

Public & Products Liability Policy Wording (OCCURRENCE WORDING)

ABOUT WINSURE UNDERWRITING PTY LTD

Winsure Underwriting Pty Ltd (A.B.N. 68 169 336 252 and AFSL 459637) has established a professional insurance service specialising in meeting the insurance needs of your business. We provide easily understood cover and a range of extensions that are available to meet your requirements.

Winsure has been founded on the principles of simplicity, integrity, service and innovation, supported by experienced and knowledgeable staff. If you would like any further information about Winsure, please visit our website www.winsure.com.au or contact our friendly customer service staff by phoning (02) 9307 6600.

IMPORTANT INFORMATION

Important documents

This is your policy document and it consists of:

- a. this printed policy which sets out details of what is and what is not covered by your policy; and
- b. the Schedule we provide you with details of:
 - who is insured;
 - the cover(s) selected;
 - the Period of Insurance;
 - the sums limits of liability;
 - the underwriter;
 - Deductibles and other important information; and
- c. the proposal form you complete and other information you provide to us.

You should read these documents carefully and keep them in a safe place for future reference. If you have any questions regarding your policy or the Schedule, please contact your insurance broker.

Protection of your interests

Over the years, a number of legislative and industry reforms have been introduced that protect the rights of consumers and assist them in their dealings with insurance companies. An example of the more important reforms is contained in the:

- Insurance Contracts Act 1984
- Privacy Act 1988
- Terrorism Insurance Act 2003
- General Insurance Code of Practice

Your Responsibilities

The Insurance Contracts Act requires:

- you to make certain disclosures, and
- both you and the insurer to act with the Utmost Good Faith in relation to, or under, the contract of general insurance.

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, that is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms. (The information you provide on the proposal form forms a part of such matter).

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 the 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.

Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its 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.

Utmost Good Faith

The law obligates all parties to a contract of insurance to act towards each other in 'utmost good faith'.

The result is that all material facts within the knowledge of the parties must be disclosed, otherwise the party to whom disclosure should have been made may avoid the contract.

The main implications from the duty of utmost good faith for an insured include:

- Fulfil your duty of disclosure
- Make honest statements in the proposal form
- Fulfil the requests of the insurer

Winsure are obliged to:

- settle claims quickly
- have a genuine reason to refuse claims
- disclose restrictions in your policy.

Failure to act with the utmost good faith may prejudice any claim you have or the continuation of this contract of insurance.

General Insurance Code of Practice

The General Insurance Code of Practice exists to raise standards of practice and service in the general insurance industry.

The objectives of the Code are:

- to promote better, more informed relations between insurers and their customers;
- to improve consumer confidence in the general insurance industry;

- to provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- to commit insurers and the professionals they rely upon to higher standards of customer service.

Brochures on the Code are available from Winsure by request.

Winsure supports the General Insurance Code of Practice. If, as the Insured, you are not satisfied with:

- one of Winsure's products;
- service;
- the service of Winsure's authorised representatives, loss adjusters or investigators;
- a decision on your claim; or
- the way in which Winsure has dealt with you,

then contact us.

Please contact Winsure if you have a complaint, the staff will help you in any way they can. If the staff are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to Winsure's Internal Dispute Resolution Department.

Privacy Statement

Only in this statement "we", "us" and "our" means Lloyd's and Winsure Underwriting Pty Ltd as its agent.

We are bound by the obligations of the Privacy Act 1988 as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012. This sets out basic standards relating to the collection, use, storage and disclosure of personal information.

Our Privacy Policy, available at www.winsure.com.au or by calling us, sets out how:

- we protect your personal information;
- you may access your personal information;
- you may correct your personal information held by us;
- you may complain about a breach of the Privacy Principles or Registered Privacy Code and how we will deal with such a complaint.

We need to collect, use and disclose your personal information in order to consider your application for insurance and to provide the cover you have chosen, administer the insurance and assess any claim. You can choose not to provide us with some of the details or all of your personal information, but this may affect our ability to provide the cover, administer the insurance or assess a claim.

We may disclose your personal information to third parties who assist us in providing the above services. These parties (which include our related entities, distributors, agents, insurers - including reinsurers - and service providers) will only use the personal information for the purposes we provided it to them for (unless otherwise required by law). It is likely that the information will be disclosed overseas.

Information will be obtained from individuals directly where possible and practicable to do so. Sometimes it may be collected indirectly (e.g. from your representatives or co-insured's). If you provide information for another person you represent to us that:

- you have the authority from them to do so and it is as if they provided it to us;
- you have made them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

You are entitled to access your information if you wish and request correction if required. You may also opt out of receiving materials sent by us by contacting Winsure.

Who is insured under your policy

The parties that are covered by your policy are shown in the Schedule. In this policy, those persons or organisations are referred to as 'you' or 'your' or 'Named Insured'.

We may extend the policy to cover other persons or organisations you advise us require cover under this policy. If we extend cover to them, they will be shown in the Schedule.

Your cooling off rights

You can return your policy to us within fourteen days of the original commencement date or renewal of the Period of Insurance. This date is shown in your Schedule. If we receive your written request to cancel your policy within the fourteen day period we will give you a full refund (less any taxes or duties payable that we are unable to have refunded).

You cannot return your policy where, before the fourteen day period ends, you have exercised or at any stage exercise, any of your rights or powers under your policy (e.g. you have made a claim). After the cooling off period ends you continue to have cancellation rights under your policy. These rights are set out in 'Cancellation of this Policy – By You' on page 6.

Disputes

Underwriters at Lloyds proudly support the General Insurance Code of Practice. The purpose of the code is to raise standards of practice and service the general insurance industry. Any enquiry or complaint relating to this insurance should be referred to Winsure in the first instance. If this does not resolve the matter or you are not satisfied with the way the complaint has been dealt with, you should write to:

Lloyds Insurers General Representative in Australia
Suite 2 Level 21 Angel Place
123 Pitt Street, Sydney NSW 2000
Telephone: 02 9223 1433
Fax 02 9223 1466

If you dispute remains unresolved you may be referred to the Financial Ombudsman Service Limited under the terms of the General insurance Code of Practise. For other disputes you will be referred to other

proceedings for resolution. Details are available from Lloyds Insurers General Representative in Australia at the address above.

The underwriters accepting this insurance agree that:

- a. if a dispute arises under this insurance, this insurance will be subject to Australian Law and practise and the Insurers will submit to the jurisdiction of any competent Courts in the Commonwealth of Australia;
- b. any summons notice or process to be server upon the underwriters may be served upon:
Lloyds Underwriters' General Representative in Australia
Suite 2 Level 21 Angel Place
123 Pitt Street, Sydney NSW 2000
who has authority to accept service and to appear on the underwriter's behalf;
- c. if a suit is brought against the underwriter, all participating in this insurance will abide by the final decision of such Court or any competent Appellate court.

In the event of a claim arising under this insurance immediate notice should be given to:

Winsure Underwriting Pty Ltd
PO Box A2016
Sydney South NSW 1235
Telephone 02 9307 6600
Fax 02 9307 6699

TABLE OF CONTENTS

ABOUT WINSURE UNDERWRITING PTY LTD	1
IMPORTANT INFORMATION.....	1
Important documents	1
Protection of your interests.....	1
Your Responsibilities.....	1
Duty of Disclosure	1
Non-disclosure.....	1
Utmost Good Faith	1
General Insurance Code of Practice	1
Privacy Statement	1
Who is insured under your policy.....	2
Your cooling off rights.....	2
Disputes.....	2
DEFINITIONS.....	2
Lloyd's Certification.....	4
Indemnity Clause.....	4
Supplementary Payments.....	4
Limits of Liability.....	4
CLAIMS CONDITIONS.....	5
GENERAL CONDITIONS.....	6

DEFINITIONS

For the purpose of determining the cover provided by this policy, the following words have the defined meanings shown.

Act of 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 sector of the public, in fear.

Aircraft means any craft or object designed to travel through air or space, other than model aircraft.

Business means business to the extent described in the Schedule (and, where applicable, as further described in any more specific underwriting information provided to us at the time this insurance was negotiated) and shall include:

- a. the ownership and maintenance of premises and/or your tenancy of them.
- b. the provision of any sponsorships, charities, galas, first aid, medical, ambulance or firefighting services by you or on your behalf.
- c. private work undertaken by your Employees for any of your directors, partners, proprietors, officers or executives.
- d. the provision of any canteen, social and / or sporting clubs or welfare and/or child care facilities by you or on your behalf, which are primarily for the benefit of your Employees.

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

Deductible means first amount of each claim or series of claims, arising out of any one Occurrence, which you must pay.

(Note: The Deductible applies to all amounts for which we become liable. The Deductible applicable to this insurance is specified in the Schedule).

Employee means any person employed by the Named Insured deemed by Common Law or by the operation of any Statute, ordinance or regulation to have been so employed. It does not include any voluntary worker or work experience person / student.

Employment Practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of your Employees.

Geographical Limit(s) means:

- a. anywhere in the Commonwealth of Australia and its external territories;
- b. elsewhere in the World, but only with respect to:
 - i. overseas visits in connection with your Business by any of your directors, partners, officers, executives or Employees but not where they perform manual work in North America.
 - ii. Products supplied by you, but the indemnity granted in relation to such Products shall not apply to claims in respect

of Personal Injury and/or Property Damage happening in North America where such Products have been exported to North America with your knowledge.

Internet Operations means:

- a. transfer of computer data or programmes by use of electronic mail systems by you or your Employees, including for the purpose of this definition only; part-time and temporary staff, contractors and others within your Business whether or not such data or programmes contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or Trojan horse,
- b. access through your network to the World Wide Web or a public internet site by you or your Employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within your Business;
- c. access to your intranet (meaning internal company information and computing resources) which is made available through the world wide web for your customers or others outside your Business; and
- d. the operation and maintenance of Your web site.

Limit of Liability means amounts specified as such in the Schedule, where applicable.

Medical Persons includes but is not limited to medical practitioners, medical nurses, dentists and first aid attendants who are legally qualified as such in Australia.

Named Insured means person(s), corporations and/or other organisations specified by their actual name in the Schedule.

Occurrence means event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and / or Property Damage that is neither expected nor intended from your standpoint.

(Note: With respect to Public Liability, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.)

Period of Insurance means Period of Insurance specified in the Schedule and any extension thereof which may be agreed in writing between you and us.

Personal Injury means:

- a. bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and / or mental injury;
- b. false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- c. wrongful entry or wrongful eviction or other invasion of privacy;
- d. libel, slander or defamation of character;
- e. assault and battery not committed by you or at your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

Pollution means discharge, dispersal, release or escape or smoke, vapour, soot, fumes, acids, alkalis, toxic chemicals, liquids, gasses, waste materials (including materials to be recycled, reconditioned or reclaimed) or any other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.

Product(s) means thing(s) manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by you or on your behalf (including your predecessors in your Business), including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which, by law or otherwise, you are deemed to have manufactured in the course of your Business including discontinued products.

Products Liability means your legal liability for Personal Injury and / or Property Damage caused by or arising out of any Product or the reliance upon a representation or warranty made at any time with respect to such Products; but only where such Personal Injury and / or Property Damage occurs away from premises owned or leased by or rented to you and after physical possession of such Products has been relinquished to others.

Property Damage means:

- a. physical loss, destruction of or damage to tangible property, including the loss of use thereof at any time resulting therefrom; and / or
- b. loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence.

Public Liability means your legal liability for Personal Injury and / or Property Damage happening during the Period of Insurance within the Geographical Limits, and caused by or arising out of an Occurrence in connection with your Business.

Schedule means the most current Schedule issued by us in connection with this Policy.

(Note: If there is any conflict between the wording on the Schedule and that which appears in the policy wording then it is the wording on the Schedule which will prevail).

Tool of Trade means a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by you at your premises or on any Worksite. Tool of Trade does not include any Vehicle whilst travelling to or from a Worksite or Vehicles that are used to carry goods to or from any premises.

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

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, ourselves means the underwriter shown in the Schedule, or, if the context or circumstances allows it, Winsure Underwriting Pty Ltd.

Worksite means premises or site where any work is performed for, or in connection with Your Business, together with all areas surrounding such premises or site and/or all areas in between such premises or site that you use in connection with such work.

you, your, insured means:

- a. the Named Insured.
- b. every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, Employee of the Named Insured (including the spouse of any such person while accompanying such person on any commercial trip or function in connection with your Business) or volunteer while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities.
- c. any Employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any such Employee superannuation fund or pension scheme which is not administered by corporate fund managers.
- d. every principal in respect of the principal's liability arising out of:
 - i. the performance by or on behalf of the Named Insured of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this policy.
 - ii. any Products sold or supplied by the Named Insured, but only in respect of the Named Insured's own acts or omissions in connection with such Products and in any event only for such coverage and Limits of Liability as are provided by this policy.
- e. every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of law (whether written or implied) to provide insurance such as is afforded by this policy, but only to the extent required by such law and in any event only for such coverage and Limits of Liability as are provided by this policy.
- f. every officer, member, Employee or voluntary helper of the Named Insured's canteen, social and/ or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, welfare and/or child care facilities, while acting in their respective capacities as such.
- g. any director, partner, proprietor, officer or executive of the Named Insured in respect of private work undertaken by the Named Insured's Employees for such person and any Employee whilst actually undertaking such work.
- h. every party including joint venture companies and partnerships to whom the Named Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this policy; but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this policy.
- i. all existing subsidiary and / or controlled corporations (including subsidiaries thereof) incorporated in the Commonwealth of Australia and / or any other organisations under the control of the Named Insured.
- j. all subsidiary and / or controlled corporations (including subsidiaries thereof) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Named Insured after the commencement of the Period of Insurance.
- k. every subsidiary and / or controlled corporation and/or other organisation of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against

such divested subsidiary, related or controlled corporation or organisation caused by or arising out of Occurrences insured against by this policy, which occurred prior to the divestment.

Lloyd's Certification

This is to certify that in accordance with the authorisation granted to Winsure Underwriting Pty Ltd, under the Contract number shown in the Schedule, by certain underwriters at Lloyd's, whose definitive numbers and the proportions underwritten by them, (which will be supplied on application), can be ascertained by reference to the Contract number and in consideration of the premium specified in the Schedule, the Underwriters are hereby bound, severally and not jointly, each for its own part and not one for another, their executors and administrators, to insure in accordance with the terms and conditions contained or endorsed within the policy wording and the Schedule.

Indemnity Clause

Subject to the terms, conditions, exclusions, endorsements and Limits of Liability, we will pay to you or on your behalf all sums which you become legally liable to pay as compensation in respect of Public Liability and / or, if shown in the Schedule, Products Liability that:

- a. happens within the Geographical Limits during the Period of Insurance; and
- b. results from an Occurrence in connection with the Business.

Supplementary Payments

In addition to the indemnity provided by this policy, and providing you have our written consent, we will also pay supplementary expenses and legal costs, incurred by you in connection with the investigation, defence or settlement of claims.

Should the established or agreed liability for compensation exceed the applicable Limit of Liability stated in the Schedule, we will only pay that percentage of such supplementary costs that that Limit of Liability bears to the amount of liability for compensation.

Under no circumstances will the total of the supplementary costs exceed an amount equal to **fifty percent** of the applicable Limit of Liability.

Limits of Liability

All Occurrences directly or indirectly arising out of or in connection with one source or original cause shall be treated as one Occurrence, for all purposes relating to this policy. The limits of our liability directly or indirectly arising out of or in connection with any one Occurrence shall not exceed the Limit of Liability stated in the Schedule.

The Limit of Liability is available in full for each Occurrence except for Products Liability where the Limit of Liability is the most we will pay in the aggregate for all Occurrences during the current Period of Insurance.

EXCLUSIONS

This insurance does not cover:

1. Aircraft

Liability for claims arising out of:

- a. any of your Products or services directly affecting the integrity of the structure, navigation or propulsion of any Aircraft where such Products or services are knowingly supplied by you for this purpose;
- b. the ownership, maintenance, operation or use by or on your behalf of any Aircraft

2. Asbestos

Liability arising out of or in connection with Public Liability (including loss of use of property) directly or indirectly arising out of or in connection with:

- a. the mining, processing, transportation, distribution, processing and / or storage of asbestos or asbestos - related products;
- b. any process or procedure for the extraction, removal, disposal, treatment or control of asbestos, or for the decontamination or remediation of property affected by asbestos.

3. Contract or Agreement

Liability arising out of or in connection with the performance of your obligations under any contract, including an agreement to indemnify any other person or organisation against a loss or liability, or for damages for your failure to perform such an obligation. This includes but is not limited to contractual obligations toward others arising out of or involving injuries to your Employees.

However, this exclusion shall not apply to statutory warranties nor to any Public Liability which would nevertheless have been imposed upon you in the absence of such a contractual obligation.

4. Defamation

Liability arising out of or in connection with any defamatory publication or utterance or malicious falsehood:

- a. made prior to the commencement of the Period of Insurance; or
- b. made at your direction with knowledge of its falsity or reckless disregard for its truth or falsity; or
- c. made in connection with advertising, broadcasting, telecasting or publishing activities conducted by or on your behalf.

5. Electronic Data

Liability arising directly or indirectly, out of or in connection with the failure or inability of any:

- a. electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device;
- b. media or systems used in connection with any of the foregoing;
whether your property or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to

denote, represent or express a date, including but without being limited to, any failure or inability to recognise, capture, save, retain or restore and/or to correctly manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:

- i. anything referred in (a) or (b) above, recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time;
- ii. the operation of any command or logic which has been programmed or incorporated into anything referred to in (a) or (b) above.

6. Employees

Liability which you incur, whether under the provisions of any Worker's Compensation legislation, industrial award, agreement or determination or otherwise, toward any Employee for Personal Injury suffered by that Employee.

7. Internet Operations

- a. Liability arising directly or indirectly out of or in any way involving your Internet Operations.

This exclusion does not apply to Public Liability arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.

This exclusion also does not apply to liability which arises irrespective of the involvement of your Internet Operations. Nothing in this exclusion shall be construed to extend coverage provided under this policy to any liability which would not have been covered in the absence of this exclusion.

- b. Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
 - i. the use of computer hardware or software; or
 - ii. the provision of computer or telecommunication services by or on your behalf; or
 - iii. the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including Property Damage caused by any computer virus.

8. Pollution

Liability, of whatsoever nature and howsoever arising, directly or indirectly out of or in connection with Pollution, including but not limited to:

- a. its prevention, clean up or containment;
- b. Public Liability arising from it; or
- c. the remediation of any environment affected by Pollution.
This exclusion shall not apply where you have proven to us that such Pollution:
 - i. did not occur gradually over a period of time but suddenly, at an identifiable point in time; and
 - ii. was entirely unexpected, unintended and fortuitous from your standpoint.

Our total aggregate liability for all Pollution claims covered in any one Period of Insurance shall not exceed the Limit of Liability shown in the Schedule.

9. Product Recall

Liability for the withdrawal, recall, inspection, repair, replacement or loss of use of the your Products, or of any property of which such Products forms a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

10. Products

- a. Property Damage to your Products if such Property Damage is attributable to any defect therein or the harmful nature or unsuitability thereof;
- b. claims in respect of the cost of performing, completing, repairing, correcting or improving any work undertaken by or on your behalf.

11. Professional Advice

- a. Liability in respect of the rendering of or failure to render professional advice or service by you or any error and omission connected with that advice or service;
- b. liability arising out of advice, design, formula or specification. This exclusion does not apply to:
 - i. the rendering of or failure to render medical advice or service by Medical Persons employed by you to provide first aid and other medical services on your premises;
 - ii. advice given in respect of the use of your Products, which is not given for a fee.

12. Property Owned, Leased or Hired

Property Damage to:

- a. property owned, leased or hired by you, except for leased premises where the damage is caused by fire, explosion, water discharging or leaking from any pipe or water system or Vehicle impact;
- b. property in your physical or legal control, except for property of your Employees, or Vehicles which are not used by or on your behalf but which are damaged whilst in your car park, provided that your Business does not include ownership or operation of a car park for reward.

13. Radiation

Public Liability directly or indirectly caused by contributed to or arising from:

- a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion, combustion shall include any self-sustaining process of nuclear fission;
- b. nuclear weapons material.

14. Terrorism

Public Liability directly or indirectly caused by, resulting from or in connection with any:

- a. act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Public Liability; or
- b. action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

In any claim or suit or other proceedings where we allege that by reason of this exclusion, any liability is not covered by this policy the burden of proving that liability is covered shall be upon you.

15. USA and Canada

Liability for:

- a. claims made and actions instituted within the United States of America or Canada or any other territory coming within jurisdiction of the courts of the United States of America or Canada;
- b. claims and actions to which the laws of the United States of America or Canada apply;
- c. claims in respect of Public Liability caused by or arising out of your Products exported to the United States of America or Canada; This exclusion does not apply to claims and actions arising from:
 - i. the presence of any of your travelling executives or salesmen, acting in that capacity, who are normally resident in Australia or its territories whilst in the United States of America or Canada; and
 - ii. the Limit of Liability in respect of coverage provided under i. above is inclusive of all Supplementary Payments.

16. Vehicles

Liability arising out of, or in connection with the ownership, maintenance, operation or your use of any Vehicle.

17. War

Liability directly or indirectly arising out of or in connection with war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power. This includes expropriation, seizure, confiscation, nationalisation, damage or destruction of your Products or of any other property, by or under the order of any de facto or de jure government or authority.

CLAIMS CONDITIONS

These conditions must be complied with before you become entitled to any benefit under this policy. If you fail to observe any of them and the failure increases our exposure to any insured loss, we may reduce the amount of your claim or decline it altogether.

Notification of Occurrence, Claim or Suit

You must give:

- a. written notice to us of any claim made against you or any Occurrence that may give rise to a claim being made against you and which may be covered by this policy. You must give this notice as soon as you can.
- b. all such additional information that we may require and every demand, writ, summons, proceedings, impending prosecution or inquest and forward to us all documents relating to the claim or Occurrence as soon as they are received by you.

Your Actions in the Event of an Occurrence, Claim or Suit

- a. Without our written consent, you must not make any admission, offer, promise or payment in connection with any Occurrence or claim.
- b. You must make every effort to preserve all property, Products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, no alteration or repair shall be effected without our consent until we have had an opportunity of inspection unless an alteration or repair is absolutely necessary.
- c. You must provide us with details of any other insurances current at the time of any Occurrence which covers any of the liability insured by this policy.

Our Rights

- a. When an Occurrence, in respect of which a claim is, or may be, made under this policy happens, we shall have full discretion in the conduct of any proceedings in connection with the claim. You must give such information and assistance that we may reasonably require in the prosecution, defence or settlement of any claim.
- b. We may at any time pay to you, in respect of all claims against you arising directly or indirectly from one source or original cause:
 - i. the amount of the Limit of Liability applicable (after deduction of any amount already paid by us, which amount would reduce the amount of our unfulfilled liability in respect thereof); or
 - ii. any lesser sum for which the amount can be settled.
- c. Upon making such payment, we shall relinquish conduct and control of, and be under no further liability under this policy in connection with, such claim(s) except for Supplementary Payments:
 - i. recoverable from you in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or
 - ii. incurred by us, or by you with our written consent, prior to the date of such payment.

Goods and Services Tax

You must inform us of the extent to which you are entitled to an input tax credit for the premium each time that you make a claim under this policy. No payment will be made to you for any GST liability that arises on the settlement of a claim under this policy when you have not informed us of your entitlement or correct entitlement to an input tax credit.

Notwithstanding anything contained in this policy (including the Schedule and any endorsements attached hereto) to the contrary, our liability will be calculated after taking into account:

- a. any input tax credit to which you, or any claimant against you, is entitled for any acquisition relevant to a claim paid under this policy; and
- b. any input tax credit to which you, or any claimant against you, would have been entitled were You or the claimant to have made a relevant acquisition; and
- c. the GST exclusive amount of any supply made by you which is relevant to your claim.

If the applicable Limit of Liability is not sufficient to cover your claim, we will only pay GST (less any relevant input tax credit) that relates to our proportion of your claim.

The terms 'GST', 'input tax credit', 'acquisition' and 'supply' have the meanings ascribed to them in the A New Tax System (Goods and Services Tax) Act 1999.

Nothing in this clause shall vary, alter, waive or extend any of the terms, Claims Conditions, General Conditions, Exclusions or Definitions of this policy other than as stated above.

GENERAL CONDITIONS

These conditions must be complied with before you become entitled to any benefit under this policy. If you fail to observe any of them and the failure increases our exposure to any insured loss, we may reduce the amount of your claim or decline it altogether.

Adjustment of Premium

If the first premium or any renewal premium for this policy or any part of it shall have been calculated on estimates provided by you, you shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow us to inspect such record.

Where requested by us after the expiry of each Period of Insurance, you must provide us with such particulars and information as we may require as soon as reasonably practicable. The premium for such Period of Insurance shall be adjusted and any difference paid by or allowed to you, as the case may be, subject to retention by us of any minimum premium specified in the Schedule.

Alteration of Risk

Every change which substantially varies any of the material facts or circumstances existing at the commencement of each Period of Insurance that shall come to the knowledge of you or your officer responsible for insurance matters, shall be notified to us as soon as possible and you must (if we request it) pay such additional premium as we may require.

Breach of Condition

Your rights under this policy shall not be prejudiced by any unintentional and/or inadvertent:

- a. breach of a condition or warranty without your knowledge or consent, or
- b. error in the name or title of any person(s), corporation and / or other organisation which forms part of the definition of "you"; or
- c. error in name, description or situation of property, or
- d. failure to report any property and / or entity and / or insurable exposure in which you have an interest.

However upon discovery of any such fact or circumstances referred to above, you or your officer responsible for insurance matters shall give written notice thereof to us as soon as possible thereafter and you shall (if so requested) pay such reasonable additional premium that we may require.

Cancellation of This Policy

By You

You may cancel this policy at any time by tendering notice in writing to us to that effect, in which event the cancellation will become effective from the earlier of the date the notice is received by us or the date on which you arranged alternative insurance protection.

By Us

We may cancel this policy in any of the circumstances set out in Sections 60 or 61 of the Insurance Contracts Act 1984 (as amended).

Such cancellation shall take effect at the earlier of the following times:

- a. the time when another policy of insurance between you and us or some other insurer, being a policy that is intended by you to replace this policy, is entered into; or
- b. at 4.00 p.m. on the thirtieth (30th) business day after the day on which notification was given to you; or
- c. automatically, if your Business is wound up or carried on by a liquidator or receiver or is permanently-discontinued because it is no longer your Business we agreed to cover.

In the event of cancellation of this policy by either party, unless the premium is minimum and deposit shall be entitled to a pro rata refund of premium, subject to any minimum and deposit premium that may apply. If you cancelled this policy, we will deduct 20% from the unused portion of the premium to cover Winsure's costs.

If the premium is subject to adjustment, cancellation will not affect your obligation to supply us with such information as is necessary to permit the premium adjustment to be calculated.

Cross Liabilities

This insurance extends to cover you separately in the same manner and to a like extent as though policies had been issued in their separate names.

Provided always that:

- a. each of such parties shall be separately subject to the terms of this Policy in the same manner and to a like extent as though separate policies had been issued, and
- b. in no case shall the amount payable by us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

Foreign Currency

All amounts referred to in this policy are in Australian dollars.

If you incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian dollars at the free rate of exchange published in the Australian Financial Review on the date when the award was made or settlement was agreed upon; subject always to the applicable Limit of Liability.

Jurisdiction

Despite what it says in the Foreign Currency condition above, as far as possible, this policy shall be governed by and construed in accordance

with the laws of Australia and the States and Territories of it. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this policy shall be determined in accordance with the law and practice of such a Court.

Premium Fund Policy Cancellation

If the premium 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, then subject to Section 60 of the Insurance Contracts Act 1984, we may cancel this policy at the request of the premium funding company, after substantiation of the debt and default in payment by you has verified by the premium funding company. We will give you not less than three business days written notice to that effect, following which, and subject to any minimum and deposit premium that may apply, a refund will be made to the premium funding company of the proportionate part of the premium applicable to the unexpired Period of Insurance.

Premium Payment

You must ensure that payment of the premium specified in the Schedule is made to us within thirty days of the commencement of the Period of Insurance.

Release

Where you are required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority or any landlord or any other persons or parties from liability for loss, destruction or damage or legal liability insured against under this policy, such release is allowed without prejudice to this insurance.

Risk Inspection

We shall be permitted, but not obligated, to inspect your premises and operations at any reasonable time. Neither our right to make inspections, nor our failure to make inspections, nor the making of inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of you or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

We may examine and audit your books of accounts and financial records at any time during the currency of this policy and within three years after the final termination of this policy but only with regard to matters which in our opinion are relevant to this policy.

Risk Management

You must:

- a. exercise care to employ competent Employees and take measures to maintain all premises, fittings and plant in sound and serviceable condition.
- b. take precautions to prevent:
 - i. incurring Public Liability;
 - ii. the manufacture, sale or supply of defective Products, and comply, and ensure that your Employees, servants and agents comply, with all statutory obligations, by-laws or regulations imposed by any public authority in respect of the safety of persons or property;

- iii. at your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency you have knowledge of or have reason to suspect.

Subrogation

With the exception of the corporations, organisations, parties or persons addressed in the Subrogation Waiver condition (to which the following clause cannot be applied), any corporation, organisation, party or person claiming under this insurance shall, at our request and at our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by us for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which we shall be or would become entitled upon us paying for or indemnifying you in respect of legal liability under this insurance.

Should you incur any legal liability which is not covered by this insurance:

- a. due to the application of a Deductible; and/or
- b. where the amounts of any judgments or settlements exceed the applicable Limit of Liability;

you will be entitled to the first call on the proceeds of all recoveries made, by either you or us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by us) and any remaining amount(s) will be applied to reimburse us.

This section has been left intentionally blank.

This section has been left intentionally blank.

Subrogation Waiver

Notwithstanding the Subrogation condition above, we agree to waive all of our rights of subrogation under this policy against:

- a. you, and
- b. any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this policy; and
- c. any party to which the Release condition applies.

Where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, our right of subrogation is not waived to the extent and up to the amount of such other policy.