

Public
and
Products
Liability
(Claims Occurring)
Policy

Version Number 01.11



SRS Underwriting Agency Pty Ltd

In 1993 an innovative business was founded in order to provide highly customised insurance solutions to Australia's general insurance brokers. Today, the team at SRS Underwriting Agency Pty Ltd ("SRS") continues that tradition. SRS strives to exceed the expectations of brokers by providing professional and flexible solutions for their clients' risks across a wide range of major and boutique general insurance products. SRS is an underwriting agency for certain Underwriters at Lloyd's of London and/or other insurers if specified in the policy. To ensure prompt service and local expertise, SRS product specialists are located in Sydney, Melbourne and Brisbane.

SRS Underwriting Agency Pty Ltd ABN 89 113 929 516 is the holder of Australian Financial Services Licence No. 290518.

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Contents

1.	Important Information.....	3
2.	Definitions	5
3.	Coverage	7
4.	Exclusions.....	8
5.	Conditions.....	12

1. Important Information

(a) This Policy

This Policy is an important document and should be kept in a safe place. Please read this Policy, and any attachments we provide to you, so that you understand the insurance provided by this Policy. This insurance is 100% underwritten by certain Underwriters at Lloyd's of London. SRS, as Coverholder and agent of Lloyd's Underwriters, has the authority to bind this Policy on Underwriters' behalf.

(b) Your Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the *Insurance Contracts Act 1984*, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of his business, ought to know;
- as to which compliance with your duty is waived by the insurer.

(c) Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce his liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

(d) Goods and Services Tax

The amount payable by you for this Policy includes an amount for GST.

The Sum Insured and other limits of insurance cover shown in the Policy documentation are GST inclusive.

When we pay a claim, your GST status will determine the amount we pay.

If you are

- Not registered for GST, the amount we pay is the Sum Insured or the other Policy limits being inclusive of GST
- Registered for GST, the amount we pay is the Sum Insured or the other Policy Limits less any Input Tax Credit (ITC) to which you are entitled or would be entitled if you made a relevant acquisition. This ITC may be claimable within your BAS.

You must advise us of your ABN Number and Taxable Percentage. Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of a claim is less than the Sum Insured or the other Policy limits, we will only pay the GST (less your ITC credit) applicable to 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 pay the claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to the claim.

GST, ITC, Business Activity Statement (BAS) and Acquisition have the same meaning as given to those words in a New Tax System (Goods and Services Tax) Act 1999 and related legislation and amendments.

Taxable Percentage is your entitlement to an Input Tax Credit on your amount payable as a percentage of the total GST on that amount.

(e) Privacy

SRS handles your personal information with care in accordance with the Privacy Act. SRS collects information about you to provide you with insurance products and a claims service. SRS only provides your personal information to Underwriters (who may be located overseas), assessors, claims adjusters, legal advisers, and others appointed by SRS or Underwriters to assist in providing relevant products and services, or as required or permitted by law. You may elect not to supply SRS with personal information; however, SRS may then not be able to provide you with insurance products and a claims service. Where you provide SRS with personal information about others, SRS relies upon you to have made them aware of that disclosure and of the SRS Privacy Policy and to obtain their consent. You can ask SRS to update this information at any time and access it unless a legal exception applies. For further information about how SRS treats your personal information, ask for a copy of the SRS Privacy Policy or visit www.srs.com.au.

(f) Complaints Handling

If you are dissatisfied with a decision SRS or Underwriters make, SRS' service, the service of others SRS appoints to discuss insurance matters with you, or a claim settlement, SRS has an internal dispute resolution process to assist you. For further information, ask for a copy of the SRS Complaints and Disputes Resolution Policy or visit www.srs.com.au.

(g) General Insurance Code of Practice

SRS and Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from www.codeofpractice.com.au, or from SRS upon request.

(h) Australian Terrorism Insurance Act

The Underwriter's have treated this insurance (or part of it) as an insurance to which the Australian Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism Exclusion to which this Policy is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism Exclusion to which this Policy is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insurance coverage and Exclusions of this Policy including applicable limits and excesses remain unchanged.

If any or all of the Underwriters have reinsured this Policy with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

(i) Further Information

Your insurance broker has arranged this insurance for you, on your behalf. If you have any questions or need further information concerning your insurance, you should contact your insurance broker to assist you with your enquiry. You should direct all of your correspondence to SRS through your insurance broker, as he is your agent for this insurance.

2. Definitions

Any word or expression which this Policy defines as having a particular meaning will have the meaning everywhere it appears.

- 2.1 “Business” means the business described in the Schedule including the provision and management of canteens, social, sports and welfare organisations for the benefit of the Insured’s employees, first aid, fire and ambulance services and the maintenance of the Insured’s premises.
- 2.2 “Damage” means:
- 2.2.1 physical damage to or destruction of tangible property, (other than Product) including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it.
- 2.2.2 loss of use of tangible property, (other than Product) that is not physically damaged or destroyed provided such loss of use is caused by physical damage of other tangible property which first happened during the Period of Insurance. All such loss shall be deemed to happen at the time of the physical damage or destruction that caused it.
- 2.3 “Employee” means any person engaged under a contract of or for service or apprenticeship with the Insured designated in Clause 2.7.1 or 2.7.2 but does not include any person employed under such a contract who is excluded from the definition of ‘worker’ under any workers’ compensation legislation.
- 2.4 “Employment Practices” means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment of any person or persons by the Insured.
- 2.5 “Excess” means the amount payable by the Insured stated in the Schedule.
- 2.6 “Injury” means:
- 2.6.1 bodily injury, disease, sickness, death, disability, shock, fright, mental anguish and mental injury. In the event of claims for Injury arising from latent injury, latent disease or latent sickness, such injury, disease or sickness in respect of each claim shall be deemed to have first happened on the day such injury, disease or sickness was first medically diagnosed and to be covered under this Policy, that diagnosis must first occur during the Period of Insurance;
- 2.6.2 the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution;
- 2.6.3 the effects of wrongful entry or eviction;
- 2.6.4 the effects of a publication or utterance of defamatory or disparaging material;
- 2.6.5 the effects of assault and battery not committed by the Insured or at the Insured’s direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.
- 2.7 “Insured” means:
- 2.7.1 The Insured named in the Schedule, and;
- 2.7.2 all the subsidiary companies (now or subsequently constituted) of the Insured named in the Schedule;
- 2.7.3 any director, executive officer, employee, partner or shareholder of one of the Insured designated in Clause 2.7.1 or 2.7.2 but only whilst acting within the scope of their duties in such capacity;
- 2.7.4 every principal, in respect of that principal’s vicarious liability for the acts or omissions of one of the Insured designated in Clause 2.7.1 or 2.7.2 in the performance by them of work for that principal, but subject always to the extent of coverage and the Limit of Indemnity provided by this Policy;

- 2.7.5 every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with the consent of the Insured designated in Clause 2.7.1 or 2.7.2 in respect of claims arising from their duties connected with the activities of any such club, organisation or service, provided that this Clause shall not apply to an Insured designated in Clause 2.7.4 or 2.7.6.
- 2.7.6 each partner, joint venturer, co-venturer or joint lessee of the Insured named in the Schedule but only:
- 2.7.6.1 if the Insured named in the Schedule assumes active control of, or is required to arrange insurance for, the partnership, joint venture, co-venture or joint lease; and
- 2.7.6.2 with respect to liability incurred as the partnership, joint venture, co-venture or joint lease; and
- 2.7.7 any director or senior executive of the Insured designated in Clause 2.7.1 or 2.7.2 in respect of private work undertaken by the Insured's employees for such director or senior executive.
- 2.8 "Limit of Indemnity" means the applicable Limit of Indemnity stated in the Schedule.
- 2.9 "Medical Persons" means qualified medical practitioners, nurses and first aid attendants.
- 2.10 "Multiple Damages" means additional damages resulting from the multiplication of compensatory damages against an Insured, such additional damages being awarded as a result of the Insured or their legal advisors or both having engaged in unnecessary delaying tactics or having hindered the due process of the court in some other manner.
- 2.11 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.12 "Period of Insurance" means the period stated in the Schedule.
- 2.13 "Policy" means this policy wording, the Certificate of Insurance, the Schedule, and any Endorsements attaching to this policy wording, and these documents shall be read together as one contract.
- 2.14 "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.
- 2.15 "Product" means any goods, products and property (after they have ceased to be in the Insured's possession or under the Insured's control), which are or is deemed to have been manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured (including any container thereof other than a vehicle).
- 2.16 "Schedule" means the schedule signed and issued by SRS or Underwriters.
- 2.17 "SRS" means SRS Underwriting Agency Pty Ltd ABN 89 113 929 516 AFSL 290518.
- 2.18 "Territorial Limits" means anywhere in the world subject to Exclusions 4.9 and 4.19.
- 2.19 "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(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 2.20 "Tool of Trade" means any Vehicle, which has any equipment either forming part of it or as an attachment, which is designed or used as a tool, including but not limited to, use in excavation, digging, scraping, grading, drilling, lifting, levelling, pumping, spraying, vacuuming and the like, whilst the equipment is at rest or being used or being prepared for use or being decommissioned after use for which it was designed.

- 2.21 "Underwriter" means certain underwriters at Lloyd's of London participating in this Policy.
- 2.22 "Vehicle" means any type of machine on wheels or self laid track made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.

3. Coverage

In consideration of the payment to the Underwriter of the amounts payable for this insurance, including any amount on account of GST, the Underwriter will indemnify the Insured in accordance with this Policy.

3.1 Operative Clause

The Underwriter will pay:

3.1.1 all sums which the Insured becomes legally liable to pay by way of compensation;

3.1.2 all costs awarded against the Insured;

in respect of Injury or Damage happening during the Period of Insurance and caused by an Occurrence within the Territorial Limits in connection with the Business.

3.2 Defence of Claims

With respect to the indemnity provided by this Policy, the Underwriter will:

3.2.1 defend in the Insured's name and on the Insured's behalf any claim or legal action against the Insured seeking damages on account of Injury or Damage even if the action is groundless, false or fraudulent, and the Underwriter will investigate, negotiate and settle any claim or legal action as the Underwriter sees fit.

3.2.2 pay all legal costs and expenses incurred by the Underwriter and all interest accruing after entry of judgement until the Underwriter has paid, tendered or deposited in court such part of the judgement as does not exceed the Limit of Indemnity;

3.2.3 reimburse the Insured for all reasonable expenses, other than loss of earnings incurred, with the Underwriter's consent, in the defence of a claim or legal action against the Insured seeking damages on account of Injury or Damage;

3.2.4 pay reasonable expenses incurred by the Insured for first aid to others at the time of Injury caused by an Occurrence (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973).

Provided that:

3.2.5 The Underwriter will not be obliged to pay any claim or judgement or to defend any claim or legal action after the Limit of Indemnity has been exhausted by payment of judgements or settlements;

3.2.6 if a payment exceeding the Limit of Indemnity has to be made to dispose of a claim, or legal action, the Underwriter's liability to pay any costs, expenses and interest under section 3.2 will be limited to that proportion of those costs, expenses and interest as the Limit of Indemnity bears to the amount paid to dispose of the claim.

The amounts thus incurred, except payments in settlement of claims, actions and all costs awarded against the Insured, are payable by the Underwriter in addition to the Limit of Indemnity.

3.3 Limit of Indemnity

3.3.1 The Underwriter's maximum liability in respect of any claim or series of claims for Injury or Damage caused by or arising out of one Occurrence shall not exceed the Limit of Indemnity.

3.3.2 The Underwriter's total aggregate liability during any one Period of Insurance for all claims arising out of the Insured's Products shall not exceed the Limit of Indemnity.

3.4 Cross Liability

Where more than one party comprises the Insured, each of the parties will be considered as a separate and distinct entity and this Policy shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of them provided that nothing in this Clause will result in an increase of the Underwriter's Limit of Indemnity in respect of any Occurrence or Period of Insurance.

4. Exclusions

This Policy does not cover liability in respect of:

4.1 Aircraft and Aircraft Products

Claims arising out of:

4.1.1 the ownership, maintenance, operation or use by the Insured or on the Insured's behalf of any aircraft.

4.1.2 Products that are aircraft component parts where such component parts affect the safety, flight, controls or takeoff or landing of an aircraft.

4.2 Asbestos

Injury or Damage directly or indirectly caused by, contributed to, or arising from exposure to asbestos.

4.3 Assault and Battery

Injury or Damage caused by or arising from assault and battery committed by the Insured or at the Insured's direction unless reasonably necessary for the protection of persons or property.

4.4 Biological or Chemical Materials

Loss, Damage cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

4.5 Contractual Liability

Any obligation assumed by the Insured under any agreement or contract except to the extent that:

4.5.1 the liability would have been implied by common law;

4.5.2 the liability arises from a provision in a contract for lease of real or personal property other than a provision which obliges the Insured to effect insurance or provide indemnity in respect of the subject matter of the contract;

4.5.3 the obligation is assumed under those agreements specified in the Schedule.

4.6 Defamation

Defamation:

4.6.1 made prior to the commencement of the Period of Insurance; or

4.6.2 made by the Insured or at the Insured's direction with knowledge of its falsity; or

4.6.3 related to advertising, broadcasting or telecasting activities conducted by the Insured or on their behalf.

4.7 Employment Liability

Injury imposed:

4.7.1 by any workers' compensation law;

4.7.2 by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination or contract of employment or workplace agreement; or

4.7.3 for or in respect of Employment Practices

provided that if the Insured is:

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

4.7.5 not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a worker or employee for the purposes of the relevant workers' compensation law or the Injury is not an injury which is subject to such law;

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

4.8 Excess

The Excess stated in the Schedule being the first amount of all claims (including any costs and expenses) arising out of any one Occurrence

4.9 Exports to the USA or Canada

Claims in respect of Injury or Damage caused by or arising out of the Insured's Products knowingly exported by the Insured, or their agents or servants, to the United States of America or Canada.

4.10 Faulty Workmanship

Damage to that part of any property upon which the Insured is or has been working where the Damage arises from the Insured's work, or the costs of performing, correcting or improving any work undertaken by the Insured.

4.11 Fines, Penalties

Fines, penalties, aggravated, punitive, multiple, exemplary and liquidated damages.

4.12 Loss of Use

Loss of use of tangible property which has not been physically damaged, or lost or destroyed resulting from:

4.12.1 a delay in or lack of performance by or on the Insured's behalf of any agreement;

4.12.2 the failure of the Insured's Product to meet the level of performance, quality, fitness or durability expressly or implied, warranted or represented by the Insured, but this Exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to, or loss or destruction of the Products after they have been put to use by any person or organisation other than the Insured designated in Clause 2.7.1 or 2.7.2.

4.13 Pollution

- 4.13.1 Injury or Damage 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, but this Exclusion 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;
- 4.13.2 Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this Exclusion 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 Injury and / or Damage.
- 4.13.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others.

The Underwriter's liability under Clauses 4.13.1 and 4.13.2 in respect of any one discharge, dispersal, release, seepage, migration and for all discharges, dispersals, releases and escape of Pollutants during any one Period of Insurance shall not exceed the Limit of Indemnity.

4.14 Product Defect

Damage to Product if the Damage is attributed to any defect in it or its harmful nature or unsuitability.

4.15 Product Recall

Claims arising out of or resulting from any loss, cost or expense incurred by the Insured for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of the Product or of any property of which they form a part, if such Product or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

4.16 Professional Liability

The rendering of or failure to render professional advice or service by the Insured or any related error or omission, but this Exclusion does not apply to the rendering of or failure to render professional medical advice by Medical Persons employed by the Insured to provide first aid on the Insured's premises.

4.17 Property in Custody or Control

Damage to:

- 4.17.1 property owned or leased or rented to the Insured; or
- 4.17.2 property in the Insured's physical or legal control.

But this Exclusion does not apply to liability for Damage to:

- 4.17.3 premises (including landlord's fixtures and fittings) which are leased or rented to the Insured;
- 4.17.4 premises (or their contents) not owned, leased or rented by the Insured but temporarily occupied by the Insured for work therein;
- 4.17.5 Vehicles (not belonging to or used by the Insured) in the Insured's physical or legal control where the Damage occurs while the Vehicles are in a car park owned or operated by the Insured, unless the Insured owns or operates the car park for reward;
- 4.17.6 the property of an employee of the Insured designated in Clause 2.7.1 or 2.7.2;
- 4.17.7 property (excluding any Vehicle which is registered or which is required under any legislation to be registered) in the Insured's physical or legal control for the purpose of repair, service,

maintenance or alteration or which is on temporary hire or loan to the Insured, subject to a maximum indemnity of \$50,000 any one Occurrence.

4.18 Radioactive Contamination

Claims directly or indirectly caused by or contributed to, by or arising from:

4.18.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purposes of this exclusion only, combustion shall include any self sustaining process of nuclear fission or fusion.

4.18.2 Nuclear weapons material.

4.18.3 The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

4.19 Territorial Limits

4.19.1 Claims made and actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the courts of the United States of America or Canada.

4.19.2 Claims and actions to which the laws of the United States of America or Canada apply.

Provided that:

4.19.3 Exclusions 4.19.1 and 4.19.2 do not apply to claims and actions arising from the presence of any employees' and / or directors, partners of the Insured resident outside the United States of America or Canada who are not undertaking manual work or supervision of work of any kind whilst in the United States of America or Canada;

4.19.4 the Limit of Indemnity in respect of coverage provided under Clause 4.19.3 is inclusive of all costs, expenses and interest as set out in Clause 3.2 of this Policy.

4.20 Terrorism

Injury or Damage of whatsoever nature directly or indirectly caused by, or resulting from or in connection with any:

4.20.1 Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Injury or Damage; or

4.20.2 action taken in controlling, preventing, suppressing or in any way relating to Terrorism.

4.21 Tobacco

Injury arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

4.21.1 tobacco or tobacco smoke;

4.21.2 any ingredient or additive present in any articles, items or goods which contain or include tobacco.

4.22 Vehicles

4.22.1 Injury arising out of the ownership, possession or use by the Insured of any Vehicle in respect of which there is required at law to be in force a policy of compulsory liability insurance or statutory indemnity for bodily injury.

Provided however this Exclusion 4.22.1 shall not apply to liability for Injury arising out of an Occurrence which is partially or totally outside the indemnity afforded under such compulsory liability insurance or other legislation relating to vehicles.

4.22.2 Damage arising out of the ownership, possession or use by the Insured of any Vehicle in respect of which at the time of the Occurrence giving rise to any claim insurance is required by virtue of any law or legal requirement relating to the use of any Vehicle.

Provided however this Exclusion 4.22.2 shall not apply to liability for Damage:

4.22.2.1 arising out of or in connection with the loading and unloading of any Vehicle and / or any delivery or collection to or from any Vehicle for which the Insured is legally liable;

4.22.2.2 arising out of the use of any Vehicle as a Tool of Trade;

4.22.2.3 arising from the use of any Vehicle (other than registered Vehicles owned or used by the Insured) in the physical or legal control of the Insured where such Damage occurs in a car park owned or operated by the Insured.

4.23 War

Any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or expropriation including lawful seizure, resumption, confiscation, nationalisation, destruction or damage to property by or under the order of any Government or public or local authority.

4.24 Watercraft

Claims arising out of

4.24.1 the ownership, maintenance, operation or use by the Insured or on their behalf of any watercraft exceeding ten (10) metres in length, except where such watercraft are owned and operated by others and used by the Insured for business entertainment.

4.24.2 Products that are watercraft component parts.

5. Conditions

5.1 Amendments

This Policy does not cover Injury or Damage directly or indirectly caused by or arising out of any change in the nature of the business which:

5.1.1 occurred during the Period of Insurance; and

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

unless the Insured shall give the Underwriter notice in writing of such change, and such change shall be allowed by the Underwriter by Endorsement and / or Certificate prior to the happening of any Occurrence caused by, contributed by or arising out of the said change.

For the purpose of this Condition, where the Insured is a corporate body, the knowledge of any officer of the Insured shall be deemed to be the knowledge of the Insured.

5.2 Cancellation

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

Upon cancellation at the request of the Insured, a pro rata refund up to eighty percent (80%) of the unexpired portion of the premium is acceptable.

5.2.2 The Underwriter may cancel this Policy at any time where:

5.2.2.1 it is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments thereto;

5.2.2.2 the Insured has failed to notify the Underwriter of any specific act or omission where such notification is required under the terms and conditions of this Policy.

Upon cancellation given by the Underwriter a pro rata refund of premium for the unexpired Period of Insurance will be allowed.

Any notice of cancellation given by the Underwriter shall take effect either at the time when another contract of insurance between the Insured and the Underwriter or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4.00pm on the third business day after the date on which notice was given to the Insured by the Underwriter (whichever is earlier).

5.3 Claims

5.3.1 The Insured shall give written notice to the Underwriter as soon as possible after any Occurrence that may give rise to a claim under this Policy and shall give all such additional information as the Underwriter may require. Every letter, claim, writ, summons or process shall be forwarded to the Underwriter immediately it is received.

5.3.2 If any claim, in whole or in part, is intentionally exaggerated by the Insured or if the Insured or anyone entitled to benefit under this Policy uses any fraudulent means or devices or if any liability is occasioned by the wilful act or with the connivance of any party entitled to benefit under this Policy, all benefit in respect of such fraudulent or exaggerated claim shall be forfeited.

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

5.4 Discharge of Liability

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

5.4.1 the total amount in respect of the said claim or claims to which the Insured is entitled to indemnity under this Policy, or

5.4.2 the total amount sought by the claimant(s) in the said claim or claims, or

5.4.3 the total amount for which the said claim or claims can be settled,

and in addition to such payment the Underwriter will pay defence costs incurred up to the date of the said payment in accordance with Clause 3.2 of this Policy.

Upon such payment, the Underwriter shall relinquish conduct or control of such claims and be under no further liability under this Policy in connection with such claim or claims.

5.5 Insurance Contracts Act 1984

Nothing contained in this Policy is to be construed to reduce or waive either the Insured's or the Underwriter's privileges, rights or remedies available under the Insurance Contracts Act 1984.

5.6 Jurisdiction

This Policy shall be interpreted in accordance with the laws of Australia and all claims for indemnity under this Policy shall be decided in accordance with those laws.

5.7 Notices

Where the Insured comprises more than one person or company, it is agreed that the Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies for the purposes of receiving any notice of cancellation, or any other notice, statement, document or information relating to this Policy. Where the Insured has an insurance broker, nothing in this paragraph shall restrict the Underwriter's right to notify the broker as agent of the Insured.

5.8 Premium Adjustment

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

5.9 Prohibited by Law

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

5.10 Reasonable Care

The Insured must:

- 5.10.1 exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- 5.10.2 take all reasonable precautions to prevent Injury and Damage, and prevent the manufacture, sale or supply of defective Product, and comply with and ensure that employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:
 - 5.10.2.1 safety of persons or property;
 - 5.10.2.2 disposal of waste products;
 - 5.10.2.3 handling, storage or use of flammable liquids or substances, gases or toxic chemicals.
 - 5.10.2.4 At the Insured's own expense take reasonable action to trace, recall or modify any of the Insured's Product containing any defect or deficiency of which the Insured has knowledge or has reason to suspect, including (but not limited to) any Product subject to governmental or statutory ban.