

# Broadform Liability Policy



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# Introduction

## Applying for Cover with Us

Prior to this Policy coming into effect You or Your insurance intermediary have provided Us with information in support of Your request for Cover with Us. The information that You have provided to Us is referred to as Your Application for this Policy.

You must ensure the information provided to Us is accurate and that You have complied with Your duty of disclosure. We have relied on Your Application to decide whether to issue this Policy and, if We do so or have, the terms and conditions upon which We do/did so.

When You have paid the Premium, or agreed to pay the Premium, We will issue You with a Schedule and this policy-booklet. If payment of the Premium as stated in the Schedule is not made then there is no Cover provided under this Policy.

## Your Policy

Your Policy consists of:

- > the Policy wording;
- > a Schedule; and
- > other documentation indicating a change to Your Policy, including Endorsements.

The Policy wording, together with the Schedule, form the legal contract of insurance between You and Us.

This policy-booklet consists of:

- > important information that You need to know before You take out a Policy with Us; and
- > the Policy wording, which forms part of Your legal contract with Us and tells You:
  - i. what Your Policy Covers;
  - ii. what Your Policy does not Cover;
  - iii. Excesses that apply to claims under this Policy; and
  - iv. conditions that relate to Your Cover and to claims You may make under this Policy.

The Schedule will state the details of the insurance Cover which You have selected and which are particular to You and includes any Endorsement that changes or limits the Cover stated in the Policy wording.

When We change Your Policy details during the Period of Cover We will send Your insurance intermediary a new Schedule. This Schedule will be titled 'Endorsement' and will contain details of the Endorsement to Your Policy.

We will also provide Your insurance intermediary with a new Schedule at each renewal of Your Policy Cover.

We will only provide insurance Cover for the Period of Cover stated in the Schedule.

Please read this policy-booklet together with the Schedule and any accompanying documents carefully and keep them in a safe place for future reference.

## Complaints and Disputes Resolution

We have a formal complaints and dispute resolution process that is fair, efficient and accessible to all Our clients. This service is free of charge to You.

If You do not agree with any decision We make in relation to Your insurance Policy please contact Your insurance intermediary or Us indicating the nature of the complaint.

We will then resolve or attempt to resolve Your complaint or refer it to Our internal Dispute Resolution Manager.

## General Insurance Code of Practice

We are a signatory to and fully support the General Insurance Code of Practice. The objectives of this Code are to commit insurers and the professionals they rely upon to higher standards of customer service.

Please contact Us if You or Your insurance intermediary would like further information about the Code of Practice. Alternatively, You can view the Code of Practice at [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

## Privacy

We are committed to complying with privacy laws and protecting Your personal information. By entering into a contract with Us, You agree to:

- > the collection, use and disclosure of Your personal information to evaluate, effect, manage and administer Your insurance Cover, financial service or product provided to You by Us, any related company, or in conjunction with Us. This applies to personal information provided previously, currently and in the future;
- > the collection, use and disclosure of Your personal information to inform You of other products and services offered by Us, Our related entities or Your representative;
- > the use and disclosure of Your personal information to test and improve upon the systems used to manage Your Policy or financial product;
- > the collection from, and/or disclosure of, Your personal information to a third party which may include Your insurance intermediary, Your employer and Our service providers (including but not limited to other insurers, medical practitioners, lawyers, claims consultants, loss assessors and investigators), where this is relevant for the administration of Your Policy, financial product or a claim under this Policy;

- > the disclosure of Your personal information to overseas recipients, where relevant, such as some of Our reinsurers; and
- > the disclosure of Your personal information to a person, regulatory bodies or other entities if We are required or permitted to do so by law.

If You do not provide the requested personal information We may not be able to evaluate, effect, manage or administer Your Policy and You may also be in breach of Your duty of disclosure.

We will ensure that Your personal information is accurate, up-to-date and complete. You or Your insurance intermediary may access personal information We hold about You by contacting Us.

If You or Your insurance intermediary would like to make a complaint about how We have handled Your personal information please contact Us and speak to one of Our staff who will assist You.

Our privacy policy contains further information on access, correction and complaints handling procedures and can be accessed online at [www.acerta.com.au/privacy-principles](http://www.acerta.com.au/privacy-principles). Alternatively, please contact Us and We will arrange for a copy of the privacy policy to be provided to You.

# Important Information

The following important information applies to this Policy. Please read this information carefully and if You are in any doubt as to how this information may affect You please contact Your insurance intermediary or Us and ask for an explanation.

## Alteration of Risk

This Policy Covers Your Business as You have represented it to Us. It is important for You or Your insurance intermediary to advise Us immediately of any changes to Your Business that may result in an increased risk of liability to third parties.

For example, You should advise Us when there is a change in:

- > Your Business name;
- > the nature of Your Business activities;
- > Your address or the location of risk from where You conduct Your Business;
- > Your or Your Business' products or services not previously disclosed to Us;
- > Your or Your Business' financial status due to being placed into bankruptcy, receivership, liquidation or administration or becoming insolvent or wound-up; or
- > any other change whereby the risk Covered under this Policy is increased.

## Your Duty of Disclosure

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

You have this duty until We agree to insure You.

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

You do not need to tell Us anything that:

- > reduces the risk We insure You for; or
- > is common knowledge; or
- > We know or should know as an insurer; or
- > We waive Your duty to tell Us about.

## If You Do Not Tell Us Something

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

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

## Excess

An Excess may apply to Your claim under this Policy. The amount of any Excess applicable to this Policy is stated in the Schedule or in this policy-booklet.

## GST and Claim Payments to You

In the event of a claim under this Policy:

- > if You are not registered for GST We will reimburse You the GST component in addition to any other amount We pay You; or
- > if You are registered for GST You will need to claim the GST component from the Australian Taxation Office. Where You cannot claim the GST component in full We will reimburse You the unclaimed GST component in addition to the amount We pay You.

Your Policy contains claims conditions in respect of:

- > GST and claim payments for compensation;
- > GST and claim payments for legal and other costs; and
- > Our limitation for GST payment.

You should read the claims conditions contained in this policy-booklet to make sure You understand both Our and Your obligations in respect of how GST will be treated in respect of the payment of claims under this Policy.

## Limit of Liability

Cover under this Policy is limited to the Limit of Liability stated in the Schedule. The Limit of Liability applicable to this Policy represents the full extent of Our maximum liability to You in relation to all claims under this Policy.

## Premiums

Your Premium will be subject to the inclusion of:

- > GST in accordance with relevant taxation legislation; and
- > stamp duty as imposed by the relevant legislation of each Australian State or Territory.

## Waiver of Rights and Subrogation

### Waiver of Rights

No provision of this Policy, either in whole or in part, shall be considered to have been waived by Us unless the provision is expressly stated in writing to be waived by Us.

Where We do waive Our rights to subrogation that waiver will be stated in this Policy.

### Subrogation – Preventing Our Right to Recovery

If You have agreed not to seek compensation from another person who is liable to compensate You for any liability which is Covered under this Policy We may not Cover You under this Policy for that liability.

# Your Policy

This policy-booklet together with the Schedule We provide to You and any Endorsement form Your insurance Policy with Us.

## Our Agreement with You

We agree to provide You with the Cover set out in this Policy which You have selected and which is stated in the Schedule.

The Cover is in force for the Period of Cover stated in the Schedule.

You have paid or agreed to pay Us the Premium set out in the Schedule for the Period of Cover.

## Exclusions, General Conditions, Claims Conditions and Definitions

This Policy has:

- > exclusions;
- > general conditions;
- > claims conditions; and
- > definitions;

that will apply to this Policy.

## Grammatical Forms

A number of the defined words or terms in this Policy have different grammatical forms. The meaning given to them in their definition applies specifically to one of their grammatical forms but their other grammatical forms have a corresponding meaning.

## Headings

This policy-booklet contains headings which are used for reference only and must not be used when interpreting this Policy.

## Singular and Plural Words

In this Policy, a reference to the singular includes the plural and vice versa.

# Your Cover

## What is Covered

### Public Liability

We will Cover You for any Claim in respect of Your legal liability to pay compensation for:

- a. Bodily Injury;
- b. Property Damage; or
- c. Advertising Liability;

happening during the Period of Cover and caused by an Occurrence within the Territorial Limits in connection with Your Business:

but excluding Products Liability.

### Products Liability

We will Cover You for any Claim in respect of Your legal liability to pay compensation for:

- a. Bodily Injury;
- b. Property Damage; or
- c. Advertising Liability;

happening during the Period of Cover and caused by an Occurrence within the Territorial Limits in connection with Your Products:

but excluding Public Liability.

### Defence Costs and Other Costs and Expenses

Where We agree to provide Cover to You for a Claim under this Policy We will also pay in addition to the Limit of Liability the following amounts in respect of that Claim:

- a. all Defence Costs;
- b. legal costs awarded against You and any interest accruing after entry of legal judgment but before We have paid or deposited into court that part of any legal judgment which does not exceed the Limit of Liability;
- c. all reasonable expenses necessarily incurred by You for rendering first aid to others at the time of Bodily Injury;  
but excluding medical expenses We are prohibited by law from paying;
- d. all reasonable expenses necessarily incurred by You for the temporary repairs, shoring up or protection of property of others that has been damaged as a result of an Occurrence; and
- e. all reasonable Defence Costs incurred by You for Your representation in any coroner's court or court of summary jurisdiction.

## Limit of Liability

### Public Liability

Our maximum liability under Public Liability in respect of any one Claim shall not exceed the Limit of Liability amount stated in the Schedule for Public Liability.

The Limit of Liability amount for Public Liability is exclusive of Defence Costs payable under this Policy:

#### Provided that:

- i. We will not be liable to defend or to continue to defend any Claim or pay or continue to pay any Defence Costs associated with such defence once the Limit of Liability amount has been exhausted;
- ii. if a payment exceeding the Limit of Liability for Public Liability has to be made to settle or dispose of a Claim Our liability to pay any amounts under Defence Costs and other costs and expenses will be limited to that proportion of the total of those Defence Costs and other costs and expense amounts as the Limit of Liability bears to the total amount paid to dispose of the Claim; and
- iii. the Limit of Liability amount for Public Liability will not be reduced by the Excess amount payable by You.

### Products Liability

Our maximum liability under Products Liability in respect of any one Claim involving Your Products shall not exceed the Limit of Liability amount stated in the Schedule for Products Liability.

Our maximum liability for all Claims in the aggregate under this Policy during the Period of Cover involving Your Products will be limited to an amount not exceeding the Limit of Liability amount for Limit of Liability in the Aggregate any one Period of Cover.

The Limit of Liability amount for Products Liability is exclusive of Defence Costs payable under this Policy:

#### Provided that:

- i. We will not be liable to defend or to continue to defend any Claim or pay or continue to pay any Defence Costs associated with such defence once the Limit of Liability amount has been exhausted;
- ii. if a payment exceeding the Limit of Liability for Products Liability has to be made to settle or dispose of a Claim Our liability to pay any amounts under Defence Costs and other costs and expenses will be limited to that proportion of the total of those Defence Costs and other costs and expense amounts as the Limit of Liability bears to the total amount paid to dispose of the Claim; and
- iii. the Limit of Liability amount for Products Liability will not be reduced by the Excess amount payable by You.



## Additional Benefits

We will, subject to all of the provisions of this Policy, also Cover You in relation to the following additional benefits.

Our liability will be limited to the amount stated in the relevant additional benefit or, if no amount is stated, the Limit of Liability amount stated in the Schedule.

## Claim Preparation Costs

When We agree to Cover You for a Claim under this Policy We will also Cover You for Your necessary and reasonable out-of-pocket expenses, not including Defence Costs, incurred by You at Our request in the preparation of Your defence to such Claim:

### **Provided that:**

We will not reimburse You for any loss of earnings, salary or other lost remuneration or associated expenses.

Our maximum liability under this additional benefit for any one Claim during the Period of Cover and for all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding \$25,000 unless otherwise stated in the Schedule.

No Excess will apply to this additional benefit unless otherwise stated in the Schedule.

## Conferences, Training, Teaching

We will Cover You for any Claim in respect of Your legal liability to pay compensation for Bodily Injury, Property Damage or Advertising Liability happening during the Period of Cover and caused by an Occurrence within the Territorial Limits in connection with Your attendance at any professional conference, training or teaching facility during the course of Your Business.

## Cross Liabilities

Where more than one legal entity or natural person comprises You under this Policy each entity or natural person will be considered as separate and distinct from each other and the word 'You' will apply to each entity and each natural person as if a separate Policy had been issued to each entity or natural person:

### **Provided that:**

nothing in this clause will increase Our Limit of Liability in respect of any one Claim or for all Claims in the aggregate made during the Period of Cover.

## Good Samaritan Acts

We will Cover Your legal liability in respect of any Claim as a result of Good Samaritan Acts happening during the Period of Cover in connection with Your Business.

## Joint Venture Liability

We will Cover You for Your legal liability in respect of any Claim for Bodily Injury, Property Damage or Advertising Liability happening during the Period of Cover and caused by an Occurrence within the Territorial Limits in connection with Your participation in any joint venture during the course of Your Business:

### **Provided that:**

We will not Cover any of the other joint venture parties.

# Exclusions

The following exclusions apply to this Policy. Please read them carefully.

This Policy does not Cover and We will not be liable for any claim under this Policy for, directly or indirectly arising out of or in any way connected with:

## Advertising Liability

Advertising Liability arising from:

- a. statements made by You or at Your direction with knowledge that such statements or any part of those statements are incorrect, false, misleading or deceptive;
- b. breach of contract other than inadvertent misappropriation of advertising ideas, concepts or designs;
- c. infringement of a trademark, service mark or trade name on any of Your Products, goods or services sold, offered for sale or advertised:  
but does not include infringement of titles or slogans;
- d. a failure of Your Products or services to conform with advertised performance, quality, fitness or durability;
- e. any incorrect description of the price of Your Products, goods or services;
- f. Your advertising, publishing, broadcasting or telecasting activities where Your Business is that of advertising, publishing, broadcasting or telecasting; or
- g. acts committed or alleged to have been committed prior to the Period of Cover.

## Aircraft

- a. Your ownership, maintenance, service, repair, operation, use or legal control of an Aircraft or Aircraft landing area; or
- b. any of Your Products that are used or incorporated in or connected with Aircraft or which You could be reasonably expected to know are or would be incorporated or used in Aircraft.

Aircraft landing area includes any land, building or structure in an area where Aircraft take off or land or are housed, maintained, operated or refuelled.

## Asbestos

the existence or presence of asbestos in whatever form or quantity.

## Computer, Electronic Equipment, Electronic Data and/or Software

- a. total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- b. error in creating, amending, entering, deleting or using Electronic Data; or
- c. total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;

from any cause whatsoever regardless of any other contributing cause or event contributing concurrently or in other sequence:

### Provided that:

- i. this exclusion shall not apply to Claims for Bodily Injury or Property Damage caused by or arising out of the ownership, possession, operation, control or use by You of Electronic Data; and
- ii. such Claims do not arise out of or are in any way connected with any of Your Products:

### Provided further that:

We will not Cover You for the costs of restoration, repair, recovery, reconfiguration or loss of Electronic Data.

## Construction

- a. any alteration, renovation or addition work to or of any buildings or structure owned by You where the total contract price or estimated commercial value of such works exceeds \$500,000; or
- b. Property Damage resulting from vibration or removal or weakening of, or interference with, support to land, buildings or any other property in connection with any alteration, renovation or addition work to or of any buildings or structure owned by You.

## Contractual Liability

liability assumed:

- a. under any contract, warranty, guarantee, indemnity or agreement unless such liability would have attached to You regardless of the existence of the contract, warranty, guarantee, indemnity or agreement; and/or
- b. which is outside the normal conduct of Your Business:

### Provided that:

this exclusion will not apply when such liability:

- i. is assumed under any statutory guarantee of fitness or quality regarding Your Products as required by any legislation in Australia in respect of product safety;

- ii. has been specifically agreed to by Us and stated in the Schedule; or
- iii. in respect of Public Liability Cover only, is assumed under any Incidental Contract.

### Defamation, Libel, Slander

the publication or utterance of a libellous, slanderous or defamatory remark:

- a. made prior to the Period of Cover;
- b. made by You or at Your direction and/or with knowledge of its falsity; or
- c. related to advertising, broadcasting, publishing, telecasting activities or on-line social media activities conducted by You or on Your behalf.

### Employer's Liability

- a. Bodily Injury to any Employee arising out of or sustained in the course of their employment with You;
- b. Bodily Injury to any individual who is deemed to be Your Employee pursuant to any workers' compensation legislation or similar law or who is deemed to be Your Employee at common law;
- c. Bodily Injury to an Employee for which You are indemnified or entitled to be indemnified under any policy of insurance or self-insurance licence arrangement required to be taken out pursuant to any workers' compensation legislation or accident compensation legislation, whether or not You are a party to such policy;
- d. liability imposed by the provisions of any workers' compensation legislation; or
- e. liability imposed by the provisions of any industrial award, agreement or determination.

### Employment Practices Liability

any wrongful or unfair dismissal, discrimination, harassment of any kind, misleading or deceptive representation, mis-statement, denial of natural justice, defamation, demotion or failure to promote or hire, relating to or in respect of:

- a. the employment; or
- b. the prospective employment;

of any person by You:

#### Provided that:

this exclusion shall not apply to the additional benefit Free Telephone Legal Advice.

### Faulty Workmanship

the cost of performing, re-performing, correcting, improving, rectifying, repairing, replacing or completing any work undertaken by You or on Your behalf.

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

- a. fines and/or penalties;
- b. liquidated damages, punitive, exemplary or aggravated damages or additional damages resulting from the multiplication of compensatory damages; or
- c. non-compensatory damages or taxes.

### Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts

any actual or alleged:

- a. dishonest, fraudulent, criminal or malicious act or conduct;
- b. wilful act or intentional conduct intended to cause loss, damage, harm or liability or committed with a reckless disregard for the consequences thereof; or
- c. wilful or intentional breach of any regulation, statute or other law, contract or duty;

committed by You or any person acting with Your knowledge, consent or connivance.

### Hovercraft

- a. Your ownership, maintenance, service, repair, operation, use or legal control of a Hovercraft or Hovercraft landing area; or
- b. any of Your Products that are used or incorporated in or connected with Hovercraft or which You could be reasonably expected to know are or would be incorporated or used in Hovercraft.

Hovercraft landing area includes any land, building or structure in an area where Hovercraft take off or land or are housed, maintained, operated or refuelled.

### Jurisdiction and Territorial Limits

- a. any event or any actual or alleged act, Bodily Injury or Property Damage happening in the United States of America or Canada;
- b. any Claim, action or matter brought in a court outside of Australia;
- c. any Claim, action or matter brought in a court within Australia to enforce a judgment handed down by a court outside of Australia; or

- d. any Claim, action or matter where You have agreed to submit to the legal jurisdiction of a court outside of Australia:

**Provided that:**

clause a. shall not apply in respect of:

- i. Your Products exported to the United States of America or Canada without Your knowledge;
- ii. the presence of Your directors or Employees temporarily visiting the United States of America or Canada at Your direction but only to the extent that they are engaged in non-manual or non-supervisory work during such visit; or
- iii. the Cover provided under additional benefits 'Conferences, Training, Teaching' and/or 'Good Samaritan Acts'.

### Loss of Use

loss of use of real or tangible property that has not been physically damaged, destroyed or lost as a result of:

- a. a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- b. the failure of Your Products to meet the level of performance, quality, fitness or durability warranted or represented by You:

**Provided that:**

clause b. of this exclusion will not apply to loss of use of other real or tangible property not being Your Products resulting from sudden and accidental physical loss, destruction or damage to any of Your Products after Your Products have been put to use by any person or organisation other than You.

### Nuclear Material

- a. ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- b. the radioactive, toxic, explosive or other hazardous properties or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c. any weapon or device employing atomic or nuclear fission and/or fusion or other reaction or radioactive force or matter;
- d. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter; or
- e. nuclear weapons material:

**Provided that:**

this exclusion will not apply to any claim under this Policy arising from the use of radioisotopes when used away from the place where such are made or produced and used solely for the purpose of medical, industrial or scientific services in the conduct of Your Business.

### Pollution and/or Contamination

- a. the actual or threatened discharge, dispersal, release, seepage, migration or escape of any Pollutant or harmful substance into or upon any property, land, watercourse, body of water or the atmosphere;
- b. costs and expenses incurred in the prevention, removal, nullifying or clean-up of contamination or pollution or harmful substance caused by Pollutants into or upon any property, land, watercourse, body of water or the atmosphere; or
- c. the actual or threatened discharge, dispersal, release, seepage, migration or escape of any contamination, Pollutant or harmful substance occurring in the United States of America, Canada or any other territory coming within or subject to the jurisdiction of the courts of the United States of America or Canada:

**Provided that:**

- i. clauses a. and b. above shall not apply where the discharge, dispersal, release or escape of any contamination, pollution or harmful substance was sudden, identifiable, unexpected and unintended and took place in its entirety at a specific time and place; and
- ii. in such circumstances Our total aggregate liability for any one Claim and all Claims Covered under this Policy in connection with Pollutants or harmful substances shall not exceed the Limit of Liability amount stated in the Schedule for Public Liability or the Limit of Liability amount stated in the Schedule for Products Liability. We will not Cover You for more than one Limit of Liability for all such Claims

### Product Defect

damage to Your Products if the damage arises from:

- a. any defect contained within Your Products;
- b. Your Products' harmful nature or unsuitability for intended purpose; or
- c. Your Products' inherent ineffectiveness:

**Provided that:**

this exclusion shall not apply to any resultant damage to third party goods caused by Your Products that are found to be defective, harmful, unsuitable or ineffective.

## Product Recall

any recall, including but not limited to the withdrawal, inspection, repair, replacement, adjustment, removal, cost of investigation, disposal or loss of use of:

- a. any goods or products manufactured, sold, supplied or distributed by You; or
- b. any of Your Products or any other property of which Your Products form a part if Your Products are recalled or withdrawn from the market or from use because of any known or suspected defect or deficiency in Your Products.

## Professional Liability

the rendering of or failure to render professional advice or services or any act, error, omission or conduct connected with such professional advice or service by You:

### Provided that:

this exclusion will not apply in respect of Bodily Injury or Property Damage arising from the rendering or failure to render:

- i. professional advice or service given without charge by You in the conduct of Your Business; or
- ii. Good Samaritan Acts in the course of Your Business.

## Property in Care, Custody or Control

any damage to property owned by, leased, hired, on loan or rented to You or property in Your physical or legal control:

### Provided that:

this exclusion will not apply to:

- i. premises leased or rented by You for the carrying on of Your Business;
- ii. premises not owned, leased or rented by You but temporarily occupied by You for the purpose of carrying out work in connection with Your Business;
- iii. property temporarily in Your possession for the purpose of being worked upon however We will not Cover You for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work;
- iv. property belonging to Your directors, partners, proprietors, Employees or visitors;
- v. any Vehicle, or the contents thereof, not belonging to You, leased or hired by You or on loan or rented to You or used by You or on Your behalf or in Your custody or control while within a car park owned or operated by You for the purpose of parking;

but excluding:

any Vehicle or its contents in any part of a car park owned or operated by You or Your Business for fee or reward; or

- vi. any other property, being property not described in clauses i. to v. above, not owned, leased or rented by You but in Your temporary physical or legal control.

Our total liability payable for any one Claim and in the aggregate for all Claims during any one Period of Cover in respect of the Cover provided under clause vi. above will not exceed the amount stated in the Schedule for Care, Custody or Control.

## Railways, Tramways and Trolleybuses

the construction and/or operation and/or ownership and/or structural maintenance of railways, tramways or trolleybuses:

### Provided that:

this exclusion will not apply where rail loops, spurs or sidings are owned or operated by You in connection with Your Business for the sole purpose of loading or unloading of Your Products.

## Sanctions

the payment of such claim or provision of such Cover that would expose Us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or Australia. This exclusion applies notwithstanding anything contained in this Policy to the contrary.

## Terrorism

any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Property Damage, Bodily Injury or Advertising Liability or Claim or for any cost or expense including any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.

## Vehicle

Your ownership, possession, or use by You of any Vehicle:

- a. which is registered or required to be registered under any legislation; and
- b. for which compulsory liability insurance or statutory indemnity is required by law whether or not such insurance has been effected or a statutory indemnity provided:

**Provided that:**

this exclusion will not apply to:

- i. Bodily Injury:
  - > directly or indirectly arising out of or in any way connected with a Vehicle which does not require to be registered and have compulsory third party insurance or similar statutory indemnity under any legislation;
  - > directly or indirectly arising out of or in any way connected with a Vehicle which is registered under legislation and by legislation is not required to have compulsory third party insurance or similar statutory indemnity and does not have compulsory third party insurance or similar statutory indemnity; or
  - > where the compulsory liability insurance or statutory indemnity does not provide indemnity and the reason why that indemnity is not provided does not involve a breach by You of legislation relating to Vehicles;
- ii. liability caused by or arising out of the delivery or collection of goods to or from any Vehicle or during the loading and unloading of goods to or from any Vehicle;
- iii. Property Damage to any Vehicle, or the contents thereof, not belonging to You, leased or hired by You or on loan or rented to You or used by You or on Your behalf or in Your custody or control while within a car park owned or operated by You for the purpose of parking:  
  
but excluding any Vehicle or its contents in any part of a car park owned or operated by You or Your Business for fee or reward; or
- iv. Bodily Injury or Property Damage caused by or arising out of the use of any Vehicle including any tool or plant forming part of or attached to or used in connection with such Vehicle whilst being operated by You or on Your behalf as a Tool of Trade.

**War or Appropriation**

any war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation, nationalisation, requisition or destruction of or damage to property by or under the order of any government or public or local authority.

**Watercraft**

Your ownership, use or operation of any Watercraft exceeding ten (10) metres in length except where such Watercraft is owned or operated by others and used by You for Business entertainment.



# General Conditions

The following general conditions apply to this Policy. Please read them carefully.

It is important that these conditions are observed.

If You or any other person or party Covered under this Policy do not comply with these conditions the Cover under this Policy may be cancelled or We may reduce any claim payment to You or refuse to pay Your or their claim under this Policy.

## Alteration of Risk

You or Your insurance intermediary must advise Us immediately if, during the Period of Cover, there is a change in:

- a. Your Business name;
- b. the nature of Your Business activities;
- c. Your address or the location of risk from where You conduct Your Business;
- d. Your or Your Business' products or services not previously disclosed to Us;
- e. You or Your Business' financial status due to being placed into bankruptcy, receivership, liquidation or administration or becoming insolvent or wound-up; or
- f. any other change to the Business whereby the risk Covered under this Policy is increased.

We may cancel this Policy or alter the Premium and/or the terms of this Policy once You advise Us of the change. We may do this with effect from the date You knew, or should have known, of the change in Your Business or of the other increase in risk.

If You or Your insurance intermediary do not advise Us about a change in the Business or of other changes in the risk Covered under this Policy We may refuse to pay Your claim under this Policy.

## Cancellation

### Cancellation by You

You may cancel this Policy at any time by giving Us written notice.

### Cancellation by Us

We may cancel this Policy when We are entitled to do so in accordance with the Insurance Contracts Act 1984.

In the event of cancellation by You or by Us:

- a. We will retain from the Premium You have paid to Us an amount that represents the period You were Covered by Us up to the date of cancellation and refund the balance of the Premium paid by You; and

- b. We may deduct from Your refund amount any reasonable administrative and transaction costs incurred by Us that are reasonably related to the acquisition and termination of this Policy.

## Premium Funding

When the Premium paid to Us for this Policy has been funded by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney We may, at the request of the premium funding company, and after substantiation of the debt and default in payment by You has been made and proven to Us, cancel this Policy by giving You not less than three (3) business days written notice to that effect following which a refund of the proportionate part of the Premium applicable to the unexpired Period of Cover will be made to the premium funding company.

## Estates, Heirs, Legal Representatives

We agree to provide Cover to Your estate, heirs, representatives or assigns in the event of Your death, mental incapacity, insolvency or bankruptcy to the same extent as Cover would otherwise be available to You under this Policy.

## Hazardous Goods

You may only use and store hazardous goods which are usual to Your Business and You must use and store them in the manner and quantities permitted by law.

## Inspection of and/or Access to the Business Premises

You must provide Us with all reasonable access to the Business premises and make the premises available to Us or Our agent appointed by Us including but not limited to loss adjusters and legal advisers for inspection if You make a claim under this Policy or allow Us to otherwise inspect the Business premises after We have accepted Your insurance or after any renewal of or alteration to this Policy.

We may inspect Your property and Business premises after providing You with reasonable notice. Neither Our right to inspect nor Our failure to do so nor the making of any inspection shall constitute an undertaking by Us on behalf of or for Your benefit to determine or warrant that such property or operations are safe or in compliance with relevant laws.

## Joint Insurance – Non-imputation

Where this Policy Covers more than one of You:

- a. any misstatements or misrepresentations in Your Application for this insurance or in any information provided for any alteration to or renewal of this Policy or failure to comply with the duty of disclosure by one of You will not be imputed to any other of You where that other of You is innocent of and had no prior knowledge of the misstatement, misrepresentation or failure to comply with the duty of disclosure; or
- b. a failure of one of You to comply with all of the provisions of this Policy will not prejudice the Cover afforded to any other of You provided that other one of You is innocent of the conduct and advises Us in writing of all the facts relating to the failure as soon as possible after becoming aware of the failure.

## Jurisdiction

Any dispute arising under this Policy will be determined by Australian courts and in accordance with the laws of the State or Territory of Australia in which this Policy was issued.

## Notices and Authorisation

Where there is more than one of You Covered under this Policy the person or the legal entity stated in the Schedule as the Insured shall be deemed the agent for the purposes of receiving notices for all other persons or entities Covered under this Policy.

The Insured stated in the Schedule will also be authorised to act on behalf of all other persons or entities Covered in respect of all matters relating to this Policy.

## Other Insurance

Where a claim Covered under this Policy may also be covered under another policy of insurance (not issued by Us) then We reserve Our right to seek contribution from the other insurer. When We so require You or any other person or entity entitled to Cover under this Policy must give Us written notice of any insurance covering, whether in whole or in part, the claim under this Policy.

## Premiums

### Premium Adjustment

When any Premium paid for Cover under this Policy has been calculated on information provided by You:

- a. We require that You keep records of such information; and
- b. We may at any reasonable time during the Period of Cover and any extension thereof and within three (3) years after termination of this Policy examine such information to verify its accuracy;

to enable Us to calculate any additional Premium payable to Us or refund of Premium payable to You as a result of such Premium adjustment.

When this Policy is renewed or cancelled or otherwise discontinued by either You or Us then, if requested by Us, You must provide such information as We may require to adjust the Premium for any previous or future Period of Cover and such information must be provided to Us within thirty (30) days of the expiry of Your current Period of Cover.

We shall not make any Premium refund to You if any Premium on this Policy remains unpaid but may use such refund to reduce any Premium amount due to Us for this Policy.

### Premium Payment

The Cover provided under this Policy does not commence until You have paid or agreed to pay Your Premium to Us or Your insurance intermediary for the Period of Cover.

### Payment in Australian Currency

Payment of all Premiums payable for this Policy and any continuation thereof shall be made in Australian currency only.

## Reasonable Precautions

You are required to:

- a. take all reasonable actions and/or precautions to maintain the Business premises in good order and condition;
- b. take all reasonable actions and precautions for the safety and protection of the Business and to prevent loss of or damage to the property of others or Bodily Injury;
- c. comply with all laws and regulations imposed by any government statutory authority for the safety of property or person; and
- d. only employ competent Employees, servants and agents who also comply with clauses a., b. and c. above.



## **Waiver of Rights and Subrogation**

No provision of this Policy, either in whole or in part, shall be considered to have been waived by Us unless the provision is expressly stated in writing to be waived by Us.

We will not pay a claim under this Policy where You have agreed not to recover from any person, entity or corporation liable to compensate You for liability, or where You have agreed under any contract, lease or similar agreement to limit or exclude any right of recovery against any third party who would otherwise be liable to compensate You with respect to that liability.

# Claims Conditions

The following claims conditions apply to this Policy. Please read them carefully.

It is important that these claims conditions are observed.

If You or any other person or party Covered under this Policy do not comply with these conditions the Cover under this Policy may be cancelled or We may reduce any claim payment to You or refuse to pay Your or their claim under this Policy.

## Admission or Authorisations

You must obtain Our written consent before making any admission, offer, promise or offer of indemnity in connection with any claim under this Policy.

## Claim Notification

You are required to provide Us with:

- a. notice of any liability or Claim made against You as soon as reasonably possible after any of these occur or You are notified of such liability or of any Claim made against You; and
- b. all correspondence and/or notice of any proceedings in relation to any claim under this Policy and forward to Us every communication, Writ or Summons or other court pleading as soon as reasonably practicable after receipt by You or service on You.

## Claims Control and Legal Proceedings

We may, in Your name, take over and have full discretion in the conduct of the defence or prosecution of legal proceedings or settlement of any claim under this Policy or in the exercise of Our rights of subrogation.

## Claims Cooperation

You must provide to Us any reasonable assistance We require to investigate, defend or settle any claim under this Policy.

In particular, You are required to provide Us with:

- a. Your cooperation in assisting Us to handle any claim under this Policy on Your behalf including the gathering of all relevant information and Your attendance at court to give evidence; and
- b. at Your own expense, such books of account and other Business books, computer records and other documents, proofs, information, explanations and other evidence as We may require for the purpose of investigating or verifying a claim under this Policy.

## Claims Payments in Australian Currency

Payment of all claims Covered under this Policy shall be made in Australian currency only.

## Excess

You must first pay the Excess amount specified in the Schedule before We will make any payment in respect of a claim under this Policy. Our liability to make any payment in respect of a claim shall be limited to that part of the claim above the Excess.

## GST

### GST and Claim Payments for Compensation

Where We make a payment under this Policy as compensation instead of as a payment for a relevant acquisition of goods, services or other supply We will reduce the amount of the payment by the amount of any Input Tax Credit that You would have been entitled to had the payment been applied to acquire such goods, services or other supply.

### GST and Claim Payments for Legal and Other Costs

If We pay Defence Costs or any other costs or expenses on Your behalf or incurred by You with Our prior consent in relation to any claim under this Policy We will not pay or reimburse the amount of GST included in those costs or expenses to the extent that You are entitled to Input Tax Credits in relation to such costs and expenses.

### Limitation of GST Payment

If the Limit of Liability amount or other limits under this Policy is/are not sufficient to Cover Your claim under this Policy We will only pay the respective proportion of the relevant GST amount that relates to the amount of Our settlement of Your claim under this Policy.

## Legal Proceedings and Waiver of Legal Privilege

Solicitors and other legal representatives retained by Us to act on Your behalf, or on behalf of any other Insured, must at all times be at liberty to disclose to Us any information obtained in the course of so acting whether from You or any other person or entity. For that purpose You and any other person or entity Covered under this Policy agree to waive any claim to legal professional privilege in respect of such information. We may rely on such information to determine Our obligation to provide Cover under this Policy.

## Loss Minimisation

You must do everything reasonable to prevent further liability following any event which is the subject of any claim under this Policy or which may lead to a claim under this Policy.

## **Our Right to Subrogation**

Where We make a payment to You or on Your behalf in respect of any claim under this Policy We will have the right to recover or obtain contribution from any person or organisation whom We consider liable at law for the liability and We shall be entitled to all Your rights of recovery against such person or organisation and We have the right to take such action in Your name.

You will be required to do all that is necessary to assist Us for the purpose of enforcing any rights and remedies or of obtaining indemnity from any other party to which We are entitled under this Policy.

## **Preservation of Evidence**

You must take all reasonable actions necessary to retain and preserve any damaged or defective appliances, machinery, plant or other things which might prove necessary or useful as evidence in connection with any claim under this Policy and, so far as possible with due regard for safety, no alteration or repair shall be made without Our prior consent.

## **Senior Counsel Clause**

We will not require You to contest any Claim unless a Senior Counsel (mutually agreed upon by You and Us or if no agreement can be reached within a reasonable time then by the President at the time of the Law Society of the State or Territory in Australia in which this Policy has been issued) advises that the Claim should be contested after taking into consideration the likely cost of defending the Claim, the prospects of successful defence of the Claim, awards or damages if any and the costs likely to be recovered from a third party claimant. The cost of the advice will be paid by Us in addition to the applicable Limit of Liability amount

## **Your Right to Contest**

Where We recommend settlement of a third party claim under this Policy and You do not agree with the proposed settlement but wish the matter to remain contested Our liability shall not exceed the amount for which the claim could have been settled if the matter had not been contested. Any Defence Costs and all other costs shall be limited to those incurred up to the date the claim could have been settled.

# Definitions

This Policy has words and terms with special meanings. We explain their meaning in the following definitions.

These defined words or terms are shown with a capital letter at the start of each word. Please read all definitions carefully.

## Advertising Liability

means any:

- a. libel, slander or defamation;
- b. infringement of copyright, passing off of a title or slogan;
- c. piracy or misappropriation of advertising ideas or style of doing business; or
- d. invasion of privacy;

arising from any advertisement, publicity article, broadcast or telecast in the course of advertising activities for Your Business.

## Aircraft

means any vessel, craft or object designed or intended to fly or move in or through air, space or atmosphere other than model aircraft.

## Application

means the information provided by You or on Your behalf and submitted to Us when applying for this Policy and which We have relied on when agreeing to issue this Policy.

## Australia, Australian

means the States and Territories of Australia.

## Bodily Injury

means:

- a. bodily injury, death, sickness, illness, disability, disease, shock, fright, mental anguish, mental injury or loss of consortium resulting from any of them; or
- b. the physical or mental effects of:
  - > false arrest, wrongful detention or false imprisonment or malicious prosecution;
  - > wrongful entry or wrongful eviction to or from any premises;
  - > invasion of privacy;
  - > assault and battery not committed by or at the direction of You unless committed for the purpose of preventing or elimination of danger to persons or property; or
  - > libel, slander or defamation of character.

Bodily Injury if relating to a latent illness, a latent disease or a latent disability shall be deemed to have happened at the time when such illness, disease or disability was first medically diagnosed.

## Business

means all the activities involved in Your business stated in the Schedule and conducted by You including:

- a. canteen, social club, social sports, welfare, child care, first aid or medical care, fire and emergency services provided for the benefit of Your Employees;
- b. private work undertaken by Your Employees for any of Your directors or senior executives;
- c. the ownership and occupation of premises by You; or
- d. Your sponsorship of or attendance at any charitable event or gala.

## Claim

means:

- a. a writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter-claim or third party or similar party notice served on You seeking compensatory damages and costs; or
- b. a written or verbal demand for compensatory damages and costs made by a third party against You.

## Cover, Covers, Covered

means the indemnity provided under this Policy.

## Defence Costs

means the necessary and reasonable legal costs and expenses incurred by Us or by You with Our prior written consent in the investigation, defence or settlement of a Claim Covered under this Policy or in respect of the Cover provided under any of the additional benefits Covered under this Policy.

Any legal costs incurred by Us or by You in determining whether there is Cover provided to You under this Policy will not form part of Defence Costs.

## 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 programs, software and other coded instructions for such equipment.

## Employee

means a natural person who has at any time entered into a contract of service or apprenticeship with You and/or for whom You are required by virtue of workers' compensation or similar legislation to effect workers' compensation insurance cover.

## Endorsement

means a written notification given to You by Us that details changes to Your Cover under this Policy.

## Excess

means the amount of money stated in the Schedule or elsewhere in this Policy that You must pay or bear as the first payment in respect of any claim under this Policy.

Where the Excess is stated as being 'costs exclusive' We will not apply the Excess to Your own Defence Costs but You will be required to pay the Excess amount in respect of any payment of compensation and/or the claimant's own legal costs and expenses.

Where the Excess is stated as being 'costs inclusive' You will be required to pay the Excess amount in respect of any payment of compensation, the claimant's legal costs and expenses and Your own Defence Costs.

## Good Samaritan Acts

means the rendering of or failure to render first aid and assistance in an emergency situation or accident to stabilise an injured person or to prepare the injured person for transfer to a medical facility or other place and where You are in attendance as a bystander or passer-by and where there is no expectation of payment or other reward for the rendering of that first aid or assistance.

## GST and GST Act

means goods and services tax as defined within the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

Input Tax Credit has the same meaning as that in the GST Act.

## Hovercraft

means any vessel, craft or device which uses a cushion of air provided by a downward thrust to travel over water or land.

## Incidental Contract

means:

- a. any written rental agreement, lease or licence of real property not requiring an obligation to insure such property or to be liable at law regardless of fault; or

- b. any written contract with any entity responsible for the supply of electricity, fuel, gas, water, sewerage, waste removal services or telecommunications other than those contracts in connection with work done for such entities by You.

## Limit of Liability

means the maximum amount We will pay under this Policy as stated in the Schedule inclusive of all amounts provided for in any relevant additional benefit under this Policy.

## Occurrence

means an event or series of events which results in Bodily Injury, Property Damage or Advertising Liability neither expected nor intended by You:

**Provided that:**

- i. all Bodily Injury or Property Damage attributable to continuous or repeated exposure to substantially the same general conditions will be deemed to be one Occurrence; and
- ii. all Advertising Liability arising out of the same injurious material or act regardless of the repetition thereof or the number and type of media used and/or the number of claimants shall be deemed to be one Occurrence.

## Period of Cover

means the period of time stated in the Schedule for which We agree to provide You with Cover under this Policy as stated in the Schedule unless this Policy is cancelled in which event the Period of Cover will end on the effective date of the cancellation.

## Policy

means the following:

- a. the Policy wording;
- b. the Schedule; and
- c. any Endorsement.

## Pollutant

means any solid, liquid, bacterial, viral, gaseous or thermal irritant or contaminant including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste includes material to be recycled, reconditioned or reclaimed.

## Premium

means the payment You make to Us for this Policy or for an alteration to this Policy and includes all applicable government or statutory taxes and charges including GST.

## Products Liability

means Your legal liability to pay compensation as Covered under this Policy which arises out of or is connected with Your Products:

but does not include Public Liability or Advertising Liability.

## Property Damage

means:

- a. physical damage to or loss of or destruction of real or tangible property including any resulting loss of use of that property; or
- b. loss of use of real or tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an Occurrence:

but does not include damage to or destruction of or loss of use of Electronic Data.

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

## Public Liability

means Your legal liability to pay compensation as Covered under this Policy including Advertising Liability which arises out of or is connected with Your Business:

but does not include Products Liability.

## Schedule

means the Schedule issued by Us containing details of Cover specific to You including but not limited to Your Policy number, the Period of Cover, details of the Covers You have selected, Limits of Liability and other limits of Your Cover and any Excesses You must pay and which attaches to and forms part of this Policy.

## Subsidiary Company

means any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the corporate entity stated in the Schedule and which is incorporated and domiciled in Australia.

## Territorial Limits

means anywhere in the world excluding the United States of America or Canada unless otherwise stated in the Schedule and subject to exclusion 'Jurisdiction and Territorial Limits':

but does not mean those countries, states or territories which require insurance to be provided by an insurer or organisation licensed in that country, state or territory to provide insurance.

## Terrorism

means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, 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.

## Tool of Trade

means any Vehicle which has any tool or plant forming part of or attached to the Vehicle or used in connection with any Vehicle while such tool or plant is in operation for the purpose of the Business.

## Vehicle

means any type of machine on wheels, on skis or on self-laid tracks designed to be moved other than by manual or animal power and includes any trailer while attached to a Vehicle:

but does not include motorised wheelchairs, electric wheelchairs, electric scooters, bicycles or Vehicles not requiring registration or compulsory third party insurance by virtue of any legislation.

## Watercraft

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

## We, Us, Our

means Guild Insurance Limited ABN 55 004 538 863 and AFS Licence No 233791 of Level 13, 171 Collins Street Melbourne VIC 3000.

## You, Your, Insured

means:

- a. the person stated in the Schedule as the Insured; and/or
- b. the legal entity stated in the Schedule as the Insured including all of its:
  - > current or former partners, principals, directors, officers and Employees, work experience personnel or volunteers whilst such persons are acting on Your behalf;
  - > prior corporate entities through which it has previously traded;
  - > Subsidiary Companies which were in existence at the commencement of the Period of Cover; and
  - > Subsidiary Companies acquired or created by You during the Period of Cover:

**Provided that:**

- i. We are given written notification within thirty (30) days of the acquisition or creation; and
- ii. We will only Cover the Subsidiary Company for a period in excess of thirty (30) days of the acquisition or creation if We agree in writing to do so and You pay any additional Premium We may require; and
- > any principal in respect of that principal's vicarious liability for the acts of any person or entity stated in the Schedule as the Insured in the performance by them of work for that principal under contract but only to the extent of the Cover and Limit of Liability provided under this Policy.

**Your Products**

means anything (after it has ceased to be in Your possession or legal control) which is or is deemed by law to have been manufactured, grown, extracted, produced, processed, imported, exported, constructed, erected, installed, assembled, altered, repaired, serviced, renovated, treated, sold, supplied or distributed by You or on Your behalf in the course of Your Business including discontinued products, product labels, packaging or containers, the design, specification or formula of any product and includes directions, instructions, advice provided or not provided in connection with such products.



1300 223 782  
[acerta.com.au](https://www.acerta.com.au)

**Who is the insurer?**

This policy is underwritten by Guild Insurance Limited ABN 55 004 538 863 and AFS Licence Number 233791 trading as Acerta.

Effective date: May 2020

GLD89208 Acerta Broadform Liability Policy 05/2020