Motor Trade Combined Liability Policy Wording

Contents

Introduction

About Victor Insurance

Victor Insurance Pty Ltd (ABN 11 146 607 838) ("Victor Insurance") is an underwriting agency and act under a binding authority, on behalf of Certain Underwriters at Lloyd's, led by Brit Global Specialty, Syndicate No. BRIT 2987 and not as agent for the insured. Victor Insurance is an authorised representative (AR No. 403803) of Marsh Pty Ltd (ABN 86 004 651 512, AFSL 238983) (Marsh). Victor Insurance is a business of Marsh.

Victor Insurance can be contacted at:
Phone – (02) 8864 7688
Address – One International Towers, 100 Barangaroo Avenue, Sydney NSW 2000
Post – PO Box H176, Australia Square NSW 1215

Who is The Insurer

Certain Underwriters at Lloyd's, led by Brit Global Specialty, Syndicate No. BRIT 2987.

Privacy Notice

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

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

Victor Insurance Complaints Notice

What to do if you have a Complaint

- If you are dissatisfied with Victor Insurance's service in any way, contact Victor Insurance and Victor Insurance will attempt to resolve the matter in accordance with Victor Insurance's own internal dispute resolution procedure, a copy of which is available upon request. In the first instance, you should address any concern or complaint to the representative servicing your account. Alternatively, you may contact Victor Insurance's Complaints Officer on (03) 9603 2338 or email complaints.australia@marsh.com.

- If your representative is unable to resolve your complaint, or if you are dissatisfied with the response, it will be escalated to Victor Insurance's Complaints Officer to investigate and take appropriate action. You will be advised within 30 days of Victor Insurance's decision. If the matter is complex and a longer period is required, you will be informed.
- If you are not satisfied with Victor Insurance's final decision, you may be able to refer your complaint to the Australian Financial Complaints Authority (AFCA). AFCA's role is to assist consumers and small business resolve disputes with financial service providers, including trustees, their broker, or their insurance company. Third party motor vehicle claimants who are uninsured can also access AFCA.

If you have any query about whether your complaint can be handled within AFCA's rules or you wish to contact them, their contact details are:

Phone: 1800 931 678 (free call);
Email: info@afca.org.au
Online: www.afca.org.au; and
Mail: Australian Financial Complaints Authority, GPO Box 3, Melbourne, Victoria, 3001

Important Information

Duty of Disclosure

Before you enter into an insurance contract, you have a duty of disclosure under the Insurance Contracts Act 1984. You have a duty to tell us anything that you know, or could reasonably be expected to know, may affect the insurer's decision to insure you and on what terms. You have this duty until the insurer agrees to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract. If we ask you questions that are relevant to the insurer's decision to insure you and on what terms, you must tell us anything that you know and that a reasonable person in the circumstances would include in answering the questions.

Also, we may give you a copy of anything you have previously told us and ask you to tell us if it has changed. If we do this, you must tell us about any change or tell us that there is no change. If you do not tell us about a change to something you have previously told us, you will be taken to have told us that there is no change.

You do not need to tell us anything that reduces the risk insured, is common knowledge, the insurer knows or should know as an insurer or the insurer waives your duty to tell them about.

If you do not tell us something
If you do not tell us anything you are required to, the insurer may cancel your contract or reduce the amount it will pay you if you make a claim, or both. If your failure to tell us is fraudulent, the insurer may refuse to pay a claim and treat the contract as if it never existed.

General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

Complaints and disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Victor Insurance in the first instance:

Victor Insurance's Complaints Officer
Email: complaints.australia@marsh.com
Telephone: (03) 9603 2338

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited
Email: idraustralia@lloyds.com
Telephone: (02) 8298 0783
Post: PO Box R1745
Royal Exchange NSW 1225

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Service of Suit

The Underwriters accepting this Insurance agree that:

(i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

(ii) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia
Post: PO Box R1745
Royal Exchange NSW 1225
Email: serviceofsuitaus@lloyds.com
who has authority to accept service on the Underwriters' behalf;

(iii) if a suit is instituted against any of the Underwriters, all Underwriters 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 notice should be given as soon as possible to:

Email: claims_support@gbtpa.com.au

Combined Liability Policy

This Policy incorporates the Schedule, Insuring Agreements, Definitions, Conditions, Exclusions, Endorsements and any other terms attached which are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

Whereas the Insured named in the Schedule has paid or agreed to pay to the Insurer specified in the Schedule the Premium shown on the Schedule, now the Insurer agrees, subject to the terms of this Policy, to indemnify the Insured as specified herein.

Insuring Agreements

1. Coverage

The Insurer will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay for Compensation (including but not limited to Additional Payments and expenses and amounts owing or liability incurred in respect of or arising out of a claim for recovery or contributions made pursuant to any legislation) in accordance with the law of any country or assumed under contract or agreement in respect of:

a) Personal Injury
b) Property Damage
c) Advertising Liability

first happening during the Period of Insurance as a result of an Occurrence within the Territorial Limits as stated herein and happening in connection with the Insured's Business or Products.

2. Additional Payments

The Insurer will pay with respect to indemnity afforded under this Policy:

a) all charges, expenses and legal costs incurred or obliged to be paid by the Insurer or by the Insured with the consent of the Insurer (whose consent must not be unreasonably withheld). The Insurer's costs shall include all amounts expended in the investigation, settlement or defence of any claims for Compensation (even if such claim is groundless, false or fraudulent) including actual loss of earnings and in relation to any appeal, coroner's inquest, royal commission or other enquiry in respect of which the Insured is entitled to indemnity under this Policy or if sustained would be so entitled.

b) all interest accruing after entry of judgement until the Insurer has paid, tendered or deposited in court such part of such judgement as does not exceed the Limit of Liability.

c) all expenses incurred by the Insured for medical and surgical relief and occupational health and other medical or therapeutic services (unless prohibited by law) to others at the time of any Personal Injury to which this Policy applies.

d) all premiums on appeal bonds and security for costs required in any such suit and pay premiums on bonds to release attachments in any suit for an amount not in Excess of the applicable Limit of Liability of this Policy, but the Insurer shall have no obligation to apply for or furnish any such bonds or security for costs.

e) all legal costs incurred by the Insured with the consent of the Insurer (whose consent must not be unreasonably withheld) arising out of the defence of any proceedings in any court arising out of any alleged breach of statutory duty resulting in Personal Injury, Property Damage or Advertising Liability which may be the subject of indemnity under this Policy.

The amounts thus incurred are payable in addition to the Limit of Liability stated in the Schedule.

Provided that:

i. the Insurer will not be obligated to pay any claim, judgement, costs, expenses or interest after the Insurer's Limit of Liability has been exhausted by payment of judgements or settlements;

ii. if a payment exceeding the Insurer's Limit of Liability has to be made to dispose of a claim, the liability of the Insurer to pay any costs, expenses and interest under Insuring Agreement 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;

iii. in the event of a claim being made against the Insured in any court or before any other legally constituted body in the United States of America or the Dominion of Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, arising from export of the Insured's Products to, or business visits by travelling executives and salespersons to, the United States of America or the Dominion of Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, the Limit of Liability shall apply to such claims inclusive of such Additional Payments;

iv. in jurisdictions where the Insured may be prevented by law or otherwise from carrying out any of 2 a) to e) above, the Insurer shall pay any expense incurred with its written consent (whose consent must not be unreasonably withheld) for others to carry out such actions and payments on its behalf.

3. Limit of Liability

The liability of the Insurer for all Compensation under this Policy as a result of an Occurrence shall not exceed the Limit of Liability.

The total aggregate liability of the Insurer during any one Period of Insurance for all claims arising out of Product Liability shall not exceed the Limit of Liability.

Provided always that the Limit of Liability applies in addition to any applicable Excess.

4. Definitions

For the purpose of determining the indemnity granted by this Policy and when used in this Policy (including Endorsements thereof), the following Definitions shall apply:

1. Advertising Liability

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

a) libel or slander except arising out of the publication or utterance of a libel or slander prior to the inception date of this Policy or made at the direction of the Insured with the knowledge of the falsity thereof;
b) infringement of copyright, title or slogan;
c) unfair competition, misappropriation of advertising ideas or style of doing Business;
d) invasion of privacy

committed or alleged to have been committed in any Advertisement and arising out of any advertising activities conducted by or on behalf of the Insured, in the course of advertising the Insured's Products, goods or services.

2. Advertisement

Means any manner of communication given to the public including by way of any form of print media, telecommunication, radio or television broadcast, electronic mail, Internet, world wide web or exhibit.

3. Aircraft

Means any vessel, craft or thing made or intended to transport persons or property through the air, atmosphere or space.

4. Business

Means your trade or occupation stated in the Schedule carried out at the Situation Premises.

5. Communicable Disease

Means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
c) the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or Property Damage.

6. Compensation

Means any amount paid or payable at law by the Insured in respect of any claim for:

a) Personal Injury
b) Property Damage
c) Advertising Liability

Provided that Compensation is only payable in respect of an Occurrence to which this Policy applies.

7. Computer System

Means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

8. Cyber Act

Means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

9. Cyber Incident

Means:

a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

10. Data

Means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

11. Employment Practices

Means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination directly related to employment by the Insured.

12. Excess

Means the amount which is payable by the Insured (excluding legal, adjusters and other claim costs) as specified in the Schedule.

13. Faulty Workmanship

Means a breach of duty by the Insured arising out of any act, error or omission in relation to:

a) work undertaken by the Insured; or
b) work which the Insured fails, omits or neglects to undertake; or
c) Advice which the Insured provides or fails, omits or neglects to provide in relation to work which is, should be or could be undertaken, on Property entrusted to the Insured for repair, servicing, refuelling, maintenance, alteration, inspection, valuation, testing, cleaning, painting, storage, delivery, sale or display.

14. General Liability

Means the Insured's legal liability as Insured under this Policy, caused by an Occurrence in connection with the Business, other than Product Liability and Advertising Liability as defined herein.

15. Hovercraft

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

16. Insured

Each of the following is an Insured to the extent described:

a) the parties named in the Schedule as the Insured, including any subsidiary or controlled corporation entity or other organisation now existing or hereafter constituted or acquired by the Insured named in the Schedule (subject to Condition 6.1);
b) any partner, officer, director, commissioner, shareholder or employee of the Insured, while acting in such capacity;
c) any person, principal, organisation, trustee, estate or other entity for whom or for which the Insured is obligated:
    i. by written contract to provide insurance coverage as an additional Insured or an Insured or otherwise, such as is afforded by this Policy;
    ii. to provide such insurance by reason of law, agreement or permit, but only to the extent required by such law, agreement or permit;
d) any principal in respect of the liability of such principal arising out of the performance by the Insured or by any party designated in sub-paragraph a)

above, of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement;

e) any partnership or joint venture in which the Insured is engaged in or is a party to but only to the extent of the Insured’s liability in respect of such partnership or joint venture;

f) any officer, member, employee or voluntary helper of the Insured’s canteen, social and sporting clubs, first aid, medical ambulance and fire fighting services, welfare and child care facilities in respect of claims arising from their duties connected with the activities of any such club, organisation or service;

g) any partner, officer, director, commissioner or employee of the Insured in respect of private work undertaken by the Insured’s employees for such person.

17. Insured’s Product

Means anything manufactured, grown, extracted, treated, produced, processed, sold, handled, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, altered, erected or constructed, by or on behalf of the Insured (including their predecessors in Business), including packaging or containers, designs, formulae or specifications thereof and directions, instructions or advice given or omitted to be given in connection with such things and any other thing the Insured is deemed to have manufactured in the course of the Business including discontinued products. Insured’s Product does not include vending machines or other property rented to or located for the use of others but not sold.

18. Insurer

Certain Underwriters at Lloyd's, led by Brit Global Specialty, Syndicate No. BRIT 2987.

19. Limit of Liability

Means the applicable Limit of Liability specified in the Schedule.

20. Medical Persons

Means qualified medical practitioners, nurses, dentists and first aid attendants.

21. 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.

22. Occurrence

Means an event including continuous or repeated exposure to substantially the same general conditions.

All events of a series consequent on or attributable to one source or original cause will be deemed one Occurrence.

With regards to Advertising Liability, all liability arising out of the same injurious material or act regardless of the number or kind of media used, the frequency or repetition thereof and number of claimants shall be deemed to be one Occurrence.

23. Offshore

Means any person employed shall be deemed by the Insurers for the purposes of this insurance to be Offshore from the time of embarkation onto a conveyance at the point of final departure to any Offshore installation including but not limited to any Offshore rig or platform until disembarkation onto land upon return from such installation.

24. Pathogenic Organism

Shall include but not be limited to mould or fungi or its their spores bacteria yeasts mildew algae mycotoxinsor any other metabolic products enzymes or protein secreted by the above whether toxic or otherwise.

25. Personal Injury

Means:

a) bodily injury, sickness, disease, disability, shock, fright, mental anguish or mental injury, loss of consortium or services including death resulting from any of these;
b) false arrest, false imprisonment, detention, discrimination (unless insurance thereof is prohibited by law), malicious prosecution, breach of confidentiality, trespass or nuisance;
c) the publication or utterance of libel or slander (except arising out of the publication or utterance of a libel or slander prior to the inception date of this Policy or where made at the direction of the Insured with the knowledge of the falsity thereof), or of other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy;
d) wrongful entry or wrongful eviction or other invasion of the right to private occupancy;
e) assault and battery not intentionally committed by or at the direction of the Insured unless so directed for the purpose of preventing or eliminating danger to persons or property.

26. Property Damage

Means:

a) loss of, physical damage to or destruction of tangible property including the loss of use thereof resulting therefrom;

b) loss of use of tangible property which has not been physically damaged, lost or destroyed, which is caused by physical damage or destruction or loss of other tangible property provided such loss of use is caused by an Occurrence.

27. Pollutants

Means any smoke, vapour, soot, fumes, acids, alkalis, chemicals, liquids, gases, waste or other irritants or contaminant. Waste includes materials to be recycled, reconditioned or reclaimed.

28. Product Liability

Means Personal Injury or Property Damage arising out of the Insured's Products or work or operations including materials, parts or equipment furnished in connection with such work or operations performed by or on behalf of the Insured or reliance upon a representation or warranty made at any time with respect thereto, but only if the Personal Injury or Property Damage occurs away from premises owned or controlled by or leased or rented to the Insured and after physical possession of such products by the Insured has been relinquished to others.

29. 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 being prepared for use or being decommissioned after use for which it was designed.

30. Territorial Limits

Means anywhere in the world except with respect to the United States of America, the Dominion of Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries where this Policy will only apply in respect of the Insured's Product exported into and/or travelling executives and salespersons within such countries and be subject to the Limit of Liability as stated in the Schedule.

31. Vehicle

Means any type of machine designed to travel over land on wheels or on self-laid tracks or skis 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.

32. Watercraft

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

5. Exclusions

The Insurer shall not be liable in respect of:

1. Asbestos

Personal Injury or Property Damage arising from:

a) mining, processing, handling, transportation, distribution and/or storage of asbestos
b) manufacture of asbestos products and/or processing of materials containing asbestos:
c) any process of removal, decontamination, treatment or control of asbestos.

This Exclusion 5.1 c) shall only apply to those claims arising in consequence of the inhalation of asbestos fibre(s) or damage to or loss of use of property due to the presence of asbestos.

2. Advertising Liability

Advertising Liability arising out of:

a) breach of contract, other than misappropriation of advertising ideas under an implied contract
b) the wrong description of the price of Insured's Products, goods or services;
c) the failure of the Insured's Products, goods or services to conform with advertised performance or quality; or
d) an offence committed by any Insured whose Business is advertising, broadcasting, publishing or telecasting.

3. Aircraft Products

Liability arising out of the Insured's Product which, with the Insured's knowledge, is incorporated into the structure, machinery or controls of any Aircraft and would affect its flying capabilities.

4. Care, Custody or Control

Property Damage to:

a) Property owned by the Insured or any property leased or rented to the Insured to the extent that the Insured has agreed under contract to provide insurance therefore;
b) Property in the physical or legal control of the Insured, other than;
    i. Premises or part of premises including contents thereof, which are leased, rented, tenanted, hired or temporarily occupied by the Insured;
    ii. Vehicles (not belonging to or used by or on behalf of the Insured) in the physical or legal control of the Insured where such damage occurs whilst any such Vehicle is in a car park owned or operated by the Insured,

provided that the Insured as the principle part of their Business does not operate the car park for reward.

iii. Employees' and visitors' property;

iv. All other property up to a limit of $250,000, or as specified in the Schedule, any one Occurrence.

5. Communicable Disease

a) Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, Compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

b) For the purposes of this exclusion, loss, liability, damage, Compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.

c) As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

   i. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and

   ii. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and

   iii. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or Property Damage.

6. Cyber and Data Limited (Other than Bodily Injury or Property Damage arising out of a Cyber Incident)

a) Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy does not apply to any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:

i. Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident; or
ii. loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any Data, including any amount pertaining to the value of such Data;

regardless of any other cause or event contributing concurrently or in any other sequence thereto, unless subject to the provisions of paragraph e).

b) In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

c) This endorsement supersedes any other wording in the Policy or any endorsement thereto having a bearing on a Cyber Act, Cyber Incident or Data, and, if in conflict with such wording, replaces it.

d) If the Underwriters allege that by reason of this endorsement loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

e) However, clause 6 a) i. of this Exclusion shall not apply in respect of any actual or alleged liability for and/or arising out of:

i. any ensuing third party bodily injury (other than mental injury, mental anguish or mental disease); or
ii. any ensuing physical damage to or destruction of third party property

resulting from or arising out of a Cyber Incident, unless that Cyber Incident is caused by, contributed to by, resulting from, arising out of or in connection with a Cyber Act. Nothing contained in the foregoing shall provide any coverage for any action taken in controlling, preventing, suppressing or remediating a Cyber Incident or a Cyber Act.

7. Employers Liability

a) Liability to the extent that the Insured is entitled to indemnity under any statutory fund, statutory scheme, policy of insurance or self-insurance, required by any law relating to workers' or workmen's Compensation.
b) Liability to any employee of the Insured to the extent imposed by industrial award or agreement or determination where such liability would not have been imposed in the absence of such law or industrial award or agreement or determination
c) Liability imposed by any law relating to Employment Practices.

8. Excess

The amount of the Excess as specified in the Schedule.

9. Fines, Penalties, Aggravated, Punitive, Multiple Exemplary and Liquidated Damages

Fines, penalties, aggravated, punitive, exemplary, liquidated and Multiple Damages.

10. Intentional Injury or Damage

Personal Injury, Property Damage or Advertising Liability expected or intended from the standpoint of the Insured.

This Exclusion 5.10 does not apply to Personal Injury resulting from the use of reasonable force to protect persons or property.

11. Loss of Use of Tangible Property

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

a) A delay in or lack of performance by or on behalf of the Insured in respect of any contract or agreement; or
b) The failure of the Insured's Products to meet the level of performance, quality, fitness or durability warranted or represented by the Insured.

Provided this Exclusion 5.11 b) does not apply to loss of use of other tangible property resulting from physical damage to or destruction of the Insured's Products after such Insured Products have been put to their intended use by any person, organisation or entity other than the Insured.

12. Offshore Work

Injury sustained by any person employed while Offshore.

13. Pollution

Liability for Personal Injury or Property Damage caused by the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water; but this Exclusion 13 does not apply if such discharge, dispersal, release or escape is caused by a sudden and accidental happening which takes place in its entirety at a specific time and place, and occurs outside of the United States of America, the Dominion of Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries.

It is noted that the expenses for the prevention of such contamination and pollution also forms part of this Exclusion 5.13 and shall not be recoverable under this Policy.

Notwithstanding the foregoing, it is noted and allowed that this Exclusion 5.13 shall not apply to any liability arising out of the discharge, dispersal, release or escape of Legionella bacteria.

14. 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 5.14 does not apply to:

a) the rendering of or failure to render professional medical advice by Medical Persons employed by the Insured to provide first aid and other medical services on the Insured's premises, or
b) Personal Injury or Property Damage arising therefrom providing such professional advice or service is not given for a fee.

15. Radioactive Contamination and Explosive Nuclear Assemblies

This Policy does not cover

a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
b) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from

i. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
ii. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

16. Repair, Replacement or Recall of Products

a) Property Damage to the Insured's Products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.
b) damages claimed for any loss, cost or expense incurred by the Insured for the inspection, repair, replacement, loss of use or recall of the Insured's Products.
c) any performance or quality guarantee or warranty given by the Insured in respect of the Insured's Product except to the extent that such liability would have been implied or imposed by law.

17. Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

18. Terrorism

Legal liability directly or indirectly occasioned by happening through in consequence of any act use threat of force violence intimidation by any person, persons, body, group, network, or organisation for any political religious ideological purpose whatsoever.

19. Toxic Mould

This insurance will not apply to legal liability of whatever nature occasioned by any Pathogenic Organism.

20. Vehicles

a) Personal 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 5.20 a) shall not apply to liability for Personal 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.

b) Property 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 5.20 b) shall not apply to liability for Property Damage:

   i. 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;
   ii. arising out of the use of any Vehicle as a Tool of Trade;
   iii. 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 Property Damage occurs in a car park owned or operated by the Insured.

21. War and Civil War

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

22. Watercraft, Aircraft

Liability caused by or arising out of the ownership, maintenance, use or operation by the Insured of:

a) any Watercraft or Hovercraft whilst afloat.

This Exclusion 5.22 a) shall not apply to:

i. Watercraft owned by others and used by the Insured for Business entertainment;

ii. manually propelled or sailing craft in Australian territorial waters.

b) any Aircraft.

6. Conditions

1. Acquisitions of Properties or Companies

The indemnity granted by this Policy extends to properties, assets, companies, firms, entities or other bodies formed or acquired by the Insured or of which the Insured assumes management responsibility during the Period of Insurance.

Provided that the activities are consistent with the description of the Business in the Schedule and subject to disclosure to the Insurer within 30 days of any new acquisition which represents more than 5% of the current group turnover, in which event, the Insured reserves the right to refuse to accept such terms and additional premium, only if the terms and additional premium are objectively unreasonable.

Provided further that:

i. No indemnity shall be granted in respect of claims for Personal Injury, Property Damage or Advertising Liability which first happened prior to the date of such acquisition, formation or assumption of management responsibility.

ii. Where existing insurance applies to the acquired properties, companies, firms, corporations, entities or other bodies over which the Insured exercises management responsibility, this Policy will indemnify the Insured for any difference in conditions and limits, until expiry or cessation of such existing insurance.

2. Adjustment of Premium

Unless otherwise stated the premium for this Policy or any renewal or replacement thereof is a flat premium and is not subject to adjustment except as provided in Condition 6.4 Cancellation herein.

However, where the premium is stated to be adjustable, the Insured will within a reasonable period after expiry of each Period of Insurance furnish such information as the Insurer may require to adjust the premium and any difference in premium shall be paid by or allowed to the Insured as the case may be.

3. Bankruptcy or Insolvency

In the event of bankruptcy or insolvency of the Insured or any of the parties or entities comprising the Insured, the Insurer shall not be relieved of the payment of any claim hereunder because of such bankruptcy or insolvency.

4. Cancellation

The Insured may cancel this Policy at any time by providing written notice to the Insurer. The Insurer may only cancel the Policy in accordance with the applicable provisions of the Insurance Contracts Act 1984 (Cth) and, in such cases, will provide a pro-rata refund of the Premium for the unexpired portion of the Period of Insurance.

If the Insured has notified the Insurer of any Claim, act, error, omission, event, fact, or circumstance that could give rise to a liability under this Policy, the Premium will be considered fully earned as of the cancellation date, and no refund will be issued.

5. Claims Co-Operation

a) In respect of Occurrences covered under this Policy, the Insurer will defend at its own cost, in the Insured's name and on the Insured's behalf, any suit against the Insured seeking Compensation even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as is deemed expedient.

   Provided that the Insurer shall not be obliged to pay any claim or judgement or to defend any suit after the Insurer's Limit of Liability has been exhausted by the payment of judgements or settlements.

b) The Insured shall cooperate with the Insurer and shall comply with the Terms and Conditions of this Policy, and shall enforce any right of contribution or indemnity against any person, corporation, organisation or entity who may be liable to the Insured because of Personal Injury, Property Damage or Advertising Liability with respect to which insurance is afforded hereunder.

6. Other Insurance

In the event of a claim, the Insured shall give written notice as soon as practicable to the Company of any other insurance or insurances affected covering the same risk.

7. Headings

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.

8. Inspection and Audit

The Insurer shall be permitted, but not obligated, to inspect the Insured's property and operations at any time. Neither the Insurer's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others to determine or warrant that such property or operations are safe. The Insurer may examine and audit the Insured's books and records at any time during the Period of Insurance and extensions thereof and within three years after the final termination of this Policy, as far as they relate to the subject matter of this insurance.

9. Insured's Duties

a) In the event of an Occurrence the Insured shall promptly take at its own expense all reasonable steps to prevent Personal Injury or Property Damage or Advertising Liability arising or continuing out of such Occurrence.
b) The Insured shall give notice in writing to the Insurer as soon reasonably practicable of every Occurrence, and shall forward to the Insurer all information relevant to such Occurrences that the Insurer may reasonably require, in particular every demand, writ, summons, proceeding, impending prosecution, inquest.
c) The Insured shall not without the Insurer's consent, make any admission, offer, promise or payment in connection with any Occurrence.
d) The Insured shall use its best endeavours to preserve all property, products, appliances, plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair shall be effected without the consent of the Insurer until the Insurer shall have had an opportunity of inspection.

10. Notification of Change

The indemnity provided by this Policy shall not be prejudiced by any change in the name of the Insured in accordance with an application under legislation permitting the change in the name of the Insured.

11. Policy Interpretations

Where words other than the Insured, or the Insurer, have been used in this Policy to represent those legal entities, it is agreed that for the purposes of this Policy and any subsequent Endorsements, the words the Insured and the Insurer are deemed to have the same meaning as those alternative words used in this Policy.

It is further agreed that:

a) words importing persons shall include corporations and other legal entities;
b) references in the singular shall be deemed to include the plural and vice versa;
c) words depicting any gender include reference to all other genders;

d) references to money shall be expressed as Australian dollars, unless otherwise stated.

12. Premium Payment Clause

Notwithstanding any provision to the contrary within this Policy or any endorsement hereto, in respect of non-payment of premium only the following clause will apply.

The Insured undertakes that premium will be paid in full to Insurer within 30 days of inception of this Policy (or, in respect of instalment premiums, when due).

If the premium due under this Policy has not been so paid to Insurer by the 30th day from the inception of this Policy (and, in respect of instalment premiums, by the date they are due) Insurers shall have the right to cancel this Policy by notifying the Insured via the broker in writing. In the event of cancellation, premium is due to Insurers on a pro rata basis for the period that Insurers are on risk but the full Policy premium shall be payable to Insurer in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this Policy.

It is agreed that Insurers shall give not less than 14 days prior notice of cancellation to the Insured via the broker. If premium due is paid in full to Insurers before the notice period expires, notice of cancellation shall automatically be revoked. If not, the Policy shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

13. Proper Law

Any dispute arising under this contract of insurance or concerning its formation shall be determined in accordance with the law of the Commonwealth of Australia and the States and Territories thereof, and any disputes relating thereto shall be submitted to the jurisdiction of the courts of such State and Territory.

14. Severability and Cross Liability

This Policy, including any amendment, renewal or variation or Endorsement to or of it, shall be construed as if each person, corporation, entity or other organisation entitled to claim on it, whether a party to the contract of insurance or not, had made a proposal, application or request for the Policy, or amendment, or renewal, or variation or Endorsement, in respect of their interest only. Further any information or knowledge possessed by a person, corporation, entity or other organisation entitled to claim on this Policy, whether possessed before or after the contract was entered into, shall not be imputed to any other person, corporation, entity or other organisation.

The Insurer will not seek any relief whatsoever (including cancellation of the Policy) for non-disclosure or misrepresentation or both against a person, corporation, entity or other organisation entitled to claim under this Policy unless the Insurer would have been entitled to that relief had the person claiming been the only person covered by the Policy.

Further neither the inclusion of more than one Insured under this Policy nor any act, omission, breach or default by an Insured shall in any way affect the rights of any other Insured, it being intended that this Policy should be construed as if a separate contract of insurance had been entered into by each Insured; but not so as to increase the Insurer's Limit of Liability under this Policy.

15. Statutory Requirements

The Insured shall take reasonable measures to comply with all statutory obligations and regulations imposed by any statutory or governmental authority.

16. Subrogation

In the event of payment for loss under this Policy to or on behalf of the Insured, the Insurer shall be subrogated to all the Insured's rights of recovery against all persons and organisations.

The Insurer agrees to waive all right of subrogation under this Policy against any corporation or corporations, the majority of whose capital stock is owned or controlled by the Insured, or against any corporation, firm or individual who owns or controls the majority of the capital stock of the Insured, or any corporation, firm or individual, to which or to whom protection is afforded under this Policy except if such corporation, firm or individual is protected from such loss by any other policy of indemnity or insurance, the right of subrogation is not waived to the extent and up to the amount of such other policy.

7. Automatic Extensions

1. Resultant Damage due to Faulty Workmanship

Notwithstanding anything contained in the policy to the contrary, the Insurer will pay up to the Limit of Liability, less the stated Excess, for all Compensation and Additional Payments in respect of any one Occurrence, arising from the resultant damage caused by or brought about through Faulty Workmanship, but the Insurer will not pay for:

a) The cost of rectifying, performing, re-performing, completing or improving any work undertaken by the Insured if such rectification, performance, re-performance, completion or improvement is a consequence of Faulty Workmanship.
b) The cost of performing or re-performing (in whole or in part) work on property which the Insured, prior to the Property Damage occurring, had agreed to perform.

2. Care, Custody & Control – Vehicles

Notwithstanding anything contained in the policy to the contrary.

a) The Insurer will pay the Insured for claims in respect of Property damage to Vehicles, not owned by the Insured, whilst in the Insured's care custody or control while:
   i. left at the Situation Premises
   ii. left stationary in the immediate vicinity of the Business; for the purpose of repair, servicing, maintenance, testing, storage, or sale, provided that:

b) If the Vehicle is stolen and the theft occurred during business hours and involved the use of the Vehicle's own key, the Insured shall pay an Excess of $2,000 or 10% of the Market Value of the Vehicle, whichever is the greater. This Excess clause will not apply if the:
   i. keys was stolen from a securely locked safe, strong room, or key cabinet and access was gained into the safe, strong room or key cabinet by use of visible force or violence; or
   ii. Vehicle was stolen as result of actual or threatened assault; or
   iii. Vehicle was stolen from within a building at the Situation.

The Insurer will not pay for the theft of a Vehicle that occurs after business hours if the theft of the Vehicle involved the use of its own key unless the Vehicles key was stolen from a securely locked safe, strong room, or key cabinet, by the use of visible force or violence.

3. Care, Custody & Control - Property (Other Than Vehicles)

Notwithstanding anything contained in the policy to the contrary:

a) The Insurer will pay for claims in respect of property not belonging to the Insured, but in the Insured's care custody or control up to the amount specified in the Schedule, for any one Occurrence.

b) The Insurer will not pay for Money, securities or negotiable instruments.

c) The Insurer will not pay for Vehicles under this Automatic Extension 3.

8. Optional Extensions

The following extensions 8.1 – 8.6, are only included if shown as "Insured" in your Schedule.

1. Rectification of Faulty Workmanship

For the Purpose of this Optional Extension 8.1 only, the following is to apply:

The Insurer will indemnify the Insured for all sums which the Insured is liable to pay for claims first made against the Insured and notified to the Insurer during the policy period for the cost of rectifying, performing, reperforming, completing or improving any work undertaken by the Insured not withstanding that such ratification, performance, re-performance, completion or improvement is consequent upon Faulty Workmanship.

Provided that:

a) the Faulty Workmanship was performed during the policy period or at a time past 1 October 2005 when the Insured held a policy of insurance that provided similar cover to the cover provided under this Optional Extension 8.1; and
b) such Faulty Workmanship was the cause of resultant Property Damage;
c) The Insured's liability shall be limited to the following:
   i. an amount equal to the wholesale price of parts, freight costs and net labour costs necessarily and reasonably incurred to rectify, perform, re-perform, complete or improve the originally undertaken by the Insured;
   ii. the amount specified in the policy Schedule for rectification of Faulty Workmanship in respect of this Optional Extension 8.1 for all claims made during the policy period.

2. Driving Risk

Exclusion 5.20 does not apply to the use of a Vehicle not owned by the Insured but temporarily in the Insured's possession for the purpose of service and/or repair where use occurs on the premises of the Insured or whilst such Vehicle is being driven on any public or private road or thoroughfare.

This Optional Extension 8.2 does not apply whilst any such Vehicles is being driven by, or is in the charge of any person, with the consent and knowledge of the Insured

a) Whose faculties or ability to operate a Vehicle are impaired to any extent by any drug or intoxicating liquor
b) whose blood or breath contains alcohol in excess of the percentage permitted by law
c) who is not duly authorized or licensed under all relevant laws and regulations to drive a Vehicle

3. Authorised Vehicle Inspections & Evaluations (Property Damage or Personal Injury)

Exclusion 5.14 is deleted in its entirety and replaced with the following:

5.14. the rendering of or failure to render professional advice or service by the Insured or any error or omission connected therewith, but this Exclusion 5.14 does not apply to:

a) the rendering of or failure to render medical advice or service by Medical Persons employed by the Insured to provide first aid on the Insured's premises; or
b) the issue of a:
   i. assessment or evaluation of a Vehicle where the Insured provided a Vehicle roadworthiness certificate, Vehicle condition report or Vehicle compliance report provided that the Insured is duly authorized by the relevant statutory body or authority to issue such certificate or report; or

ii. Vehicle pre-purchase inspection report; or
iii. Vehicle safety report

4. Authorised Vehicle Inspections & Evaluations (excluding Property Damage or Personal Injury)

Notwithstanding anything contained in the policy to the contrary:

The Insurer will indemnify the Insured for all sums which the Insured shall become legally to pay as Compensation as a result of a claim or claims first made against the Insured and reported to the Insurer during the policy period arising out of any negligence, whether by act, error or omission committed or allege to have been committed buy or on behalf of the Insured in connection with:

a) the performance of work undertaken; or
b) the issue of a:
   i. assessment or evaluation of a Vehicle where the Insured provided a Vehicle roadworthiness certificate, Vehicle condition report or Vehicle compliance report provided that the Insured is duly authorized by the relevant statutory body or authority to issue such certificate or report; or
   ii. Vehicle pre-purchase inspection report; or
   iii. Vehicle safety report

   Provided that:

   a) no coverage shall apply under this Optional Extension 8.4 in respect of any claim or claims in respect of Compensation for Personal Injury or Property Damage;
   b) The Insurer's total liability for all claims made during the Policy Period shall be limited to the amount specified in the Schedule for this Optional Extension 8.4.

5. Towing or Transportation Cover (Liability only)

Notwithstanding anything contained in the policy to the contrary:

The Insurer will indemnify the Insured for its legal liability in respect of any Vehicles being:

a) Towed by; or
b) Carried by; or
c) Loaded onto; or
d) Unloaded from a Vehicle owned the Insured and under the Insured's control or the control of the Insured's employees, provided that the Insured and the Insured's employees:
   i. Comply with the law of any state or territory in respect of the towing, carrying or transportation of Vehicle: and
   ii. Comply with the Vehicle manufacturer's documented towing or carrying instructions applying to the Vehicle being towed or carried

The Insurer will not pay any amount that exceeds $250,000 in respect to any one event.

6. Negligence of Contractors/Subcontractors

The Insurer will pay for claims in respect to Personal Injury or Property Damage arising directly or indirectly out of contractors or subcontractors negligence in respect to work undertaken under a contract with You and which is incidental to Your Business.