



Addendum to Woodina General Liability Policy Wording 06_ 21

We have updated the Woodina General Liability Policy Wording 11_18 to version 06_21 with the following changes:

- a) 4.28 Cyber and Data exclusion included. Cyber and data loss claims are not intended to be covered by the policy. The addition of this extension clarifies this intent;
- b) Definitions of Computer System, Cyber Act, Cyber Incident, and Data have been included to give deeper understanding of the application of the Cyber and Data exclusion;
- c) Enhancement of complaints handling procedures to new Lloyd's standards.



Woodina
Underwriting Agency

**General Liability Insurance
Policy Wording**

Section 1 Preamble

- 1.1 Subject to payment of the **Premium** or as agreed in writing, **We** agree to provide indemnity in accordance with and subject to the terms and conditions of this **Policy**.
- 1.2 Before this **Policy** commenced **We** received information provided on behalf of the **Insured** in the **Proposal** and in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms. If any of this information is wrong or false it may affect the cover provided by this **Policy**.
- 1.3 Any word or expression to which a specific meaning has been attached shall bear that special meaning wherever they appear. If a word has a specific meaning it appears in the **Policy** in bold black type and with a capital letter. The meanings of these words can be found in Section 7 Definitions.

Section 2 Insuring Clauses

2.1 Public & Products Liability

We agree to indemnify the **Insured** against any **Claim** for legal liability to pay compensation for **Personal Injury** or **Property Damage** or **Advertising Injury** as a result of an **Occurrence** happening in connection with the **Insured Business** during the **Period of Insurance** and within the **Territorial Limits**.

2.2 Defence Costs

We agree, in addition to the **Limit of Indemnity**, to pay the **Defence Costs** of any **Claim** which is subject to indemnity under Clause 2.1, even if any of the allegations of such claim or suit is groundless, false or fraudulent and pay:

- i. all charges, expenses & legal costs incurred by **Us** or by the **Insured** at **Our** written request in the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of the **Insured's** attendance at hearings or trials at our request;
- ii. all interest accruing on **Our** portion of any judgement until **We** have paid, tendered or deposited in court that part of such judgement which does not exceed the **Limit of Indemnity**;
- iii. all charges, expenses and legal costs recoverable from or awarded against the **Insured** in any such claim or suit;
- iv. premiums on appeal bonds or security for costs required in any suit but **We** shall have no obligation to apply for or furnish any such bonds or security for costs;
- v. expenses incurred by the **Insured** for rendering of first aid or other medical services

to others at the time of any **Personal Injury** (other than the payment of any medical expenses by **Us** which **We** are prevented paying by law);

- vi. all charges for temporary protection of damaged or undamaged property, including temporary repairs or protection of property of others that has been damaged as a result of an **Occurrence** which is the subject of indemnity under this **Policy**;
- vii. all costs incurred by the **Insured** with our written consent for legal representation at any coronial inquest or inquiry, court or tribunal, royal commission or government inquiry, or any inquiry or hearing of a disciplinary nature held before a legally constituted inquiry board, committee or authority;
- viii. up to \$50,000 in respect of each **Occurrence** for reasonable professional fees incurred by the **Insured** for the preparation of a claim under this **Policy**.

Provided that **Our** liability under clause 2.2 (vii) shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one **Occurrence**.

The amounts of such **Defence Costs** incurred, except payments in settlement of claims and suits, are payable by **Us** in addition to the **Limit of Indemnity** of this **Policy**.

However, in respect of any claims or suits originating in the United States of America or the Dominion of Canada or any of their territories or protectorates the applicable **Limit of Indemnity** shown in the **Schedule** shall be inclusive of all **Defence Costs**.

In jurisdictions where we may not be legally permitted to, or cannot for any other reason, defend any claim or suit against the **Insured**, we will reimburse the **Insured** for the expense of such defence incurred with **Our** written consent.

Section 3 Extensions

Extension 1 Errors or Omissions Coverage

We will pay to or on behalf of the **Insured** all sums which the **Insured** becomes legally liable to pay as compensation in respect of financial loss solely and directly attributable to any negligent act, error or omission committed or alleged to have been committed by or on behalf of the **Insured** in connection with the **Insured's Products** or services.

Coverage under this section is subject to:

- i. such act, error or omission occurring after the inception date of this **Policy** or the retroactive date specified in the **Schedule**, whichever is the earlier; and
- ii. such act, error or omission occurring within the **Territorial Limits**; and
- iii. a demand for compensation being first made against the **Insured** and notified to **Us**

during the **Period of Insurance**; and

- iv. **Our** maximum liability in respect of this extension for all claims payable during the **Period of Insurance** not exceeding \$250,000 or as otherwise stated in the **Schedule**, whichever is the greater.

Extension 2 Product Recall Expense Coverage

We will pay to the **Insured** any **Product Recall Expense** necessary because the use or consumption of any **Product** has resulted in or may result in **Personal Injury**, death, illness or disability or physical damage to or destruction of tangible property due to:

- i. the accidental omission of a substance or the accidental introduction or substitution of a harmful or damaging substance in the manufacture of the **Product**; or
- ii. any unintentional error or deficiency in the manufacture, design, blending, mixing, compounding or labelling of the **Product**; or
- iii. a ruling of a government or other regulatory body requiring the **Insured** to recall any **Product** as a result of any of the matters set out in paragraphs i or ii above.

Coverage is subject to:

- a) the **Insured** first discovering during the **Period of Insurance** that the use or consumption of any **Product** has resulted or may result in **Personal Injury**, death, illness or disability or physical damage to or destruction of tangible property; and
- b) the **Personal Injury**, death, illness or disability or physical damage to or destruction of tangible property being indemnifiable in respect of **Products** liability; and
- c) **Our** maximum liability in respect of this extension for all **Product Recall Expenses** during the **Period of Insurance** not exceeding \$250,000.

Section 4 Exclusions

We shall not be liable under this **Policy** to provide indemnity in respect of any **Claim** against the **Insured**:

4.1 Advertising Injury

directly or indirectly caused by, or arising from

- i. statements made at the direction of the **Insured** with knowledge that such statements are false;
- ii. any incorrect description of the **Insured's Products**;

- iii. any mistake in advertised price of the **Insured's Products** or services;
- iv. failure of performance of contract, however this exclusion does not apply to claims for unauthorised appropriation of ideas based upon breach of an implied contract.
- v. The failure of the **Insured's Products** to conform with advertised performance, quality, fitness or durability.
- vi. Advertising, broadcasting, publishing or telecasting, if this is the **Insured's** principal occupation.

4.2 Aircraft, Hovercraft or Watercraft

directly or indirectly caused by, or arising from

- i. the ownership, operation, maintenance or use by or on behalf of the **Insured** of any **Aircraft or Hovercraft**
- ii. the ownership, operation or use by or on behalf of the **Insured** of any **Watercraft** exceeding ten (10) metres in length whilst such **Watercraft** is on, in or under water.

However, this exclusion does not apply to claims for **Personal Injury** or **Property Damage** arising out of:

- a) **Watercraft** used in operations carried out by an independent contractor for whose conduct the **Insured** is legally liable or
- b) **Watercraft** and **Hovercraft** owned and operated by others and used by the **Insured** for the purpose of business entertainment only.

4.3 Asbestos

directly or indirectly caused by or arising from:

- i. asbestos or other things that contain it; or
- ii. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, or mycotoxins relating to Stachy Botrys, such action to include investigation, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, mycotoxins relating to Stachy Botrys.

4.4 Contractual Liability

assumed under a contract or agreement that requires the **Insured** to:

- i. effect insurance over property, either real or personal;

- ii. assume liability regardless of fault;

provided that this exclusion shall not apply to:

- a) liabilities which would have been implied by law in the absence of such contract or agreement; or
- b) liabilities assumed under **Incidental Contracts**; or
- c) terms regarding the merchantability, quality, fitness or care of the **Insured's Products** which are implied by law or statute;
- d) liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this **Policy**.

4.5 Damage to Products

for **Property Damage** to any **Products** where such damage is directly caused by a fault or defect in such **Products**; but this exclusion shall be interpreted to apply with respect to damage to that part and only that part of such **Product** to which the damage is directly attributable.

4.6 Dishonest or Reckless Acts

directly or indirectly arising from any actual or alleged:

- i. dishonest, fraudulent, criminal or malicious act;
- ii. wilful breach of any statute, contract or duty; or
- iii. conduct with a reckless disregard for the consequences thereof;

by the **Insured**.

4.7 Electronic Data

directly or indirectly caused by or arising from:

- i. the communication, display, distribution or publication of **Electronic Data**;
- ii. the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of **Electronic Data**;
- iii. an error in creating, amending, entering, deleting or using **Electronic Data**; or
- iv. the total or partial inability or failure to receive, send access or use **Electronic Data** for

any time at all;

- v. loss of use, loss of, damage to, corruption of (or) inability to access or manipulate **Electronic Data**;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

However, this exclusion does not apply to **Personal Injury** or **Advertising Injury** or damage to tangible property arising therefrom.

4.8 Employer's Liability

for any loss or damage:

- i. in respect of which the **Insured** is or would be entitled to indemnity under any fund, scheme, policy of insurance or self-insurance pursuant to or required by any legislation relating to workers compensation whether or not such insurance has been effected;
- ii. imposed by the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement;
- iii. relating to **Employment Practices**.

4.9 Faulty Workmanship

directly or indirectly caused by or arising from the cost of performing, correcting or improving any work undertaken by the **Insured**.

4.10 Fines, Penalties and Damages

for fines, penalties, liquidated damages, punitive damages, exemplary damages, aggravated damages, additional damages resulting from the multiplication of compensatory damages, or any other non-compensating damages of any kind against the **Insured**.

4.11 Jurisdictional Limits

- i. brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- ii. arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

4.12 Known Defects

directly or indirectly arising from the **Insured's Products** which are known to the **Insured** or which in the ordinary course of business ought to have been known by the **Insured** to be defective or ineffective or incapable of fulfilling the purpose for which they were intended or warranted (whether expressly or impliedly) or guaranteed.

4.13 Libel, Slander and Defamation

directly or indirectly arising from the publication or utterance of a libel or slander:

- i. made prior to the commencement date of this **Policy**;
- ii. made by the **Insured** or at the **Insured's** direction knowing it to be false; or
- iii. related to the advertising, broadcasting or telecasting activities conducted by the **Insured** or on the **Insured's** behalf.

4.14 Loss of Use

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

- i. delay in lack of performance by or on behalf of the **Insured** of any contract or agreement;
- ii. the failure of **Products** or work performed by or on behalf of the **Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured**.

However this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of **Products** or work performed by or on behalf of the **Insured** after such **Product** or work has been put to their intended use by any person or organisation other than the **Insured**.

4.15 Own Property Damage

for **Property Damage** occurring to property owned by or in the physical or legal control of the **Insured**, with the exception of:

- i. premises or part(s) of premises (including their contents) which are tenanted, leased or rented by the **Insured** for the purpose of the **Business**, but no cover is provided by this **Policy** if the **Insured** has assumed the responsibility to insure such premises;
- ii. personal clothing and effects of the **Insured's** directors, employees and visitors;
- iii. (a) premises (and/or their contents) temporarily occupied by the **Insured** for the

purpose of carrying out work in connection with the **Business**; or

(b) any other property in the **Insured's** possession for the purpose of being worked upon;

But no indemnity is granted for damage to that part of any property upon which the **Insured** is or has been working if the damage arises solely out of such work;

- iv. **Vehicles** (not belonging to or used by the **Insured** or on the **Insured's** behalf) in the **Insured's** physical or legal control whilst within a car park owned or operated by the **Insured** unless part of the **Insured's Business** is the operation of a car park for reward;
- v. notwithstanding Exclusion 4.4 Contractual Liability, any property (except property owned by the **Insured**) not mentioned in Exclusions 4.15 (i) to 4.15 (iv) above whilst in the **Insured's** physical or legal control whether or not the **Insured** has accepted or assumed legal liability for such property. Provided that **Our** total liability payable for all such **Claims** during the **Period of Insurance** under Exclusion 4.15(v) shall not exceed \$250,000 for each and every **Occurrence**, or as otherwise stated in the **Schedule**.

4.16 Ownership of Vehicle

for **Personal Injury** or **Property Damage** arising out of the ownership, maintenance, possession or use by the **Insured** of any vehicle which is registered or which is required under any legislation to be registered or in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation, provided that this exclusion shall not apply to:

- i. **Personal Injury** where the insurance required by virtue of any legislation does not provide indemnity, and the lack of indemnity is not due to a breach of legislation relating to vehicles;
- ii. **Personal Injury** or **Property Damage** caused by the use of any **Tool of Trade** and where applicable legislation does not require insurance against such **Personal Injury of Property Damage**;
- iii. the loading or unloading of any **Vehicle**;
- iv. the delivery or collection of goods to or from any **Vehicle**;
- v. any **Vehicle** temporarily in the **Insured's** care, custody or control for the purpose of parking.

4.17 Pollution

directly or indirectly caused by or arising from the discharge, dispersal, release, seepage, migration or escape of **Pollutants**, including the cost of testing, monitoring, treating, detoxifying, removing, neutralising or cleaning up **Pollutants**; or for the cost of preventing the discharge, dispersal, release, seepage, migration or escape of **Pollutants**.

However this exclusion does not apply where such discharge, dispersal, release, seepage, migration or escape arises from a sudden, identifiable, unintended and unexpected event from the standpoint of the **Insured** which takes place in its entirety at a specific time and place and occurs outside of the United States of America, or the Dominion of Canada or any of their territories or protectorates.

4.18 Product Guarantee

directly or indirectly arising from **Products** warranty or guarantee given by or on behalf of the **Insured**, but this exclusion shall not apply to the requirements of any Federal or State legislation as to **Product** safety and information.

4.19 Product Recall

for the withdrawal, inspection, repair, modification, replacement and loss of use of any of the **Insured's Products** or of any property of which such **Insured's Products** form a part if such **Insured's Products** or property are withdrawn from the market or from use because of:

- i. any known defect or deficiency therein or any defect of which the **Insured** knew or in the ordinary course of business ought to have known;
- ii. loss of customer approval or confidence, or any costs incurred to regain customer approval, or other consequential loss;
- iii. mislabelling or non-labelling of any **Product** or any container or packaging in relation to "use by" or "best before" date authorised or required by a government agency or other statutory or regulatory authority;
- iv. continued use by the **Insured** of materials that have been banned or declared unsafe by a government agency or other responsible body; or
- v. error or omissions of the **Insured** or any of its employees of which officers or directors of the **Insured** knew or ought to have discovered on reasonable enquiry.

4.20 Professional Liability

directly or indirectly caused by or arising from any breach of duty owed in a professional capacity by the **Insured**.

However this exclusion shall not apply to:

- i. liability that arises from the rendering of or failure to render medical advice or services by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises;
- ii. **Personal Injury or Property Damage** where such breach of duty arises out of advice or services given gratuitously;

during the **Period of Insurance**.

4.21 Radioactivity and Nuclear

directly or indirectly arising from ionising radiation or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material whether occurring naturally or otherwise, or by the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

4.22 Rights of Recovery

for any liability, loss or damage in respect of which the **Insured** has at any time foregone, excluded or limited a right of recovery.

4.23 Sexual Misconduct

directly or indirectly arising from any actual or alleged sexual misconduct of any nature.

4.24 Territorial Limits

directly or indirectly caused by or arising from any **Occurrence** which is brought in a Court of Law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or directly or indirectly arising from any settlement or for the enforcement of any judgement or order obtained within the territorial limits of, or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

4.25 Terrorism

directly or indirectly arising from terrorism or any action taken in controlling, preventing, suppressing any act or acts of terrorism or in any way relating thereto.

For the purposes of this clause, "terrorism" means any act (whether threatened or actual) of any person involving the causing or threatening of harm and by made in whole or in part for political, religious, ideological or similar purpose.

For the purpose of this clause the term "indirectly" does not include the rendering of or failure to render medical treatment to persons injured as a result of a terrorism event.

4.26 Tobacco

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

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

4.27 War

directly or indirectly arising from war, invasion, acts of foreign enemies, hostilities revolution, insurrection, military or usurped power or confiscation or nationalism or requisition or destruction of or property damage by or under the order of any government or public or local authority.

4.28 Cyber and Data

- i. 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:
 - a. **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
 - b. 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.

- ii. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- iii. 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.
- iv. If the **We** allege that by reason of this endorsement that loss sustained by the **Insured** is not covered by this **Policy**, the burden of proving the contrary shall be upon the **Insured**.

Definitions applicable to exclusion 4.28

- v. **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.
- vi. **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**.
- vii. **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**.
- viii. **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**.

Section 5 Claims conditions

5.1 Claims notification

The **Insured** shall, as soon as practicable, give **Us** written notice of any **Claim** made against the **Insured**. Furthermore every letter, demand, writ summons or legal process pertaining to such **Claim** shall be forwarded to **Us** as soon as practicable after receipt.

All **Claim** notifications should be forwarded to:

The Claims Manager
Woodina Underwriting Agency Pty Ltd
GPO Box 3313
Brisbane Qld 4001

Or Email: claims@woodina.com.au

It is the **Insured's** responsibility to ensure such notification has been forwarded to and received by **Woodina Underwriting Agency Pty Ltd**.

5.2 Claims mitigation and co-operation

- i. If the **Insured**, either prior to or during the **Period of Insurance**, becomes aware of a situation which could, if not rectified, lead to a **Claim** or increase the quantum of a **Claim**, the **Insured** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability.
- ii. The **Insured** shall frankly and honestly disclose to **Us** all relevant information and, in addition shall provide assistance to **Us**, as **We** may require to enable **Us** to investigate and to defend any **Claim** under this **Policy** or enable **Us** to determine **Our** liability under this **Policy**.
- iii. Other than **Defence Costs** incurred by **Us** to enable **Us** to determine our liability under this **Policy**, compliance with this condition shall be at the **Insured's** own cost, unless otherwise agreed in writing by **Us**.

5.3 Claims conduct

- i. **We** shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** and shall have full discretion in the conduct of any proceedings and in the settlement of any **Claim**.
- ii. The **Insured** agrees not to settle any **Claim**, incur any **Defence Costs** or investigation costs, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim** or loss without **Our** written consent, such consent not to be unreasonably withheld. **We** shall not be liable for any settlement, **Defence Costs**, investigation costs, admission, offer or payment, or assumed obligation to which **We** have not consented in writing.
- iii. **We** may, if **We** believe that any **Claim** will not exceed the **Deductible**, instruct the **Insured** to conduct the defence of the **Claim**. In such situation, **We** will reimburse the **Insured** for all reasonable **Defence Costs** in the defence of the **Claim** in the event that any payment made to dispose of the **Claim** exceeds the **Deductible**.

5.4 Senior Counsel

- i. **We** and the **Insured** shall not be required to contest any legal proceedings unless a **Senior Counsel**, to be mutually agreed upon by **Us** and the **Insured**, shall advise that such proceedings should be contested. Failing agreement for the appointment, the **Senior Counsel** is to be appointed by the President of the Queensland Bar Association.
- ii. In formulating such advice, the **Senior Counsel** shall take into consideration the commerciality of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely **Defence Costs** and the prospects of the **Insured** successfully defending the **Claim**.

- iii. The costs of such **Senior Counsel's** opinion shall be regarded as part of the **Defence Costs**.

5.5 Right to contest

In the event that **We** recommend a settlement in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, then the **Insured** may elect to contest such **Claim**. Provided always that **Our** liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the **Defence Costs** incurred with **Our** written consent up to the date of such election, less the **Deductible**.

5.6 Subrogation

In the event of any payment under this **Policy**, **We** will be subrogated to all the **Insured's** rights of recovery against any person or organisation and the **Insured** shall execute and deliver any appropriate instruments and papers and do whatever else is necessary to secure such rights. Any amount so recovered shall be applied in accordance with the provisions of s.67 of the Insurance Contracts Act 1984.

We agree to waive all rights of subrogation under this **Policy** against each of the parties described as an **Insured**. However, where an **Insured** is protected from liability insured against hereunder by any other policy of insurance or indemnity our subrogation right is not waived to the extent and up to the amount of cover provided by such other policy of insurance or indemnity.

Section 6 General Conditions

6.1 Adjustment

If the **Premium** for this **Policy** has been calculated on estimates provided by the **Insured** and the **Policy** is identified as subject to adjustment based on a minimum or deposit premium, the **Insured** shall within a reasonable period after expiry of each **Period of Insurance** furnish **Us** such information as the **We** may require for such expired period and the **Premium** for such period shall be adjusted by **Us** and the difference be paid by or allowed to the **Insured** subject to any minimum **Premium** applicable.

The **Insured** shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow **Us** to inspect such record.

6.2 Assignment

This **Policy** cannot be assigned by the **Insured** without **Our** written consent.

6.3 Alteration to Risk

The **Insured** must notify **Us** as soon as reasonably practicable of any material change in the

risk insured by this **Policy**. **We** are entitled to amend the terms of this **Policy** or charge an additional premium based on **Our** assessment of any change in the risk insured by this **Policy**.

A material change in the risk shall include, but is not limited to;

- i. an **Insured** going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an **Insured** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- ii. any material change to the nature of the **Insured Business** of the **Insured**;
- iii. any material change in the **Insured's** business.

6.4 Breach of condition or warranty

Our rights under this **Policy** shall not be prejudiced by any unintentional or inadvertent:

- i. breach of a condition or warranty without the **Insured's** knowledge or consent;
- ii. error in the name or title of any person, corporation or other organisation which forms part of the definition of the **Insured**;
- iii. error in name, description or situation of property;
- iv. failure to report any property or entity or insurable exposure in which the **Insured** has an interest;

provided always that, upon discovery of any such fact or circumstances referred to above, the **Insured** shall give written notice thereof to **Us** as soon as reasonably practicable thereafter and shall (if so requested) pay such reasonable additional premium that **We** may require.

6.5 Cancellation

- i. The **Insured** may cancel this **Policy** at any time in writing to **Us**. Upon receipt of such request **We** will retain a short period **Premium** calculated at the pro rata portion of the annual **Premium** for the time they have been on risk plus ten percent (10%), subject to a minimum retained **Premium** of \$500, and the **Insured** shall receive a refund of any balance of the **Premium** actually paid.
- ii. **We** may cancel this **Policy** in accordance with the Insurance Contracts Act 1984.
- iii. If there have been any **Claims** made under the **Policy** no refund shall be given.

6.6 Cross Liability / Joint Insureds

Where the **Insured** is comprised of more than one party, each person or party is treated as a

separate **Insured** and is separately indemnified in respect of **Claims** made by any of them against any other of them provided that **Our** total liability shall not exceed the **Limit of Indemnity** for all claims under this **Policy**.

6.7 Deductible

- i. The amount of the **Deductible** shall be borne by the **Insured** at its own risk in respect of each **Claim**.
- ii. Where the quantum of any **Claim** is less than the **Deductible**, the **Insured** shall be liable for the **Claim** and the **Defence Costs**, up to the amount of the **Deductible**.

6.8 GST Basis of Settlement

- i. Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Insured** is, or will be, entitled to under a New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.
- ii. Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any input Tax credit that the **Insured** would have been entitled to under a New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

6.9 Governing Law

This **Policy** is governed by the law of the territory or State where the **Policy** was issued, which is stated in the **Schedule**. The Courts of this place have jurisdiction in any dispute about or under this **Policy**.

6.10 Interpretation

In this **Policy**:

- i. the single includes the plural and the masculine includes the feminine and visa versa;
- ii. the titles and headings to the various sections of the **Policy** are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

6.11 Limit of Indemnity

- i. **Our** liability for all compensation payable in respect of any **Claim** or a series of **Claims** caused by or arising out of one **Occurrence** shall not exceed the **Limit of Liability**.

- ii. All **Claims** for compensation that result from one original source, or one original cause, shall be considered to have been caused by or arise out of a single **Occurrence**.
- iii. Our total aggregate liability in any one **Period of Insurance** for product liability **Claims** shall not exceed the **Limit of Liability**.

6.12 Other Insurance

If at the time any **Claim** arises under the **Policy** there is any other insurance in force covering the same liability the **Insured** shall promptly provide **Us** full details of such other insurance, including the identity of the insurer, the policy number and such further information as **We** may reasonably require.

6.13 Sanctions

We shall not provide cover and **We** shall not be liability 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 **Us** to any sanction, prohibition or restriction under United States resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

6.14 Severability and Non Imputation – Insureds

Where this **Policy** insures more than one party, any failure on the part of any of the parties to:

- i. comply with the duty of disclosure under the Insurance Contracts Act 1984;
- ii. comply with any obligation under this **Policy** (other than the obligation to pay premium);
- iii. refrain from conduct which is dishonest, fraudulent, criminal or malicious;

shall not prejudice the right of the remaining party or parties to indemnity under this **Policy**, provided that such remaining party or parties shall:

- a) be entirely innocent of and have no prior knowledge of any such failure; and
- b) as soon as practicable after becoming aware of any such failure, advise **Us** in writing of all its relevant circumstances.

6.15 Severability and Non Imputation – Insurers

Our liability under the **Policy** is several and not joint with other insurers party to this **Policy**. **We** are liable only for the proportion of liability **We** have underwritten. **We** are not jointly liable for the proportion of liability underwritten by any other insurer. Nor are **We** otherwise responsible for any liability of any other insurer that may underwrite this **Policy**.

6.16 Variation of the policy

No variation of this **Policy** will be effective unless made by Endorsement which is signed by a properly authorised employee of Woodina Underwriting Agency Pty Ltd.

6.17 Several Liability

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

Section 7 Definitions

7.1 Act of Terrorism

means an act, including but not limited to the use of force or violence or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

7.2 Advertising Injury

means injury arising out

of:

- i. defamation;
- ii. any breach of the misleading or deceptive conduct provisions of the Trade Practices Act 1974 (Commonwealth) or any Fair Trading or similar legislation of any country, state or territory;
- iii. any infringement of copyright or passing off of title or slogan;
- iv. unfair competition, piracy, misappropriation of advertising ideas or style of doing business;
- v. invasion of privacy;

committed or alleged to have been committed during the **Period of Insurance** in any advertisement, publicity article, broadcast or telecast and caused by or arising out of the **Insured's** advertising activities.

7.3 Aircraft

means any craft or object designed to travel through air or space, other than model aircraft or unmanned inflatable balloons used for advertising or promotional purposes.

7.4 Business

means the business as described in the **Schedule** including:

- i. any prior operations or activities which have ceased or have been disposed of where the **Insured** retains a legal liability;
- ii. the ownership of premises or the tenancy thereof by the **Insured**;
- iii. participation in any exhibition or conference by or on behalf of the **Insured**;
- iv. first aid, medical, ambulance or firefighting services;
- v. the provision of sponsorships by or on behalf of the **Insured**;
- vi. private work undertaken by the **Insured's** employees for any of the **Insured's** directors, partners, proprietors, officers or executives; and
- vii. the provision or management of any canteen, social or sporting clubs or educational, welfare or child care facilities by or on behalf of the **Insured**, which are primarily for the benefit of the **Insured's** employees.
- viii. the hire or loan of plant or equipment to other parties.

7.5 Claim

means the receipt by the **Insured** of a demand for compensation made by a third party against the **Insured**. It must take the form of:

- i. a writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third party or similar party notice; or
- ii. any other form of written or verbal notice.

7.6 Compensation

means monies paid or agreed to be paid by judgment, award or settlement in respect of **Personal Injury** or **Property Damage** or **Advertising Injury**.

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

7.7 Contractor

means a person or entity contracted to provide services for or on behalf of the **Insured**.

7.8 Deductible

means the deductible specified in the **Schedule**.

7.9 Defence Costs

means the costs incurred by **Us**, or the reasonable costs incurred by the **Insured** with **Our** written consent, in the investigation, defence, reporting or negotiation for settlement of any **Claim**. It shall not include any costs of the party that is claiming against the **Insured**.

7.10 Electronic Data

means facts, concepts and information converted to a form usable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.

7.11 Employee

means any person employed by the **Insured** under a contract of service or apprenticeship including medical practitioners, voluntary workers, social workers, any member of a Board or management committee and work experience students but shall not mean a consultant.

7.12 Employment Practices

means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of the **Insured's Employees**.

7.13 General Liability

Means the **Insured's** legal liability in respect of **Personal Injury** and/or **Property Damage** and/or **Advertising Injury** happening in connection with the **Business** and caused by or arising out of an **Occurrence** other than **Products Liability**.

7.14 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.

7.15 Insured

means:

- i. the **Named Insured**
- ii. every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the **Named Insured** (including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the **Business**) while such persons are acting for or on behalf of the **Named Insured** or within the scope of their duties in such capacities;
- iii. any employee superannuation fund or pension scheme managed by or on behalf of the **Named Insured**, and the trustees and the directors of the trustee of any such superannuation fund or pension scheme which is not administered by corporate fund managers.
- iv. every principal in respect of the principal's liability arising out of:
 - a) the performance by or on behalf of the **Named Insured** of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and **Limit of Indemnity** as is provided by this **Policy**;
 - b) any **Products** sold or supplied by the **Named Insured**, but only in respect of the **Named Insured's** own acts or omissions in connection with such **Products** and in any event only for such coverage and **Limit of Indemnity** as is provided by this **Policy**;
- v. every person, corporation, organisation, joint venture company or partnership, to whom the **Named Insured** is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this **Policy** (but only to the extent required by such contract or agreement and in any event only for such coverage and **Limit of Indemnity** as is provided by this **Policy**);
- vi. every officer, member, employee or voluntary helper of the **Insured's** canteen, social or sporting clubs, first aid, medical, ambulance or firefighting services, charity or welfare work or child care facilities, while acting in their respective capacities as such;
- vii. any director, partner, proprietor, officer or executive of the **Insured** in respect of private work undertaken by the **Insured's** employees for such person, and any employee whilst actually undertaking such work;

7.16 Incidental Contracts

means:

- i. any written rental or lease or hiring agreement of real or personal property, other than with respect to any term or condition contained in such rental, lease or hiring agreement that requires the **Insured** to insure such property;

- ii. any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;
- iii. any written contract with any railway authority for the loading, unloading and/or transport of **Products**, including contracts relating to the operation of railway sidings;
- iv. those contracts designated in the **Schedule**.

7.17 Limit of Indemnity

shall mean the limit of indemnity specified in the **Schedule**.

7.18 Medical Persons

Shall mean medical practitioners, medical nurses, dentists and first aid attendants.

7.19 Named Insured

Means:

- i. the persons(s), corporations and/or other organisations specified in the **Schedule**;
- ii. all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the **Named Insured** incorporated in the Commonwealth of Australia and/or other organisations under the control of the **Named Insured** as advised to **Us**;
- iii. all subsidiary and/or controlled corporations (including subsidiaries thereof) of the **Named Insured** and/or any other organisations under the control of the **Named Insured** incorporated in the Commonwealth of Australia and which are constituted or acquired by the **Named Insured** during the **Period of Insurance** as advised to **Us** and which addition to the **Policy** may require an additional **Premium** to be paid.
- iv. Every subsidiary and/or controlled corporation and/or other organisation of the **Named Insured** which is divested during the **Period of Insurance**, but only in respect of claims made against such divested subsidiary or controlled corporation or organisation caused by or arising out of **Occurrences** insured against by this **Policy**, which occurred prior to the date of divestment.

7.20 Occurrence

means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** or **Advertising Injury** that is neither expected nor intended (except for the matters set out in (vi) of the definition of **Personal Injury**) from the standpoint of the **Insured**.

With respect to **Personal Injury** or **Property Damage**, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one **Occurrence**. All **Advertising Injury** arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one **Occurrence**.

7.21 Period of Insurance

means the period specified in the **Schedule**.

7.22 Personal Injury

means:

- i. **Personal Injury**, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom;
- ii. false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- iii. wrongful entry or wrongful eviction;
- iv. defamation or invasion of privacy, unless arising out of Advertising Injury;
- v. discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by the **Insured** or at the **Insured's** direction, but only with respect to liability other than fines and penalties imposed by law;
- vi. assault and battery not committed by the **Insured** or at the **Insured's** direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of **Personal Injury** claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability: such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

7.23 Pollutants

means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material, including materials that are intended to be recycled, reconditioned or reclaimed.

7.24 Policy

means:

- i. the insuring clauses, exclusions, conditions, definitions, **Schedule** and other terms contained herein;
- ii. any endorsement to this **Policy** whether issued at the inception of the **Policy** or during the **Period of Insurance**; and
- iii. the information provided by the **Insured** in the **Proposal**.

7.25 Premium

means the premium specified in the **Schedule**.

7.26 Products

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

7.27 Products Liability

Means the **Insured's** legal liability in respect of **Personal Injury** and/or **Property Damage** caused by or arising out of any **Products** or the reliance upon a representation or warranty made at any time with respect to such **Products**; but only where such **Personal Injury** and/or **Property Damage** occurs away from premises owned or leased or rented to the **Insured** and after physical possession of such products has been relinquished to others.

7.28 Product Recall Expense

means the reasonable and necessary costs and expenses incurred by the **Insured** in relation to effecting the recall of a **Product** for:

- i. communications to customers and the public, including media announcements;
- ii. external advice to prepare such communications;
- iii. transporting any recalled **Product** to a place designated by the **Insured**;
- iv. the hiring of necessary additional persons to conduct the duties performed by regular employees of the **Insured** who are involved in effecting the recall of a

Product, and the hiring of necessary additional storage space;

- v. additional remuneration paid to employees (other than salaried employees);
- vi. expenses incurred by employees for transport and accommodation; and
- vii. disposing of any recalled **Product** that cannot be reused.

7.29 Property Damage

means:

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

7.30 Proposal

means the written proposal by the **Insured** made to **Us** containing information and statements which, together with any other information or documents provided, are the basis of this **Policy** and are considered incorporated in it.

7.31 Schedule

means the schedule to this **Policy**.

7.32 Territorial Limits

means:

- i. anywhere in the world except the United States of America, Canada and their respective protectorates and territories;
- ii. the United States of America, Canada and their respective protectorates and territories if the **Personal Injury** or **Property Damage** arises from products exported into such countries and business visits of the **Insured's** directors, partners, officers, executives or **Employees**, who are non-resident in the United States of America, Canada, other than where such persons perform manual work.

7.33 Tool of Trade

means tools, implements, machinery or plant attached to or towed by a **Vehicle** and is being used by the **Insured** at the **Insured's** premises or on any worksite. **Tool of Trade** does not include any **Vehicle** whilst travelling to or from a worksite or **Vehicles** that are used to carry

goods to or from any premises.

7.34 Vehicle

means any type of machine, including attachments, that is designed to travel on wheels or on self-laid tracks made or intended to be propelled by mechanical power.

7.35 Watercraft

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

7.36 We, Our, Us

shall mean **Woodina Underwriting Agency Pty Ltd** acting on behalf of Certain underwriters at Lloyd's pursuant to a binding authority agreement.

NOTICES

The information contained in this section is general information only and does not form part of the **Insured's** contract with us.

Insured's Duty of Disclosure

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

You have this duty until we agree to insure you.

Your duty however does not require disclosure of a matter:-

- that diminishes the risk to be undertaken by **Us**
- that is common knowledge
- that **We** know, or in the ordinary course of business as an insurer, out to know
- as to which compliance with your duty is waived by **Us**.

Non-Disclosure

If you fail to comply with your duty of disclosure, **We** may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is

fraudulent, **We** may also have the option of avoiding the contract from the beginning.

Privacy

Woodina Underwriting is committed to protecting the privacy of the personal information you provide **Us**. Woodina Underwriting collects, uses and retains your personal information in accordance with the National Privacy Principles.

We need to collect the personal information on the applicable proposal form to consider your application for insurance and to determine the premium (if your application is accepted) when you are applying for, changing or renewing an insurance policy with **Us**. This information will also be used if you lodge a claim under your policy. We may also need to request additional information from you in connection with your application or a claim. If you do not provide **Us** with this information, or any additional information **We** request, **We** may not be able to process your application or offer you insurance cover or respond to any claim.

We may disclose the personal information **We** collect:

- To our relevant employees involved in delivering our services;
- If your insurance broker collects this form from you, to that broker;
- To facilitators such as legal firms, professional experts such as accountants, actuaries, engineers and technology experts;
- To the insurance companies with whom **We** transact business;
- To the Lloyd's Syndicates **We** represent (which are located in the United Kingdom);
- To insurance reference bureau or credit reference bureau;
- To reinsurers or reinsurance brokers (which may include reinsurers located outside of Australia).

Where **We** do disclose the information as above the recipient may hold the information in accordance with its own privacy statement / policies. Those may include, by way of example, disclosing the information to and storage of that information by its associated entities which may be located overseas. **We** may also be required to provide your personal information to others for purposes of public safety and law enforcement and if required by law or by a law enforcement body to do so.

You may request access to your personal information, and where necessary, correct any errors in this information (some restrictions and costs may apply). If you would like to access a copy of your personal information or you wish to correct or update your personal information, please also contact **Us** on (07) 3222 9400.

By completing and returning a proposal form and/or providing **Us** with any additional information in connection with your application, you agree to **Us** using and disclosing your information as set out above. This consent to the use and disclosure of your personal information remains valid unless you alter or revoke it by giving **Us** written notice.

From time to time, **We** may use your personal information to send you details of new insurance products or other insurance related information that may be of interest to you. If you do not wish to receive such information, please advise **Us** on (07) 3222 9400.

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 Procedures

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 in the first instance:

Complaints Officer
Woodina Underwriting Agency Pty Ltd
Post: GPO Box 3313
Brisbane Qld 4001
Email: info@woodina.com.au
Telephone: (07) 3222 9400

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
Post: Suite 1603, Level 16, 1 Macquarie Place,
Sydney NSW 2000
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783

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:

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

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.

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
Suite 1603, Level 16, 1 Macquarie Place
Sydney NSW 2000*

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 practicable to:

The Claims Manager
Woodina Underwriting Agency Pty Ltd
GPO Box 3313
Brisbane Qld 4001
Or Email: claims@woodina.com.au