4. any other information we may require.
- B. If a claim is made against any **insured**, you must:
1. immediately record the specifics of the claim and the date received;
 2. notify us as soon as practicable; and
 3. ensure we receive written notice of the claim as soon as practicable.
- C. You and any other involved **insured** must:
1. immediately send us copies of any demands, notices, summonses or other legal papers received in connection with a claim;
 2. authorise us to obtain records and other information if requested;
 3. cooperate with us in the:
 - a. investigation and settlement of a claim; and
 - b. defence against a claim;
- D. No **insured** may settle any claim, incur any **claim defence expenses** (other than for first aid), assume any contractual obligation or admit any liability with respect to any claim without our written consent. We will not be liable for any settlement, **claim defence expenses**, assumed obligation or admission to which we have not consented.
- E. Notice to us under this insurance shall be given in writing addressed to:
- Notice Of Claim
Claim Manager at the address of the Company shown in the Schedule.
- Other Notices
Underwriting Manager at the address of the Company shown in the Schedule.
- F. If **loss events** involve any other insurers who may provide insurance coverage, you must ensure that such other insurers are notified as soon as practicable. Further you must cooperate with such other insurers and us in the:
1. investigation and settlement of a claim; and
 2. defence against a claim.

First Named Insured

The person or organisation first named in the Schedule is primarily responsible for payment of all premiums and other amounts payable to us under this insurance. The first Named **Insured** will act on behalf of all other **insureds** for the giving and receiving of notices and the receiving of any return premiums that become payable under this insurance.

Goods And Services Tax (GST)

If an **insured** is entitled to an input tax credit for the premium, that **insured** must inform us of the extent of that entitlement at or before the time a claim is made under this insurance. We will not be liable for amounts based upon, arising from or in consequence of any **insured's** misstatement or failure to inform us of the extent of its entitlement to an input tax credit.

The amount of any deductible or retention payable will be less any input tax credit that is or may be available to the **insured**.

Commercial Liability Insurance Policy

Conditions

(Continued)

Inspections And Surveys

We have the right but are not obligated to:

- make inspections and surveys of property, business methods or procedures at any time;
- give the **insured** reports on the conditions of what we inspect or survey; and
- recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organisation to provide for the health or safety of workers or the public. We also do not warrant that conditions:

- are safe or healthful;
- comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organisations which make insurance inspections, surveys, reports or recommendations that are used by us to determine insurability and the premiums to be charged.

Legal Jurisdiction

The terms and conditions of this insurance shall be governed by and construed in accordance with the laws of Australia. If any person or organisation sues us on this insurance or as a result of a dispute arising out of, in connection with or relating to this insurance, then such legal proceeding against us must be brought in and determined exclusively in an Australian court of competent jurisdiction.

Premium And Other Amounts Payable

Premiums shown in the Schedule as a deposit premium shall be credited to the amount of the earned premium due at the end of the Policy Period. At the end of the Policy Period, or any part of the Policy Period which ends with the termination of the policy, the earned premium shall be calculated for such period and, upon notice to you, shall become due and payable. If the total earned premium is less than the premium previously paid, then we will return to you the difference, provided that the adjusted premium is not less than the minimum premium shown in the Schedule.

You shall keep records of such information as is necessary for premium calculation and shall send copies of such records to us at the end of the Policy Period or during the Policy Period as we may request.

Each Named **Insured** is jointly and severally liable for any and all amounts payable to us under this insurance, any other insurance issued by us, or an affiliate of ours.

Representations

It is a provision of this insurance that in accepting it, the **insureds** agree that the representations and statements contained in any **application**:

- are accurate and complete;
- were made to induce our reliance upon them;
- were made on behalf of all **insureds**;
- are material to our decision to provide coverage; and
- are considered as incorporated in and constituting part of this insurance.

Separation Of Insureds

Except with respect to the Limits Of Insurance, Cancellation Condition and any rights or duties specifically assigned in this insurance to the first Named **Insured**, this insurance applies:

- as if each Named **Insured** were the only Named **Insured**; and
- separately to each **insured** against whom a claim is made.

Commercial Liability Insurance Policy

Conditions

(Continued)

Titles Of Paragraphs

The titles of the various paragraphs of this insurance and endorsements, if any, attached to this insurance are inserted solely for convenience or reference and are not to be deemed in any way to limit or affect the provisions to which they relate.

Transfer Of Rights And Duties

The **insured's** rights and duties under this insurance may not be transferred without our written consent.

Transfer Of Rights Of Recovery Against Others

The **insured's** rights to recover all or part of any payment made under this insurance are transferred to us. The **insured** must do nothing after loss to impair them. At our request, the **insured** will transfer those rights to us and help us enforce them.

Definitions

When used with respect to insurance under this insurance, words and phrases that appear in bold print have the special meanings described below.

Advertisement

Advertisement means an electronic, oral, written or other notice, about goods, products or services, designed for the specific purpose of attracting the general public or a specific market segment to use such goods, products or services.

Advertisement does not include any e-mail address, Internet domain name or other electronic address or metalanguage.

Advertising Injury

Advertising injury means injury, other than **bodily injury, property damage** or **personal injury**, sustained by a person or organization and caused by an act of infringing, in that particular part of your **advertisement** about your goods, products or services, upon their:

- copyrighted **advertisement**;
- registered collective mark, registered service mark or other registered trademarked name, slogan, symbol or title.

Aircraft

Aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space and includes hovercraft.

Application

Application means any information or representation submitted to us by the **insured** or by any person or organisation on behalf of any **insured** in applying for this insurance or prior insurance that this insurance replaces.

Asbestos

Asbestos means asbestos in any form, including its presence or use in any alloy, by-product, compound or other material or waste. Waste includes material to be recycled, reconditioned or reclaimed.

Bodily Injury

Bodily injury means physical:

- injury;
- sickness; or
- disease;

sustained by a person, including death, humiliation, mental anguish, mental injury and shock resulting from such injury, sickness or disease. All such humiliation, mental anguish, mental injury and shock shall be deemed to happen at the time of the injury, sickness or disease from which it resulted.

Commercial Liability Insurance Policy

Definitions

(Continued)

Claim Defence Expenses

Claim defence expenses:

- A. means necessary and reasonable:
1. costs, charges, fees (including legal counsels' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the partners, directors, **officers** or employees of the **insured**) incurred by us or with our consent in defending against and investigating claims, including the premium for appeal, attachment or similar bonds;
 2. expenses incurred by the **insured** with our consent to assist in the investigation of and defence against such claims, including actual loss of earnings up to \$25.00 per hour per employee (but not to exceed \$250.00 per day for all employees);
 3. expenses incurred by you for first aid rendered to others as a result of **bodily injury**;
 4. costs and expenses incurred by us or with our consent in connection with any investigation of a **loss event** that we undertake, at our discretion, regardless of whether any claim has been made; and
 5. other expenses incurred by us or with our consent, that we allocate to a specific claim or **loss event**.
- B. does not include any expense that would have been incurred by any **insured** in the absence of any **loss event** including legal, loss-adjusting or other retainer fees or overhead costs or expenses.

Deemed Known

Deemed known means known by, or that should have been known from the standpoint of a reasonable person in the circumstances of:

- you, if you are an individual who is a sole proprietor; or
- any of your directors, **officers** or partners (whether or not any of the foregoing is an employee). **Officer** will be deemed to include an **officer's** designee.

Such act, injury, damage, claim or facts, as applicable, will be **deemed known** at the earliest time when any such person described above:

- A. reports all, or any part, of the act, injury, damage, claim or facts to us or any other insurer;
- B. receives a claim for damages in connection with the act, injury, damage, **occurrence** or facts; or
- C. becomes aware or should have been aware:
1. that the injury or damage has happened or has begun;
 2. that the act has happened or has begun; or
 3. of any actual, alleged or threatened act, injury, damage or claim in connection with the facts.

Group Assets

Group assets means the total gross assets of the Named **Insured** (including partnerships or joint ventures shown in the Schedule) and of **subsidiaries** as measured at the commencement of the Policy Period.

Insured

Insured means a person or organisation who qualifies under the Who Is An Insured section of this insurance.

Commercial Liability Insurance Policy

Definitions

(Continued)

Insured Contract

Insured contract means a written contract or agreement entered into by you in the usual course of your Business in which you assume the tort liability of another to pay damages because of injury or damage to which this insurance applies, to a third person or organisation, where the contract or agreement is made prior to the injury or damage or the act giving rise to such injury or damage.

Intellectual Property Law Or Right

Intellectual property law or right means any:

- certification mark, copyright, patent or trademark (including collective or service marks);
- right to, or judicial or statutory law recognizing an interest in, any trade secret or confidential or proprietary non-personal information;
- other right to, or judicial or statutory law recognizing an interest in, any expression, idea, likeness, name, slogan, style of doing business, symbol, title, trade dress or other intellectual property; or
- other judicial or statutory law concerning piracy, unfair competition or other similar practices.

Loading Or Unloading

Loading or unloading:

- A. means the handling of property:
 1. after it is moved from the place where it is accepted for movement into or onto an **aircraft, vehicle or watercraft**;
 2. while it is in or on an **aircraft, vehicle or watercraft**; or
 3. while it is being moved from an **aircraft, vehicle or watercraft** to the place where it is finally delivered.
- B. does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the **aircraft, vehicle or watercraft**.

Loss Event

Loss event means an **occurrence** or act under the applicable coverage.

Occurrence

Occurrence means an event, including continuous or repeated exposure to substantially the same general harmful conditions, that would be unexpected and unintended from the standpoint of a reasonable person in the circumstances of the **insured**.

Officer

Officer means a person holding any of the officer positions created by an organisation's charter, constitution, articles of association, by-laws or any other similar governing document or any similar positions within an organisation.

Personal Injury

Personal injury means injury, including humiliation, mental anguish, mental injury and shock, caused by an act of:

- A. false arrest, false detention or other false imprisonment;
- B. malicious prosecution;
- C. wrongful entry into, wrongful eviction of a person from or other violation of a person's right of private occupancy of a dwelling, premises or room that such person occupies, if committed by or on behalf of its landlord, lessor or owner;

Commercial Liability Insurance Policy

Definitions

(Continued)

- D. electronic, oral, written or other publication of material that:
 - 1. libels or slanders a person or organization (which does not include disparagement of goods, products, property or services); or
 - 2. violates a person's right of privacy; or
- E. discrimination, harassment or segregation based on a person's age, colour, national origin, race, religion or sex.

Personal injury does not include **bodily injury, property damage** or **advertising injury**.

Pollutants

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

Products Hazard

Products hazard:

- A. includes **bodily injury** and **property damage** arising out of **your product**, but only if the **bodily injury** or **property damage** happens away from premises owned or occupied by or loaned or rented to you and happens after physical possession of such product has been relinquished to others.
- B. notwithstanding anything to the contrary set forth above, includes all **bodily injury** and **property damage** in connection with **your product** that is or was at any time:
 - 1. loaned or rented to; or
 - 2. located for the use of;others, regardless of whether such product:
 - has been sold; or
 - is in your possession.

Property Damage

Property damage means:

- physical injury to tangible property, including resulting loss of use of such property.
- loss of use of tangible property that is not physically injured, provided such loss of use is caused by physical injury to other tangible property.

All such loss of use shall be deemed to happen at the time of the physical injury that caused it.

Tangible property does not include any software, data or other information that is in electronic form.

Subsidiary

Subsidiary means an organisation:

- A. the accounts of which are consolidated with the accounts of the Named **Insured** as shown in the Schedule, in accordance with *Australian Accounting Standard AASB 1024: Consolidated Accounts* or any successor standard; or
- B. in which the Named **Insured** as shown in the Schedule :
 - 1. controls the composition of the organisation's board;
 - 2. is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the organisation; or

Commercial Liability Insurance Policy

Definitions

(Continued)

3. holds more than 50% of the issued share capital of the organisation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

Terrorism

Terrorism means any act, including the use of force or violence or the threat thereof, 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), committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear.

Vehicle

Vehicle means any type of machine (including any trailer, machinery or apparatus attached thereto) that travels on wheels or self-laid tracks and is propelled by other than manual or animal power.

Watercraft

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

Your Product

Your product:

- A. means any goods or products manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by:
 1. you;
 2. others trading under your name; or
 3. a person or organisation whose assets or business you have acquired;including:
 - a. containers (other than **aircraft, vehicles** or **watercraft**) materials, parts or equipment furnished in connection with:
 - such goods or products; or
 - your service;
 - b. vending machines and other property loaned or rented to or located for the use of others by:
 - you;
 - others trading under your name; or
 - a person or organisation whose assets or business you have acquired; and
 - c. any other thing deemed by the Trade Practices Act 1974 (Commonwealth of Australia) to have been manufactured by you.
- B. includes:
 1. representations or warranties made with respect to the durability, fitness, performance, quality or use of **your product**; and
 2. the providing of or failure to provide instructions or warnings.

Endorsements and additional conditions applicable: as attached