

## What is Not Covered

We shall not be liable to indemnify **You** in respect of:

### Advertising Liability

Liability for **Advertising Liability** arising from:

- a) offences committed prior to the **Period of Insurance**;
- b) offences made at the direction of **You** with knowledge of the illegality or falsity thereof;
- c) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- d) incorrect description of the price of **Your Products**, goods or services, infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of **Your Products**, goods or services sold, offered for sale or advertised, but this exclusion does not apply to titles or slogans;
- e) failure of **Your Products**, goods or services to conform with advertised performance, quality, fitness or durability; or
- f) ) any of **You** whose business is advertising, broadcasting, publishing or telecasting.

### Aircraft and Watercraft

Liability for **Personal Injury** or **Property Damage** arising from the ownership, possession, operation, use or legal control by **You** of:

- a) any **Aircraft**; or
- b) any **Watercraft** or vessel exceeding eight (15) meters in length.

Provided that b) of this exclusion shall not apply to claims arising out of:

- (i) **Watercraft** used in operations carried out by any independent contractors for whose conduct **You** may be held liable;
- (ii) **Hovercraft** owned and operated by others and used by **You** for **Business** entertainment;
- (iii) **Watercraft** owned by others and used by **You** for **Business** entertainment.

### Aircraft Products

Any liability arising out of the selling, leasing, hiring or manufacture and/or supply of parts and/or products that are used with **Your** knowledge in **Aircraft** or any aerial device.

### Asbestos

Liability for **Personal Injury**, **Property Damage** or **Advertising Liability** caused by, arising out of, or in connection with, the use or presence of asbestos.

### Contractual Liability

Liability for **Personal Injury** or **Property Damage** or **Advertising Liability** to the extent such liability has been assumed under an agreement unless such liability:

- a) arises from a provision in a contract for lease of real or personal property other than a provision which obliges **You** to effect insurance or provide indemnity in respect of the subject matter of contract; and
- b) arises from a provision in a written contract with any public supplier for the supply of water, gas, electricity, fuel, sewerage or waste removal services, telephone and communications services, except contracts with such suppliers for the performance of work by **You**; or
- c) would have attached in the absence of such agreement; or
- d) is specifically allowed by **Our** written endorsement; or
- e) is assumed by **You** under a warranty of fitness or quality, or is implied by law, in respect of **Your Products**.

### Damage to Your Products

Liability for:

- a) physical damage to or destruction or loss of **Your Products** or any part of **Your Products** arising out of them or any part of them; or
- b) loss of use of any tangible property caused by physical damage to or destruction or loss of **Your Products** or any part of **Your Products** arising out of them or any part of them.

This exclusion does not apply to **Your Products** repaired, serviced or treated by **You** after **Your Products** were originally sold, supplied or distributed by **You**.

### Electromagnetic fields

Any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from electromagnetic fields (EMF) or electromagnetic interference (EMI).

### Electronic Data

Loss of, damage to or destruction of any **Electronic Data**.

### Employer's Liability

- a) Liability for **Personal Injury** to any of **Your Employees** arising out of, or in the course of their employment in **Your Business**;
- b) Liability for **Personal Injury** to any person who is deemed to be **Your Employee** pursuant to any legislation relating to workers' compensation;
- c) Liability for claims which **You** are entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not **You** are a party to such policy of insurance;
- d) Liability imposed by the provisions of any workers' compensation legislation or any industrial award or agreement or determination;
- e) Any liability howsoever or whatsoever for claims related to or arising from **Employment Practices**.

Provided that exclusions a), b) and c) above do not apply to the extent that **Your** legal liability would not be covered under any such policy of insurance or fund set up pursuant to or required by any

legislation relating to workers' compensation had **You** complied with **Your** obligations pursuant to such law.

## Faulty Workmanship

Any liability for the cost of performing, completing, correcting or improving any work done or to be undertaken by **You**.

## Fines and Punitive Damages

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

## Internet Operations

- a) Any liability, loss, damage or destruction arising, directly or indirectly, out of or in any way connected with **Your Internet Operations**.
- b) Part a) above does not apply to **Personal Injury** or **Property Damage** arising out of any material which is already in print in support of **Your Products**, including but not limited to product use and safety instructions or warnings, and which is also published by **You** via **Your Internet Operations**.
- c) Notwithstanding b) above, **We** shall not be liable to indemnify **You** in respect of **Personal Injury** or **Property Damage** arising out of any other advice or information published by **You**, via **Your Internet Operations**, that is used for the purpose of attracting customers.

For the purpose of this exclusion, **Your 'Internet Operations'** means:

- (i) use of electronic mail systems by **Your** employees, including part time and temporary staff and others within **Your Business**;
- (ii) access through **Your** network to the world wide web or a public internet site by **Your** employees including part-time and temporary staff and others within **Your Business**;
- (iii) access to **Your** intranet (meaning internal company information and computer resources) which is made available through the world wide web for **Your** customers or others outside **Your Business**; and
- (iv) the operation and maintenance of **Your** web-site.

## Libel and Slander

Liability arising out of the publication or utterance of a libel or slander:

- a) made prior to the **Period of Insurance**; or
- b) made at **Your** direction with the knowledge of the falsity thereof; or
- c) related to advertising, publishing or printing, broadcasting or telecasting activities conducted by or on behalf of **You**.

## Loss of Use

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

- a) a delay in or lack of performance by or on **Your** behalf of any contract; or
- b) the failure of any products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by **You**. However, this does not apply to loss of use of other tangible property resulting from the sudden, unexpected and unintended physical injury to or destruction of **Your Products** after such **Products** have been put to use by any person or organisation other than **You**.

## Motor Vehicles

Liability for **Personal Injury** or **Property Damage** arising out of the ownership, possession, or use by **You** of any **Vehicle**:

- a) which is registered or which is required under any legislation to be registered; or
- b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is affected).

Exclusions a) and b) above do not apply to claims:

- c) for **Personal Injury** where:
  - (i) that compulsory liability insurance or statutory indemnity does not provide indemnity; and
  - (ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by **You** of legislation relating to **Vehicles**;
- d) arising out of and during the loading or unloading of goods to or from any **Vehicle**;
- e) caused by or arising from the operation or use of any **Vehicle** which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by **You** or on **Your** behalf within the confines of **Your** premises;
- f) ) caused by or arising out of the use of:
  - (i) any **Vehicle** whilst being used as a tool; or
  - (ii) plant forming part of any **Vehicle** being used as a tool within the confines of **Your** premises or at any **Worksite**; or
- g) for **Property Damage** arising out of the movement by **You** or by any **Employee(s)** of **Yours** of any **Vehicle** or trailer not belonging to **You** which is interfering with access to or from **Your** premises or any site where **You** are carrying out work.
- h) for **Property Damage** caused by or arising out of the movement of any **Vehicle** (which is required to be conditionally registered in accordance with the law of any State or Territory in Australia) in the event of **Your** inadvertent and unintentional failure to effect conditional registration

## North American Jurisdiction

- a) Legal proceedings brought within the United States of America and/or Canada or any of their territories or protectorates;
- b) The enforcement of any judgment or award obtained within or determined pursuant to the laws of the United States of America and/or Canada or any of their territories or protectorates; or
- c) Legal proceedings in which the laws of the United States of America and/or Canada or any of their territories or protectorates are applicable even if only in a limited respect.

This exclusion does not apply to claims resulting from the acts, errors or omissions of an employee of the **Named Insured** who normally resides in Australia while such employee is temporarily travelling on behalf of the **Named Insured** outside Australia.

## Nuclear

Liability for **Personal Injury** or **Property Damage** of whatsoever nature directly or indirectly caused or contributed to by or arising from ionising radiation, or contamination by radioactivity from nuclear fuel or from any nuclear waste. For the purpose of this exclusion combustion shall include any self-sustaining process of nuclear fission.

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

## Pollution

- a) Liability for **Personal Injury**, **Property Damage** or **Advertising Liability** caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater) but this exclusion does not apply if the actual discharge, dispersal, release or escape:
  - (i) is neither reasonably expected nor intended by **You**; and
  - (ii) is the consequence of a sudden and instantaneous cause which takes place at a clearly identifiable point in time during the **Period of Insurance**.
- b) Liability for any costs or expenses incurred in the preventing, removing, nullifying, or cleaning up any discharge, dispersal, release or escape as described in a) above, unless such costs or expenses are consequent upon an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identifiable point in time during the **Period of Insurance** and results in **Personal Injury**, **Property Damage** or **Advertising Liability** and is not otherwise excluded by this **Policy**; or Provided that **Our** total aggregate liability during any one **Period of Insurance** in respect of all claims arising out of such **Personal Injury**, **Property Damage** or **Advertising Liability** or such costs or expenses shall not exceed the **Policy Limit** stated in the **Schedule**.

## Product Recall

Liability for damages claimed for the withdrawal, inspection, repair, replacement or loss of use of **Your Products**.

## Professional Errors and Omissions Liability

Liability for the rendering of or failure to render professional advice or service by **You** or error or omission connected therewith, but this exclusion does not apply to:

- a) the rendering or failure to render professional medical advice by **Medical Persons** employed by **You** to provide first aid and other medical services on **Your** premises; or
- b) **Your** liability in respect of **Personal Injury** or **Property Damage** resulting from the provision of professional advice or services, or any error or omission in connection with **Your Products** which is not given for a fee.

## Property in Physical or Legal Control

Liability arising out of or in any way connected with **Property Damage** to property which **You** own, lease, hire, is loaned or rented to **You**, or is otherwise in **Your** physical or legal control other than:

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

## Sanctions

Liability in respect of which and to the extent that such cover, payment, service, benefit and/or any **Business** or activity of **Yours** would violate any applicable trade or economic sanctions, law or regulation.

## Terrorism

Liability for **Personal Injury** or **Property Damage** directly or indirectly caused by or contributed to, by, or arising from or happening through or in connection with any act of **Terrorism**.

## War

Liability for **Personal Injury** or **Property Damage** directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (with or without the declaration of war), civil war, rebellion, insurrection, military or usurped power.