



Combined General & Products Liability

In consideration of payment of the premium and in reliance upon any written submission, declaration and any other underwriting information received by the **Insurer**, which will be deemed to be incorporated into and be the basis of the Policy, and subject to the provisions of the Policy, the **Insurer** will indemnify the **Insured** as follows.

Section 1 INSURING CLAUSE

The **Insurer** will indemnify the **Insured** against those sums which the **Insured** shall become legally liable to pay as **Compensation** in respect of:

- 1.1 **Injury;**
- 1.2 **Damage;** or
- 1.3 **Advertising Injury**

first happening during the **Period of Insurance** and occurring within the **Policy Territory** as a result of an **Occurrence** in connection with the **Insured's Business**.

Section 2 DEFINITIONS

2.1 **Advertising Injury** means:

- 2.1.1 infringement of copyright of, or passing off of a title or slogan;
- 2.1.2 unfair competition, piracy or idea misappropriation contrary to an implied contract;
- 2.1.3 invasion of privacy; or
- 2.1.4 defamation, libel, slander

committed or alleged to have been committed during the **Period of Insurance** in any manner of communication given to the public including any advertisement, publicity article, press release, broadcast, telecast, electronic mail, internet, world wide web or exhibit, arising out of the **Insured's** advertising activities or any advertising activities conducted on the **Insured's** behalf, in the course of advertising the **Products**, goods or services related to those **Products**.

2.2 **Aircraft** means

Any vessel, craft or thing made or intended to fly, move in or through the atmosphere or space.

2.3 **Asbestos** means:

- 2.3.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or
- 2.3.2 That group of man-made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres,

and includes **Asbestos products** and **Products** containing **Asbestos**.

2.4 Compensation means:

Monies paid or payable as a result of any judgment or settlement together with any liability on the **Insured's** part to pay legal costs and expenses (other than any **Defence Costs**).

2.5 Damage means:

2.5.1 Physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or

2.5.2 Loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the **Period of Insurance**. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.

For the purposes of this insurance tangible property does not include any information, facts, programs, instructions, commands, **Electronic Data**, and anything else stored as or on, created or used on, or transmitted to or from computers or their software, including, but not limited to, systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices, networks, clouds, or other media used with electronically controlled equipment.

2.6 Deductible means:

The amount stated in Item 7 of the Schedule which is borne and payable by the **Insured**, and shall apply to any **Defence Costs** as well as any **Compensation**. The **Insurer's** liability to indemnify the **Insured** under the Policy applies only in respect of the amount of **Defence Costs** and **Compensation** that exceeds the **Deductible** amount stated in the Schedule.

2.7 Defence Costs means:

The costs and expenses as stated in Section 6 of this Policy.

2.8 Electronic Data includes, but is not limited to:

Information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

2.9 Employment Practices means:

Any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise), withholding of salary, wages, entitlements or other employment related benefits in respect of employment by the **Insured**.

2.10 Injury means:

2.10.1 Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;

- 2.10.2 False arrest, wrongful detention or imprisonment, malicious prosecution;
- 2.10.3 Wrongful entry or eviction;
- 2.10.4 Assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing **Injury** and/or **Damage** or eliminating danger; or
- 2.10.5 Libel, slander, defamation of character or invasion of right of privacy.

2.11 Injury to Third Party Worker means:

Any **Injury** to any contractor, sub-contractor or labour hire personnel engaged by the **Insured** where the contractor, sub-contractor or labour hire personnel is deemed not to be a **Worker** of the **Insured** under any **Workers Compensation Law**.

2.12 Insured wherever used in this Policy means:

The **Insured** named in the Schedule and:

- 2.12.1 Any subsidiary company of the **Insured** incorporated within Australia including subsidiaries thereof incorporated in Australia; or
- 2.12.2 Any other entity incorporated within Australia controlled by the **Insured** and over which the **Insured** assumes active management;
- 2.12.3 Any new organisation acquired by the **Insured** during the **Period of Insurance** resulting from consolidation, merger, purchase of the assets, assumption of active management control, provided that:
 - (a) such acquisition is notified to the **Insurer** in writing within 90 days; and
 - (b) the **Insurer** gives notice in writing to the **Insured** that such new organisation shall be covered by the Policy; and
 - (c) the **Insured** pays any additional premium that may be required by the **Insurer** in respect of such new organisation;
- 2.12.4 Any director, officer, **Worker**, voluntary worker, work experience person, partner or shareholder of the **Insured**, but only whilst acting within the scope of their duties in such capacity;
- 2.12.5 Any social or sporting clubs, first aid, fire and ambulance services formed with the consent of the **Insured**, and their respective office bearers or members whilst acting in such capacity.

2.13 Insured Business is the business shown in the Schedule.

2.14 Insurer means:

Berkshire Hathaway Specialty Insurance Company (Incorporated in Nebraska, USA. ABN 84 600 643 034, AFS Licence 466 713).

2.15 Limit of Indemnity means:

The amount stated in Item 6 of the Schedule pursuant to Section 5 of this Policy.

2.16 Occurrence means:

An event, including continuous or repeated exposure to substantially the same general conditions, which results in **Injury, Damage** and/or **Advertising Injury** neither expected nor intended from the standpoint of the **Insured**.

With respect to **Injury** or **Damage**, all events of a series consequent on or attributable to one source or original cause shall be deemed one **Occurrence**.

With respect to **Advertising Injury**, all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants, shall be deemed to arise out of one **Occurrence**.

2.17 Period of Insurance means:

The period shown in Item 5 of the Schedule.

2.18 Policy Territory means:

Anywhere in the world, except for the United States of America, Canada and their respective protectorates and territories in respect of:

2.18.1 **Insured's Products** exported with the knowledge of the **Insured** to the United States of America, Canada and their respective protectorates and territories; and

2.18.2 Any of the **Insured's** operations or premises within the United States of America, Canada and their respective protectorates and territories.

2.19 Pollutants means:

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

2.20 Product means:

Any goods or products (after they have ceased to be in the possession or under the control of the **Insured**) which are or are deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the **Insured** or by others trading under the name of the **Insured** (including any packaging or container thereof) other than a motor vehicle.

2.21 Terrorism means:

an act or acts including but not limited to the use of force or violence and/or the threat thereof of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) committed for political, religious, ideological or similar purposes including the

intention to influence any government and/or to put the public or any section of the public in fear.

2.22 Vehicle means:

Any type of machine on wheels or on caterpillar tracks made or intended to be self-propelled by mechanical power.

2.23 Watercraft means:

Any vessel or craft made to or intended to float on or in or travel on, through or under water.

2.24 Worker means:

Any person employed by the **Insured** or deemed by any law or otherwise to be employed by the **Insured**.

2.25 Workers' Compensation Law means:

Any law relating to **Compensation for Injury to Workers** or employees.

Section 3

INDEMNITY TO OTHERS

Subject to the terms of this Policy and in accordance with Section 1 Insuring Clause, this Policy will extend to pay to or on behalf of:

- 3.1** Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the **Insured** pursuant to Definition 2.12 and arising out of the **Insured's Business**, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;
- 3.2** Any director, executive officer or **Worker** of the **Insured** or, where the **Insured** is a partnership, any partner of the **Insured**, but only while acting within the scope of their duties in such capacity;
- 3.3** The officers, committee and members of the **Insured's** canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such; or
- 3.4** The legal personal representative of any person entitled to indemnity under this Section 3 in circumstances giving rise to indemnity under this Policy.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy in so far as they can apply as though they were the **Insured**.

Section 4

CROSS LIABILITIES

Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them in respect of any one **Occurrence** against any other of them provided that the **Insurer's** total liability for any one **Occurrence** shall not exceed the **Limit of Indemnity** for any one claim under this Policy.

Section 5 **LIMIT OF INDEMNITY**

The **Insurer's** liability to pay **Compensation** shall not exceed the sum stated in Item 6 of the Schedule in respect of any one claim or series of claims arising from one **Occurrence**.

The total aggregate liability of the **Insurer** for any one **Period of Insurance** for all claims in respect of or in any way connected with the **Insured's Products** shall not exceed the **Limit of Indemnity** stated in the Schedule.

Section 6 **DEFENCE COSTS**

In addition to the **Limit of Indemnity**, the **Insurer** will pay all reasonable legal costs and/or expenses incurred with **Insurer's** prior written consent in connection with any claim for which the **Insured** is indemnified by this Policy.

Provided that the **Insurer** shall not be liable for legal costs and/or expenses:

- 6.1** Where indemnity is not provided by this Policy;
- 6.2** For or in respect of representation at any formal legal inquiry involving an accident resulting in **Injury** or at any coroner's inquiry or of defending any proceedings in a court of summary jurisdiction; or
- 6.3** In respect of any **Occurrence** after the **Insurer** has paid **Compensation** up to the **Limit of Indemnity**.

Provided further that the legal costs and/or expenses incurred in connection with claims made and/or actions instituted within 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, shall form part of the **Limit of Indemnity** and will not be payable by the **Insurer** in addition to the **Limit of Indemnity**.

In the event the **Insured** is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this Policy, the **Insured** and the **Insurer** will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this Policy which relate solely to what is covered under this Policy.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by the **Insurer** and the **Insured** and at the **Insurer's** expense) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination the **Insurer** may, in its absolute discretion, pay such legal costs and/or expenses or any other amount payable under this Policy as it considers appropriate.

Section 7 **EXCLUSIONS**

This Policy does not cover any liability directly or indirectly caused by, arising out of or in any way connected with:

7.1 Advertising Injury

Any liability directly or indirectly caused by, in connection with, contributed to or by or arising from:

7.1.1 Failure of performance of contract, but this shall not relate to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;

7.1.2 Incorrect description of any article or commodity; or

7.1.3 Mistake in advertised price.

7.2 Aircraft and Watercraft Products

Any **Product** which is incorporated into the structure, machinery or controls of any **Aircraft**, aerial device, **Watercraft** or hovercraft.

7.3 Aircraft, Watercraft, Hovercraft

The ownership, maintenance, operation, possession or use by or on behalf of the **Insured** of:

7.3.1 Any **Aircraft** or aerial device;

7.3.2 Any **Watercraft** exceeding 10 metres in length; or

7.3.3 Any hovercraft.

7.4 Asbestos

Any **Asbestos**.

7.5 Change in Business

Any change in the nature of the **Insured's Business** which:

7.5.1 Occurred during the **Period of Insurance**; and

7.5.2 Was known by the **Insured**, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of **Injury** or **Damage** for which indemnity is provided by this Policy.

For the purposes of this exclusion, where the **Insured** is a corporate body, the knowledge of any director or officer of the **Insured** shall be deemed to be the knowledge of the **Insured**.

7.6 Contractual Liability

7.6.1 Liability assumed under the terms of a contract, agreement, guarantee or warranty unless, and then only to the extent that, the **Insured** would have been liable in the absence of such contract, agreement, guarantee or warranty; or

7.6.2 Liability assumed where the **Insured** may have been able to recover from another party but for an agreement between the **Insured** and such party where the **Insured** has waived, released or abandoned any right of recourse or recovery against any party.

7.7 Electronic Data

Injury, Damage, Advertising Injury or any other loss, cost or expense of whatsoever nature directly or indirectly caused by or resulting from or in connection with any actual or alleged:

7.7.1 Unauthorized or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of **Electronic Data**, including, but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information;

7.7.2 Violation of any statute, regulation, common law, or any other law regulating or protecting access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of **Electronic Data**.

This Exclusion applies to, among other things, damages or amounts associated with any notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other loss, cost or expense, whether incurred by the **Insured** or others, arising out of any access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information that is subject to this Exclusion.

However, this Exclusion will not apply to any resultant **Injury** as defined in Sub-Section 2.10.1 or **Damage** as defined in Sub-Section 2.5.1.

7.8 Faulty Workmanship

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

7.9 Fraud

Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the **Insured** or any person covered by Section 3 of this Policy.

7.10 Injury to Workers

Injury to any **Worker**, provided that if the **Insured**:

7.10.1 Is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such **Injury**;
or

7.10.2 Is not required to so insure or otherwise fund such liability by reason only that the **Injury** is to a person who is not a **Worker** or employee within the meaning of the relevant **Workers' Compensation Law** or the **Injury** is not an **Injury** which is subject to such law,

then this Policy will respond to the extent that the **Insured's** liability would not be covered under any such fund, scheme, policy of insurance or self-insurance arrangement had the **Insured** complied with its obligations pursuant to such Law.

7.11 Liquidated or Punitive Damages

Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.

7.12 Loss of Use

The loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- 7.12.1 A delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement; or
- 7.12.2 The failure of any **Product** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the **Insured** but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical **Damage** to or destruction of the **Product** after such **Product** has been put to use by any person or organisation other than the **Insured**.

7.13 Nuclear

Any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 7.13.1 Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission or fusion; or
- 7.13.2 The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

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

7.14 Pollution

- 7.14.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of **Pollutants**;
- 7.14.2 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of **Pollutants**;
- 7.14.3 Testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising **Pollutants** or their effect; or
- 7.14.4 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of **Pollutants** caused by any **Product** that has been discarded, dumped, abandoned or thrown away by others.

Provided that this Exclusion 7.14.1, 7.14.3, 7.14.4 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place during the **Period of Insurance** and outside of the United States of America, Canada and their respective protectorates and territories.

The total aggregate liability of the **Insurer** for all claims covered in any one **Period of Insurance** in respect of Exclusion 7.14 shall not exceed the **Limit of Indemnity** shown in the Schedule.

7.15 Product Guarantee

Any product guarantee or warranty given by or on behalf of the **Insured** but this exclusion shall not apply to the requirements of any Australian Federal, State or Territory legislation with respect to **Product** safety and information.

7.16 Professional Indemnity

The rendering of or failure to render professional advice or service or any error or omission connected therewith.

However, this Exclusion shall not apply to:

7.16.1 the **Insured's** liability in respect of **Injury, Damage, Advertising Injury** resulting from the provision of professional advice or services, or any error or omission in connection with the **Insured's Products**, which advice or professional service is not given for a fee; or

7.16.2 the rendering of first aid or medical services on the **Insured's** premises by persons employed by the **Insured**. For the purpose of this Sub-Section 7.16.2, medical services excludes advice or services provided by a qualified medical practitioner.

7.17 Property in Custody or Control

Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the **Insured** or otherwise in the **Insured's** care, custody or control other than:

7.17.1 Premises (or to contents thereof) temporarily occupied by the **Insured** for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical **Damage** to or destruction of that part of any premises or contents on which the **Insured** is or has been working if the physical **Damage** or destruction arises from such work;

7.17.2 Premises tenanted by the **Insured**;

7.17.3 Directors', employees' and visitors' clothing and personal effects; or

7.17.4 Other property not owned by the **Insured** temporarily in the **Insured's** possession provided:

7.17.4.1 No indemnity is granted for liability in respect of physical **Damage** to or destruction of that part of any property upon which the **Insured** is or has been working if the physical **Damage** or destruction arises from such work; and

7.17.4.2 The **Insurer's Limit of Indemnity** under this Sub-Section 7.17.4 does not exceed \$500,000 each and every **Occurrence** and in the aggregate for any one **Period of Insurance**.

Provided further that no indemnity is granted under this Policy in respect of liability assumed by the **Insured** under any contract or agreement which requires the **Insured** to effect material damage insurance on premises, property or goods not owned by the **Insured**.

7.18 Recall of Products

The withdrawal, recall, inspection, repair, adjustment, removal, replacement or loss of use of any **Product** or work completed for the **Insured** and/or the withdrawal or recall of any property of which such **Product** forms a part.

7.19 Reinstatement, Repair or Replacement of Products

7.19.1 **Damage** to any **Product** or any property of which such **Product** forms a part if such **Damage** is attributable to any defect therein or the harmful nature or unsuitability thereof, however this Exclusion shall not apply to **Damage** to other property resulting therefrom.

7.19.2 **Damage** to any part of any property that must be repaired, reconditioned, reinstated, corrected or replaced by reason of incorrect work performed by the **Insured** or on the **Insured's** behalf, or by reason of materials or equipment which are or are proved to be defective or inadequate in connection with such work, however this Exclusion does not apply to **Damage** resulting from such work.

7.20 Sanctions

Any coverage of whatsoever nature that is in violation of any applicable trade or economic sanctions, law or regulation including but not limited to sanctions administered and enforced by the United Nations, the United States Treasury Department's Office of Foreign Assets Control (OFAC), or under laws or regulations of the European Union, United Kingdom, New Zealand or Australia.

7.21 Terrorism

Injury, Damage, Advertising Injury or any other loss, cost or expense of whatsoever nature directly or indirectly caused by or resulting from or in connection with **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion also excludes any **Injury, Damage, Advertising Injury** or any other loss, cost or expense of whatsoever nature directly or indirectly caused by or resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to **Terrorism**.

If the **Insurer** alleges that by reason of this exclusion any **Injury, Damage, Advertising Injury** loss, cost or expense is not covered by this Policy, the burden of proving the contrary shall be upon the **Insured**.

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

7.22 Tobacco

Injury sustained due to the inhalation or ingestion of, or exposure to:

- 7.22.1 Tobacco or tobacco smoke; or
- 7.22.2 Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

7.23 Vehicles

The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the **Insured** of any **Vehicle** or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there exists a statutory scheme providing compensation for **Injury**, but this exclusion does not apply to:

- 7.23.1 **Injury** for which no indemnity is or would be available to the **Insured** under the said policy of compulsory liability insurance had the **Insured** complied with its obligations pursuant to that law requiring a policy of liability insurance to be in force;
- 7.23.2 **Injury** caused by the use of any tool or plant forming part of or attached to or used in connection with any **Vehicle** or trailer for which no indemnity is or would be available to the **Insured** under the said policy of compulsory liability insurance had the **Insured** complied with its obligations pursuant to that law requiring a policy of liability insurance to be in force;
- 7.23.3 **Damage** caused by the use of any tool or plant forming part of or attached to or used in connection with any **Vehicle** or trailer;
- 7.23.4 **Damage** to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any **Vehicle** or trailer or of the load carried thereon; or
- 7.23.5 **Damage** to any **Vehicle** or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the **Insured**) temporarily in the **Insured's** custody or control for the purpose of parking which **Damage** arises directly out of such parking.

7.24 War

Injury, Damage, Advertising Injury or any other loss, cost or expense of whatsoever nature directly or indirectly caused by or resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to war and military action, which include without limitation the following:

- 7.24.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or **Damage** to property by or under the order of any government or public or local authority;

7.24.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

7.24.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7.25 Workers' Compensation and Employment Practices

7.25.1 Any **Workers' Compensation Law**; or

7.25.2 The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or

7.25.3 **Employment Practices.**

Section 8

GENERAL CONDITIONS

8.1 Claims Condition

8.1.1 The **Insured** shall give written notice to the **Insurer** as soon as possible of any claim under this Policy, using the contact details in the Schedule, and shall give all such additional information as the **Insurer** may require.

8.1.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the **Insured** without the prior written consent of the **Insurer** who shall be entitled to take over the conduct in the name of the **Insured** of the defence or settlement of any claim or to prosecute in the name of the **Insured** for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the **Insured** shall give all such information and assistance as the **Insurer** shall require.

8.2 Titles, Headings and Plurals

This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear. References in the singular shall be deemed to include the plural and vice versa and words depicting any gender include reference to all other genders.

8.3 Deductible

The amount shown within the Schedule as a **Deductible** and/or self-insured retention is the first amount for all claims arising out of any one **Occurrence** which is to be borne by the **Insured** or any person covered by Section 3 of this Policy.

8.4 Discharge of Liability

The **Insurer** may at any time discharge its total liability to the **Insured** in respect of any one claim or series of claims arising from one **Occurrence** by paying to or on behalf of the **Insured**:

- 8.4.1 The total amount in respect of such claim to which the **Insured** is entitled to indemnity under this Policy;
- 8.4.2 The total amount sought by the claimant for such claim; or
- 8.4.3 The total amount for which such claim can be settled,

And in addition to such payment the **Insurer** will pay **Defence Costs** incurred up to the date of payment as provided for by Section 6 of this Policy.

Upon such payment, the **Insurer** shall relinquish conduct or control of such claim and be under no further liability under this Policy in connection with such claim including but not limited to **Defence Costs**.

8.5 Jurisdiction

This Policy shall be interpreted in accordance with the laws of the Australian State or Territory in which the contract is entered, and all claims for indemnity under this Policy shall be decided in accordance with those laws.

In the event of any dispute arising under this policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, the **Insured** will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

8.6 Reasonable Care

The **Insured** must:

- 8.6.1 Exercise reasonable care that only competent **Workers** and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- 8.6.2 Take all reasonable precautions to:
 - 8.6.2.1 Prevent **Injury, Damage and Advertising Injury**;
 - 8.6.2.2 Prevent the manufacture, sale or supply of defective **Products**; and
 - 8.6.2.3 Comply and ensure that its **Workers**, servants and agents comply with all statutory obligations, by laws or regulations imposed by any public authority for the safety of persons or property;
- 8.6.3 At its 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; and
- 8.6.4 At its own expense, assist and co-operate fully and promptly with the **Insurer** in the investigation, settlement or defence of any claim or matters relating or in connection thereto.

The amount of any benefit under this Policy for any liability caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which the **Insurer's** interests have been prejudiced thereby.

8.7 Premium Adjustment

Where the premium is provisionally based on the **Insured's** estimates, the **Insured** shall keep accurate records and within 60 days after expiry of the **Period of Insurance** declare such details as the **Insurer** requires and the premium shall be adjusted and any difference paid by or allowed to the **Insured** as the case may be subject to any minimum premium that may apply.

8.8 Cancellation

The **Insured** may cancel this Policy at any time by giving notice in writing to the **Insurer**.

The **Insurer** may cancel this Policy at any time where:

- 8.8.1 It is entitled to do so pursuant to the *Insurance Contracts Act 1984* (Cth) or any amendments thereto;
- 8.8.2 The **Insured** has failed to notify the **Insurer** of any specific act or omission where such notification is required under the terms or conditions of this Policy; or
- 8.8.3 The **Insured** has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers the **Insurer** to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by the **Insurer** shall take effect either at the time when another contract of insurance between the **Insured** and the **Insurer** or some other insurer (being a contract that is intended by the **Insured** to replace this Policy) is entered into or at 4pm on the 3rd business day after the date on which notice was given to the **Insured** by the **Insurer**, whichever is the earlier.

Upon cancellation by the **Insured** during the **Period of Insurance** a pro-rata refund will be paid of up to 80% of the net premium for the unexpired **Period of Insurance**. Upon cancellation by the **Insurer**, a pro-rata refund of premium will be allowed for the unexpired **Period of Insurance**.

8.9 Notices

Where the Insured comprises more than one person or company, it is agreed that the Insured referred to in the Schedule shall be the agent of each of the other insured persons or companies or others indemnified by Section 3 for the purposes of receiving any notice of cancellation pursuant to this General Condition, or any other notice, statement, document or information relating to this Policy. Where the Insured has a broker, nothing shall restrict the Insurer's right to notify the broker as agent of the Insured.

8.10 General Condition

Where this Policy provides indemnity to the Insured which is prohibited by law, this Policy shall be varied by operation of this General Condition so that this Policy does not respond to the extent that indemnity is prohibited by law.

8.11 Assignment

No assignment of interest under this policy shall bind the **Insurer** until our consent is endorsed herein. However, should any **Insured** die or be adjudged bankrupt or insolvent, the **Insurer** will consent to the assignment of this policy to such **Insured's** legal representative provided that written notice is given to us within a reasonable time after the date of such death, bankruptcy or insolvency.

8.12 Fraudulent Acts

If any claim upon this policy be in any respect fraudulent, or if any fraudulent means or devices be used by the **Insured** to obtain a benefit under this Policy, or if any **Damage** the subject of any claim under this Policy be occasioned by a wilful act of the **Insured** or with their connivance, all benefit under this Policy for any claim connected therewith shall be forfeited.

8.13 Disclosure of Insureds

Where the **Insured** is comprised of more than one legal entity, information supplied to us shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to us or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such entities.

8.14 Breach of Duty

Any and all **Insured** and any persons deriving benefit under this insurance are jointly liable and responsible for any breach of any terms of this Policy and/or misrepresentation and/or non-disclosure and/or fraud. For the avoidance of doubt this clause survives avoidance of the Policy.

8.15 Waiver of Subrogation

The **Insurer** waives all rights of subrogation under this Policy against:

8.15.1 any corporation or organisation the majority of whose capital stock is owned or controlled by the **Insured**.

8.15.2 any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this Policy. Where such corporation, organisation or person is protected from such loss by any other policy of indemnity or insurance, the **Insurer's** right of subrogation is not waived to the extent and up to the amount of such other Policy.

8.16 Goods and Services Tax

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

When a payment is made under this Policy as **Compensation** instead of payment for the acquisition of goods, services or other supply, we will reduce

the amount of the payment by the amount of any input tax credit that the **Insured** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

This Policy is valid only if attaching to a signed and current Policy Schedule including any applicable endorsements and it is signed and dated by a duly authorised representative of the Insurer.