



QBE Insurance (Australia) Limited

# Victor Insurance Broadform Liability

Policy Wording



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## Introduction

### About Marsh Advantage Insurance

Marsh Advantage Insurance Pty Ltd (ABN 31 081 358 303), Australian Financial Services Licence (AFSL) No 238369 (Marsh Advantage Insurance). Marsh Advantage Insurance is a subsidiary of Marsh Inc. Marsh Inc. is a world leader in delivering risk and insurance services and solutions to clients.

Global risk management consulting, insurance broking and insurance program management services are provided for businesses, professional services organisations and private clients under the Marsh Advantage Insurance name.

Marsh Advantage Insurance's ultimate parent is Marsh & McLennan Companies, Inc. (MMC) which is a public company listed on the New York, Chicago and London stock exchanges.

### About Victor Insurance

Victor Insurance Pty Ltd (Victor Insurance) is an underwriting agency and acts on behalf of QBE Insurance (Australia) Limited ABN 78 003 191 035 AFS Licence No 239545. Victor Insurance is an Authorised Representative (No. 403803) of Marsh Pty Ltd ABN 86 004 651 512 AFS Licence No 238983 (Marsh). Victor Insurance is a subsidiary of Marsh, which is part of the Marsh & McLennan Companies (MMC) group of companies.

Victor Insurance can be contacted at:

Phone – (02) 8864 7688

Address – One International Towers, 100 Barangaroo Avenue, Sydney NSW 2000

Post – PO Box H176, Australia Square NSW 1215

### The Insurer (QBE)

The insurer of this Policy is QBE (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545) (QBE). In this Policy the insurer is called "We", "Us" or "Our".

### About QBE Australia

QBE Insurance (Australia) Limited ABN 78 003 191 035 AFSL 239545 is a member of the QBE Insurance Group Limited ABN 28 008 485 014 (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the largest insurers and reinsurers in the world.

### About Echelon

Echelon Australia Pty Limited ABN 96 085 720 056 (Echelon) is wholly owned subsidiary of Marsh and a business of Marsh & McLennan Companies (MMC). Echelon is a national company with offices in all major capitals and strategic regional centres. Echelon consultants will actively support the claims process with a view to resolve outstanding claims as quickly as possible by providing direct access to relevant specialists and industry experts.

Claims are lodged via - Echelon Claims Services at GPO Box 1693 Adelaide SA 5001

Phone: 1800 640 009 Fax: (08) 8235 6448

### Policy Schedules

Policy Schedules are a record of Your specific insurance covers. When You receive them, please check the Policy Schedules carefully and inform Marsh Advantage Insurance immediately if You feel anything needs to be changed. In order that You always have a complete up-to-date record of Your cover, Marsh Advantage Insurance will send You a new set of Policy Schedules whenever Your insurance cover is renewed or changed in any way.

### Policy Wordings

The Policy Wording details all the terms and Conditions of cover. In certain cases, Additional Benefits, Definitions, Exclusions and Conditions have been included or varied to suit the requirements of Your Business. In these cases Endorsements are included with the relevant Policy Wording and are shown on Your Policy Schedule.

### Important

**You are only covered for those sections which are shown on the policy schedule or in respect of which a certificate of insurance has been issued.**

## General Insurance for Broadform Liability Policy

The information contained in this part is general information only and does not form part of Your insurance contract with Us. The Policy Terms and Conditions in the remainder of this document contain the details of Your contract.

### Duty of Disclosure - What you must tell us

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

### Non-Disclosure

If You fail to comply with Your duty of disclosure We may be entitled to reduce Our liability under this Policy in respect of a claim or may cancel this Policy. If Your non-disclosure is fraudulent, We may also have the option of avoiding this Policy from its beginning.

### Privacy

#### Victor Insurance Privacy Policy

Victor Insurance Pty Ltd (Victor Insurance) is committed to the protection of your privacy and is bound by the Australian Privacy Principles (APPs) for the handling of your information. Full details of how, when and from where we collect, hold, use and disclose personal information is available in our Privacy Policy by accessing our website (<https://www.victorinsurance.com.au/privacy-policy>) or by obtaining a copy from our Privacy Officer (One International Towers, 100 Barangaroo Ave, Sydney, NSW, 2000, or on telephone number (02) 8864 7688 or email: [privacy.australia@marsh.com.au](mailto:privacy.australia@marsh.com.au)). If you have any questions or comments in relation to Privacy including how we deal with any privacy complaints or you wish to access your personal information or update it please contact our Privacy Officer.

When you give us personal or sensitive information about other individuals, we rely on you to have made or make them aware that you will or may provide that information to us, the purposes we may use it for, the types of third parties that we disclose it to and how they can access it. If it is sensitive information, we rely on you to have obtained their consent on these matters. If you have not done either of these things, you must tell us before you provide the relevant information.

#### QBE Privacy Policy

We'll collect personal information when you deal with us, our agents, other companies in the QBE group or suppliers acting on our behalf. We use your personal information so we can do business with you, which includes issuing and administering our products and services and processing claims. Sometimes we might send your personal information overseas. The locations we send it to can vary but include the Philippines, India, Ireland, the UK, the US, China and countries within the European Union.

Our Privacy Policy describes in detail where and from whom we collect personal information, as well as where we store it and the full list of ways we could use it. To get a free copy of it please visit [qbe.com.au/privacy](http://qbe.com.au/privacy) or contact QBE Customer Care.

It's up to you to decide whether to give us your personal information, but without it we might not be able to do business with you, including not paying your claim.

## The General Insurance Code of Practice

QBE Australia is a signatory to the General Insurance Code of Practice.

The Code aims to:

- Commit us to high standards of service
- Promote better, more informed relations between us and you
- Maintain and promote trust and confidence in the general insurance industry
- Provide fair and effective mechanisms for the resolution of complaints and disputes between us and you
- Promote continuous improvement of the general insurance industry through education and training.

## Resolving complaints & disputes

At QBE we're committed to providing you with quality products and delivering the highest level of service.

We also do everything we can to safeguard your privacy and the confidentiality of your personal information.

### Something not right?

We know sometimes there might be something you're not totally happy about, whether it be about our staff, representatives, products, services or how we've handled your personal information.

#### Step 1 – Talk to us

If there's something you'd like to talk to us about, or if you'd like to make a complaint, speak to one of our staff. When you make your complaint please provide as much information as possible. They're ready to help resolve your issue.

You can also contact our Customer Care Unit directly to make your complaint. Our aim is to resolve all complaints within 15 business days.

#### Step 2 – Escalate your complaint

If we haven't responded to your complaint within 15 days, or if you're not happy with how we've tried to resolve it, you can ask for your complaint to be escalated for an Internal Dispute Resolution (IDR) review by a Dispute Resolution Specialist.

The Dispute Resolution Specialist will provide QBE's final decision within 15 business days of your complaint being escalated, unless they've requested and you've agreed to give us more time.

#### Step 3 – Still not resolved?

If you're not happy with the final decision, or if we've taken more than 45 days to respond to you from the date you first made your complaint, you can contact the Australian Financial Complaints Authority (AFCA). AFCA is an ASIC approved external dispute resolution body.

AFCA resolves insurance disputes between consumers and insurers, at no cost to you. QBE is bound by AFCA decisions - but you're not. You can contact AFCA directly and they'll advise you if your dispute falls within their Rules.

##### *Disputes not covered by the AFCA Rules*

If your dispute doesn't fall within the AFCA Rules, and you're not satisfied with our decision then you may wish to seek independent legal advice.

##### *Privacy complaints*

If you're not satisfied with our final decision and it relates to your privacy or how we've handled your personal information, you can contact the Office of the Australian Information Commissioner (OAIC).

## Contacting QBE's CCU, AFCA or the OAIC

### How to contact QBE Customer Care

Phone	1300 650 503 (Monday to Friday from 9am to 5pm, Sydney time, except on public holidays). Calls from mobiles, public telephones or hotel rooms may attract additional charges.
Email	<ul style="list-style-type: none"> <li>• <a href="mailto:complaints@qbe.com">complaints@qbe.com</a>, to make a complaint.</li> <li>• <a href="mailto:privacy@qbe.com">privacy@qbe.com</a>, to contact us about privacy or your personal information.</li> <li>• <a href="mailto:customercare@qbe.com">customercare@qbe.com</a>, to give feedback or pay a compliment.</li> </ul>
Post	Customer Care, GPO Box 219, Parramatta NSW 2124

### How to contact AFCA

Phone	1800 931 678 (free call)
Email	<a href="mailto:info@afca.org.au">info@afca.org.au</a>
Online	<a href="http://www.afca.org.au">www.afca.org.au</a>
Post	Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001

### How to contact the OAIC

Phone	1300 363 992 Calls from mobiles, public telephones or hotel rooms may attract additional charges.
Email	<a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>
Online	<a href="http://www.oaic.gov.au">www.oaic.gov.au</a>

## The Policy and Victor Insurance's service

If you have a complaint about this Policy, or about Victor Insurance's service, you can contact Victor Insurance at:

The Dispute Resolution Manager  
Victor Insurance Pty Ltd  
PO Box H176, Australia Square NSW 1215  
Telephone: (02) 9290 8000

## Money Back Promise

If You are not completely happy with this contract, We will try to help with Your concerns, or You can return it with the Policy Schedule for a refund - We will refund the full amount of the premium if you do this within (30) days of cover starting and no event for which a claim could be made has occurred.

## Renewal Procedure

Before this contract expires, We will send a Renewal Notice or Expiry Notice advising the cover details, the sum insured and the amount of premium payable to renew this contract. It is important that You check all the details on the Policy Schedule including the sums insured before renewing the Insurance Contract to satisfy Yourself they are the full replacement values.

## Who Is Insured Under This Policy

The "Insured", "You", "Your", means the party or parties named as the Insured in this Policy Schedule.

## Policy Terms and Conditions for Broadform Liability

### Our Agreement with You

This Policy is a legal contract between You and Us. You pay Us the premium, and We provide You with the cover You have chosen as set out in the Policy, occurring during the Period of Insurance shown on Your Policy Schedule or any renewal period.

The amount of any Excess that applies to Your Policy is shown on the Policy Schedule.

The Exclusions and General Conditions apply to all Sections of this Policy.

### Your Policy

Your Policy consists of the Policy terms and Conditions and the Policy Schedule We give You.

Please read the Policy carefully, and satisfy Yourself that it provides the cover You require.

If You need more information about any part of Your Policy, please ask Marsh Advantage Insurance, Your Financial Services Provider.

### Paying Your Premium

You must pay Your premium, any adjustments of premium, GST and other amounts charged for this Policy and any renewal, extension or endorsement to this Policy by the due date. If We do not receive the premium by this date or Your payment is dishonoured this Policy will not operate and there will be no cover.

### How Goods and Services Tax Affects any Payments We Make

The amount of premium payable by You for this Policy includes an amount on account of the GST on the premium.

When We pay a claim, Your GST status will determine the amount We pay.

When You are:

- (a) not registered for GST, the amount We pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST.
- (b) registered for GST, We will pay the sum insured/limit of indemnity or the other limits of insurance and where You are liable to pay an amount for GST in respect of an acquisition relevant to Your claim (such as services to repair a Damaged item insured under the Policy) We will pay for the GST amount.

We will reduce the GST amount We pay by the amount of any input tax credit to which You are or would be entitled if You made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through Your Business Activity Statement (BAS).

You must advise Us of Your correct Australian Business Number & Taxable Percentage.

Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of Your claim is less than the sum insured/limit of indemnity or the other limits of insurance cover, We will only pay an amount for GST (less Your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover Your loss, We will only pay the GST relating to Our settlement of the claim.

We will (where relevant) pay You on Your claim by reference to the GST exclusive amount of any supply made by any Business of Yours which is relevant to Your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is Your entitlement to an Input Tax Credit on Your premium as a percentage of the total GST on that premium.

# Broadform Liability Insurance Policy

## 1. Cover

### 1.1 Insuring Clause

When You have paid or agree to pay the premium stated in the Policy Schedule, then subject to the terms, Conditions and Exclusions contained in or endorsed to this Policy We will pay to or on Your behalf all sums provided by this Policy which You shall become legally liable to pay as Compensation for Personal Injury, Property Damage and/or Advertising Liability happening during the Period of Insurance and caused by an Occurrence within the Geographical Limits as stated herein in connection with Your Business.

### 1.2 Limit of Liability

Our Limit of Liability in respect of any one claim or series of claims for Personal Injury, Property Damage or Advertising Liability caused by or arising out of one Occurrence shall not exceed the Limit of Liability stated in the Policy Schedule. All Personal Injury, Property Damage or Advertising Liability arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.

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

Provided that the Limit of Liability in respect of Occurrences in North America will be inclusive of Supplementary Payments and will apply in the aggregate to all claims in any one Period of Insurance.

### 1.3 Supplementary Payments

We will pay in addition to the applicable Limit of Liability

- (a) all expenses incurred by Us, all costs recoverable from or awarded against You in any suit defended by Us and all interest on the entire amount of any judgment which occurs after the entry of the judgment and before We have paid or tendered or deposited in Court that part of the judgment which does not exceed Our Limit of Liability thereon.
- (b) expenses incurred by You for first aid to others at the time of an Occurrence for Personal Injury covered by this Policy (other than medical expenses prohibited by Law).
- (c) reasonable expenses incurred by You at Our request in assisting Us in the investigation or defence of any claim excluding loss of earnings.
- (d) all legal costs incurred by You with Our consent for Your representation at:
  - (i) any Coroner's Inquest or Inquiry;
  - (ii) any proceedings in any Court of Summary Jurisdiction in connection with liability insured under this Policy.

We shall have the right and duty to defend in Your name any suit against You seeking compensation on account of such Personal Injury, Property Damage or Advertising Liability even if the allegations of the claim or suit are groundless, false or fraudulent and may make such investigation and settlement of any claim or suit as is deemed expedient. We shall not be obliged to pay any claim or judgment or to defend any suit after we have discharged our liability under this Policy.

### 1.4 Excess

You shall pay the amount of the Excess shown in the Policy Schedule in respect of each claim. This amount will be deducted from the total amount otherwise payable by Us, including Supplementary Payments.

## 2. Definitions

Some of the words in this Policy have a special meaning. Wherever the following words or terms are used in the Policy, their meaning is as set out below:

### 2.1 Advertising Liability

means liability arising out of one or more of the following:

- (a) libel, slander or defamation;
- (b) infringement of copyright or of title or slogan;
- (c) piracy or unfair competition or idea misappropriation under an implied contract;
- (d) invasion of privacy,

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of Your advertising activities or any advertising activities conducted on Your behalf in the course of advertising the Products, goods or services.

### 2.2 Aircraft

means any vessel, craft or thing made or intended to fly persons or property in or through the air, atmosphere or space.



### 2.3 Business

means the Business stated in the Policy Schedule and shall include:

- (a) property owners and/or occupiers;
- (b) all past or present activities associated with the Business as stated in the Policy Schedule;
- (c) the activities of any canteen, social, sports, welfare and/or child care organization or first aid, medical, fire or ambulance services referred to in Definition 2.21. (f) 'You', Your or Insured';
- (d) private work undertaken by Your Employees referred to in Definition 2.21 (a) and 2.21. (b) 'You', Your or Insured' for any director, partner or executive officer of the Insured.

### 2.4 Compensation

means monies paid or agreed to be paid by judgment, award or settlement for Personal Injury, Property Damage and/ or Advertising Liability. Provided that Compensation is only payable in respect of an Occurrence to which this Policy applies.

### 2.5 Electronic Data

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

### 2.6 Employee

means any person engaged in the Business under a contract of service or apprenticeship with any of the persons insured as referred to in Definition 2.21. 'You, Your or Insured'.

### 2.7 Geographical Limits

means anywhere in the world but does not apply to any liability for claims:

- (a) arising in North America in respect of:
  - (i) ownership, occupancy or tenancy of any building, land or structure;
  - (ii) performance of manual labour;
  - (iii) any of Your Products knowingly exported by You, Your agents or servants.
- (b) made or actions instituted under the law of any country, state or territory (outside the Commonwealth of Australia) that requires such liability to be insured or secured with an Insurer or organization licensed in that country, state or territory to grant such insurance or security.

### 2.8 Hovercraft

means any vessel, craft or thing designed to transport persons or property over land or water, supported on a cushion of air.

### 2.9 Medical Persons

means medical doctors, medical nurses, dentists and first aid attendants.

### 2.10 North America

means the United States of America and Canada and any state or territory incorporated in, or administered by, or from, either the United States of America or Canada

### 2.11 Occurrence

means an event including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury, Property Damage or Advertising Liability neither expected nor intended from Your standpoint. 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 the number of claimants shall be deemed to be one Occurrence.

### 2.12 Period of Insurance

means the period of time commencing on the 'From' date stated in the current Policy Schedule and ending on the 'To' date stated in that Policy Schedule.

### 2.13 Personal Injury

means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury;
- (b) the effects of false arrest, false imprisonment, malicious prosecution and humiliation;
- (c) the effects of the publication or utterance of defamatory or disparaging material libel, slander, defamation of character;
- (d) wrongful entry or wrongful eviction or other invasion of the right of private occupancy;

- (e) assault and battery, not committed by You or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property;

which occurs during the Period of Insurance.

## 2.14 Policy Schedule

means the schedule, insurance certificate, renewal invitation or revised Policy Schedule issued by Us, whichever of those is the most current.

## 2.15 Products Liability

means Personal Injury or Property Damage:

- (a) caused by any defect in, or the harmful nature of any of Your Products;
- (b) resulting from any defect or deficiency in any direction or advice given or intended to be given by You concerning the use or storage of Your Products;

after Your Products have passed from Your physical or legal control.

## 2.16 Property Damage

means:

- (a) physical damage to or destruction or loss of tangible property which occurs during the Period of Insurance and any loss of use of that property resulting therefrom;
- (b) loss of use of tangible property which has not been physically damaged or destroyed or lost which is caused by physical damage to or destruction or loss of other tangible property which occurs during the Period of Insurance.

## 2.17 Public Liability

means liability covered by this Policy including Advertising Liability, but does not include Products Liability.

## 2.18 Tool of Trade

means any Vehicle which has any tool or plant forming part of or attached to or used in connection with it while such tool or plant is engaged on a work site, but does not include:

- (a) Vehicles whilst in transit to or from any worksite;
- (b) Vehicles used for transport or haulage.

## 2.19 Vehicle

means any type of machine on wheels or on self-laid tracks made or intended to be propelled other than by manual or animal power or any trailer or other attachment made or intended to be drawn by such machine.

## 2.20 Watercraft

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

## 2.21 You, Your or Insured

Means each of the following to the extent as set out hereunder:

- (a) You, the Insured stated in the Policy Schedule;
- (b) All Your subsidiary companies (now or hereafter constituted) of the Insured named on the Policy Schedule whose place of incorporation is within Australia;
- (c) Any director, executive officer, Employee, voluntary unpaid worker, work experience students, partner or shareholder of Yours or of any company designated in clause (b) above but only while acting within the scope of their duties in such capacity;
- (d) Any principal by whatever name in respect of the liability of such principal arising out of the performance by You or by any company designated in clause (b) above of any contract or agreement for the performance of work for such principal, to the extent required by such contract or agreement;
- (e) Any office bearer or member of social and/or sporting clubs formed with Your consent (other than those designated in clause (d) above) in respect of claims arising from duties of or connected with activities of any such club;
- (f) Any incorporated or unincorporated associations or organisations (now or hereafter constituted) organised by You, or Your employees with Your knowledge and consent for the purpose of providing canteen, social, sports, welfare and/or child care organizations or first aid, medical, fire or ambulance services and/or educational activities for such employees and/or their families;
- (g) At Your request as designated in clause (a) and (b) above any director, partner, or executive officer in respect of private work undertaken by such Insured's employees for such director, partner or executive officer.

## 2.22 Your Products

means anything, including any packaging or container thereof (after it has ceased to be in Your possession or under Your control) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by You.

### 3. Exclusions

The following Exclusions will apply to this Policy.

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

#### 3.1 Advertising Liability

Liability to pay Compensation for Advertising Liability arising from:

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

#### 3.2 Aircraft, Watercraft and Hovercraft

Claims arising out of the ownership, maintenance, possession, operation, use or legal control of:

- (a) any Aircraft;
- (b) any Hovercraft;
- (c) any Watercraft or vessel exceeding eight (8) metres in length.

#### 3.3 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.

#### 3.4 Asbestos

Claims directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

#### 3.5 Contractual Liability

Liability to pay Compensation for Personal Injury or Property Damage assumed by You in respect of Products Liability under any contract, warranty or agreement except to the extent that such liability would have otherwise been implied by law. This Exclusion does not apply to those written contracts designated in the Policy Schedule or to liability assumed by You under a warranty of fitness or quality as regards Your Products.

#### 3.6 Defamation

For defamation,

- (a) made prior to this Policy commencing on the date stated in the Policy Schedule;
- (b) made by You or at Your direction with the knowledge of the falsity thereof;
- (c) if Your Business is related to advertising, publishing, printing, broadcasting or telecasting activities conducted by You or on Your behalf.

#### 3.7 Electronic Data

Liability to pay Compensation in respect of any claim of whatsoever nature which consists of or arises directly or indirectly out of or in connection with:

- (a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data and/or software;
- (b) error in creating, amending, entering, deleting or using Electronic Data and/or Software;
- (c) total or partial inability or failure to receive, send, access or use Electronic Data and/ or software for any time or at all;
- (d) communication, display, distribution or publication of Electronic Data, provided that this Exclusion (d) does not apply to Personal Injury or Advertising Liability arising therefrom.

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

### 3.8 Employment Liability

- (a) Liability for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in Your service, or through the breach of any duty owed to that person, where You:
  - (i) are indemnified or entitled to be indemnified (either in whole or in part) in respect of claims for damages under a policy of insurance (which expression includes arrangements made by You to provide accident insurance for Your workers under a licence to self insure) arranged (whether required by law or not) in accordance with any workers' compensation legislation or accident compensation legislation;
  - (ii) would have been indemnified or entitled to be indemnified had You arranged a policy of insurance as required by such legislation;
- (b) Liability for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in Your service in Western Australia, other than a person of whom You are deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Rehabilitation Act 1981 (WA);
- (c) Liability for mental anguish suffered by any person arising out of, or in the course of, that persons employment by or service to You;
- (d) Liability for Personal Injury arising out of harassment, libel, slander, defamation or humiliation of, or discrimination against, any person while in Your service or while employed by You;
- (e) Liability of a type in respect of which indemnity previously would have been provided under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current Period of Insurance;

This Exclusion does not apply to the liability of others assumed by You under a written contract where the contractual liability has been notified and specifically accepted by Us.

### 3.9 Faulty Workmanship

Any liability for the cost of performing, completing, correcting, rectifying, replacing or improving any work done or undertaken by You or on Your behalf.

### 3.10 Fines, Penalties or Damages

- (a) punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages
- (b) fines, penalties.

### 3.11 Loss of Use

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

- (a) a delay in or lack of performance by You or on Your behalf of any contract or agreement;
- (b) failure of any Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You; however this Exclusion 3.11 (b) shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after such Products or work have been put to use by any person or organisation other than You.

### 3.12 Pollution

- (a) Personal Injury or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water. Provided that this Exclusion (a) does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place and which occurs outside of the United States of America or Canada;
- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution. Provided that this Exclusion (b) does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury and/or Property Damage and which occurs outside of the United States of America or Canada;
- (c) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any of Your Product that has been discarded, dumped or abandoned by You or on Your behalf.

Our liability under this Exclusion (a) and (b) in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of Pollutants during any one Period of Insurance will not exceed the Limit of Liability.

For the purposes of this Exclusion 'Pollutants' means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

### 3.13 Products Defect

for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products.

However, this Exclusion 3.13 shall be interpreted to apply with respect to damage to that part and only that part of such product to which the damage is directly attributable.

### 3.14 Product Recall

Liability to pay Compensation for damages claimed for the withdrawal, recall, inspection, repair, replacement, or loss of use of Your Products.

### 3.15 Professional Liability

Liability to pay Compensation for the rendering of or failure to render professional advice or service by You or any related error or omission connected therewith, but this Exclusion does not apply to:

- (a) Personal Injury and/or Property Damage arising from 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;
- (b) Personal Injury or Property Damage arising from such rendering of or failure to render professional advice or service, providing such professional advice or service is not given for a fee.

### 3.16 Property in Custody or Control

Liability to pay Compensation for Property Damage to:

- (a) property owned by You;
- (b) property leased, rented or in Your physical or legal control.

This Exclusion does not apply to liability for Property Damage to:

- (i) premises which are leased or rented by You or temporarily occupied by You for the purpose of Your Business;
- (ii) any Vehicle (not belonging to or used by You or on Your behalf) in Your physical or legal control where such Property Damage occurs whilst any such vehicle is in a car park owned or operated by You;
- (iii) any property not under lease or rental agreement in Your physical or legal control up to a limit of \$100,000 (or any other amount if specified in the Policy Schedule) for any one Occurrence.

### 3.17 Radioactivity

Liability directly or indirectly caused by, contributing to or arising from:

- (a) ionising radiation, or contamination by radioactivity from nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion combustion shall include any self-sustaining process of nuclear fission;
- (b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

### 3.18 Terrorism

Loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion also excludes loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

For the purpose of this Exclusion 'Act of Terrorism' means an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

### 3.19 Vehicle

Liability to pay Compensation for Personal Injury or Property Damage arising out of the ownership, possession, operation, use or legal control by You of any Vehicle:

- (a) which is registered;
- (b) in respect of which insurance is required by virtue of any legislation relating to motor vehicles;
- (c) which is otherwise insured in respect of the same liability.

Provided that this Exclusion does not apply to:

- (i) Personal Injury where compulsory liability insurance or a statutory scheme does not provide indemnity for reasons that do not involve a breach by You of legislation relating to Vehicles;
- (ii) Personal Injury or Property Damage arising out of and during loading and unloading of goods to and from any Vehicle;
- (iii) Property Damage caused by or arising out of the use of Vehicles whilst being operated or used by You as a Tool of Trade;
- (iv) Property Damage to Vehicles not belonging to You or used by You or on Your behalf, but in Your physical or legal control at Your situation for the purpose of servicing, repairing or testing as part of Your Business up to a limit of \$100,000 (or any amount as specified in the Policy Schedule) for any one Occurrence.

### 3.20 War

War, invasion, act of foreign enemy, hostilities or war-like operations (with or without the declaration of war), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority.

### 3.21 Sanctions limitation and exclusion clause

The Insurer will not be liable to provide any cover, pay any claim or provide any benefit under this Policy, to the extent that to do so may expose the Insurer to any sanction, prohibition, or restriction under United Nations resolutions or any applicable trade or economic sanctions, laws or regulations of any country.

## 4. General Conditions

These General Conditions apply to all sections of this Policy:

### 4.1 Adjustment of Premium

If the first or renewal premium for this Policy or part thereof shall have been calculated on estimates furnished by You, then You shall keep an accurate record containing all particulars relative thereto and shall at all times allow us to inspect such records. You shall within thirty (30) days after expiry of each Period of Insurance furnish to us such particulars and information as We may require. The premium for such period shall thereupon be adjusted and any difference paid or allowed to You as the case may be subject to receipt and retention of any minimum premium charged by Us.

### 4.2 Cancellation

- (a) This policy may be cancelled at any time at Your request in writing, in which case We will retain (or be entitled to) the customary short-period rate for the time this Policy has been in force.
- (b) We may also cancel this policy by giving You written notice to that effect where:
  - (i) You or any person who was at any time the Insured failed to comply with the duty of utmost good faith;
  - (ii) the person who was the Insured at the time when this policy was entered into failed to comply with the duty of disclosure;
  - (iii) the person who was the Insured at the time when this policy was entered into made a misrepresentation to Us during the negotiations for the policy but before it was entered into;
  - (iv) You or any person who was at any time the Insured failed to comply with a provision of this Policy, including a provision with respect to the payment of the premium;
  - (v) You made a fraudulent claim under this policy or any other contract of insurance (whether with us or some other insurer) that provided insurance cover during any part of the period during which this policy provides insurance cover;
  - (vi) You failed to notify Us of any specific act or omission where such notification is required under the terms of this Policy;
  - (vii) You acted in contravention of or omitted to act in compliance with any condition of this policy which empowers Us to refuse to pay, or reduce Our liability in respect of a claim, in the event of such contravention or omission.
- (c) Our notice of cancellation takes effect at 4.00 pm in the afternoon 14 business days after the day the notice was given to You, being the earlier of the following times:
  - (i) if it is delivered to You or Marsh Advantage Insurance personally
  - (ii) if it is posted to Your address last known to Us, three Business days after having been posted by Us.
- (d) In the event that We cancel this policy we will repay on demand a rateable proportion of the premium for the unexpired Period of Insurance from the date of cancellation.

Notwithstanding the cancellation or termination of the Policy You shall furnish such particulars as We may require for the adjustment of premium as aforesaid.

### 4.3 Changes of information previously advised

You must provide Us with immediate written notice of every change that materially varies any of the facts or circumstances existing at the commencement of this policy which increase the risk of Personal Injury, Property Damage or Advertising Liability that comes to Your knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be Your knowledge.

We may at Our discretion, for what We consider to be an increase of risk:

- (a) charge additional premium;
- (b) amend or impose additional terms or conditions
- (c) cancel the policy.

If You want to make a change to this policy, the change becomes effective when We

- (d) agree to it;
- (e) give You a new Policy Schedule and/or an endorsement schedule detailing the change.

If You do not provide such notification before the happening of an Occurrence giving rise to a claim under this policy, then, subject to the Insurance Contracts Act 1984, We may refuse to pay a claim, either in whole or in part.

#### 4.4 Claims

Notice in writing shall be given to Us as soon as possible of every Occurrence, claim, writ, summons, impending proceedings, impending prosecution and/or inquest in respect of which there may arise a liability under this policy.

- (a) You shall not without Our written consent make any admission, offer, promise or payment in connection with any incident, Occurrence or claim which is likely to result in someone claiming against You. If We desire We shall be entitled to take over and conduct in Your name the defence or settlement of any claim and may make such investigation, negotiation and settlement of any claim or suit as We deem expedient. You must co-operate by giving Us any statements, documents or assistance We require. This may include giving evidence in any legal proceedings.
- (b) You shall use the best endeavours to preserve any property, products, appliances, plant or other things which might prove necessary or useful by way of evidence in connection with any claim, and so far as may be reasonably practicable no alteration or repair shall be effected without Our consent until we shall have had the opportunity of inspection.
- (c) We shall be entitled to prosecute in Your name at our expense and for Our benefit any claim for indemnity for damages or otherwise.
- (d) We shall have full discretion in the conduct of any proceedings in connection with any claim and You shall give all information and assistance as We may require in the prosecution, defence or settlement of any claim.
- (e) In the event of an Occurrence, You shall promptly take at your expense all reasonable steps to prevent other Personal Injury, Property Damage or Advertising Liability arising out of the same or similar conditions, but such expense shall not be recoverable under this policy.
- (f) We shall be entitled to attend any inquest in respect of which there may arise liability under this policy.

#### 4.5 Cross Liability

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

#### 4.6 Discharge of Liabilities

We may at any time pay to You in respect of all claims against You arising directly or indirectly from the one source or original cause the amount of the liability or such other amount specified in respect thereof (after deduction of any sum or sums already paid by Us which sum or sums would reduce the amount of our unfulfilled liability in respect thereof) or any lesser sum for which the claim or claims can be settled and upon such payment We shall relinquish conduct or control of and be under no further liability under this policy in connection with such claim or claims except for costs, charges or expenses recoverable from You in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently) or incurred by Us or by You with Our written consent prior to the date of such payments.

#### 4.7 Inspection of property

We shall be permitted but not obligated to inspect Your property and operations at any time. Neither our right to make inspections or the making thereof or any report thereon shall constitute an undertaking on behalf of or for Your benefit or others, to determine or warrant that such property or operations are safe. We may examine and audit Your books and records at any time during the Period of Insurance and extensions thereof and within three (3) years after the final termination of this policy, as far as they relate to the subject matter insured.

#### 4.8 Insurance Arranged by Principal

If You enter into an agreement with any other party (who for the purpose of this clause is called the "Principal") pursuant to which the Principal has agreed to provide a policy of insurance that is intended to indemnify You for any loss or liability arising out of the performance of the said agreement then We will (subject to the terms and conditions of this Policy) only indemnify You for loss or liability not covered by the policy of insurance provided by the Principal.

#### 4.9 Insurance Contracts Act

Nothing contained in this policy shall be construed to reduce or waive either your or our privileges, rights or remedies available under the Insurance Contracts Act, 1984 as amended.

#### 4.10 Jurisdiction

Should any dispute arise between You and Us over the application of this policy, such dispute shall be determined in accordance with the laws of the state or territory of Australia in which the policy was issued.

#### 4.11 Other Insurance

If You make a claim under this policy in respect of an Occurrence recoverable under this Policy which Occurrence is or may be covered in whole or in part by any other Insurance, then You must advise Us of the full details of such other insurance when making a claim under this policy. Subject to the Insurance Contracts Act 1984, We reserve the rights to seek contribution from the other Insurer(s).

#### 4.12 Preventing Our right of recovery

If You have entered into any agreement which excludes or limits a right which You may have against any party, then, subject to the Insurance Contracts Act 1984, We will not be liable for any claim under this policy to the extent of such Exclusion or limitation.

#### 4.13 Reasonable care

You shall:

- (a) take all reasonable precautions to:
  - (i) prevent Personal Injury or Property Damage or Advertising Liability;
  - (ii) prevent the manufacture, sale or supply of defective products;
  - (iii) comply and ensure that Your workers, servants and agents comply with all Statutory Obligations, By-Laws or Regulations imposed by any Public Authority in respect thereof for safety of persons and property;
- (b) at Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency of which defect or deficiency You have knowledge or have reason to suspect.

#### 4.14 Subrogation

In the event of payment under this policy to or on Your behalf we shall be subrogated to all Your rights of recovery against all persons and organisations and You shall execute and deliver instruments and papers and do all that is necessary to assist in the exercise of such rights.

### 5. Endorsement

**5.1** It is noted and agreed that, Notwithstanding Condition 4.12 and 4.14 of this Policy. We will waive any right of subrogation against any Insured where they are entitled to indemnity under this Policy.

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