

# **BROADFORM LIABILITY**

**INSURANCE POLICY**



# Contents

<b>Important Information</b>	<b>1</b>	<b>Section 3 Conditions</b>	<b>6</b>
About CGU	1	3.1 Alteration of risk	6
Intermediary remuneration	1	3.2 Cancellation	6
Your duty of disclosure	1	3.3 Claims control	6
		3.4 Cross liabilities	6
<b>General Insurance Code Of Practice</b>	<b>1</b>	3.5 Currency	6
Our service commitment	1	3.6 Discharge of liability	6
How CGU protects your privacy	2	3.7 Goods and Services Tax	6
Interest on unallocated premium	2	3.8 Inspection and audit	6
		3.9 Non-imputation	6
<b>Section 1 Insuring Agreement</b>	<b>2</b>	3.10 Other insurances	7
Introduction	2	3.11 Policy law	7
1.1 Compensation	2	3.12 Premium adjustment	7
1.2 Limit of liability	2	3.13 Prevention of loss	7
1.3 Deductible	2	3.14 Reasonable care	7
1.4 Defence costs and expenses	2	3.15 Singular and plural	7
		3.16 Subrogation	7
<b>Section 2 Exclusions</b>	<b>3</b>	3.17 Waiver of subrogation	7
2.1 Advertising injury	3		
2.2 Aircraft	3	<b>Section 4 Interpretation</b>	<b>8</b>
2.3 Asbestos	3	Definitions	8
2.4 Contractual	3		
2.5 Defamation	3		
2.6 E-commerce	3		
2.7 Employers liability	3		
2.8 Faulty work	4		
2.9 Fines or penalties and punitive damages	4		
2.10 Loss of use	4		
2.11 Nuclear	4		
2.12 Pollution	4		
2.13 Product defect	4		
2.14 Property in the physical or legal control	4		
2.15 Products guarantee	5		
2.16 Professional indemnity	5		
2.17 Recall of products	5		
2.18 Terrorism	5		
2.19 Vehicles	5		
2.20 War	5		
2.21 Watercraft and hovercraft	5		



# Important Information

## About CGU

CGU Insurance Limited is the underwriter of this insurance policy. Our Australian Business Number is 27 004 478 371. Our Australian Financial Services License Number is 238291. In this policy CGU Insurance Limited is called “We,” “Us,” or “Our.”

## Intermediary remuneration

CGU pays remuneration to insurance intermediaries when We issue, renew or vary a policy the intermediary has arranged or referred to Us. The type and amount of remuneration varies and may include commission and other payments. If You require more information about remuneration We may pay Your intermediary You should ask Your intermediary.

## 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.

# General Insurance Code Of Practice

We proudly support the General Insurance Code of Practice.

The purpose of the Code is to raise standards of practice and service in the general insurance industry.

### The objectives of the Code are:

- to commit Us to high standards of service
- to promote better, more informed relations between Us and You
- to maintain and promote trust and confidence in the general insurance industry
- to provide fair and effective mechanisms for the resolution of complaints and disputes between Us and You; and
- to promote continuous improvement of the general insurance industry through education and training.

### Our commitment to you

We have adopted and support the Code and are committed to complying with it. Please contact Us if You would like more information about the Code

## Our service commitment

We are proud of Our service standards and support the General Insurance Code of Practice. In an unlikely event that You are not satisfied with the way in which We have dealt with You, as part of Our commitment to customer service, We have an internal dispute resolution process in place to deal with any complaint You may have.

Please contact Your nearest CGU Insurance office if You have a complaint, including if You are not satisfied with any of the following:

- one of Our products
- Our service
- the service of Our authorised representatives, loss adjusters or investigators; or
- Our decision on Your claim.

Our staff will help You in any way they can. If they are unable to satisfy Your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to Our internal dispute resolution department.

Further information about Our complaint and dispute resolution procedure is available by contacting Us.

## How CGU protects your privacy

We use information provided by Our customers to allow Us to offer Our products and services. This means We may need to collect Your personal information, and sometimes sensitive information about You as well (for example, health information for travel insurance). We will collect this information directly from You where possible, but there may be occasions when We collect this information from someone else.

We will only use Your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give Us Your information, but this may affect Our ability to provide You with insurance cover.

We may share this information with companies within Our group, government and law enforcement bodies if required by law and others who provide services to Us or on Our behalf, some of which may be located outside of Australia.

For more details on how We collect, store, use and disclose Your information, please read Our Privacy Policy located at [www.cgu.com.au/privacy](http://www.cgu.com.au/privacy). Alternatively, contact Us at [privacy@cgu.com.au](mailto:privacy@cgu.com.au) or 13 15 32 and We will send You a copy.

We recommend that You obtain a copy of this policy and read it carefully.

By applying for, using or renewing any of Our products or services, or providing Us with Your information, You agree to this information being collected, held, used and disclosed as set out in this policy.

Our Privacy Policy also contains information about how You can access and seek correction of Your information, complain about a breach of the privacy law, and how We will deal with Your complaint.

## Interest on unallocated premium

If We are unable to issue Your insurance when We receive Your application, We are required to hold your premium in a trust account on Your behalf until Your insurance can be issued. We will retain any interest payable by Our bank to meet, among other things, bank fees and other bank costs We incur in operating the account.

# Section 1 Insuring Agreement

## Introduction

CGU Insurance Limited and the Insured are identified and referred to in the Policy and the Schedule. The Named Insured having paid, or agreed to pay, to CGU the premium shown in the Schedule for the Period of Insurance or a premium as advised by CGU as applying to any subsequent period. CGU will provide insurance against the risks described herein, subject to the terms, conditions, exclusions and endorsements of this Policy. In issuing this Policy, CGU rely upon the information contained in the application and/or any written statements made by the Named Insured or anyone acting on their behalf. The insurance applies only in respect of those insured items against which a Limit of Liability is shown in the Schedule or which are otherwise indicated in the Schedule as being insured.

### 1.1 Compensation

Subject to the terms, exclusions, definitions, endorsements and limitations of this Policy, CGU will indemnify the Insured for all amounts which the Insured is legally liable to pay as compensation in respect of:

- a) Personal Injury
- b) Property Damage
- c) Advertising Injury,

happening during the Period of Insurance within the Territorial Limits as result of an Occurrence and arising out of the Business or Products of the Insured.

### 1.2 Limit of liability

The limit of CGU's liability in respect of any one Occurrence shall not exceed the Limit of Liability stated in the Schedule.

The total aggregate limit of CGU during any one Period of Insurance for all claims arising out of Products Liability shall not exceed the Limit of Liability stated in the Schedule.

Subject to clause 1.4, the Limit of Liability is exclusive of the Deductible and Defence Costs and Expenses.

### 1.3 Deductible

The Deductible is the amount stated in the Schedule that the Insured must first bear in relation to each and every Occurrence.

The Deductible applies to each Occurrence and is payable by the Insured at such time and to such person required by CGU.

The Deductible applies to all amounts payable under this Policy.

### 1.4 Defence costs and expenses

With respect to the indemnity provided by this Policy, CGU will pay in addition to the Limit of Liability, Defence Costs and Expenses.

CGU will defend any suit against the Insured seeking compensation for Personal Injury, Property Damage or Advertising Injury to which indemnity under this Policy applies, even if the allegations of the suit are groundless false or fraudulent.

CGU is not obliged to pay Defence Costs and Expenses or defend any claim or legal action after CGU's liability under this Policy to indemnify the Insured has been exhausted by either payment of judgment, settlement or payment to the Insured.

If a payment exceeding CGU's liability under this Policy to indemnify the Insured has to be made to dispose of a claim, the liability of CGU for Defence Costs and Expenses is limited to the proportion that CGU's liability to indemnify the Insured under this Policy bears to that payment.

In the event of a claim being made against the Insured in any court or before any other legally constituted body in North America, the total amount payable in respect of the claim by CGU under this Policy including Defence Costs and Expenses are subject to the Limit of Liability stated in the Schedule.

## Section 2 Exclusions

This Policy does not cover:

### 2.1 Advertising injury

Any Advertising Injury arising out of or in any way connected with any:

- a) statement made by, or at the direction of an Insured where the Insured knew or suspected the statement or any part of the statement was false
- b) failure to perform any obligation pursuant to any contract. This exclusion 2.1 b) does not apply to any claim for unauthorised appropriation of advertising ideas, concepts or designs contrary to an implied contract.
- c) incorrect description of Products, goods or services
- d) any mistake in the advertised price of Products, goods or services
- e) failure of Products, goods or services to conform with advertised performance, quality, fitness or durability
- f) Insured whose business is advertising, broadcasting, publishing or telecasting.

### 2.2 Aircraft

Any liability arising out of or in any way connected with:

- a) the ownership, use, maintenance, operation of any Aircraft by the Insured
- b) repair or servicing of critical components of Aircraft
- c) any Products that are incorporated into the hull or critical components of any Aircraft; or
- d) any Products which the Insured knew, or reasonably should have known, would be incorporated into the structure, machinery, controls or construction of any Aircraft.

### 2.3 Asbestos

Any liability arising out of or in any way connected with any claim or claims in respect of Personal Injury, Property Damage, Advertising Injury, loss or losses arising directly or indirectly out of, or in any way connected with asbestos in whatever form or quantity.

### 2.4 Contractual

Any liability arising out of or in any way connected with any liability or obligation:

- a) assumed under the terms of a contract, agreement or warranty; or
- b) which requires the Insured effect or maintain insurance with respect to premises, property or goods not owned by the Insured.

This exclusion 2.4 a) does not apply to:

- i. the extent that such liability or obligation would have been implied by law in the absence of such contract, agreement or warranty
- ii. liability assumed under an Incidental Contract
- iii. any contract specifically excepted by CGU's written agreement.

### 2.5 Defamation

Any liability for defamation:

- a) resulting from any statement made prior to the Period of Insurance
- b) resulting from any statement made by the Insured, or at the direction of an Insured, with knowledge of its falsity; or
- c) incurred by any Insured whose business is advertising, broadcasting, publishing or telecasting.

### 2.6 E-commerce

Any liability arising out of or in any way connected with:

- a) total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation or misappropriation or other use of Electronic Data
- b) error in creating, amending, entering, deleting or using Electronic Data; or
- c) total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all, from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

### 2.7 Employers liability

- a) Any liability in respect of which the Insured is or should be entitled to indemnity under any fund, scheme, policy of insurance or self insurance pursuant to or required by any legislation relating to workers compensation, whether or not such fund, scheme or insurance has been effected. However, this Policy will respond to the extent that the Insured's liability would not be covered under any such policy, fund, scheme or self insurance arrangement had it complied with its obligations pursuant to such law.

For the purpose of exclusion 2.7 a) the term 'worker' means any person deemed to be employed by the Insured pursuant to any Workers Compensation law or legislation. Voluntary workers and unpaid work experience students are not deemed to be the Insured's workers.

- b) Any liability imposed by the provisions of any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination.
- c) Any liability relating to Employment Practices.

## 2.8 Faulty work

Any liability arising out of or in any way connected with the cost of reinstating, repairing, replacing, performing, completing, correcting or improving any work done or undertaken by or on behalf of an Insured.

## 2.9 Fines or penalties and punitive damages

Any liability arising out of or in any way connected with fines, penalties, exemplary, punitive, liquidated or aggravated damages, and any additional damages resulting from the multiplication of compensatory damages.

## 2.10 Loss of use

Any liability for the loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- a) a delay in or lack of performance by or on behalf of the Insured in respect of any contract or agreement; or
- b) the failure of a Product or work performed by or on behalf of the Insured to meet the level of performance, quality, fitness, or durability expressly or impliedly warranted or represented by the Insured.

This exclusion 2.10 b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to, or destruction of the Product or work performed by or on behalf of the Insured after the Product or work has been put to its intended use by any person or organisation other than the Insured.

## 2.11 Nuclear

Any liability arising out of or in any way connected with operations employing the process of nuclear fission or fusion or handling of radioactive material, which operations include but are not limited to:

- a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices
- b) the use, handling or transportation of radioactive materials; or
- c) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

This exclusion does not apply to liability arising from radio-isotopes or 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.

## 2.12 Pollution

Any liability arising out of or in any way connected with:

- a) the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of Pollutants into or upon any property, land, the atmosphere or any watercourse or body of water, including ground water
- b) the cost of testing, monitoring for, containing, removing, nullifying, or cleaning up of Pollutants or the cost of preventing the release or escape of Pollutants.

Provided that with respect to liability incurred outside North America, Exclusion 2.12 shall not apply where such discharge, seepage, migration, dispersal, release or escape is caused by a sudden, identifiable, unintended

and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place during the Period of Insurance. Exclusion 2.12 will apply to any liability incurred in North America regardless of how it arises.

## 2.13 Product defect

Any liability arising out of or in any way connected with Property Damage to any Products if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

This exclusion 2.13 is restricted to the defective or harmful or unsuitable part of a damaged Product and does not apply to any resultant damage caused to the remainder of the Product.

## 2.14 Property in the physical or legal control

Any liability arising out of or in any way connected with Property Damage to property owned by, leased, hired, on loan or rented to, or otherwise in the physical or legal control of the Insured other than:

- a) premises or part of any premises (including the contents of such premises) leased or rented to the Insured, or temporarily occupied by the Insured for the purpose of the Business. This clause 2.14 a) does not extend to any liability where the Insured has assumed the responsibility to effect or maintain insurance with respect to any premises referred to in this clause 2.14 a).
- b) premises temporarily occupied by the Insured (including the contents of such premises) for the purpose of carrying out work in connection with the Business. This clause 2.14 b) does not extend to liability for physical damage to or destruction of any premises or contents on which the Insured was or is working on if such physical damage or destruction arises from such work.
- c) any other property temporarily in the Insured's possession for the purpose of being worked upon. This clause 2.14 c) does not extend to liability for physical damage to or destruction of that part of any property on which the Insured was or is working on if such physical damage or destruction arises from such work.
- d) any Vehicle (including its contents, spare parts and accessories while they are in or on a Vehicle) not belonging to or used by the Insured while such Vehicle is in a car park owned or operated by the Insured provided the Insured does not operate the car park for reward as a principal part of the Business
- e) Property Damage to any Vehicle temporarily in the Insured's possession for the purpose of parking and unparking such vehicle
- f) any other property (except property owned by the Insured) temporarily in the Insured's physical or legal care, custody or control subject to a maximum of \$500,000 or other amount stated in the schedule, for any one Occurrence and in the aggregate during any one Period of Insurance.



## 2.15 Products guarantee

Any liability arising out of or in any way connected with any guarantee or warranty given by or on behalf of the Insured in respect of any Product.

This 2.15 exclusion does not apply to a guarantee or warranty imposed by legislation.

## 2.16 Professional indemnity

Any liability arising out of any breach of duty owed in a professional capacity or any error or omission connected therewith by the Insured or any person for whose breach of duty the Insured may be legally liable.

This 2.16 exclusion does not apply to claims arising out of:

- a) advice or service where no fee was charged; or
- b) the rendering of or failure to render professional medical advice by any person employed by the Insured (not being a qualified medical practitioner) to provide first aid on the Insured's premises
- c) advice given in respect of the use or storage of Products.

## 2.17 Recall of products

Any liability or expense arising out of or in any way connected with the withdrawal, recall, inspection, repair, adjustment, replacement, removal, cost of investigation, disposal or loss of use of any Products or any property of which the Insured's Products form a part where such Products or property are withdrawn from the market or from use by any person or organisation because of any known, alleged or suspected defect or deficiency in such Products.

## 2.18 Terrorism

Any liability arising out of or in any way connected with:

- a) death, injury, illness, loss or damage directly or indirectly caused by, contributed by, resulting from or arising out of or in connection with any Act of Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the death, injury, illness, loss or damage; or
- b) any action in controlling, preventing, suppressing, retaliating against or responding to any Act of Terrorism.

## 2.19 Vehicles

Any liability for Personal Injury or Property Damage caused by or arising out of the ownership, operation, use or possession of any Vehicle:

- a) which is registered for use on a public road or which is legally required to be registered; and
- b) in respect of which compulsory liability insurance or statutory indemnity is required by any legislation, whether or not such insurance has been effected.

However, this exclusion 2.19 does not apply to:

- i. claims in respect of Personal Injury where compulsory liability insurance or statutory indemnity does not provide indemnity and where the reason or reasons why compulsory liability insurance or statutory indemnity does not provide indemnity does not involve a breach of any legislation by the Insured

- ii. Personal Injury or Property Damage arising out of or in connection with the loading and unloading of goods to or from any Vehicle or from the delivery or collection of goods by any Vehicle
- iii. Personal Injury or Property Damage arising out of the use of any Vehicle (including any tool or plant forming part of or attached to or used in connection with such Vehicle) whilst being operated or used as a Tool of Trade
- iv. Property Damage in relation to any Vehicle indemnified under clause 2.14 d) and e).

## 2.20 War

Any liability arising out of or in any way connected with loss or damage 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.

## 2.21 Watercraft and hovercraft

Any liability arising out of or in any way connected with the ownership, maintenance, operation or use by an Insured of any Watercraft exceeding 23 metres in length or any Hovercraft.

This exclusion 2.21 does not apply to liability arising out of:

- a) the use of Watercraft by an independent contractor carrying out works and/or operations on behalf of the Insured in the course of the Insured's Business; or
- b) Watercraft or Hovercraft owned and operated by others and used by an Insured for the purpose of business entertainment
- c) floating jetties, floating pontoons or buoys.

# Section 3

## Conditions

### 3.1 Alteration of risk

The Named Insured must provide CGU with immediate written notice of every change which materially varies any of the facts or circumstances existing at the commencement of the Period of Insurance that comes to the Insured's knowledge, which will also be deemed to include the knowledge of any person whose knowledge would at law be the Insured's knowledge.

### 3.2 Cancellation

- a) The Named Insured may cancel this Policy by giving notice in writing to CGU. After cancellation by the Named Insured, CGU will refund to the Named Insured the pro-rata premium calculated on the unexpired Period of Insurance from the date of cancellation.
- b) CGU may cancel this Policy in any of the circumstances set out in the Insurance Contracts Act 1984.

When the premium is subject to adjustment, cancellation will not affect the Named Insured's obligation to supply such information as CGU may require for the adjustment of the premium. Cancellation will not affect the Insured's obligations to pay the amount of adjustment applicable up to the date of cancellation.

### 3.3 Claims control

The Insured must give CGU notice in writing, of every loss, damage, Occurrence, claim, writ, summons, impending proceedings, impending prosecution or inquest that is or might give rise to a claim under this Policy.

The Insured or their legal representative must:

- a) advise details to CGU and send written confirmation within 30 days of first becoming aware of such Occurrence, claim, writ, summons, inquest, impending proceedings or prosecution
- b) take all reasonable steps to minimise the loss, damage or liability and to prevent any further loss, damage or liability
- c) take all reasonable precautions to preserve anything which might prove necessary or useful by way of evidence in connection with any claim
- d) advise the nearest Police Station in the case of property lost, stolen or vandalised, and obtain a written Police report if requested by CGU
- e) take all practical steps to recover any property; and
- f) retain all damaged property for inspection by CGU.

The Insured must not, without CGU's consent in writing, make any admission, offer, promise or payment in connection with any Occurrence or claim.

CGU will have full discretion in the conduct of any proceedings in connection with any claim and the Insured shall give all information and assistance as CGU may require in the prosecution, defence or settlement of any claim.

### 3.4 Cross liabilities

Where more than one party comprises the Insured each of the parties shall be considered as a separate and distinct unit and the word Insured shall be considered as applying to each party in the same manner as if a separate Policy had been issued to each, provided that nothing in this clause results in the increase of the Limit of Liability in respect of any Occurrence or Period of Insurance.

### 3.5 Currency

The currency applicable to this Policy shall be in Australian Dollars (AUD) and all references to dollar amounts will be taken to be AUD unless otherwise stated.

### 3.6 Discharge of liability

CGU may at any time pay to the Insured, in respect of all claims against the Insured arising directly or indirectly from one Occurrence, the Limit of Liability (after deduction of any amount already paid by the CGU in respect of those claim). This payment will extinguish all liability under the Policy in connection with such claim or claims, including Defence Costs and Expenses.

### 3.7 Goods and Services Tax

Where CGU makes a payment under this Policy for the acquisition of goods, services or other supply CGU will reduce the amount of the payment by the amount of any input tax credit the Insured is, or will be, or would have been entitled to under A New System (Goods and Services Tax) Act 1999 (Cth), in relation to that acquisition, whether or not that acquisition is actually made.

Where CGU makes a payment under this Policy as compensation instead of payment for the acquisition of goods, services or other supply, CGU will reduce the amount of payment by the amount of any input tax credit that the Insured would have been entitled to under A New System (Goods and Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or other supply.

### 3.8 Inspection and audit

CGU is permitted, but not obliged, to inspect the Insured's property and operations at any time.

Neither CGU's right to make inspections, the making of them or any report on them constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe, fit for purpose or compliant with any rule or regulation.

CGU may examine and audit the Insured's books and records at any time during the Period of Insurance and within three (3) years after the end of this Policy, as far as they relate to the subject matter insured.

### 3.9 Non-imputation

Where this Policy is arranged in the joint names of more than one Insured:

- a) each Insured shall be covered as if it made its own proposal for this Policy
- b) any declaration, statement or representation made in any proposal will 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).

### 3.10 Other insurances

If the Insured makes a claim under this Policy in respect of an Occurrence recoverable under this Policy, which Occurrence is or may be covered in whole or in part by another policy, the Insured must advise CGU of the full details of such other insurance when making a claim under this Policy.

Notwithstanding anything contained in this Policy to the contrary, where a Principal or another has effected insurance (the Primary Insurance), CGU agrees that this Policy will in respect of the interests insured under this Policy provide the following indemnity:

- a) to pay as compensation in respect of Personal Injury, Property damage or Advertising Injury not otherwise recoverable under the Primary Insurance policies
- b) to pay all amounts in excess of that recoverable under the Primary Insurance policies
- c) to pay the difference (if any) between the excess or deductible under the Primary Insurance and the Deductible that would have been applicable under this Policy if any such loss incurred by the Insured had been insured,

provided that such losses and/or amounts would but for the existence of the Primary Insurance policies be indemnified under this Policy and subject to the Limit of Liability and provided that such cover is for the sole benefit of the Insured defined in 4.12 a, b, c, d and h.

### 3.11 Policy law

The law of Australia applies to this Policy.

CGU and the Insured submit to the jurisdiction of all Australian Courts in relation to all disputes arising under this Policy.

### 3.12 Premium adjustment

If the premium for this Policy, or part of it, were calculated on estimates furnished by the Insured, then the Insured shall keep an accurate record containing all particulars relative to those estimates and shall at all times allow CGU to inspect such records. The Named Insured must within thirty (30) days after the expiry of each Period of Insurance furnish to CGU such particulars and information as CGU may require. The premium for that period will be adjusted, and any difference paid or allowed to the Insured, as the case may be, subject to receipt and retention of any minimum premium charged by CGU at its discretion.

### 3.13 Prevention of loss

In the event of an Occurrence, the Insured must promptly take at the Insured's expense all reasonable steps to prevent other Personal Injury, Property Damage or Advertising Injury arising out of the same or similar conditions. These expenses are not recoverable under this Policy.

### 3.14 Reasonable care

The Insured must:

- a) take all reasonable precautions to:
  - i. prevent Personal Injury, Property Damage and Advertising Injury
  - ii. prevent the manufacture, sale or supply of defective Products; and
  - iii. comply and ensure that the Insured's employees, workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for or in connection with the safety of persons and property.
- b) at the Insured's own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.

### 3.15 Singular and plural

In this Policy, words importing the singular include the plural and the plural the singular, unless the context requires an alternative construction.

### 3.16 Subrogation

In the event of payment under this Policy to or on behalf of the Insured, CGU is subrogated to all the Insured's rights of recovery against all persons and organisations and the Insured shall execute and deliver instruments and papers and do all that is necessary to assist in the exercise of such rights.

### 3.17 Waiver of subrogation

CGU agrees to waive its rights of subrogation under this Policy against:

- a) each Insured
- b) any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation that is an Insured. Where such corporation, organisation or person is covered by any other policy of insurance or indemnity, CGU's right of subrogation is not waived to the extent of cover and up to the amount of such other cover.
- c) any government, public or local authority, statutory authority or any landlord insured under Definition 4.11 c) but only to the extent required by such Incidental Contract.

# Section 4

## Interpretation

### Definitions

Wherever appearing in this Policy, the following definitions apply:

4.1 **Act of Terrorism** means:

any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public or any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or defacto, and which:

- a) involves violence against one or more persons
- b) involves damage to property
- c) endangers life other than that of the person committing the action; or
- d) is designed to interfere with or to disrupt an electronic system.

4.2 **Advertising Injury** means:

- a) defamation
- b) infringement of copyright of or passing off of a title or slogan
- c) unfair competition, piracy or idea, concept or design misappropriation contrary to an implied contract; or
- d) invasion of privacy,

arising from any advertisement, publicity article, broadcast or telecast and caused by or arising out of advertising activities conducted by the Insured or on behalf of the Insured.

4.3 **Aircraft** means any vessel, craft or thing made or intended to fly or move in or throughout the atmosphere or space, other than:

- a) model aircraft; and
- b) unmanned tethered balloons used for advertising purposes.

4.4 **Business** means all activities stated in the Schedule including:

- a) the ownership and occupation of premises by the Insured
- b) the provision of any sponsorship, charitable donations, or attendance at any charitable event or gala
- c) canteen, social, sports, welfare, child care services or other activities for the Insured's employees
- d) first aid, fire and ambulance services provided by the Insured for the Insured's own internal purposes
- e) private work undertaken by employees for any director, partner, officer or executive of the Insured.

4.5 **CGU, Our, We, Us** means CGU Insurance Limited.

4.6 **Deductible** means the amount shown in the Schedule the Insured must first bear in relation to each and every Occurrence and is payable by the Insured at such time required by CGU.

The Deductible applies to all amounts payable under this Policy.

4.7 **Defence Costs and Expenses** means the reasonable legal costs and expenses:

- a) solely and exclusively incurred by the Insured with the prior written agreement of CGU, to defend a claim under clause 1.1 of this Policy for which the Insured is entitled to indemnity under this Policy
- b) solely and exclusively incurred by CGU to defend a claim under clause 1.1 of this Policy for which the Insured is entitled to indemnity under this Policy
- c) of any claimant who has made a claim against the Insured which is a claim under clause 1.1 of this Policy for which the Insured is entitled to indemnity under this Policy and the Insured is liable to pay those legal costs and expenses.

Defence Costs and Expenses do not include the Insured's own internal costs including wages, salaries or costs of any Insured.

4.8 **Electronic Data** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

4.9 **Employment Practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment or prospective employment by the Insured.

4.10 **Hovercraft** means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

4.11 **Incidental Contract** means:

- a) any written contract with any public authority for the supply of water, gas, electricity or telephone services in connection with the Business but does not include those contracts in connection with work done for such authorities
- b) any written rental agreement for the lease of real or personal property provided such rental, lease or hiring agreement that does not require you to insure such property
- c) where the Insured is required by contract to release any government, public authority, statutory authority or landlord but only to the extent required by such contract.

4.12 **Insured** means:

- a) the Named Insured
- b) any subsidiary, controlled corporation or other organisation of the Named Insured existing at the inception date of the Period of Insurance

- c) any new entity acquired or constituted by the Named Insured during the Period of Insurance through consolidation, merger, purchase of assets, or assumption of control and active management, or creation, provided that:
- i. the acquisition is notified to CGU in writing within 90 days
  - ii. CGU gives notice to the Named Insured in writing that the new entity is covered under this Policy after the 90 day period; and
  - iii. the Named Insured pays any additional premium that may be required by CGU in respect of the new entity.
- d) every past, present or future director, executive officer, employee, partner or shareholder of the Insured defined in 4.12 a), b) or c) (including any spouse or family member of such person whilst performing a designated role in connection with the Business, attending a function or accompanying legitimate Business travel) whilst acting within the scope of their duties in such capacity
- e) any voluntary worker of any Insured referred to in 4.12 a), b) and c)
- f) any person whilst working for any Insured referred to in 4.12 a), b) and c) for the purpose of gaining unpaid work experience
- g) any employee Stand-Alone Superannuation Fund managed by the Insured including any trustees or directors of such fund
- h) any Principal in respect of liability:
- i. arising out of the performance by or on behalf of the 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
  - ii. any Products sold or supplied by the Insured, but only in respect of the Insured's own acts or omissions in connection with such Products and in any event.
- i) any social or sporting clubs, child care facilities, first aid, fire and ambulance services formed with the consent of the Insured referred to in 4.12 a), b) or c), including any office bearer or member of any such club whilst acting in that capacity
- j) any director, partner, officer or executive of the Insured referred to in 4.12 a), b) or c) in respect of private work undertaken by any employee for such person including any employee whilst actually undertaking such work
- k) if any party named in the Schedule as an Insured is an individual, the personal representative of that individual in the event of the death, incapacitation or mental disorder of that individual, but only in respect of liability incurred by that individual in connection with the Business.
- 4.13 **Limit of Liability** means the amount stated in the Schedule.
- 4.14 **Named Insured** means the legal entity(s) or person(s) having paid the premium to CGU and who is so named in the Schedule.
- 4.15 **North America** means:
- a) the United States of America and the Dominion of Canada; and
  - 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.
- 4.16 **Occurrence** means an event including continuous or repeated exposure to substantially the same general conditions which results in Personal Injury, Property Damage or Advertising Injury neither expected nor intended from the standpoint of the Insured.
- All events of a series consequent on or attributable to one source or original cause are deemed one Occurrence.
- All Advertising Injury arising out of the same injurious material or act (regardless of frequency or repetition thereof, the number and kind of media used or the number of claimants) are deemed one Occurrence.
- 4.17 **Personal Injury** means any of the following:
- a) bodily injury, death, sickness, illness, disability, disease, shock, fright, mental anguish or mental injury, loss of consortium or services resulting therefrom
  - b) false arrest, wrongful detention, false imprisonment, malicious prosecution or humiliation
  - c) wrongful entry, eviction or other invasion of right of privacy
  - d) defamation, unless arising out of Advertising Injury
  - e) assault and battery not intentionally committed by or at the direction of the Insured unless so directed for the purpose of preventing or eliminating danger to persons or property.
- 4.18 **Policy** means the contract of insurance between CGU and the Named Insured which comprises this Policy wording, the Schedule, and any document issued by CGU varying the Policy.
- 4.19 **Period of Insurance** means the period stated in the Schedule.
- 4.20 **Principal** means any person with whom the Named Insured has entered into a written contract or agreement to do any work or provide any services in connection with the Business.
- 4.21 **Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour(s), soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- 4.22 **Product** means anything (after it has ceased to be in the possession or under the control of the Insured), which is or is deemed to have been manufactured, grown, extracted, produced, processed, imported, exported, constructed, assembled, erected, installed, repaired, serviced, renovated, treated, sold supplied or distributed by or on behalf of the Insured including any discontinued products, labels packaging or containers, the design specification or formula of any products and including directions and instructions, advice given or omitted to be given in connection with such products.

The term 'product' shall not be deemed to include food and beverages:

- a) sold or supplied by or on behalf of the Insured from any canteen or vending machine primarily for the use of the Insured's employees
- b) served to employees or guests for consumption on any Insured's premises.

4.23 **Products Liability** means Personal Injury, Property Damage or Advertising Injury happening during the Period of Insurance within the Territorial Limits as a result of an Occurrence and arising out of the Products of the Insured.

4.24 **Property Damage** means:

- a) physical damage to, or loss of or destruction of tangible property including subsequent loss of use of the property; or
- b) loss of use of tangible property which has not been physically damaged or destroyed.

4.25 **Schedule** means the current Policy schedule.

4.26 **Stand-Alone Superannuation Fund** means a superannuation fund or pension fund established by the Insured under its own trust structure managed by or on behalf of the Insured. It does not include an industry fund, a wholesale master trust, a retail master trust, public sector employees' funds or any investment or retirement fund managers.

4.27 **Territorial Limits** means:

- a) anywhere in the world, except North America; and
- b) North America if the Personal Injury, Property Damage or Advertising Injury arises from:
  - i. Products exported into those countries
  - ii. Work performed by travelling employees and/or directors whose normal place of residence is outside North America.

4.28 **Tool of Trade** means a Vehicle that has tools, implements, machinery or plant attached to any Vehicle and is being used by the Insured at any Worksite or Insured premises. 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.

4.29 **Vehicle** means any type of machine on wheels, self laid tracks or skids made or intended to be propelled other than by manual or animal power and any trailer or attachment whilst attached to or used in conjunction with any such machine.

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

4.31 **Worksite** means any premises or site where work is performed for or in connection with the Business and includes any surrounding area or premises used by the Insured to undertake such work.

4.32 **You, Your** means the Named Insured.



## CONTACT DETAILS

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### Mailing address

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Insurer  
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