



**Newsagents Broadform
Public and Products Liability
Contract of Insurance**

Arch Underwriting at Lloyd's (Australia) Pty Ltd

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Introduction

Please read the contract of insurance (contract) carefully to ensure that it meets your requirements. Underwriters will provide insurance in accordance with the terms of this contract.

Construction and Interpretation

- (a) Clause headings and the use of bold print are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) Unless the contrary intention appears in this Contract:
 - (i) words importing a gender include any other gender, and
 - (ii) words in the singular include the plural and words in the plural include the singular;
- (c) References to statutes include amendments thereof, regulations thereunder, and re-enactments or consolidations thereof.

Important Notices

INSURANCE CONTRACTS ACT 1984

Disclosure

In accordance with the provisions of the Insurance Contracts Act 1984 insurers are required to advise you of your responsibilities in relation to the disclosure of relevant information.

Your Duty of Disclosure

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

Your duty however does not require disclosure of any matter:

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

Non-Disclosure

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

Your duty of disclosure also applies when you amend or vary a contract in any way and continues after the proposal form is completed until the contract commences.

1. **UTMOST GOOD FAITH**

The insurance contract is based on the utmost good faith requiring the insurer(s) and the proposer/insured(s) (including third party beneficiaries after the contract is entered into) to act towards each other with the utmost good faith in respect of any matter relating to the insurance contract. A failure to comply is a breach of the Insurance Contracts Act 1984.

2. **AVERAGE PROVISION AND ALLOCATION OF LOSS BETWEEN THE INSURED AND UNDERWRITERS**

One of the Contract terms provides that if the Insured incur loss covered by the Contract with other loss that

is not covered by the Contract , or if a claim is made against the Insured and it is impossible to identify whether loss is attributable exclusively or primarily to a covered cause, or the claim against the Insured, as appropriate, then the Insured together with Underwriters shall use our best efforts to agree a fair and proper allocation of the loss between Underwriters and the Insured. Please refer to the Contract wording for full details.

The Contract may also provide that, where the amount required to dispose of a claim exceeds the limit of the sum insured in the Contract, Underwriter shall be liable only for a part of the total costs and expenses which shall be the same proportion of the total expenses as the Contract limit bears to the total amount required to dispose of the claim.

3. LIABILITY ASSUMED UNDER AGREEMENT

Cover provided by this form of liability insurance does not cover liability which You have agreed to accept, unless You would have been so liable in the absence of such agreement.

UNDERWRITERS' SANCTION LIMITATION AND EXCLUSION CLAUSE

Insurers shall not be liable to pay or indemnify the Insured for any loss or claim made under the Contract which would expose any 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. For the purpose of this clause and the proposal, **Insurers** means those Underwriters at Lloyd's who have subscribed their name(s) to the insurance contract.

GENERAL INSURANCE CODE OF PRACTICE

Arch Underwriting at Lloyd's (Australia) Pty Ltd is conscious of its obligations under the General Insurance Code of Practice (the Code) and is committed to complying with the Code's service standards in our dealings with you including the management of any complaint or dispute which might arise.

Please contact your Insurance Broker for further information about the Code. Further information about the Code may also be obtained from our offices in Melbourne or Sydney or from our website at www.archinsurance.com.au

PRIVACY POLICY

Our Commitment

Arch Underwriting at Lloyd's (Australia) Pty Ltd ("AUALA") is bound by the **Privacy Act 1988 (Cth) (Act)** and the **Australian Privacy Principles (APP)** set out in the Act concerning the collection use and management of Personal Information about individuals.

Collecting And Using Your Personal Information

We collect and use your personal information only for the purpose of providing and administering our products and services. Generally, the type of personal information we collect includes, names, postal and email addresses, telephone numbers and information relevant to particular contracts of insurance. In certain circumstances we may collect sensitive information such as health information about you and information about your membership of personal and trade associations.

Management of Personal Information

We will manage all collected personal information about you in accordance with the Privacy Act. AUALA will take steps to ensure that personal information we hold about you is accurate and up to date. If you believe that any information we hold about you is incorrect or out of date, you should notify us so that we can correct it. We disclose personal information to third parties who we believe are necessary to assist us and them in providing the relevant services and products. We will not do this unless it meets with the APP under the Privacy Act. For example, to evaluate or deliver our products and services to you, we may need to disclose your information to:-

- An agent authorised by AUALA to collect or assess information relating to the relevant product or service.
- A broker or other persons authorised by you.
- Underwriters or Reinsurers of the relevant product or service.
- A person or organisation contracted by AUALA to assess, evaluate or manage claims made under your contract of insurance.
- An organisation contacting AUALA with your consent to obtain past policy, insurance contracts or claims information about you.
- Commonwealth or State/Territory Government Authorities; and courts, tribunals or other dispute resolution bodies.
- Underwriters at Lloyd's and other relevant agencies or to any other person associated with this risk, or as authorised/required by law.
- Other insurers who also underwrite your contract of insurance.
- AUALA's Lloyd's brokers who are located in the United Kingdom.
- Legal advisers, investigators or consultants retained by or on behalf of AUALA.

We limit the use and disclosure of any personal information provided by us to them to the specific purposes for which we supply it. We may transfer your personal information overseas to countries such as the UK and the United States of America when it is necessary to provide our service or product.

Protecting And Maintaining Your Personal Information

We will take all reasonable steps to protect the information we hold about you from unauthorised access, use and disclosure. We will destroy your information when it is no longer needed.

We do not use any form of encryption (in coding software) to protect information you send from your computer to us over the Internet. If you use our Internet site, you should be aware of the risks associated with this.

Unsolicited Information

If we receive personal information that we did not solicit, we will determine as soon as reasonably practicable where we could have lawfully collected that information as part of our functions or activities. If we are not satisfied that we could have lawfully collected the information, then we will (if it is lawful and reasonable) destroy the information or ensure that it is de-identified.

What We Expect Of You

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

If we give you personal information, you and your representatives must only use it for the purposes to which we agree. Where relevant you must meet the requirements of the Privacy Act when collecting, using, disclosing and handling personal information on our behalf. You must also ensure that your agents, employees and contractors meet the above requirements.

Accessing Your Personal Information

You can request access to your personal information by writing to AUALA. If accessing your personal information will take an extended period of time, we will inform you of any likely delay.

The APP outline circumstances under which we may deny access to some or all of your personal information. In such cases, we will give you reasons for our decision.

We may charge for the cost of providing access to your personal information. We will inform you if such a charge applies before we proceed with your request.

Privacy Complaints

AUALA has established a Privacy Complaints Handling Procedure to deal with any complaints you may have about how we have collected, used or managed your personal information. If you would like to make a complaint, please contact the Privacy Officer, Arch Underwriting at Lloyd's (Australia) Pty Ltd, Level 10, 61 York Street, Sydney NSW 2000 or email info@archinsurance.com.au. Your complaint will be taken seriously and investigated thoroughly.

If you are not satisfied with our final decision, you can direct your complaint to the Federal Privacy Commissioner either on 1300 363 992 (for the cost of a local call anywhere in Australia) or by mail to GPO Box 5218, Sydney NSW 2001.

Newsagents Broadform Public and Products Liability Contract of Insurance

The persons, organisations or entities (referred to as the “**Named Insured**”) named in the **Schedule** on the Certificate of Insurance attached to this **Contract** of Insurance (**Contract**) have made to **Underwriters** at Lloyd’s, who have subscribed our name(s) to this **Contract**, written statements and declarations contained in the proposal, questionnaire or insurance broker’s quotation submission and containing particulars, representations and statements in reliance on which it is hereby agreed are the basis of this **Contract** and are to be considered as incorporated in it.

This **Contract** is evidence that in consideration of the payment of the **Premium** stated in the **Schedule** and to the extent and in the manner set out herein:

1. Insuring Clauses

Section A – Public liability

Underwriters will pay to or on behalf of the **Insured** all sums which the **Insured** shall become legally liable to pay as **Compensation** in respect of:

- (a) **Personal Injury,**
- (b) **Damage to Property,**
- (c) **Advertising Injury**

happening during the **Period of Insurance** within the **Territorial Limits** as a result of an **Occurrence** and in connection with the **Insured’s Business**.

Section B – Products liability

Underwriters will pay to or on behalf of the **Insured** all sums which the **Insured** shall become legally liable to pay as **Compensation** in respect of:

- (a) **Personal Injury,**
- (b) **Damage to Property,**
- (c) **Advertising Injury**

happening during the **Period of Insurance** within the **Territorial Limits** as a result of an **Occurrence** and caused by or arising from the **Insured’s Products**.

2. Limits of liability

Unless otherwise stated in this **Contract**, **Underwriters**

- 3.1 liability to indemnify the **Insured** will not exceed the **Limit of Liability** in respect of any one **Occurrence**; and
- 3.2 maximum liability in respect of ‘Section B – Products liability’ for all **Occurrences** during the **Period of Insurance** will not exceed the **Limit of Liability**.

The applicable **Limit of Liability** is over and above the **Deductible** payable by the **Insured**.

3. Defence costs and supplementary payments

With respect to claims for which indemnity is available under this Contract, **Underwriters** will defend, in the **Insured’s** name and on the **Insured’s** behalf, any **Claim** or suit against the **Insured** alleging such **Personal Injury** or **Damage to Property** or **Advertising Injury**, even if any of the allegations of such **Claim** or suit are groundless, false or fraudulent, and pay:

- 3.1 all costs and expenses incurred by **Underwriters** and/or by the **Insured** with **Underwriters** written consent;
- 3.2 all interest accruing on **Underwriters** portion of any judgment until **Underwriters** have paid, tendered or deposited in court that part of such judgment which does not exceed the **Limit of Liability**;
- 3.3 premium on appeal bonds or security for costs required in any suit, and premium on bonds to release attachments in any suit, for an amount not exceeding the applicable **Limit of Liability**, but **Underwriters** shall have no obligation to apply for or furnish any such bond or security;
- 3.4 expenses incurred by the **Insured** for rendering of first aid or other medical service to others at the time of any **Personal Injury** (other than the payment of any medical expense by **Underwriters** which **Underwriters** are prevented from paying by law);
- 3.5 temporary protection of 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 **Contract**;
- 3.6 all costs incurred by the **Insured** with **Underwriters** 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; and
- 3.7 up to \$25,000 in respect of each **Occurrence** for reasonable professional fees or costs incurred by the **Named Insured** for the preparation of a claim under this **Contract**.

These 'Defence costs and supplementary payments' are payable subject to the following:

- 3.8 **Underwriters** are not obliged to pay any 'Defence costs and supplementary payments' or to defend any suit after **Underwriters** liability under this **Contract** to indemnify the **Insured** has been exhausted;
- 3.9 If a payment exceeding **Underwriters** liability under this **Contract** to indemnify the **Insured** has to be made to dispose of a **Claim**, **Underwriters** liability in respect of 'Defence costs and supplementary payments' is limited to the proportion that **Underwriters** liability to indemnify the **Insured** under this **Contract** bears to that payment;
- 3.10 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, Canada or their respective protectorates and territories, the total amount payable in respect of the **Claim** by **Underwriters** under this **Contract** including 'Defence costs and supplementary payments' will not exceed the **Limit of Liability**; and
- 3.11 In jurisdictions where **Underwriters** are not legally permitted to, or cannot for any other reason, defend any **Claim** or suit against the **Insured**, **Underwriters** will reimburse the **Insured** for the expense of such defence provided that such expenses are incurred with **Underwriters** written consent.

4. Deductible

The **Deductible** applies to:

- 4.1 each **Occurrence** and/or payment in respect of 'Defence costs and supplementary payments'; and
 - 4.2 each **Claim** in respect of the 'Extension to Section B – Products liability',
- and the Deductible is payable by the Insured at such time required by **Underwriters**.

5. Exclusions

Exclusions applicable to Section A – Public liability

Underwriters shall not be liable to pay or indemnify the **Insured** for any loss or **Claim** made under this **Contract** which arises directly or indirectly from, or in connection with:

5.1 Aircraft, watercraft and hovercraft

5.1.1. the operation, ownership, possession or use by or on behalf of the **Insured** of any **Aircraft** or **Hovercraft**; or

5.1.2. the operation, ownership, possession or use by or on behalf of the **Insured** of any **Watercraft** exceeding fifteen (15) metres in length, while such **Watercraft** is on, in or under water.

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

5.1.3. **Watercraft** used in operations carried out by an independent contractor for whose conduct the **Insured** is legally liable; or

5.1.4. **Watercraft** and **Hovercraft** owned and operated by others and used by the **Insured** for the purposes of business entertainment only.

5.2 Defective work
the cost of performing, completing, correcting or improving any work done or undertaken by the **Insured**.

5.3 Products liability
loss or liability which is indemnifiable under 'Section B – Products liability' or any extension thereto.

However this exclusion 5.3 does not apply to **Personal Injury** or **Damage to Property** caused by food or beverages sold or supplied by the **Insured** as a service to the **Insured's** employees or visitors for consumption on the **Insured's** premises.

5.4 Property in the insured's care, custody or control
damage to property owned by the **Insured** or property in the **Insured's** care, custody or control other than:

5.4.1 premises tenanted, leased or hired by the **Insured**;

5.4.2 **Vehicles** (other than **Vehicles** owned or used by or on behalf of the **Insured**) in the **Insured's** care, custody or control but only while such **Vehicles** are in a car park owned or operated by the **Insured** other than for income or reward as a car park operator;

5.4.3 clothing and personal effects of the **Insured's** directors, employees and visitors; or

5.4.4. property not owned by the **Insured** (and not being property referred to in items 1, 2 and 3) but temporarily in the **Insured's** care, custody or control, subject to **Underwriters** maximum liability for such property damage being \$250,000 for each and every **Occurrence**, or as otherwise stated in the **Schedule**, whichever is greater.

However this **Contract** does not cover liability arising out of or in any way connected with physical damage to, destruction of or loss of that part of any property upon which the **Insured** is or has been working.

5.5 Vehicles
the use of a **Vehicle** owned by, or in the physical or legal control of the **Insured** which is registered, required by law to be registered, or in respect of which insurance is required by virtue of any legislation which applies to its use (whether or not such insurance is effected).

However this exclusion shall not apply to:

- 5.5.1. liability directly or indirectly caused by or arising from the use of a **Vehicle** (other than a **Vehicle** owned or used by or on behalf of the **Insured**) whilst that **Vehicle** is in a car park owned or operated by the **Insured** other than for income or reward as a car park operator;
- 5.5.2. **Personal Injury** or **Damage to Property** occurring during the loading or unloading of a **Vehicle** caused by or arising from the collection or delivery of any goods from or to the **Vehicle** where such **Personal Injury** or **Damage to Property** occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability;
- 5.5.3. **Personal Injury** or **Damage to Property** caused by the use of any tool, plant or equipment forming part of or attached to or used in connection with any **Vehicle** and where applicable legislation does not require insurance against such liability; or
- 5.5.4. **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**.

Exclusions applicable to Section B – Products liability and any extension thereto

Underwriters shall not be liable to pay or indemnify the **Insured** for any loss or **Claim** made under this **Contract** which arises directly or indirectly from, or in connection with:

- 5.6 Aircraft products
any **Product** that is an **Aircraft** or is incorporated in an **Aircraft** with the **Insured's** knowledge and which affects the flying capabilities of an **Aircraft**.
- 5.7 Product recall or replacement
the cost of recalling, withdrawing, replacing or repairing **Products**, or of making any refund on the price paid for **Products**; however this exclusion shall not apply to liability for physical damage to or destruction of **Products** caused by other **Products** if they were physically independent at the time of such physical damage or destruction.
- 5.8 Public liability
loss or liability indemnifiable under 'Section A – Public liability'.

General Exclusions (applicable to both Section A and B and any extensions thereto)

Underwriters shall not be liable to pay or indemnify the **Insured** for any loss or **Claim** made under this **Contract** which arises directly or indirectly from, or in connection with:

- 5.9 Advertising injury
Advertising Injury directly or indirectly caused by, or arising from:
 - 5.9.1 failure of performance of any contract, however this exclusion does not apply to **Claims** for unauthorised appropriation of ideas based upon breach of an implied contract;
 - 5.9.2 infringement of trade mark, service mark or trade name, however this exclusion shall not apply to titles or slogans;
 - 5.9.3. incorrect description of any good or **Product**; or
 - 5.9.4 mistake in advertised price.
- 5.10 Asbestos
inhalation of, or fears of the consequences of exposure to, or inhalation of, asbestos, asbestos fibres or derivatives of asbestos, nor that part of any loss, cost or expense for the cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any asbestos, asbestos fibres or any

derivatives of asbestos.

- 5.11 Defamation
 - the publication or utterance of a libel or slander:
 - 5.11.1 made prior to the commencement of the **Period of Insurance**;
 - 5.11.2 made at the direction of the **Insured** with knowledge of the falsity thereof; or
 - 5.11.3 where the occupation or business of the **Insured** is advertising, broadcasting, publishing or telecasting.
- 5.12 Electronic data
 - 5.12.1 the communication, display, distribution or publication of **Electronic Data**;
 - 5.12.2 the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of **Electronic Data**;
 - 5.12.3 an error in creating, amending, entering, deleting or using **Electronic Data**; or
 - 5.12.4 the total or partial inability or failure to receive, send, access or use **Electronic Data** for any time or at all, 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.
- 5.13 Employers liability
 - 5.13.1 or in respect of which the **Insured** is or would be entitled to indemnity under any fund, scheme, contract of insurance or self insurance pursuant to or required by any legislation relating to workers' compensation whether or not such insurance has been effected;
 - 5.13.2 or imposed by the provisions of any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or
 - 5.13.3 **Employment Practices.**
- 5.14 Injury to third party workers
 - 5.14.1 **Personal Injury** to any **Contractor** or **Subcontractor** of the **Insured** or employee of any **Contractor** or **Subcontractor** of the **Insured** whilst such employee or **Contractor** or **Subcontractor** is acting in such capacity
 - 5.14.2 **Personal Injury** to any **Labour Hire Personnel** hired by or on behalf of the **Insured**.
- 5.15 Liability under agreement
 - or assumed under a contract or agreement that requires the **Named Insured** to:
 - 5.15.1 effect insurance over property; or
 - 5.15.2 accept liability regardless of fault; however this exclusion 5.15.2 does not apply where:
 - 5.15.2.1 that liability would otherwise exist at law in the absence of the contract or agreement; or
 - 5.15.2.2 the contract is an **Incidental Contract** and liability does not arise due to an obligation to insure rented, leased or hired property or an obligation to indemnify a landlord irrespective of fault.
- 5.16 Loss of use
 - loss of use of tangible property, which has not been physically lost, damaged or destroyed, resulting from:
 - 5.16.1 delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement;

5.16.2 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**.

5.17 Penalties and punitive damages
any punitive, aggravated, multiple, exemplary or liquidated damages, or fines or penalties imposed by law or any investigation or defence costs arising as a consequence thereof.

5.18 Pollution

5.18.1 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

5.18.2 for the cost of preventing the discharge, dispersal, release, seepage, migration or escape of **Pollutants**.

Provided that, with respect to any such liability which may be incurred anywhere other than the United States of America, Canada and their respective protectorates and territories exclusion 5.18.1 and 5.18.2 do 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.

5.19 Professional duty and treatment risk
any breach of duty owed in a professional capacity by the **Insured** including but not limited to the failure to treat or the treatment of any person including consultation or advice.

5.20 Radioactive contamination

5.20.1 ionising radiation or contamination by radioactivity from any nuclear fuel, weapon or waste from the combustion or fission of nuclear fuel; or

5.20.2 the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

However this exclusion shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

5.21 Sanctions

any **Claim** or to provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would contravene any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

5.22 Sexual Molestation

any sexual assault, abuse or molestation or attempt thereof committed or alleged to have been committed by the **Insured**.

5.23 Terrorism

any **Act of Terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence to the **Personal Injury** or **Damage to Property**.

5.24 Tobacco

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

5.24.1 tobacco or tobacco smoke;

- 5.24.2 any ingredient or additive present in any articles, items or goods which contain or includes tobacco;
- 5.24.3 e-cigarettes and vapour/vaping/vape products.
- 5.25 War
war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to a popular rising, military rising, military or usurped power.
- 5.26 Known Claims and Circumstances
- 5.26.1 any **Claim** made, threatened or intimated against the **Insured** prior to the commencement of the **Period of Insurance**, or circumstances:
 - 5.26.1.1 notified to any insurer before the commencement of the **Period of Insurance**; or
 - 5.26.1.2 known to the **Insured** at the commencement of the **Period of Insurance** and which the **Insured** believed or a reasonable person in the position of the **Insured** would or might have considered may give rise to a **Claim**; or
 - 5.26.1.3 referred to in any proposal, questionnaire or insurance broker's quotation submission for this **Contract** or any earlier policy or insurance; or
- 5.26.2 **Claims** made, threatened or intimated against the **Insured** after expiry of the **Period of Insurance** even though the facts or circumstances giving rise to the **Claim** may have occurred during the **Period of Insurance**;
- 5.26.3 **Claims** or possible **Claims** notified to **Underwriters** after expiry of the **Period of Insurance**.

6. Definitions

For the purpose of determining the cover provided by this **Contract**:

- 6.1 **Act of Terrorism** means:
an act, including but not limited to the use of force or violence and/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.
- 6.2 **Advertising Injury** means:
any unintentional:
 - 6.2.1 libel, slander, defamation;
 - 6.2.2 infringement of copyright or passing off of title or slogan;
 - 6.2.3 piracy, unfair competition, idea misappropriation or invasion of rights of privacy;
 - 6.2.4 breach of the misleading or deceptive conduct provisions of any consumer protection legislation or similar legislation of any country, state or territory,

committed or alleged to have been committed during the **Period of Insurance** in any advertisement, publicity article, broadcast, telecast or via an internet website, and caused by or arising out of the **Insured's** advertising activities.
- 6.3 **Aircraft** means:
any craft or object designed to travel through air, atmosphere or space, other than unmanned inflatable balloons used for advertising or promotional purposes or model aircraft.
- 6.4 **Business** means:
the business as described in the **Schedule** including:

- 6.4.1 any prior operations or activities which have ceased or have been disposed of where the **Insured** retains a legal liability;
- 6.4.2 the ownership of premises and/or the tenancy thereof by the **Insured**;
- 6.4.3 participation in any exhibition or conference by or on behalf of the **Insured**;
- 6.4.4 first aid, medical, ambulance or fire fighting services;
- 6.4.5 the provision of sponsorships by or on behalf of the **Insured**;
- 6.4.6 private work undertaken by the **Insured's** employees for any of the **Insured's** directors, partners, proprietors, officers or executives; and
- 6.4.7 the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and/or child care facilities by or on behalf of the **Insured**, which are primarily for the benefit of the **Insured's** employees.
- 6.5 **Claim** means:
 - 6.5.1 any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter claim or third or similar party notice issued against or served upon the **Insured**;
or
 - 6.5.2 the receipt by the **Insured** of any written or verbal notice of demand for **Compensation** made by a third party against the **Insured**.
- 6.6 **Compensation** means:
monies paid or payable by judgment, award or settlement together with any liability on the **Insured's** part to pay legal costs and expenses (other than those referred to in 'Defence costs and supplementary payments') for:
 - 6.6.1 **Personal Injury**;
 - 6.6.2 **Damage to Property**;
 - 6.6.3 **Advertising Injury**;
- 6.7 **Contract or Contract of Insurance** means:
 - 6.7.1 the Contract of Insurance, the certificate of insurance and **Schedule**, insuring clauses, extensions, conditions, definitions, exclusions and other terms contained herein;
 - 6.7.2 any endorsement attaching to and forming part of this Contract of Insurance either at inception or during the Period of Insurance;
 - 6.7.3 the information contained in or associated with the proposal, questionnaire or insurance broker's quotation submission.
- 6.8 **Damage to Property** means:
 - 6.8.1 physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; and/or
 - 6.8.2 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.
- 6.9 **Deductible** means:
the amount stated in the **Schedule** payable by the **Insured**.
- 6.10 **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.

- 6.11 **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.
- 6.12 **Financial Loss** means:
any loss which is solely economic in nature and not consequent upon **Personal Injury, Damage to Property or Advertising Injury**.
- 6.13 **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.
- 6.14 **Incidental Contract** means:
- 6.14.1 any written rental, 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;
 - 6.14.2 any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, 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;
 - 6.14.3 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; and
 - 6.14.4 contracts specified in the **Schedule**.
- 6.15 **Insured** means:
- 6.15.1 the **Named Insured**;
 - 6.15.2 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** and/or within the scope of their duties in such capacities;
 - 6.15.3 every principal in respect of the principal's liability arising out of:
 - 6.15.3.1 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 Liability** as is provided by this **Contract** ;
 - 6.15.3.2 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 Liability** as is provided by this **Contract**;
 - 6.15.4 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 **Contract** but only to the extent required by such contract or agreement and in any event only for such coverage and **Limit of Liability** as is provided by this **Contract**;
 - 6.15.5 every officer, member, employee or voluntary helper of the **Named Insured's** canteen,

social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charity or welfare work and/or child care facilities, while acting in their respective capacities as such; and

- 6.15.6 any director, partner, proprietor, officer or executive of the **Named Insured** in respect of private work undertaken by the **Named Insured's** employees for such person, and any employee whilst actually undertaking such work.
- 6.16 **Labour Hire Personnel or Contractor or Sub contractor** means:
any person engaged in any aspect of the **Business** of the **Insured** whilst employed by an employment agency, placement agency, labour hire company or any other company or person whose business is or includes the supply and/or provision of labour.
- 6.17 **Limit of Liability** means:
the limit of liability stated in the **Schedule**.
- 6.18 **Medical Persons** means:
qualified medical practitioners, dentists, nurses and first aid attendants.
- 6.19 **Named Insured** means:
the persons, organisations or entities named in the **Schedule**. The **Named Insured** includes:
- 6.19.1 subsidiary companies and any other organisation under the control of the **Named Insured**;
- 6.19.2 subsidiary and/or controlled corporations which are constituted or acquired by the **Named Insured** during the **Period of Insurance**; and
- 6.19.3 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** which occurred prior to the date of divestment.
- 6.20 **Occurrence** means:
an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** and/or **Damage to Property** and/or **Advertising Injury** that is neither expected nor intended from the standpoint of the **Insured**.
- With respect to **Personal Injury** and/or **Damage to Property**, 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**.
- 6.21 **Period of Insurance** means:
the period stated in the **Schedule** and any extension thereof which may be agreed in writing between the **Insured** and **Underwriters**.
- 6.22 **Personal Injury** means:
- 6.22.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium resulting therefrom;
- 6.22.2 the effects of false arrest, false imprisonment, wrongful detention, wrongful entry or wrongful eviction, malicious prosecution or humiliation;
- 6.22.3 the effects of libel, slander, defamation of character or invasion of privacy;
- 6.22.4 the effects of assault and battery not committed by or at the direction of the **Insured**, unless committed for the purpose of preventing or eliminating danger to persons or property; and
- 6.22.5 the effects of 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 or at the direction of the Insured, but only with respect to liability other than fines and penalties imposed by law.

- 6.23 **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.
- 6.24 **Premium** means:
the amount payable for this **Contract**. It includes all relevant government charges.
- 6.25 **Products** means:
anything (after it has ceased to be in the possession or control of the **Insured**) 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.
- 6.26 **Retroactive date** means the date specified in the **Schedule**.
- 6.27 **Schedule** means:
the schedule on the certificate of insurance.
- 6.28 **Territorial Limits** means:
- 6.28.1 anywhere in the world except the United States of America, Canada and their respective protectorates and territories;
- 6.28.2 the United States of America, Canada and their respective protectorates and territories if the **Personal Injury** or **Damage to Property** arises from business visits of the **Insured's** directors, partners, officers, executives or employees, who are non-resident in the United States of America or Canada, other than where such persons perform manual work.
- 6.29 **Underwriters** means:
Those Underwriters at Lloyd's who have subscribed their name(s) to this **Contract**.
- 6.30 **Vehicle** means:
any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.
- 6.31 **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. Conditions

- 7.1 Underwriters obligations
Each subscribing **Underwriters** obligations under this **Contract** to which he or she subscribes is several and not joint and is limited solely to the extent of his or her individual subscription. No subscribing **Underwriter** is responsible for the subscription of any co-subscribing **Underwriter** who for any reason does not satisfy all or part of his or her obligations.

To the extent allowed by the Insurance Contracts Act 1984, the following Conditions apply and in the event of breach, Underwriters may refuse indemnity.

7.2 Adjustment

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

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

7.3 Allocation

7.3.1 If a **Claim** covered by this **Contract** includes a loss or liability which is not covered by this **Contract**, the **Insured** and **Underwriters** shall use their best efforts to agree upon a fair and proper allocation between the covered and uncovered loss or liability.

7.3.2 If the **Insured** and **Underwriters** cannot agree on an allocation of loss or liability, they may agree to submit the dispute to arbitration. The arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by **Underwriters**, and a third independent arbitrator selected by the first two arbitrators.

7.3.3 Any arbitrated or judicially determined allocation of loss or liability shall be applied retrospectively to all loss or liability relating to any **Claim** under this **Contract**. Any allocation or advancement on account of any **Claim** under this **Contract** shall not apply to or create any presumption with respect to the final allocation of loss or liability.

7.4 Cancellation

The **Named Insured** may cancel this **Contract** by giving notice in writing to **Underwriters**. If such notice is given, the cancellation will take effect on the day the notice is received by **Underwriters**.

Underwriters may cancel this **Contract** in any of the circumstances set out in the Insurance Contracts Act 1984.

When cancelled by the **Named Insured**, a refund of **Premium** will be allowed at seventy percent (70%) pro rata of the **Premium** for the unexpired **Period of Insurance**, subject to any minimum and deposit **Premium** that may apply.

When the **Premium** is subject to adjustment, cancellation will not affect the obligation of the **Insured** to supply to **Underwriters** such information as is necessary to permit the **Premium** adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

7.5 Claims conditions

7.5.1 In the event of an **Occurrence** or loss or if an **Occurrence** or loss appears reasonably likely to take place the **Insured** must immediately take at its own expense all responsible steps to prevent or minimise **Personal Injury, Damage to Property, Advertising Injury** and/or any other loss or expense.

7.5.2 The **Insured** must immediately upon becoming aware of the same, give **Underwriters** notice in writing of any:

7.5.2.1 **Claim** or demand made against the **Insured**; or

7.5.2.2 circumstances which may give rise to a **Claim**; or

7.5.2.3 **Occurrence**;
which may give rise to a liability insured under this **Contract**.

Upon giving such notice the **Insured** must give to **Underwriters** all such information as **Underwriters** may reasonably require for the purpose of deciding whether the **Insured** is entitled to be indemnified under this **Contract** or for the purpose of defending any **Claim** or demand.

7.5.3 The Insured must not, without Underwriters prior written consent, make any admission, offer, promise or payment in connection with any Occurrence or loss.

7.5.4 The Insured must use its best endeavours to preserve all property, any Product, appliance and 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 is to be effected without the consent of Underwriters until Underwriters have had an opportunity of inspection.

7.5.5 In respect of any Occurrence or loss covered under this Contract, Underwriters have the right, if they so elect, to defend any suit against the Insured seeking Compensation or reimbursement of expenses for an Occurrence or loss and to bring any cross claim in the name of the Insured 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 they deem expedient. However Underwriters are not obligated to pay any Claim or judgment or to defend any suit after Underwriters liability under this Contract in respect of the Claim has been exhausted.

7.5.6 The Insured must co-operate with Underwriters and comply with the terms and conditions of this Contract, and assist as necessary in enforcing any right to contribution or indemnity from any person, corporation or organisation.

7.5.7 All notifications to Underwriters will be deemed given if notified in writing to:-

Arch Underwriting at Lloyd's (Australia) Pty Ltd
Level 8, 22 William Street
Melbourne VIC 3000

7.6 Cross liability

Each of the parties comprising the **Insured** is considered a separate legal entity and the word **Insured** applies to each party as if a separate **Contract** had been issued to each of the said parties, provided always that:

1. each of such parties shall be separately subject to the terms, conditions, exclusions and definitions of this **Contract**; and
2. nothing contained in this clause will operate to increase **Underwriters** liability under this **Contract**.

7.7 Currency

All amounts referred to in this Contract are in Australian Dollars.

If the **Insured** incurs liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by **Underwriters** shall be the value of such

award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the applicable currency rate of exchange on the date on which the payment is made, subject to the **Limit of Liability**.

7.8 Goods and Services Tax

As part of the **Premium**, **Underwriters** will charge the **Named Insured** an amount on account of GST.

The **Named Insured** must inform **Underwriters** of the extent to which there is an entitlement to an input tax credit for that GST amount each time that it notifies a **Claim** under this Contract. No payment will be made to the **Named Insured** for any GST liability that it may incur on the settlement of a **Claim** if it does not inform **Underwriters** of its entitlement or correct entitlement to an input tax credit.

Despite the other terms of this **Contract**, the **Underwriters** liability to the **Named Insured** will be calculated taking into account any input tax credit to which the **Named Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which it would have been entitled had it made a relevant acquisition.

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

7.9 Material facts

Every change materially affecting the facts or circumstances existing at the commencement of this insurance, or at any subsequent renewal date, must be notified to **Underwriters** in writing as soon as possible after such change comes to the notice of the **Insured**.

7.10 Reasonable care

The **Insured** at their own expense shall take all reasonable measures and care to:

- 7.10.1 maintain premises and plant in satisfactory condition;
- 7.10.2 employ only competent employees;
- 7.10.3 comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
- 7.10.4 prevent **Personal Injury**, **Damage to Property**, **Advertising Injury** and/or **Financial Loss** and/or any other loss, damage or expense; and
- 7.10.5 prevent the manufacture, sale or supply of defective **Products**.

7.11 Subrogation rights

In the event of any payment under this Contract, **Underwriters** 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.

Underwriters agree to waive all rights of subrogation under this **Contract** 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, **Underwriters** subrogation right is not waived to the extent and up to the amount of cover provided by such other policy of insurance or indemnity.

7.12 Endorsements

Any endorsement does not affect or increase the **Limit of Liability** or any other term of this **Contract**, except to the extent specifically provided in the endorsement. For the avoidance of doubt, each endorsement is otherwise subject to the all the terms, conditions, exclusions, definitions and **Limits of Liability** of this **Contract**.

- 7.13 Payment of premium
The **Named Insured** must pay the **Premium** specified in the **Schedule** for the **Period of Insurance** to **Underwriters** by the due date. If the **Named Insured** does not pay the **Premium** by the due date, **Underwriters are** entitled to cancel this **Contract** in accordance with the Insurance Contracts Act 1984.
- 7.13 Other insurance
In the event of the **Insured**, being indemnified under such other insurance effected by or on behalf of the **Insured** (not being insurance specifically effected as insurance excess of this **Contract**) in respect of a **Claim** for which indemnity would be available under this **Contract**, this **Contract** will not apply and will provide no cover for that **Claim**.

In the event of any claim being made under this **Contract**, the **Insured** must notify and give details to **Underwriters** of any other insurance contract or policies insuring the same risk insured under this **Contract**.
- 7.14 Service of Suit and Jurisdiction
Underwriters herein agree that:
- 7.14.1 In the event of a dispute arising under this **Contract**, **Underwriters** at the request of the **Insured** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court;
- 7.14.2 any summons notice or process to be served upon Underwriters may be served upon:
Lloyd's Underwriters' General Representative in Australia
Level 9, 1 O'Connell Street
Sydney NSW 2000

who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on Underwriters' behalf.
- 7.14.3 If a suit is instituted against any one of the **Underwriters** all **Underwriters** hereon will abide by the final decision of such Court or any competent Appellate Court.
- 7.15 Fraud
If any **Claim** under this **Contract** shall be in any respect fraudulent or if any fraudulent means or devices are used by the **Insured** or anyone acting on the **Insured's** behalf to obtain any benefit under this **Contract**, all benefit hereunder shall be forfeited.

To be valid, this Contract must have attached to it the Certificate of Insurance signed by an authorised officer of Arch Underwriting at Lloyd's (Australia) Pty Ltd.