



# General Liability and Product Liability Insurance Policy

HDI Global SE, Australia

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## Important Notices

In these Important Notices “**We**”, “**Our**” and “**Us**” means HDI Global SE, Australia, the **Insurer** of this **Policy**. “**You**” and “**Your**” refers to the **Insured** under this **Policy**.

### 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, which 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;
- is common knowledge;
- **We** know or should know as an insurer; or
- **We** waive **Your** duty to tell **Us** about something.

### If You do not tell Us something

If **You** do not tell **Us** something that **You** are required to, **We** may cancel **Your** insurance contract or reduce the amount **We** will pay **You** if **You** make a claim, or both.

If **Your** failure to tell **Us** something is fraudulent, **We** may refuse to pay a claim and treat the insurance contract as if it never existed.

### Privacy Statement

For the purpose of this Privacy Statement “**We**”, “**Our**” and “**Us**” means HDI Global SE, Australia. “**You**” and “**Your**” refers to **Our** customers and prospective customers. Defined terms used in this Privacy Statement will have the same meaning as set out in **Our** Privacy Policy.

**Our** Privacy Policy may be updated from time to time, and any updates can be found here: <https://www.hdi.global/legal/privacy>

**We** comply with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles, as updated from time to time (together the “**Privacy Act**”) and **We** are committed to protecting **Your** privacy when **We** collect, disclose and handle **Your Personal Information**.

### Why We collect Your Personal Information

The primary purpose for **Our** collection and use of **Your Personal Information** is to enable **Us** to provide **Our** insurance services and products to **You**.

### How We obtain Your Personal Information

**We** collect **Your Personal Information** at various points including, but not limited to, when **You** are applying for, changing or renewing an insurance policy with **Us** or when **We** are processing a claim (that relates to **You** or is made against **You**). **Your Personal Information** is usually obtained directly from **You**, but sometimes **We** collect **Your Personal Information** via a third party such as an insurance intermediary or **Your** employer (e.g. in the case of a group insurance policy). Please refer to **Our** Privacy

Policy for further details of how **We** obtain **Your Personal Information**.

When **Your Personal Information** is provided to **Us** via a third party **We** use that **Personal Information** on the basis that **You** have consented or would reasonably have expected **Us** to collect that information from the third party. **We** take reasonable steps to ensure that **You** have been made aware of how **We** obtain and handle **Your Personal Information**.

### When do We disclose Your Personal Information

**We** may disclose **Your Personal Information** that **We** collect to others, including:

- to the **Policyholder** (where the **Insured** is not the **Policyholder** i.e. group policies);
- people listed as co-insureds on **Your Schedule** such as family members;
- service providers engaged by **Us** to carry out certain business activities on **Our** behalf (e.g., adjustors, administrators etc);
- agents, intermediaries authorised by **You** such as **Your** current or previous brokers;
- other affiliates within **Our** group and **Our** re-insurers (who may be located overseas);
- **Our** insurance intermediaries, insurance reference bureau, credit reference agencies, **Our** advisers, **Our** agents, **Our** administrators and those involved in the claims handling process (such as assessors, investigators or other third parties) for the purpose of allowing **Us** and them to provide **You** with the relevant services and products, or for the purpose of recovery or litigation; and
- if required by law, government bodies, law enforcement, dispute resolution bodies, statutory and/or regulatory bodies.

If **We** need to disclose **Your Personal Information** to an overseas recipient, **We** will only do so if:

- **We** have reasonable grounds to believe that the overseas recipient is subject to privacy laws that provide comparable safeguards to those in the **Privacy Act**; or
- the overseas recipient agrees to protect **Your Personal Information** in a way that, provides comparable safeguards to those in the **Privacy Act**.

### Your decision to provide Your Personal Information

In dealing with **Us**, **You** consent to **Us** collecting, disclosing and handling **Your Personal Information**, in accordance with this Privacy Statement and **Our** Privacy Policy. **Your** consent remains valid unless **You** give **Us** written notice to alter or revoke it.

### Access to and correction of Your Personal Information

To request access to, update or correct **Your Personal Information** that is held by **Us**, please contact **Our** Privacy Officer at the details below.

### How to Contact Us or Make a Privacy related Complaint

Please see **Our** Privacy Policy for more details on how **We** collect, disclose and handle **Your Personal Information**, and **Our** processes for addressing complaints regarding a breach of privacy:

HDI Global SE, Australia Privacy Officer  
Level 19, 20 Martin Place, Sydney, NSW 2000  
E: [au.privacy@hdi.global](mailto:au.privacy@hdi.global)  
W: [www.hdi.global/en-au/legal/privacy](http://www.hdi.global/en-au/legal/privacy)

### Complaints and Disputes

**We** are dedicated to providing **You** with a high standard of service and **We** want to ensure that **We** maintain **Our** standards at all times. If **You** feel that **We** have not offered **You** a first-class service and **You** wish to make a complaint that relates to **Us**, **Our** products or services, **Your Policy**, the handling of a claim or **Our** complaint process itself. **You** can submit **Your** complaint to **Us** for Internal Dispute Resolution (“IDR”) via **Our** contact details below:

HDI Global SE, Australia Dispute Resolution Team  
Level 19, 20 Martin Place, Sydney, NSW 2000  
E: [HGABdisputes@hdi.global](mailto:HGABdisputes@hdi.global)

**We** will acknowledge **Your** complaint within 1 business day from **Our** receipt of **Your** complaint. **We** will also provide **You** with a progress update about **Your** complaint every 10 business days. If **We** require further information from **You** or if **We** need more time to respond, **We** will let **You** know.

**We** will provide **You** with an IDR response within 30 calendar days from the date **You** submit **Your** complaint to **Us** and **Our** response will inform **You** of **Our** IDR decision and reasons for it, next steps, timeframes and, if applicable to **You**, **Your** right to refer **Your** complaint to External Dispute Resolution (“EDR”).

To help **Us** consider **Your** complaint fully and quickly, **We** recommend that **You** provide **Us** with the following information as soon as reasonably practicable:

- **Your Policy** number;
- claim reference (if applicable);
- a description of the complaint;
- any new information not currently in **Our** possession that may have a bearing on **Our** understanding of **Your** complaint; and
- details of any action that **You** would like **Us** to take to resolve the complaint.

### Financial Claims Scheme

In the event of the insolvency of the **Insurer**, **You** may be entitled to payment under the Financial Claims Scheme. Access to the Financial Claims Scheme is subject to eligibility criteria. Information about the Financial Claims Scheme can be obtained from the APRA website: [www.apra.gov.au](http://www.apra.gov.au) and the APRA hotline on 1300 55 88 49.

### About the Insurer

The **Insurer** of this **Policy** is HDI Global SE, Australia (ABN 55 490 279 016) with its principal place of business at:

Level 19, 20 Martin Place  
Sydney, NSW 2000

HDI Global SE, Australia is authorised to carry out insurance business in Australia by the Australian Prudential Regulation Authority in accordance with the *Insurance Act 1973* (Cth). HDI Global SE, Australia is a branch of HDI Global SE which is a company registered in Germany, with its registered office at HDI Platz 1, 30659 Hannover, Germany with registration number 60320, authorised by Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”). HDI Global SE is authorised to carry on insurance business in Germany under the *German Insurance Supervisory Act* (“Versicherungsaufsichtsgesetz”).

## 1 Preamble

### General Liability and Products Liability Insurance Policy

In consideration of the payment of the premium and in reliance upon the statements made in the authorised agents' underwriting submission or quotation slip or **Proposal**, the **Insurer** agrees to provide insurance on the terms set out in this **Policy**.

Subject to the terms and conditions of the **Policy**, the total amount payable by the **Insurer** under the **Policy** will not exceed the **Limit of Liability** specified in Item 5 of the **Schedule**.

All applicable sub-limits applying to this **Policy** or applicable endorsement, will be specified in Item 6 of the **Schedule** or endorsement. The sub-limit is the maximum amount payable by the **Insurer** under an insuring clause or endorsement.

A sub-limit is part of and not in addition to the **Limit of Liability**.

All applicable **Deductibles** are specified in Item 7 of the **Schedule** or by endorsement. **Deductibles** are inclusive of **Additional Payments**.

## 2 Insuring Agreement

### 2.1 Coverage

In consideration of the **Insured** having paid or agreed to pay the premium and subject to the terms of this **Policy** the **Insurer** will pay to or on behalf of the **Insured** all sums which the **Insured** becomes legally liable to pay for **Compensation** in respect of:

- (a) **Personal Injury**;
- (b) **Property Damage**; and
- (c) **Advertising Liability**

first happening during the **Period of Insurance** within the **Territorial Limits** as a result of an **Occurrence** and happening in connection with the **Insured's Business** or **Product**.

### 2.2 Additional Payments

With respect to claims for which indemnity is available under this **Policy**, the **Insurer** will pay the following **Additional Payments**, which are defined as:

- (a) all reasonable charges, expenses and legal costs incurred by the **Insurer** or by the **Insured** with the written consent of the **Insurer**, including costs for all amounts expended in the investigation, settlement or defence of any claims for **Compensation** even if any of the allegations of such claim or suit is groundless, false or fraudulent;
- (b) expenses incurred by the **Insured** for the rendering of first aid or other medical service to third parties at the time of any **Personal Injury** (unless prohibited by law);
- (c) expenses incurred by the **Insured** for the temporary protection of third party property which has been physically damaged as a result of an **Occurrence** covered by this **Policy**. This includes purchasing, hiring, barriers, fences and other forms of temporary protection, shoring up or preservation of property; and
- (d) legal costs incurred by the **Insured** with the **Insurer's** written consent for the **Insured's** representation at any coronial inquest or other inquiry arising out of any alleged breach of statutory duty resulting in **Personal Injury** or **Property Damage** which could result in a claim covered by this **Policy**.

The **Additional Payments** referred to in 2.2(a) to (d) are payable in addition to the **Limit of Liability** detailed in Item 5 of the **Schedule**, provided that:

- (i) the **Insurer** will not be obliged to pay any claim or judgement or to defend any suit after the **Limit of Liability** has been exhausted by payment of judgements or settlements for **Compensation**;
- (ii) if a sum exceeding the **Limit of Liability** is required to dispose of a claim, the liability of the **Insurer** to pay any **Additional Payments** will be limited to that proportion of **Additional Payments** that reflects the proportion that the **Limit of Liability** bears to the amount paid to dispose of a claim;
- (iii) the **Insurer** is entitled to recover from the **Insured** any amount paid to the **Insured** over and above the **Insurer's** actual liability for **Additional Payments**;
- (iv) in the event of a claim or action made against the **Insured** in any court or before any other legally constituted body in the United States of America or Canada and their respective territories or protectorates or any territory within the jurisdiction of the courts of those countries, the **Limit of Liability** will apply to such claim or action inclusive of all **Additional Payments**; and
- (v) in jurisdictions where the **Insurer** or the **Insured** may be prevented by law or otherwise from carrying out any of the **Additional Payments** in 2.2(a) to (d) above,

the **Insurer** will pay any expense incurred with its written consent for others to carry out such actions and payments on its behalf.

### 2.3 **Limit of Liability**

The maximum liability of the **Insurer** in respect of any one **Occurrence** for **General Liability** will not exceed the **Limit of Liability**.

The maximum total aggregate liability of the **Insurer** during any one **Period of Insurance** for all claims arising out of **Product Liability** will not exceed the **Limit of Liability**.

The **Limit of Liability** applies inclusive of any applicable **Deductible**.

### 3 Definitions

For the purpose of determining the cover provided by this **Policy**, and any attaching endorsement (unless otherwise specified in the endorsement) capitalised words in bold have the following meanings:

**3.1 Act of Terrorism** means any act of any person or group of people, involving the use of or threat of force or violence, where the purpose of the act by its nature or context is to further a political, religious or ideological aim and/or to intimidate or influence a government (whether lawfully constituted or otherwise), the public or any section of the public.

**3.2 Additional Payments** has the meaning given under Insuring Agreement 2.2.

**3.3 Advertising Liability** means:

- (a) defamation;
- (b) infringement of copyright of or passing off of title or slogan;
- (c) unfair competition, piracy or idea misappropriation contrary to an implied contract;
- (d) invasion of privacy; or
- (e) any breach of Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* or similar legislation of any country, state or territory;

committed or alleged to have been committed during the **Period of Insurance** in any advertisement, publicity article, broadcast or telecast or via an internet website and caused by or arising out of the **Insured's** advertising or promotional activities conducted by or on behalf of the **Insured**.

**3.4 Aircraft** means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

**3.5 Business** means all activities and operations of the business stated in Item 3 of the **Schedule**, including:

- (a) the ownership and occupation of property, premises or facilities including the maintenance and repair of all property, premises or facilities owned and or occupied by the **Insured** for the purposes of the **Business**;
- (b) participation and attendance at exhibitions, trade fairs, field demonstrations, conferences and other promotional events in connection with the **Business**;
- (c) private work undertaken by any person employed for any director, partner or employee of the **Insured** with the prior consent of the **Insured** in connection with the **Business**; and
- (d) the provision or management of canteen, social, sports, welfare or child care organisations for the **Insured's** employees and internal first aid, fire and ambulance services.

**3.6 Compensation** means monies paid or payable by judgement, award or settlement together with any liability on the **Insured's** part to pay legal costs and expenses (other than those referred to in Insuring Agreement 2.2 (Additional Payments)) for:

- (a) **Personal Injury**;
- (b) **Property Damage**; or
- (c) **Advertising Liability**

provided that **Compensation** is only payable in respect of **Occurrences** to which this **Policy** applies.

- 3.7 Data** means any corporate or personal information in any format and includes, but is not limited to, records, reports, designs, plans, formulas, processes, trade secrets, patents, financial information, medical or healthcare information, contact information, account numbers, account histories, passwords or credit or debit card details, in electronic form, and whether or not belonging to the **Insured**.
- 3.8 Deductible** means the amount of the deductible as stated in Item 7 of the Schedule payable by the Insured. **Deductibles** are inclusive of **Additional Payments**.
- 3.9 Employment Practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising harassment or discrimination related to employment by the **Insured**.
- 3.10 General Liability** means the **Insured's** legal liability in respect of **Personal Injury, Property Damage** or **Advertising Liability** as insured under this **Policy**. **General Liability** does not include **Product Liability**.
- 3.11 Incidental Contracts** means:
- (a) any written rental, lease or hiring agreement of real or personal property, except rental lease or hire agreements that:
    - (i) require the **Insured** to insure such property; or
    - (ii) agree to accept liability regardless of fault;
  - (b) any written contract with any authority or entity responsible for the supply of water, sewerage, gas, natural gas, air electricity, telephone and communication services, or internet services except those contracts in connection with work done for such authorities or entities;
  - (c) any written contract with any railway authority for the loading, unloading, storing or transport of any **Product**, including any contract relating to the operation of railway sidings; or
  - (d) contracts specified as designated contracts by endorsement.
- 3.12 Insured** means:
- (a) the parties named in Item 1 of the **Schedule** as the **Insured**, and any subsidiary companies (including their subsidiaries), and any other entity under the **Insured's** control, and over which the **Insured** exercises active management whose place of incorporation is within Australia;
  - (b) every director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the **Insured** as specified in 3.12(a) above, including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the **Business**, while such persons are acting for or on behalf of the **Insured** and/or within the scope of their duties in such capacity;
  - (c) any principal in respect of the liability of the principal arising out of the performance by the **Insured** as defined in 3.12(a) above, of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and **Limit of Liability** as is provided by this **Policy**;
  - (d) any office bearer or member, employee or voluntary helper of the canteen, social, sports, welfare or child care organisations for the **Insured's** employees and internal first aid, fire or ambulance services formed with the consent of the **Insured** specified in 3.12(a) above, but only whilst acting within the scope of their duties in such capacity; or
  - (e) any director or senior executive of the **Insured** specified in 3.12(a) above in respect of private work undertaken by the **Insured's** employees for such director or senior executive.

- 3.13 Insurer** means HDI Global SE, Australia (ABN 55 490 279 016).
- 3.14 Limit of Liability** means the applicable limit of the **Insurer's** liability as stated in Item 5 of the **Schedule**.
- 3.15 Medical Persons** means any appropriately qualified medical practitioners, dentists, nurses and first aid attendants.
- 3.16 Mental Injury** means shock, fright, mental anguish, mental injury or mental illness, humiliation, discrimination.
- 3.17 Occurrence** means an event or series of events, including continuous or repeated exposure to substantially the same general conditions which results in **Personal Injury** or **Property Damage** or **Advertising Liability** that is neither expected nor intended from the standpoint of the **Insured**.

All events or series of events attributable to one source or original cause will be deemed to be one **Occurrence**.

With regards to **Advertising Liability**, all liability arising out of the same injurious material or act, regardless of the number or kind of media used, the frequency or repetition thereof and number of claimants, will be deemed to be one **Occurrence**.

- 3.18 Period of Insurance** means the period of insurance as stated in Item 4 of the **Schedule** and any endorsement which may be agreed in writing between the **Insured** and **Insurer**.
- 3.19 Personal Injury** means bodily injury, sickness, disease, disability, **Mental Injury** or, loss of consortium including death resulting from any of these:
- (a) false arrest, false detention, wrongful imprisonment or malicious prosecution, trespass or nuisance, humiliation;
  - (b) defamation unless arising out of an **Advertising Liability**;
  - (c) wrongful entry, wrongful eviction or invasion of privacy;
  - (d) assault or battery not intentionally committed or at the direction of the **Insured** unless committed or directed for the purpose of preventing or eliminating danger to persons or property; or
  - (e) discrimination as a result of race, religion, sex, marital status, sexuality, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by the **Insured** or at the **Insured's** direction, but only with respect to liability other than fines or penalties imposed by law.

In the event of claims for **Personal Injury** arising from latent injury, latent disease or latent sickness, such injury, disease or sickness shall be deemed to have first occurred on the date it is first medically diagnosed by a **Medical Person**, provided that such diagnosis must first occur during the **Period of Insurance**.

- 3.20 Policy** means this contract of insurance consisting of this document, the **Schedule** and any endorsement issued by the **Insurer** varying coverage and accepted by the **Insured**.
- 3.21 Policyholder** means the person or entity who enters into this insurance contract with the **Insurer** and who owns this **Policy**, responsible for payment of the premium and entitled to the rights conferred by this **Policy**.
- 3.22 Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.
- 3.23 Product** means anything (after it has ceased to be in the care, physical custody or under the control of the **Insured**) which is or is deemed to have been manufactured, grown, extracted, produced, processed, packaged, sold, supplied, treated, distributed, imported, exported, repaired, serviced, installed, assembled, altered, erected or constructed by or on behalf of the **Insured** (including any packaging or

containers thereof, as well as any design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with the **Product**) in the course of the **Business** including discontinued products.

The term **Product** shall not be deemed to include:

- (a) food and beverages supplied by the **Insured** to employees or **Workers** as a staff benefit; or
- (b) any vending machine or similar property rented by the **Insured** for the use of others but not that which is sold by the **Insured**.

**3.24 Product Liability** means **Personal Injury** or **Property Damage** arising out of the **Insured's Product** or work or operations including materials, parts or equipment furnished in connection with such work or operations performed by or on behalf of the **Insured**, or reliance upon a representation or warranty made at any time with respect thereto, but only if the **Personal Injury** or **Property Damage** occurs after physical possession of the **Insured's Product** has been relinquished to others.

**3.25 Property Damage** means:

- (a) physical damage to, or loss or destruction of, tangible property including the loss of use resulting therefrom; or
- (b) loss of use of tangible property which has not been physically lost, damaged or destroyed, which is caused by physical damage or destruction or loss of other tangible property provided such loss of use is caused by an **Occurrence**.

All such loss of use shall be deemed to have happened at the time of the physical damage that caused it.

In the event of claims arising from latent damage or from the exposure of tangible property to gradual deterioration and eventual damage, such **Property Damage** shall be deemed to have happened on the day such deterioration or damage was first discovered.

**3.26 Proposal** means all signed applications and any other documents submitted in connection with the underwriting of this **Policy** or any previous **Policy** underwritten by the **Insurer** or its affiliates of which this **Policy** is a renewal or replacement.

**3.27 Schedule** means the schedule of insurance attaching to and forming part of this **Policy** that the **Insurer** issues to the **Insured**.

**3.28 Senior Counsel** means a senior counsel to be mutually agreed upon by the **Insured** and the **Insurer** or, in the absence of agreement, to be appointed by the current President of the Law Society in the State or Territory in which this **Policy** is issued.

**3.29 Sub-Limit of Liability** means the limit of the **Insurer's** liability for the applicable sub-limit specified in Item 6 of the **Schedule** or any endorsement attaching to this **Policy**. The sub-limit is part of and not in addition to the **Limit of Liability**.

**3.30 Territorial Limits** means worldwide subject to Exclusion 4.19 (Territorial Limitation).

**3.31 Tool of Trade** means any **Vehicle** which has any equipment either forming part of it or as an attachment, which is designed for excavation, digging, scraping, grading, drilling, lifting or levelling and the like. Provided that the **Vehicle** will only be a **Tool of Trade** while the equipment on that **Vehicle** is being used for the purpose for which such equipment was designed.

**3.32 Vehicle** means any type of machine:

- (a) intended to travel on wheels or on self-laid tracks or skis; and
- (b) made or intended to be propelled other than by manual or animal power.

**Vehicle** includes any trailer or attachment made or intended to be drawn by any such machine.

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

**3.34 Worker** means:

- (a) any person engaged by the **Insured** on a temporary or permanent basis under a contract with a labour hire entity;
- (b) any person (including a person who may be a director, executive officer or an employee of a contractor), contracted to perform work for the **Insured** or under the **Insured's** direct supervision or control in the performance of such work; or
- (c) any person (including a person who may be a director, executive officer or an employee of a subcontractor or any of their contractors or subcontractors), subcontracted by any party (including parties insured or not insured under the **Policy**) to perform work on the same work site as the **Insured**.

## 4 Exclusions

This **Policy** does not provide cover for and no payments will be made in respect of any liability directly or indirectly caused by, arising out of or in any way connected with:

### 4.1 Advertising Liability

- (a) for breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (b) for infringement or passing off of a trade mark, service mark or trade name on any products, goods or services sold, offered for sale or advertised. This does not apply to infringement of titles or slogans;
- (c) for any **Insured** whose business is advertising, broadcasting, publishing or telecasting;
- (d) any incorrect description of the price of **Product**, goods or services; or
- (e) the failure of **Products**, goods or services to conform with advertised performance or quality. This Exclusion 4.1(e) does not apply to any warranty as to product safety implied by statute.

### 4.2 Aircraft

- (a) any **Aircraft**; or
- (b) any property used for the purpose of an airport or any commercial **Aircraft** landing strip or helipad.

### 4.3 Aircraft Products

the **Insured's Product** which with the **Insured's** knowledge is incorporated into the structure, machinery or controls or connected with the navigation or flying capabilities of any **Aircraft**.

### 4.4 Aggravated, Punitive or Exemplary Damages, Liquidated Damages and Fines or Penalties

aggravated, punitive or exemplary damages, liquidated damages, fines or penalties.

### 4.5 Asbestos

asbestos or materials containing asbestos in whatever form or quantity.

### 4.6 Contractual Liability

assumed by the **Insured** under any contract, warranty or agreement requiring the **Insured** to:

- (a) effect insurance over property either real or personal; or
- (b) assume liability for **Personal Injury, Property Damage** or **Advertising Liability** regardless of fault. Provided that this Exclusion 4.6(b) does not apply with regard to:
  - (i) liabilities which would have been implied by law in the absence of such contract, warranty or agreement;
  - (ii) liabilities assumed under **Incidental Contracts**;
  - (iii) terms regarding merchantability, quality, fitness or care of the **Insured's Product** which are implied by law or statute; or
  - (iv) liabilities assumed under contracts that are specifically designated in any endorsement to this **Policy**.

### 4.7 Data

**Mental Injury** arising from:

- (a) **Data** which is subject to:
  - (i) modification, corruption, loss, destruction, theft, collection, misuse, extortion, illegitimate or unauthorized access, restricted or an inability to access; or
  - (ii) processing in an unlawful, unauthorized or illegitimate manner;
- (b) any form of **Data** disclosure;
- (c) the theft, loss, misplacing, damage or destruction of any computer, electronic device hardware (or its component) that contain or store **Data**; or
- (d) **Data** which is involved in any invasion or breach of privacy, infringement of intellectual property rights, breach of confidentiality, libel, slander defamation or other reputational injury.

#### 4.8 Defamation

defamation:

- (a) made prior to the **Period of Insurance**; and
- (b) made at the direction of the **Insured** with knowledge that it is false.

#### 4.9 Employers' Liability

- (a) **Personal Injury** to any employee in respect of which the **Insured** is or would be entitled to indemnity under any policy of insurance, fund, scheme or self-insurance pursuant to or required by any legislation relating to workers compensation or accident compensation whether or not such policy, fund, scheme or self-insurance has been effected;
- (b) **Personal Injury** to any person in the service of the **Insured** for liability imposed by any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement; or
- (c) **Employment Practices**.

#### 4.10 Faulty Workmanship

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

#### 4.11 Loss of Use

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

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

This Exclusion 4.11 (b) shall not apply to the **Insured's** liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any **Product** or work performed by the **Insured** or on behalf of the **Insured** after such **Product** or work have been put to the use by any organisation other than the **Insured**.

#### 4.12 Pollution

- (a) the discharge, dispersal, release, seepage, migration or escape of **Pollutants** into or upon land, the atmosphere or any water course or body of water; or

- (b) any costs or expenses incurred in preventing the discharge, dispersal, release, seepage, migration or escape of, or testing and monitoring for, containing, removing, nullifying or cleaning up of **Pollutants**

provided that this Exclusion 4.12 (Pollution) does not apply if such discharge, dispersal, release, migration or escape:

- (i) is caused by a sudden identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place; and
- (ii) occurs outside of the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries.

#### 4.13 Product Repair and Defect

**Property Damage** to the **Product** if such damage is attributable to any defect in them or to their harmful nature or unsuitability, provided that this Exclusion 4.13 (Product Repair and Defect):

- (a) will not apply to **Products** repaired, serviced or treated by the **Insured** after such **Products** were originally sold, supplied or distributed; and
- (b) applies only to the defective or harmful or unsuitable part of the **Product** and does not apply to **Property Damage** to the remainder of the **Product**.

#### 4.14 Product Guarantee

any performance or quality guarantee given by or on behalf of the **Insured** in respect of the **Insured's Product**. Provided that this Exclusion 4.14 (Product Guarantee) does not apply to liability which would be implied or imposed by statute or law as to product safety and information.

#### 4.15 Product Recall

- (a) the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, adjustment, removal, replacement or loss of use of any **Product** or work completed by or for the **Insured**; or
- (b) the withdrawal or recall of any property of which the **Product** or work completed by the **Insured** form a part.

#### 4.16 Professional Liability

the rendering of or the failure to render professional advice or service provided by the **Insured** or any error or omission connected thereto. Provided that this Exclusion 4.16 (Professional Liability) does not apply to:

- (a) **Personal Injury** or **Property Damage** or **Advertising Liability** arising from the provision of such professional advice or service that is not given for a fee; or
- (b) the rendering of or failure to render professional medical advice by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

#### 4.17 Property in Care, Custody or Control

**Property Damage** to property owned by the **Insured** or in the **Insured's** physical or legal care, custody or control.

Provided that this Exclusion 4.17 (Property in Care, Custody or Control) does not apply to:

- (a) premises or part of premises (including contents, fixtures and fittings) which are leased, rented to, hired by or temporarily occupied by the **Insured** for the purposes of the **Business**. However, no cover is provided by the **Policy** if the **Insured** has assumed any responsibility to insure those premises;

- (b) any other property temporarily in the possession of the **Insured** for the purpose of being worked on. However, no cover is provided by the **Policy** for **Property Damage** to that part of any property upon which the **Insured** is or has been working if the **Property Damage** arises solely out of such work;
- (c) **Vehicles**, spare parts, accessories and **Vehicle** contents (not belonging to the **Insured** or used by the **Insured**) whilst in a car park owned or operated by the **Insured**, provided that the **Insured's** business does not include the operation of a car park for reward;
- (d) the **Insured's** directors, employees and visitors property; or
- (e) property in the **Insured's** physical or legal control (and not referred to in 4.17 (a) to (d) above), subject to the **Insurer's** maximum liability being limited to \$500,000 for any one **Occurrence** and in the aggregate during any one **Period of Insurance**, or as otherwise stated in Item 6 of the **Schedule**.

#### 4.18 Radioactive Contamination

- (a) ionising radiation or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel. For the purposes of this Exclusion 4.18 (Radioactive Contamination) only, combustion includes any self-sustaining process of nuclear fission, nuclear weapons material, medical isotope, waste or other material, whether occurring naturally or otherwise;
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- (c) the storage, transport, assembly, disassembly, maintenance or operation of any nuclear weapon or nuclear component thereof.

#### 4.19 Territorial Limitation

any claim, or actions instituted in the United States of America, Canada and their respective territories or protectorates or any territory within the jurisdiction of the courts of those countries.

Provided that, if the **Insured** has no legal presence in the United States of America or Canada, and their respective territories or protectorates or any territory within the jurisdiction of the courts of those countries then this Exclusion 4.19 (Territorial Limitation) does not apply to:

- (a) **Products** exported into such countries without the **Insured's** knowledge; or
- (b) business visits of the **Insured's** directors, partners officers, executives, employees or salespersons who are non-residents of the United States of America, Canada and their respective territories or protectorates, but excluding any business visits where such persons undertake any work or labour of a manual nature.

#### 4.20 Terrorism

- (a) **Act of Terrorism** regardless of any other cause or event contributing concurrently or in sequence; or
- (b) action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

#### 4.21 Vehicle

**Personal Injury** or **Property Damage** caused by or arising out of the use of, ownership, possession or operation by the **Insured** of any:

- (a) **Vehicle** which is registered or required to be registered under any legislation;
- (b) **Vehicle** in respect of which compulsory liability insurance or statutory scheme is required by virtue of legislation (whether or not such insurance is effected).

Provided that this Exclusion 4.21 (Vehicle) will not apply to:

- (i) **Personal Injury** in respect of which no cover is provided pursuant to any compulsory liability insurance or statutory scheme provided that the reason no cover is provided does not involve a breach of legislation relating to a **Vehicle**;
- (ii) the use of any **Tool of Trade** while being operated or used by or on behalf of the **Insured** at any site where the **Insured** is working or at the **Insured's** premises, unless the **Tool of Trade** is used only for the transportation or haulage of goods;
- (iii) the loading or unloading of a **Vehicle** caused by or arising from the delivery or collection of any goods to or from any **Vehicle**, and which occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability;
- (iv) any **Vehicle**, temporarily in the **Insured's** custody or control for the purposes of parking, provided that the **Insured's Business** does not include the operation of a car park for reward; or
- (v) caused by or arising out of the use of an unregistered **Vehicle** whilst being driven under its own power between its point of unloading and a worksite and whilst returning from a worksite to the point of reloading for its conveyance from the area, provided that no other indemnity is provided for such **Personal Injury** under a contract of insurance entered into for the purpose of a law that relates to compensation for **Personal Injury** arising out of the use of a **Vehicle**.

#### 4.22 War

- (a) war, invasion, acts of foreign enemies, or hostilities (whether war is declared or otherwise) insurrection, civil or military uprising, rebellion, civil war or usurped power or confiscation, nationalisation, requisition or destruction of, or damage to, any property by or under order (whether lawful or otherwise) of any government, public or local authority; or
- (b) the imposition of any economic, trade or political sanctions.

#### 4.23 Watercraft

the ownership, maintenance, repair, servicing, installation, use or operation by the **Insured** of any **Watercraft** exceeding 15 metres in length. This Exclusion 4.23 (Watercraft) does not apply to **Watercraft**:

- (a) operated by independent contractors; or
- (b) not owned by the **Insured** but used by the **Insured** for business entertainment.

## 5 Claims Conditions

Unless stated in any endorsement attaching to this **Policy** to the contrary, the following Claims Conditions apply to this **Policy**.

### 5.1 Notification

As soon as reasonably practicable, the **Insured** must notify the **Insurer** in writing of any **Occurrence**, event, fact or circumstance likely to involve this **Policy**.

The **Insured** must give the **Insurer** such information and co-operation as it reasonably requires, including but not limited to:

- (a) a detailed description of the **Occurrence**, event, fact or circumstance including the nature of the alleged or potential loss;
- (b) the details of all parties involved;
- (c) the manner and date on which the **Insured** first became aware of the **Occurrence**, event, fact or circumstance;
- (d) copies of any:
  - (i) claim or written demand;
  - (ii) information regarding any claim for any other matter potentially covered under the **Policy**; and
  - (iii) other insurance policy that may be applicable.

Provided that the **Insurer's** interests are not prejudiced, the failure of the **Insured** to give notice of any **Occurrence**, event, fact or circumstance, which at the time of its happening did not appear to involve the cover granted by this **Policy**, but which at a later date would appear to give rise to a claim under this **Policy**, will not prejudice such claim.

The **Insured** shall keep the **Insurer** fully informed as regards all developments relating to a claim as soon as reasonably practicable.

### 5.2 Address of Notice

Any notices in respect of a claim must be provided to the **Insured's** authorised agent, or:

Claims Manager - HDI Global SE, Australia  
Level 19, 20 Martin Place, Sydney, NSW 2000  
E: [liability.claims@hdi.global](mailto:liability.claims@hdi.global)

### 5.3 Co-operation and Mitigation

The **Insured** will co-operate with the **Insurer** and provide it with all documents and information which the **Insurer** may reasonably require in connection with any claim for indemnity under this **Policy**, including, but not limited to:

- (a) providing the **Insurer** and its duly appointed representatives with all information and assistance reasonably required for the purpose of investigating:
  - (i) the cause and consequences of a claim;
  - (ii) the **Insured's** liability to any party in respect of a claim; and
  - (iii) whether the **Insurer** is liable to the **Insured** under this **Policy** in respect of a claim, and if so, the extent of its liability.
- (b) providing the **Insurer** and its duly appointed representatives with all information and assistance reasonably required for the purpose of conducting the defence of any claim;

- (c) (at its own expense) providing the **Insurer** and its duly appointed representatives all such information, assistance, signed statements or affidavits as may reasonably be required to facilitate compliance with all applicable court rules, recoveries and subrogation claims; and
- (d) providing the **Insurer** and its duly appointed representatives all documents and information which the **Insurer** may reasonably require to mitigate loss.

Upon the happening of any **Occurrence**, event, fact or circumstance that appears reasonably likely to give rise to a claim under this **Policy**, the **Insured** must as soon as reasonably practicable take reasonable steps to prevent any further liability arising or continuing out of such **Occurrence**, event, fact or circumstance.

#### 5.4 Defence of a claim

In respect of an **Occurrence** or loss covered by this **Policy**, the **Insurer** will have the right, but not the duty, to take over conduct and defend any claim brought against the **Insured** seeking **Compensation** even if any of the allegations of the claim are groundless, false or fraudulent and may make such investigation and reasonable settlement of any claim as is deemed expedient and with due regard to the **Insured's** interests.

Provided that the **Insurer** will not be obliged to pay any claim or judgement or to defend any claim after the **Insurer's** limit as applying to this **Policy** has been exhausted by the payment of judgements or settlements.

However, the **Insured** has the right to request that the **Insurer** defend the claim. Such a request is to be in writing to the claims manager of the when a claim is notified.

If the **Insurer** elects or is otherwise required to defend a claim, this does not waive the **Insurer's** rights under the **Policy**, if any. The defending of a claim by the **Insurer** does not afford an **Insured** any greater cover under this **Policy** and any direct costs and expenses incurred that are not covered by the **Policy** will be for the **Insured's** own account.

To the extent that an actual or potential conflict of interest might otherwise arise as between **Insureds**, the **Insurer** will agree to **Insureds** being separately legally represented in respect of a claim.

#### 5.5 Allocation of Loss

If a claim involves:

- (a) loss for which the **Insurer** is liable under this **Policy**; and
- (b) loss for which the **Insurer** is not liable under this **Policy**,

the **Insured** and the **Insurer** will use their best efforts to determine a fair and appropriate allocation of:

- (i) amounts for which the **Insurer** is liable under this **Policy**, including **Additional Payments**; and
- (ii) amounts for which the **Insurer** is not liable under this **Policy**, which does not include **Additional Payments**.

When determining a fair and appropriate allocation the **Insured** and the **Insurer** will consider factors including but not limited to:

- (A) the extent of the **Insurer's** liability for loss under this **Policy**;
- (B) the relative legal and financial exposures of the parties involved in a claim;
- (C) the relative benefits obtained by the parties to a claim;
- (D) issues of fact and law arising in relation to the parties involved in a claim; and
- (E) the relative degree of responsibility for the loss.

If a fair and reasonable allocation cannot be agreed by the **Insured** and the **Insurer**, it will be determined by **Senior Counsel** as an expert, not as an arbitrator. The parties agree to be bound by the final opinion of the **Senior Counsel**.

The costs of obtaining this opinion will form part of the **Additional Payments**.

## 5.6 Consent to Settlement

The **Insured** will not unreasonably incur any **Additional Payments** or other costs payable under the **Policy**, admit or assume any liability, consent to any judgment, agree to any settlement, or make any settlement offer in relation to an **Occurrence**, event, fact or circumstance which may lead to a claim under this **Policy**, without the **Insurer's** prior written consent.

Where there is a dispute between any **Insured** and the **Insurer** as to whether a claim should be settled or should continue to be defended, within 30 days after notice to the **Insurer** of such dispute, the **Insurer**, at its expense, will refer the matter to **Senior Counsel** who will determine whether, on the balance of probabilities, the **Insured** is likely to succeed in defending the claim to final resolution or whether the claim should be settled.

If **Senior Counsel** determines that the claim should be settled, the **Insured** may elect to continue the defence of that claim provided that the **Insurer's** liability for the loss arising from that claim will not exceed the amount for which **Senior Counsel** determines the claim could have been settled.

**Senior Counsel** will determine the amount for which the claim could have been settled at the **Insurer's** expense and taking into account:

- (a) the economics of the claim;
- (b) the damages and costs likely to be recovered by the claimant and/or **Insured** (if a subrogated recovery is a possibility);
- (c) the likely future costs of defence; and
- (d) the prospects of the **Insured** successfully defending the claim.

## 6 General Conditions

Unless stated in any endorsement attaching to this **Policy** to the contrary, the following General Conditions apply to this **Policy**.

### 6.1 Address of Notice

Any notices under this **Policy** other than in respect of a claim will be provided to:

HDI Global SE, Australia  
Level 19, 20 Martin Place  
Sydney NSW 2000

Unless otherwise specified in this **Policy**, the date of the notice was received by the **Insurer** will constitute the date any such notice was given.

### 6.2 Adjustment of Premium

Where the premium for this **Policy** or any renewal or replacement is stated in the **Schedule** to be adjustable, the **Insured** must, within a reasonable period after expiry of each **Period of Insurance**, furnish to the **Insurer** such information as the **Insurer** may reasonably require to adjust the premium for such expired period. The premium for the **Period of Insurance** will be adjusted by the **Insurer** and the difference in premium will be paid by the **Insured** or refunded to the **Insured** as the case may be subject to any agreed minimum deposit premium. The **Insurer** will only request information relevant to the adjustment of the **Insured's** premium and will explain why the information is needed.

The **Insured** must keep an accurate record containing all particulars relative to the adjustment, and at all reasonable times allow the **Insurer** to inspect such record.

### 6.3 Aggregation

All causally connected or interrelated events or series of events attributable to one source or original course will be deemed to be one **Occurrence**. With regards to **Advertising Liability**, all liability arising out of the same injurious material or act, regardless of the number or kind of media used, the frequency or repetition thereof and number of claimants, will be deemed to be one **Occurrence** under the **Policy**.

Where a single event, or series or events, or liability arising out of the same injurious material or act gives rise to more than one claim, all such claims will jointly constitute one claim under the **Policy**.

### 6.4 Alteration of Risk

The **Insured** will give the **Insurer** written notice as soon as reasonably practicable of any material alteration to the risk at the commencement of the **Policy** or any subsequent renewal date or during the **Period of Insurance**.

In the event that this General Condition 6.4 (Alteration of Risk) applies, the **Insurer** may, if it deems reasonably necessary and after consultation with the **Insured**, amend the terms and conditions of the **Policy** and/or charge an additional premium to reflect the material change in risk.

### 6.5 Assignment

The **Insured** must not assign the **Policy** or any rights under the **Policy** without the **Insurer's** prior written consent by way of endorsement to the **Policy**.

### 6.6 Cancellation

Subject to General Condition 6.23 (Severability, Non-Avoidance, Non-Cancellations, Non-Imputation) or the non-payment of the premium in full, the circumstances and manner in which the **Insurer** may cancel this insurance is governed by the *Insurance Contracts Act 1984* (Cth).

The **Insured** may cancel this **Policy** at any time by giving 14 days' notice and provided there have been no notifications made by the **Insured** under this **Policy** the **Insured** will be entitled to a pro rata refund of unearned premium, except if the premium is subject to adjustment.

When the premium is subject to adjustment, cancellation will not affect the obligation of the **Insured** to supply to the **Insurer** such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation subject to any agreed minimum deposit premium.

#### 6.7 Confidentiality

In the event of a claim, the **Insured** must not disclose the existence, the **Limit of Liability**, the premium payable or any details of this **Policy** to any party unless:

- (a) the **Insurer** has provided written consent to the disclosure; or
- (b) there is a requirement to disclose pursuant to operation of law.

The **Insured** will not publish or disclose in an annual report or other similar report the nature of the liability covered by this **Policy**, the identity of the **Insurer**, the **Limit of Liability** or the premium paid for the **Policy**.

#### 6.8 Cross Liability

Subject to the terms of this **Policy** each of the parties comprising the **Insured** is considered a separate legal entity and the word **Insured** applies to each party as if a separate **Policy** had been issued to each of the parties but nothing contained in this General Condition 6.8 (Cross Liability) will operate to increase the **Insurer's** liability under this **Policy**.

#### 6.9 Currency

All amounts referred to in this **Policy** are in Australian Dollars. If the **Insured** incurs liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by the **Insurer** will be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the applicable currency rate of exchange on the date on which the payment is made, subject to the **Limit of Liability**.

#### 6.10 Deductible

The **Insurer** will only be liable for a loss in respect of a claim covered under the **Policy** in excess of the applicable **Deductible** specified in the **Schedule**.

The **Deductible** is inclusive of **Additional Payments** and will be the first amount borne by the **Insured** and will remain uninsured.

#### 6.11 Exhaustion of Limit of Liability

If the **Limit of Liability** and any additional **Sub-Limit of Liability** specified in the **Schedule** or added by endorsement, are exhausted by the payment of a loss or other amounts under this **Policy**:

- (a) the premium for this **Policy** will be deemed fully earned;
- (b) all obligations of the **Insurer** under this **Policy** will be completely fulfilled; and
- (c) the **Insurer** will have no further obligations of any kind under the **Policy**.

#### 6.12 Goods and Services Tax

Where the **Insurer** makes payment under this **Policy**:

- (a) the **Insured** must inform the **Insurer** of the extent of any entitlement to an input tax credit for the premium at or before the time a claim is made under this **Policy**; and
- (b) the amount of the payment will be reduced by the amount of any input tax credit to which the **Insured** is or may, in the opinion of the **Insurer**, be entitled to claim.

If the **Insured** makes a claim under this **Policy**, they must inform the **Insurer** of their Australian Business Number if they have one.

The amount of the applicable Deductible is calculated after deduction of the amount of any input tax credit that the **Insured** is or, in the opinion of the **Insurer**, may be entitled to claim.

#### 6.13 Inspection and Audit

The **Insurer** will be permitted but not obliged to inspect the **Insured's** property and operations at any reasonable times and frequency and with reasonable advance notice to the **Insured**. Neither the **Insurer's** right to make inspections or the making of inspections, or any report relating to inspections will 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.

Upon providing reasonable advance notice to the **Insured**, the **Insurer** may examine and audit the **Insured's** books and records at any reasonable times and frequency during the **Period of Insurance** and extensions thereof and within three years after the final termination of this **Policy**, as far as they relate to the subject matter of this insurance.

#### 6.14 Insurer Consent

Where this **Policy** requires the **Insured** to obtain the **Insurers'** consent, such consent will not be unreasonably withheld or delayed.

If the **Insured** does not obtain the **Insurers'** consent where required in this **Policy**, the **Insurer** will only pay for the fees, costs and expenses (as applicable) which are reasonable in the circumstances.

#### 6.15 Law and Jurisdiction

This **Policy** is governed by and is to be interpreted in accordance with the laws of the Commonwealth of Australia and of the State or Territory of the office of the **Insurer** in which the **Policy** was issued. The courts of that State or Territory have exclusive jurisdiction in relation to any disputes regarding the interpretation of this **Policy**.

#### 6.16 Multiple Insureds

Neither:

- (a) the inclusion of more than one **Insured** under this **Policy**; or
- (b) any negligent act by any **Insured**

will in any way affect the rights of any other **Insured**. This **Policy** should be construed as if a separate contract of insurance had been entered into by each **Insured**, provided that the **Insurer's** total liability to all **Insureds** shall not exceed the **Limit of Liability** as detailed in the **Schedule**.

#### 6.17 Other Insurance

If any loss or other amount payable by the **Insurer** under this **Policy** is also insured under any other insurance policy:

- (a) entered into by the **Insured**; or
- (b) effected on behalf of the **Insured**; or
- (c) under which the **Insured** is a beneficiary; and
- (d) specified in the **Schedule**

then to the extent permitted by the *Insurance Contracts Act 1984* (Cth), this **Policy** will only cover the loss to the extent that the amount of such loss is in excess of the amount of such other insurance.

This provision does not apply to such other insurance that is written specifically as excess insurance over the **Limit of Liability** provided in this **Policy**.

#### 6.18 Other Sources of Reimbursement

If any loss or other amount payable by the **Insurer** under this **Policy** is also reimbursable by other sources, this **Policy** will only cover the loss to the extent that the amount of such loss is in excess of the amount reimbursable by the other sources.

#### 6.19 Policy Construction and Interpretation

In this **Policy**, unless the context otherwise requires:

- (a) in the Important Notices section, references to “**You**”, “**Your**” means the **Insured** and “**Us**”, “**We**”, “**Our**” means the **Insurer**;
- (b) the singular includes the plural and vice versa;
- (c) headings are merely descriptive and not to aid interpretation;
- (d) if a word or expression is given a definite meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (e) references to an amount of money are references to that amount in Australian dollars unless otherwise provided; and
- (f) references to statute law also includes all its amendments or replacements, reenactments, successors, equivalents or similar statute laws, in whole or part, which have taken place before or after inception of this **Policy**.

#### 6.20 Priority of Payments

If the payment of loss or defence costs in respect of a covered claim under this **Policy** exceeds the remaining available **Limit of Liability**, the **Insurer** will:

- (a) first pay such loss for which the **Insured** has not yet been indemnified; and
- (b) to the extent of any remaining amount of the **Limit of Liability** available after payment under 6.20 (a) above, pay such loss for which cover is provided under any other provision of this **Policy**.

The **Insurer** will otherwise pay loss covered under this **Policy** in the order in which such loss is presented to the **Insurer** for payment.

#### 6.21 Reasonable Care and Precautions

The **Insured** will take reasonable care and precautions:

- (a) to prevent **Personal Injury**, **Property Damage** or **Advertising Liability** losses;
- (b) to prevent the manufacture, sale or supply of **Products** which are defective; and
- (c) to comply with all relevant statutory obligations, by-laws or regulations imposed by any statutory or governmental authority that concern the safety of persons or property.

The **Insured** will at its own expense take reasonable action to trace, recall or modify any of the **Products** containing any defect or deficiency of which the **Insured** has knowledge or has reason to suspect, including any **Products** subject to Government or statutory ban.

If the **Insured** fails to comply with this General Condition 6.21 (Reasonable Care and Precautions), the **Insurer** may refuse to pay a claim, or reduce its liability to the extent the **Insurer** is prejudiced by the **Insured's** failure.

## 6.22 Sanctions

The **Insurer** will not be deemed to:

- (a) provide cover;
- (b) be liable to pay any claim; or
- (c) provide any benefit

under this **Policy** to the extent that the provision of such would expose the **Insurer** to any sanctions, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the United Kingdom, Australia, New Zealand or the United States of America.

## 6.23 Severability, Non-Avoidance, Non-Cancellations, Non-Imputation

The **Proposal** for insurance (including any applicable quotation slip, placement slip or underwriting submission) will be construed as a separate **Proposal** by each **Insured** and with respect to statements and particulars in the **Proposal**, no statements made or information possessed by any **Insured** will be imputed to any other **Insured** to determine whether cover is available for another **Insured**.

Where there is any fraudulent non-disclosure or misrepresentation to the **Insurer**, the **Insurer** irrevocably waives any right to rescind, avoid or cancel the **Policy** as against any innocent **Insured** but the **Insured** which engaged in, or was or were aware of, the fraudulent non-disclosure or misrepresentation will not be entitled to any indemnity under this **Policy**.

Where the **Insured** includes a company, the knowledge of any sole principal or sole practitioner, chairman of the board, chief executive officer, managing director, chief financial officer or chief operating officer of the company will be imputed to the company.

Where there is any non-disclosure or misrepresentation which is not fraudulent, the **Insurer** irrevocably waives any right to cancel the **Policy** or to reduce its liability under the **Policy** in respect of any claim or provide any benefits arising from the matter not disclosed or misrepresented.

No state of mind or knowledge possessed by any one **Insured** will be imputed to any other **Insured** for the purpose of determining whether any provision in this **Policy** applies. However, any state of mind or knowledge possessed by any past or present chairman of the board, chief executive officer, managing director, chief operating officer or chief financial officer of the **Insured** will be imputed to the **Insured**.

The acts or omissions of any **Insured** shall not be imputed to any other **Insured** for the purpose of determining whether any provision in this **Policy** applies.

## 6.24 Several Liability of Insurers

Where there is more than one (1) insurer subscribing to this **Policy**, their obligations are:

- (a) several and not joint; and
- (b) are limited solely to the extent of their individual subscriptions.

No subscribing insurer is responsible for the subscription of any co-subscribing insurer who, for any reason, does not satisfy all or part of its obligations.

## 6.25 Subrogation

In the event that the **Insurer** makes any payment under this **Policy**:

- (a) the **Insurer** will be subrogated to all of the **Insured's** rights of recovery;
- (b) the **Insured** will co-operate with the **Insurer** in securing such rights;
- (c) the **Insured** will not do anything to prejudice the **Insurer's** ability to assert such rights; and

- (d) the **Insurer** will not exercise any rights of subrogation against any **Insured** unless the relevant **Insured** has committed a deliberate criminal act or obtained any profit or advantage to which they were not legally entitled.

The **Insurer's** right of subrogation includes the **Insurer's** entitlement to commence legal action in the **Insured's** name against a third party.

If the **Insured** brings a claim in their own name against a third party in respect of the same facts, matters or circumstances which gave rise to payments being made under this **Policy**, these payments must be included in the claim including interest. If the **Insured** recovers damages from the third party (whether by settlement or judgment) the **Insurer** must be repaid in respect of recovered payments which the **Insured** initially received from the **Insurer** under the **Policy**.

If an **Insured** enters into a contract or agreement with another party that prevents or limits recovery of any payment made under the **Policy**, the **Insurer** may be entitled to deny or reduce the cover for the claim.

The **Insurer** agrees to waive all rights of subrogation under this **Policy** against each of the parties defined as an **Insured**.

#### **6.26 Terms of Payment**

All premiums due to the **Insurer** under this **Policy** must be paid within 90 days from the **Policy's** inception.

## 7 Endorsements