



# **PUBLIC AND PRODUCTS LIABILITY**



**JUA Underwriting Agency Pty Limited**



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## **Welcome to JUA Underwriting Agency Pty Ltd**

In this policy document You'll find all the information You need to know about the type of cover(s) available, the Underwriter's terms and conditions, and making a claim.

Please read this booklet and make sure that You are satisfied with what the Underwriter offers.

This booklet and the insurance schedule the Underwriter sends You form Your legal contract with the Underwriter, so please keep them together in a safe place.

Please do not hesitate to contact Your broker or agent if You have any questions about this policy booklet or Your insurance cover.

## **IMPORTANT INFORMATION**

### **Please Check the Schedule Details**

Please check that the Schedule accurately states what You have insured. Especially check that the Limits of Liability are adequate.

### **Your Duty of Disclosure**

The law requires You to tell the Underwriter everything You know (or a reasonable person in the circumstances could be expected to know) which is relevant to the Underwriter's decision to insure You and the terms on which the Underwriter insures You.

This duty applies before You enter into a contract with the Underwriter, that is before the Underwriter accepts Your application for insurance and also before each time You renew, extend, vary or reinstate the Policy.

Each person named as the Insured has the same duty.

### **Penalty for Non-Disclosure**

If You do not tell the Underwriter everything that is relevant, the Underwriter may:

- reduce or refuse to pay a claim;
- cancel Your Policy; or
- if You act fraudulently, invalidate the Policy from its beginning and not be bound by it.

## **You don't need to tell the Underwriter anything which**

- reduces the risk;
- is of common knowledge;
- the Underwriter already knows, or ought to know in the ordinary course of the Underwriter's business; or
- the Underwriter indicates it does not want to know.

If You are not sure that something is relevant, it is best to disclose it anyway. Also be sure to notify the Underwriter of any changes during the Period of Insurance which affect Your Policy.

## **Preventing the Underwriter's Right of Recovery**

If You have agreed not to seek compensation from another person who is liable to compensate You for any loss, damage or liability, which is covered by this Policy, the Underwriter will not cover You under this Policy for that loss, damage or liability.

## **Other Parties Interests**

You must tell the Underwriter about all parties (eg financiers, lessors) to be covered by this insurance. The Underwriter will protect their interests only if You have told the Underwriter about them and the Underwriter have noted them on the Schedule.

## **Contracts or Agreements**

The Underwriter will not cover any liability or obligation assumed by You under any contract, agreement or warranty which would not have otherwise arisen or been implied by law unless You have told the Underwriter about them and the Underwriter has noted them on the Schedule.

## **Goods and Services Tax (GST)**

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

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

Where the Underwriter pays a claim and You have paid an amount for GST on acquisitions in connection with Your claim, the Underwriter will cover You for that GST, less any input Tax Credit You may be able to claim for Your acquisitions. This amount is included in the Limit of Liability shown on the Schedule. This is the maximum amount the Underwriter will pay inclusive of GST.

You must advise the Underwriter of Your correct Taxable Percentage. Any GST liability arising from Your incorrect advice is payable by You.

## 1. DEFINITIONS

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

- 1.1** “**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 section of the public, in fear.
- 1.2** “**Aircraft**” means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 1.3** “**Business**” means the business described in the Schedule including the provision and management of canteens, social, sports and welfare organisations for the benefit of Your employees, first aid, fire and ambulance services and the maintenance of Your premises.
- 1.4** “**Deductible**” means the amount You first bear in relation to each Occurrence including all costs arising from the Defence of Claims.
- 1.5** “**Employee**” means any person engaged under a contract of or for service or apprenticeship with the Insured designated in clause 1.21.1 and 1.21.2 but does not include any person employed under such a contract who is excluded from the definition of ‘worker’ under any workers’ compensation legislation.
- 1.6** “**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 You.
- 1.7** “**Hovercraft**” means any vessel, craft or thing made or intended to float on or in or travel on or through the atmosphere or water.
- 1.8** “**Limit of Liability**” means the applicable Limit of Liability specified in the Schedule.
- 1.9** “**Medical Persons**” means qualified medical practitioners, nurses, dentists and first aid attendants.
- 1.10** “**Occurrence**” means an event which results in Personal Injury or Property Damage, neither of which is expected nor intended from any person’s standpoint. All Personal Injury or Property Damage arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one Occurrence.
- 1.11** “**Period of Insurance**” means the period specified in the Schedule.
- 1.12** “**Personal Injury**” means:
- 1.12.1** bodily injury, disease, sickness, death, disability, shock, fright, mental anguish and mental injury. In the event of claims for Personal 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;
- 1.12.2** the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution;
- 1.12.3** the effects of wrongful entry or eviction;
- 1.12.4** the effects of assault and battery not committed by You or at Your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

- 1.13** “**Policy**” means this document and each endorsement issued by the Underwriter attached, or intended to be attached, to it.
- 1.14** “**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.
- 1.15** “**Property Damage**” means:
- 1.15.1** physical damage to or loss or destruction of tangible property including any resulting loss of use of that property; or
- 1.15.2** loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by physical damage to or loss or destruction of other tangible property.
- 1.16** “**Schedule**” means the most current schedule issued by the Underwriter in connection with this Policy.
- 1.17** “**Territorial Limits**” means anywhere in the world subject to exclusions 3.8 and 3.20.
- 1.18** “**Underwriter**” means certain Insurance Companies whose name and proportions underwritten by each of them appears in the schedule.
- 1.19** “**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.
- 1.20** “**Watercraft**” means any vessel, hovercraft, craft or thing made or intended to float on or in or travel on or through or under water.
- 1.21** “**You/Your**” means:
- 1.21.1** the Insured named in the Schedule including as if they were You;
- 1.21.2** all the subsidiary companies (now or subsequently constituted) of the Insured named in the Schedule provided their places of incorporation are within Australia or any Territory of Australia;
- 1.21.3** every director, executive officer, employee, partner or shareholder of one of the Insured designated in clause 1.21.1 or 1.21.2 but only whilst acting within the scope of their duties in such capacity;
- 1.21.4** every principal, in respect of that principal’s vicarious liability for the acts or omissions of one of the Insureds designated in clause 1.21.1 or 1.21.2 in the performance by them of work for that principal, but subject always to the extent of coverage and the Limit of Liability provided by this Policy;
- 1.21.5** every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with Your consent (other than an Insured designated in clause 1.21.4 or 1.21.6) in respect of claims arising from their duties connected with the activities of any such club, organisation or service. This Insurance shall not apply to Personal Injury or Property Damage of any participants of any game, match, race, practice or trial;
- 1.21.6** each partner, joint venturer, co-venturer or joint lessee of the Insured named in the Schedule but only:
- 1.21.6.1** 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
- 1.21.6.2** with respect to liability incurred as the partnership, joint venture, co-venture or joint lease; and
- 1.21.6.3** the Underwriter agrees to insure them and the Insured named in the Schedule agrees to pay the premium the Underwriter requires;
- 1.21.7** any director or senior executive of the Insured designated in clause 1.21.1 and 1.21.1 in respect of private work undertaken by Your employees for such director or senior executive.
- “You/Your” does not include the interest of any person other than as described in 1.21.1 to 1.21.7 above.

**1.22** “Your Products” means any goods, products and property (after they have ceased to be in Your possession or under Your 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 You (including any container thereof other than a vehicle).

## 2. 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 You in accordance with this Policy, provided that the Underwriter will only be liable after the exhaustion of the Deductible.

### 2.1 Liability

The Underwriter will pay:

**2.1.1** all sums which You become legally liable to pay by way of compensation;

**2.1.2** all costs awarded against You;

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

### 2.2 Defence of Claims

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

**2.2.1** defend in Your name and on Your behalf any claim or legal action against You seeking damages on account of Personal Injury or Property 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;

**2.2.2** pay all legal costs and expenses incurred by the Underwriter and all interest accruing after entry of judgment until the Underwriter have paid, tendered or deposited in court such part of the judgment as does not exceed the Limit of Liability;

**2.2.3** reimburse You 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 You seeking damages on account of Personal Injury or Property Damage;

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

Provided that:

**2.2.5** the Underwriter will not be obliged to pay any claim or judgment or to defend any claim or legal action after the Limit of Liability has been exhausted by payment of judgments or settlements;

**2.2.6** if a payment exceeding the Limit of Liability 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 2.2 will be limited to that proportion of those costs, expenses and interest as the Limit of Liability bears to the amount paid to dispose of the claim.

The Limit of Liability is inclusive of all costs, expenses and interests as set out in section 2.2 of this Policy.

### 2.3 Limit of Liability

**2.3.1** The maximum liability of the Underwriters in respect of any claim or any series of claims, inclusive of law costs and expenses, for Personal Injury or Property Damage caused by or arising out of one Occurrence shall not exceed the Limit of Liability.

**2.3.2** The total aggregate liability during any one Period of Insurance for all claims, inclusive of law costs and expenses, arising out of Your Products shall not exceed the Limit of Liability.

## 2.4 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 Liability in respect of any Occurrence or Period of Insurance.

Any claim by an Insured party in respect of Personal Injury to any person who is or was an employee or deemed employee of any one or more Insured parties under the Policy or persons to whom the policy extends (regardless of the basis of their liability) will be subject to a Deductible of \$25,000 each and every loss.

## 3. EXCLUSIONS

This Policy does not cover liability in respect of:

### 3.1 Aircraft, Aircraft Products and Watercraft

Claims arising out of:

- 3.1.1** the ownership, maintenance, operation or use by You or on Your behalf of:
  - 3.1.1.1 any Aircraft; or
  - 3.1.1.2 any Watercraft exceeding 20 metres in length, except where such watercraft are owned and operated by others and used by You for business entertainment; or
  - 3.1.1.3 any Hovercraft.
- 3.1.2** Your Products that are Aircraft component parts used for maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery which to Your knowledge are incorporated in an Aircraft.

### 3.2 Asbestos

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

### 3.3 Assault and Battery

Personal Injury or Property Damage caused by or arising from assault and battery committed by You or at Your direction unless reasonably necessary for the protection of persons or property.

## 3.4 Contractual Liability

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

- 3.4.1** the liability would have been implied by law;
- 3.4.2** the liability arises from a provision in a contract for lease of real or personal property other than a provision which obliges You to effect insurance or provide indemnity in respect of the subject matter of that contract;
- 3.4.3** the liability is assumed by You under a warranty of fitness or quality as regards to Your Products;
- 3.4.4** the obligation is assumed under those agreements specified in the Schedule.

## 3.5 Design

The harmful nature, condition or quality of any of Your Products which nature, condition or quality results from the intended use of any design, formula, specification, plan or pattern.

## 3.6 e-Commerce

For claims of whatsoever nature of any kind anywhere in the world directly or indirectly caused by, contributed or arising from:

- 3.6.1** total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation, misappropriation or other use of Computer Equipment; or
- 3.6.2** error in creating, amending, entering, directing, deleting or using Computer Equipment; or
- 3.6.3** total or partial inability or failure to receive, send, access or use Computer Equipment for any time or at all.

For the purpose of this Exclusion "Computer Equipment" shall mean and include data or parts of data, computer hardware, operating system, computer network, equipment, web site, server, extranet, software, applications software, computer chip including microprocessor chip and coded instructions as well as any new technology, product or service replacing existing computer equipment.

### 3.7 Employment Liability

Personal Injury imposed:

- 3.7.1 by any workers' compensation law;
- 3.7.2 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
- 3.7.3 for and in respect of Employment Practices; provided that if You are:
  - 3.7.4 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 Personal Injury; or
  - 3.7.5 not required to so insure or otherwise fund such liability by reason only that the Personal Injury is to a person who is not a worker or employee for the purposes of the relevant workers' compensation law or the Personal Injury is not an injury which is subject to such law;

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

### 3.8 Exports to the USA or Canada

Claims in respect of Personal Injury or Property Damage caused by or arising out of Your Products knowingly exported by You, or Your agents or servants, to the United States of America or Canada.

### 3.9 Faulty Workmanship

Property Damage to that part of any property upon which You are or have been working where the Property Damage arises from Your work or the cost of performing, correcting or improving any work undertaken by You.

### 3.10 Fines, Penalties

Fines, penalties or liquidated damages.

### 3.11 Libel and Slander

The publication or utterance of a libel or slander or other defamatory or disparaging material.

### 3.12 Loss of Use

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

- 3.12.1 a delay in or lack of performance by or on Your behalf of any agreement;
- 3.12.2 the failure of Your Products to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by You, 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 Your Products after they have been put to use by any person or organisation other than one of You designated in clause 1.21.1 or 1.21.2.

### 3.13 Pollution

- 3.13.1 Personal Injury or Property 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;
- 3.13.2 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 Personal Injury and/or Property Damage;

**3.13.3** 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 3.13.1 , 3.13.2 and 3.13.3 in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases and escape of Pollutants during any one Period of Insurance shall not exceed the Limit of Liability.

### **3.14 Product Defect**

Property Damage to Your products if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

### **3.15 Product Recall**

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

### **3.16 Professional Liability**

The rendering of or failure to render professional advice or service by You or any related error or omission but this exclusion does not apply to the rendering of or the failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises.

### **3.17 Property in Custody or Control**

Property Damage to:

**3.17.1** property owned by or leased or rented to You; or

**3.17.2** property in Your physical or legal control.

But this exclusion does not apply to liability for Property Damage to:

**3.17.3** premises (including landlord's fixtures and fittings) which are leased or rented to You;

**3.17.4** premises (or their contents) not owned, leased or rented by You but temporarily occupied by You for work therein;

**3.17.5** vehicles (not belonging to or used by You) in Your physical or legal control where the Property Damage occurs while the vehicles are in a car park owned or operated by You, unless You own or operate the car park for reward;

**3.17.6** the property of an employee of one of You designated in clause 1.21.1 or 1.21.2.

### **3.18 Punitive Damages**

Punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

### **3.19 Radioactivity**

Personal Injury or Property Damage directly or indirectly caused by, contributing to or arising from:

**3.19.1** 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 only, combustion shall include any self-sustaining process of nuclear fission;

**3.19.2** nuclear weapons material.

### **3.20 Territorial Limits**

**3.20.1** 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.

**3.20.2** claims and actions to which the laws of the United States of America or Canada apply.

Provided that:

**3.20.3** exclusions 3.20.1 and 3.20.2 do not apply to claims and actions arising from the presence of any of Your employees' and/or directors, partners or proprietors resident outside the United States of America or Canada who is not undertaking manual work or supervision of work of any kind whilst in the United States of America or Canada;

**3.20.4** the Limit of Liability in respect of coverage provided under clause 3.20.3 is inclusive of all costs, expenses and interest as set out in clause 2.2 of this Policy.

### 3.21 Terrorism

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

- 3.21.1 Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Personal Injury or Property Damage; or
- 3.21.2 action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

### 3.22 Tobacco

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

- 3.22.1 tobacco or tobacco smoke;
- 3.22.2 any ingredient or additive present in any articles, items or goods which contain or include tobacco.

### 3.23 Vehicles

Personal Injury or Property Damage arising out of the ownership, possession, operation, maintenance or use by You or on Your behalf of any Vehicle:

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

Exclusions 3.23.1 to 3.23.2 do not apply to:

- 3.23.3 Personal Injury where:
  - 3.23.3.1 that compulsory liability insurance or statutory indemnity does not provide indemnity and
  - 3.23.3.2 the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles.
- 3.23.4 Property Damage arising out of and during the loading or unloading of goods to or from any Vehicle.

- 3.23.5 Property Damage caused by or arising from the operation or use of any Vehicle which is designed primarily for lifting, lowering, loading or unloading, whilst being operated or used by You or on Your behalf within the confines of Your premises.

- 3.23.6 Property Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any Vehicle (excluding whilst the vehicle is travelling, transporting or carting goods) at any work site.

### 3.24 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. CONDITIONS

### 4.1 Adjustment of Premium

- 4.1.1 If the first or renewal premium for the Policy has wholly or partly been calculated on estimates, You must within 30 days after the expiry of each Period of Insurance provide to the Underwriter such matters, particulars and information relevant to the policy as the Underwriter may reasonably require. The premium for the period will then be adjusted and any difference paid by or allowed to You as the case may be, provided that the adjusted premium will not be less than any minimum premium specified in the Schedule.
- 4.1.2 You must keep a record of all matters, particulars and information requested by the Underwriter and must on reasonable notice allow the Underwriter or the Underwriter's nominee to inspect and make copies of those records.

## **4.2 Cancellation**

- 4.2.1** You may cancel this Policy by giving written notice to the Underwriter.
- 4.2.2** The Underwriter may cancel this Policy in any of the circumstances set out in the Insurance Contracts Act 1984.
- 4.2.3** When the premium is subject to adjustment, cancellation will not affect Your obligation to supply to the Underwriter such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

## **4.3 Claims**

- 4.3.1** You must not without the Underwriter's written consent make any admission, offer, promise or payment in connection with any Occurrence or claim and the Underwriter will be entitled to take over and conduct in Your name the defence or settlement of any claim.
- 4.3.2** You must use Your best endeavours to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of right of subrogation and so far as may be reasonably practicable You must not without the Underwriter's written consent carry out any alteration or repair until the Underwriter has had an opportunity of inspection.
- 4.3.3** The Underwriter will have full discretion in the conduct of any proceedings in connection with any claim and You must give all information and assistance as the Underwriter may require in the prosecution, defence or settlement of any claim.

## **4.4 Discharge of Liabilities**

The Underwriter may at any time pay to You in respect of all claims against You arising from an Occurrence the balance of the Limit of Liability or any smaller sum for which the claim or claims can be settled and upon that payment the

Underwriter will relinquish conduct or control of and be under no further liability under this Policy in connection with those claims except for costs, charges and expenses:

- 4.4.1** recoverable from You for all or part of the period prior to the date of such payment;
- 4.4.2** incurred by the Underwriter;
- 4.4.3** incurred by You with the Underwriter's written consent prior to the date of such payment.

## **4.5 Due Observance**

If You fail to comply with any provision of the Policy, the Underwriter may refuse to pay a claim, but in any event the Underwriter's rights will be subject to Section 54 of the Insurance Contracts Act 1984.

## **4.6 Inspection of Property**

- 4.6.1** The Underwriter will be permitted but not obligated to inspect Your property and operations at any time.
- 4.6.2** Neither the Underwriter's right to inspect nor the Underwriter's failure to inspect nor the making of any inspection nor any report of an inspection may be used by You or others in any action or proceeding involving the Underwriter.
- 4.6.3** The Underwriter may examine and audit Your books and records at any time during the Period of Insurance and within three years thereafter but that examination and audit will be restricted to matters which in the Underwriter's opinion are relevant to the Policy.

## **4.7 Insurance Contracts Act 1984**

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

## **4.8 Jurisdiction**

All disputes arising out of or under this Policy will be subject to determination by any Court of competent jurisdiction within Australia.

#### **4.9 Notices**

You must as soon as possible give to the Underwriter notice in writing of:

- 4.9.1** every Occurrence, claim, writ, summons, proceeding, impending prosecution, and inquest together with all relevant information which may result in a claim under this Policy, whether or not You believe any claim amount might fall below the applicable Deductible;
- 4.9.2** every change (including anything done or not done by You) that comes to Your knowledge which materially varies any of the facts or circumstances existing at the commencement of this Policy.

Any notice given in writing by the Underwriter to the first named Insured specified in the Schedule will be treated as notice to each of the parties comprising the Insured.

Service of notices by the Underwriter will be effective immediately on receipt by the first named Insured of a letter or electronic communication sent by the Underwriter or in the case of notices by post, three business days after having been posted by the Underwriter.

#### **4.10 Other Insurance**

As soon as is reasonably practical but in any case within 15 days after entering into any other contract of insurance, You must notify the Underwriter of, and give the Underwriter full details of, any other insurance which provides indemnity, in full or in part, for any of the liabilities insured under this Policy.

#### **4.11 Payment of Premium**

You will pay promptly to the Underwriter the premium, any adjustments of premium, any amount on account of GST and other amounts charged for this Policy and any renewal, extension or endorsement to the Policy.

#### **4.12 Preventing the Underwriter's Right of Recovery**

If You have agreed not to seek compensation from another person who is liable to compensate You for any loss, damage or liability, which is covered by this Policy, the Underwriter will not cover You under this Policy for that loss, damage or liability.

#### **4.13 Reasonable Care**

You must:

- 4.13.1** exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- 4.13.2** take all reasonable precautions to prevent Personal Injury and Property Damage, and prevent the manufacture, sale or supply of defective Products, and comply with and ensure that Your employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:
  - 4.13.2.1 safety of persons or property;
  - 4.13.2.2 disposal of waste products;
  - 4.13.2.3 handling, storage or use of flammable liquids or substances, gases or toxic chemicals.
  - 4.13.2.4 at Your own expense take reasonable action to trace, recall or modify any of Your Products containing any defect or deficiency of which You have knowledge or have reason to suspect, including (but not limited to) any of Your Products subject to governmental or statutory ban.

#### **4.14 Subrogation**

The Underwriter may prosecute in Your name for damages or otherwise. The Underwriter may do this before or after the Underwriter has paid Your claim and whether or not You have been fully compensated for Your actual loss. You must execute and deliver instruments and papers and do everything that is necessary to assist the Underwriter in the exercise of those rights.

## THE UNDERWRITER'S PRIVACY PROMISE

The Underwriter is committed to safeguarding privacy and the confidentiality of personal information. The Underwriter will only collect personal information from You, which is relevant to Your application for insurance or Your insurance policy, including claims made by You and use it in a way You would reasonably expect.

When the Underwriter collects information about Your business that identifies an individual, it becomes personal information and subject to the Privacy Act. Without this personal information the Underwriter may not be able to issue insurance cover or process Your claim.

The Underwriter or the Underwriter's authorised agent, may disclose personal information collected from You:

- To an investigator, assessor, surveyor, accountant, repairer, supplier, health service provider, Your broker or State or Federal Authority (for the purpose of investigating, assessing or processing Your claim);
- To a lawyer or recovery agent (for the purpose of defending an action by a third party against You or for the purpose of recovering the Underwriter's costs including Your excess or for the drafting of policy wording or documentation);
- To another insurer (for the purpose of seeking recovery from them or to assist them to assess insurance risks) or a reinsurer or reinsurance broker (who may be located overseas);
- To an insurance reference bureau (for the purpose of recording any claims You make upon the Underwriter);
- To a witness or another party in a claim (for the purpose of obtaining a statement from them or seeking recovery from them or to defend an action by a third party).

Personal information may also be obtained from the above people or organisations relating to Your insurance. The Underwriter may also obtain personal information when obtaining financial or credit information from commercial credit reporting organisations or financial institutions.

In addition the Underwriter will:

- Give the individual the opportunity to correct their personal information, or obtain access to it (some restrictions and costs may apply);
- Provide the Underwriter's dispute resolution procedures to the individual in respect of any complaint they may have regarding their personal information.

Where You name a person as a partner, director, officer, employee or other position as required on the Underwriter's proposal form, the Underwriter will rely on You having informed those people that You will be providing their names, positions, professional body membership or other personal information to the Underwriter.

The Underwriter would appreciate it if You would provide a copy of this Privacy Promise to any person whose information has been provided to the Underwriter by You for the purpose of obtaining Corporate Liability or Corporate Property insurance cover.

Further information can be obtained by contacting the Underwriter's authorised agents:

**Tel:** (02) 8272 4802

**Fax:** (02) 9247 2411

**E-mail:** [compliance.manager@juaunderwriting.com.au](mailto:compliance.manager@juaunderwriting.com.au)

or by contacting the Underwriter's Compliance Manager:

**Tel:** (02) 9375 4656

**Fax:** (02) 9221 1330

**E-mail:** [compliance.manager@qbe.com](mailto:compliance.manager@qbe.com)

