



PUBLIC AND PRODUCTS LIABILITY POLICY

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IMPORTANT INFORMATION

THIS POLICY

This policy is an important document. The policy wording and schedule together set out the cover provided, the amount insured and the terms and conditions of your insurance. Please read it carefully and keep it in a safe place.

Your insurance broker has arranged this policy for you. If you have any questions about your cover, or you wish to contact ProRisk, please contact your insurance broker for assistance.

PRORISK

ProRisk, Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076, is a coverholder for certain Underwriters at Lloyd's. ProRisk has the authority to bind this policy on their behalf.

YOUR DUTY OF DISCLOSURE

Section 21 of the *Insurance Contracts Act 1984* provides that before you enter into a contract of general insurance with an insurer, you have a duty 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, upon what terms. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of matter:

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

NON-DISCLOSURE

If you fail to comply with your duty of disclosure, Underwriters 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, Underwriters may also have the option of avoiding the contract from its beginning.

PRIVACY STATEMENT

ProRisk is bound by the obligations of the *Privacy Act 1988* (as amended) regarding the collection, use, disclosure and handling of personal information. We will protect the privacy of your personal information.

We collect personal information about you to enable us to provide you with relevant products and services, to assess your application for insurance and, if a contract is entered, to enable us to provide, administer, and manage your policy, and to investigate and handle any claims under your policy. We may disclose your information to third parties (who may be located overseas), such as the insurer, lawyers, claims adjusters, and others appointed by ProRisk or by the insurer to assist us and them in providing relevant products and services. We may also disclose your information to people listed as co-insured on your policy and to your agents. By providing your personal information to us, you consent to us making these disclosures.

If you do not provide all or part of the information required, we may not be able to provide you with our products and services, consider your application for insurance, administer your policy, assess or handle claims under your policy, or you may breach your Duty of Disclosure.

When you provide us with personal information about other individuals, we rely upon you to have made them aware of that disclosure, and of the terms of the ProRisk Privacy Statement, and to obtain their consent.

For a copy of the ProRisk Privacy Statement or to request access to or update the personal information, contact the Privacy Officer at ProRisk by email: enquiries@prorisk.com.au or by mail at the address shown on this policy.

GENERAL INSURANCE CODE OF PRACTICE

ProRisk and Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from www.codeofpractice.com.au.

This policy and the schedule are Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia.

COMPLAINTS HANDLING

Any enquiry or complaint relating to this Insurance should be referred to ProRisk in the first instance. We have a complaints handling and internal dispute resolution process to assist you, and information about our complaints handling procedures is available upon request. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place
123 Pitt Street
Sydney NSW 2000

Telephone Number: (02) 9233 1433

Facsimile Number: (02) 9233 1466

: who will refer your dispute to the Complaint's Department at Lloyd's.

Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

AUSTRALIA TERRORISM INSURANCE ACT 2003 NOTICE (NMA2984)

The Underwriters have treated this Insurance (or part of it) as an Insurance to which the Australia Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

If any or all of the Underwriters have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

In consideration of the payment of the Premium and in reliance on the contents of the Proposal and any other information submitted by or on the Insured's behalf, Underwriters will indemnify the Insured in accordance with the terms of this Policy.

1. INSURING CLAUSE

Subject to all the terms and provisions of this Policy, Underwriters agree to indemnify the Insured during the Insurance Period against the Insured's liability to pay compensation, including claimants' costs, fees and expenses, for Injury or Damage first happening during the Insurance Period as a result of an Occurrence in connection with the Insured's Business.

2. INDEMNITY TO OTHERS

The indemnity granted under the Insuring Clause extends to:

- 2.1 at the request of the Insured, any party who enters into an agreement with the Insured for any purpose of the Business, but only to the extent required by such agreement to grant indemnity and only to the extent that such liability would have attached to the Insured in the absence of the agreement;
- 2.2 at the request of the Insured, any person or firm for their liability arising out of the performance of a contract to provide labour only services to the Insured;
- 2.3 Principals in their business capacity for their liability arising out of the performance of the Business and/or in their private capacity arising out of their temporary engagement of the Employees;
- 2.4 Employees and shareholders of the Insured but only whilst acting within the scope of their duties in their respective capacities as such;
- 2.5 the officers, committee and members of the Insured's canteen, social, sports, and welfare organisations, and the Insured's medical, first aid, and fire fighting services in their respective capacities as such; and
- 2.6 the personal representatives of the estate of any person indemnified under this Clause 2 in respect of liability incurred by such person,

provided always that all such persons shall observe, fulfil and be subject to the terms, conditions and exclusions of this Policy as though they were the Insured.

3. CROSS LIABILITIES

Each person named as the Insured is separately indemnified in respect of claims made by any of them against any other of them, subject to Underwriters' total liability not exceeding the Limit of Indemnity.

4. LIMIT OF INDEMNITY

Underwriters' liability to indemnify the Insured for each claim under this Policy or series of such claims arising out of one Occurrence shall not exceed the Limit of Indemnity.

5. DEFENCE COSTS AND EXPENSES

Where indemnity is or would be available under this Policy, Underwriters will pay in addition to the Limit of Indemnity:

- 5.1 the reasonable costs and expenses incurred by the Insured with Underwriters' prior consent in the investigation, defence or settlement of any claim made or which might be made against the Insured, including:
 - 5.1.1 the investigation of any circumstances of which the Insured shall become aware which might reasonably be expected to give rise to a claim being made against the Insured;
 - 5.1.2 representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to such claim; and
 - 5.1.3 representation and defence of any proceedings in a Court of Summary jurisdiction brought against the Insured or any Principal in respect of breach or alleged breach of any statute relating to health and safety, provided that Underwriters will not pay the costs of any Appeal unless Senior Counsel to be appointed by Underwriters shall advise that in their opinion, such Appeal is likely to succeed.
- 5.2 the reasonable expenses of immediate emergency medical assistance to third parties in respect of Injury.

Provided that if the total amount required to dispose of any claim or series of claims arising out of one Occurrence exceeds the Limit of Indemnity then Underwriters' liability under this Clause 5 shall be limited to that proportion of those costs and expenses as the Limit of Indemnity bears to the total amount required to dispose of the claim.

6. EXCLUSIONS

This Policy does not cover liability caused by, arising directly or indirectly out of, or in connection with:

Motor Vehicles

- 6.1. the ownership, possession or use of any motor vehicle or trailer by or on behalf of the Insured, other than liability:
 - 6.1.1 arising out of unregistered vehicles which are not required to be registered, and in respect of which liability insurance is not in force;
 - 6.1.2 caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
 - 6.1.3 arising beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;
 - 6.1.4 for Damage to any bridge, weighbridge, road or anything beneath caused by the weight of any motor vehicle or trailer or the load carried thereon;
or
 - 6.1.5 for Damage to any motor vehicle or trailer temporarily in the Insured's custody or control for the purpose of parking,

provided that no indemnity is granted against liability compulsorily insurable by legislation or for which the government or other authority has accepted responsibility.

Aircraft and Watercraft

- 6.2. the ownership, possession or use by or on behalf of the Insured of any aircraft, spacecraft, watercraft or hovercraft (other than watercraft not exceeding five metres in length and then only while on inland waterways).

Property in Physical or Legal Control

- 6.3. Damage to property owned, leased or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control, but this exclusion shall not apply to liability for Damage to:
 - 6.3.1 premises or the contents thereof temporarily occupied by the Insured for work therein or thereon but no indemnity is granted for Damage to that part of the property on which the Insured is working and which arises out of such work;
 - 6.3.2 clothing and personal effects belonging to employees and visitors of the Insured;
 - 6.3.3 premises tenanted by the Insured to the extent that the Insured would be held liable in the absence of any specific agreement; or
 - 6.3.4 other property temporarily in the Insured's physical or legal control up to a maximum of AUD\$100,000 any one Occurrence and in the aggregate during the Insurance Period.

Deliberate Acts

- 6.4. the deliberate, conscious or intentional disregard by the Insured's technical or administrative management of the need to take all reasonable precautions to prevent Injury or Damage.

Professional Liability

- 6.5. the rendering of or failure to render professional advice or service, but this exclusion does not apply to the rendering of or the failure to render first aid or medical services to Employees on the Insured's premises by medical persons employed by the Insured.

Contractual Liability

- 6.6. liability assumed by the Insured under any liquidated damages, penalty or forfeiture clause, express warranty, contract, agreement or guarantee other than to the extent that such liability would have attached to the Insured in the absence of such clause, warranty, contract, agreement or guarantee.

Employment Liability

- 6.7. liability for Injury to any Employee. Provided that if the Insured:
 - 6.7.1 is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or

6.7.2 is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not an employee or worker within the meaning of the relevant workers compensation law or the Injury is not an Injury which is subject to such law,

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

- 6.8. any other liability imposed by any workers compensation law.
- 6.9. any other liability imposed by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination, or any such contract of employment or workplace agreement.
- 6.10. Employment Practices.

Libel and Slander

- 6.11. the publication or utterance of a libel or slander:
 - 6.11.1. made prior to the commencement of the Insurance Period;
 - 6.11.2. made by the Insured or at the Insured's direction with knowledge of its falsity; or
 - 6.11.3. related to publishing, advertising, broadcasting or telecasting activities conducted by the Insured or on the Insured's behalf.

Cyber Liability

- 6.12. the Insured's intranet, extranet or internet operations.

Damage to Products

- 6.13. Damage to any Product or part thereof.

Product Guarantee

- 6.14. costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof and/or any economic loss consequent upon the necessity for such repair, reconditioning, modification or replacement.

Recall

- 6.15. the recall of any Product or part thereof.

Aviation Products

- 6.16. any Product or part thereof which the Insured knows or ought to know is intended to be incorporated into the structure, machinery, electrics, electronics or controls of any aircraft or spacecraft.

Fines, Penalties and Punitive Damages

- 6.17. awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or in any other form whatsoever.

Recovery Rights

- 6.18. any claim or claims where and to the extent that the Insured has, without Underwriters' prior consent, granted a waiver of any recovery rights whether by express term or by reason of an assumption of liability under contract.

Assault or Battery

- 6.19. assault or battery committed by the Insured or at the Insured's direction, unless it was committed for the purpose of preventing or eliminating danger to persons or property.

Sexual Molestation

- 6.20. sexual molestation, sexual harassment, sexual assault, rape, or the consequences thereof.

Asbestos

- 6.21. asbestos or asbestosis, or any actual or alleged asbestos related Injury or Damage involving the use, presence, existence, detection, decontamination, treatment, removal, elimination or avoidance of asbestos.

Pollution

- 6.22. Pollution, or the actual, alleged or threatened discharge, release or escape of pollutants, or the containment, clean up, removal, treatment or monitoring of such pollutants.

USA and Canada

- 6.23. claims and actions:

6.23.1 instituted within the United States of America or Canada, or their dominions or protectorates; or

6.23.2 to which the laws of the United States of America or Canada, or their dominions or protectorates apply.

Provided that this exclusion does not apply to claims and actions arising from the presence of a Principal or Employee who is usually resident outside the United States of America or Canada whilst travelling on behalf of the Insured.

War and Terrorism

- 6.24. war, Terrorism, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, or any action taken in controlling, preventing, suppressing or in any way relating to war or Terrorism.

Radioactive Contamination and Explosive Nuclear Assemblies

- 6.25. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive

or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

7. GENERAL CONDITIONS

Due Observance

- 7.1 Underwriters' liability to provide indemnity under this Policy is conditional upon the Insured's observance of the terms and Conditions of this Policy, and that of any other person entitled to indemnity under this Policy.

Material Changes to Risk

- 7.2 The Insured shall throughout the Insurance Period give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the Proposal.
- 7.3 In the event of Underwriters being at any time entitled to void this Policy by reason of the Insured failing to give notice in accordance with Clause 7.2, Underwriters may at their election, instead of voiding this Policy, give notice in writing to the Insured that any Claim which has arisen or may arise which is related to such facts, activities or circumstances shall be excluded from indemnity under this Policy.

Claims Notification

- 7.4 The Insured shall give to Underwriters immediate notice in writing of:
- 7.4.1 any claim made against any Insured which may fall within the scope of this Policy;
 - 7.4.2 the receipt of notice, whether written or oral, from any person or entity of their intention to make such a claim against the Insured;
 - 7.4.3 any circumstances of which the Insured shall become aware which might reasonably be expected to give rise to such a claim being made against the Insured, giving reasons for the anticipation of such claim;
 - 7.4.4 any other circumstances which might give rise to a claim under this Policy.
- 7.5 Notice under Clause 7.4 shall be given to ProRisk at the address stated in the Schedule.

Claims Handling

- 7.6 No admission, offer, promise or payment shall be made or given by or on behalf of the Insured nor shall any costs be incurred by the Insured without Underwriters' written consent, and Underwriters shall be entitled to take over and conduct, in the name of the Insured, the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings in the defence or settlement of any claim.
- 7.7 The Insured shall at all times and without charge give Underwriters such information and co-operation as they may reasonably require.

Subrogation

- 7.8 If Underwriters grant indemnity under this Policy, then Underwriters shall become subrogated to all the Insured's rights of recovery, before as well as after any payment by Underwriters to the extent of such payment, and the Insured shall take all reasonable steps to preserve such rights, and to assist Underwriters in the exercise of such rights.
- 7.9 Notwithstanding Clause 7.8, if any payment is made or may be made under this Policy, Underwriters agree not to exercise their rights of subrogation against any Principal or Employee of the Insured unless the claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Principal or Employee.
- 7.10 The Insured shall give all such assistance in the exercise of rights of recovery as Underwriters may reasonably require.

Discharge of Liability

- 7.11 In the event of a claim or series of claims under this Policy, Underwriters may at any time pay to the Insured the amount of the Limit of Indemnity remaining under this Policy, or any lesser amount for which such claim or claims can be settled, less any sums already paid. Upon such payment being made, Underwriters shall relinquish the conduct and control of and be under no further liability in connection with such claims or costs and expenses incurred after the date of such relinquishment.
- 7.12 If Underwriters exercise the option in Clause 7.11, and the total amount required to dispose of any claim or series of claims exceeds the Limit of Indemnity, then Underwriters will pay under Clause 5 the reasonable costs and expenses incurred up to the date of relinquishment in such proportion as the amount of the indemnity available under this Policy bears to the total amount which in Underwriters' opinion at the time of relinquishment will be necessary to dispose of the claim.

Goods and Services Tax

- 7.13 The Premium includes an amount for GST.
- 7.14 Underwriters' liability to the Insured in respect of a claim or series of claims under this Policy is calculated less any input tax credit to which the Insured is entitled for any acquisition which is relevant to the claim, or to which the Insured would have been entitled had it made a relevant acquisition. The Insured must inform Underwriters of the extent to which it is entitled to an input tax credit, and any GST liability arising from the Insured's provision of incorrect advice is payable by the Insured.

Excess

- 7.15 Underwriters shall only be liable for that part of each claim or series of such claims arising out of any one Occurrence under this Policy which exceeds the amount of the Excess stated in the Schedule. The Insured shall retain the Excess for its own account and shall not insure it elsewhere.
- 7.16 The Excess shall include costs and expenses under Clause 5 unless otherwise stated in the Schedule.

Consideration

- 7.17 The indemnity provided by Underwriters under this Policy is in consideration of the payment of the Premium.
- 7.18 The Premium is the amount due to Underwriters and any commission allowed by them is to be regarded as remuneration of ProRisk.

Fraud

- 7.19 If any claim under this Policy is in any respect fraudulent, Underwriters shall be under no liability in respect of such claim.

Service of Suit

- 7.20 Underwriters' agree that:
- 7.20.1 In the event of a dispute arising under this Policy, at the request of the Insured, Underwriters 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.
 - 7.20.2 Any summons, notice or process to be served upon Underwriters may be served upon the Lloyd's General Representative in Australia, Suite 2, Level 21 Angel Place, 123 Pitt 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.
 - 7.20.3 If a suit is instituted against Underwriters, Underwriters will abide by the final decision of any such Court or any competent Appellate Court.

Cancellation

- 7.21 This Policy may be cancelled by Underwriters in accordance with the provisions of the Insurance Contracts Act 1984.
- 7.22 The Insured may cancel this Policy at any time by giving notice in writing to ProRisk. In the event of cancellation by the Insured, ProRisk's cancellation rates will apply.

Enforceability

- 7.23 To be enforceable, this Policy must have a Schedule attached to it which has been signed by an authorised officer of ProRisk or Underwriters.

Governing Law

- 7.24 This Policy is governed by the laws of Australia.

8. DEFINITIONS

- 8.1 **Business** means: the business conducted by the Insured as stated in the Schedule, and includes:
- 8.1.1 property ownership and office occupation by the Insured for the purposes of the Business; and
 - 8.1.2 a canteen, social or sporting club or first aid, fire or ambulance service,

provided by the Insured and incidental to the Business.

8.2 **Damage** means:

8.2.1 loss or destruction of or physical damage to tangible property, including any resulting loss of use of that property; and

8.2.2 loss of use of tangible property which has not been lost, destroyed or physically damaged, where the loss of use arises out of an Occurrence.

8.3 **Employee** means any person employed by the Insured under a contract of service or apprenticeship, and any person deemed at law to be employed by the Insured whether pursuant to any workers' compensation law or otherwise.

8.4 **Employment Practices** means any actual or alleged wrongful or unfair dismissal or unlawful termination denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment by the Insured of any person or persons.

8.5 **Excess** means the amount stated in the Schedule as the Excess.

8.6 **GST, input tax credit, and acquisition** have the meaning given to those words in A New Tax System (Goods and Services Tax) Act 1999 (as amended).

8.7 **Injury** means:

8.7.1 bodily injury, sickness, disease, disability, shock, loss of amenities, discomfort, disfigurement, malformation, fright, mental anguish, mental injury or death of or to any person;

8.7.2 the effects of false arrest, false imprisonment, wrongful detention or malicious prosecution;

8.7.3 the effects of wrongful entry, wrongful eviction;

8.7.4 the effects of libel, slander, humiliation or violation of personal rights; and

8.7.5 the effects of assault and battery committed for the purpose of protecting persons and/or property.

8.8 **Insurance Period** means the period stated in the Schedule as the Insurance Period unless terminated earlier.

8.9 **Insured** means the person or entity named as the Insured in the Schedule and:

8.9.1 any subsidiary company of the Insured (and their subsidiaries);

8.9.2 any other entity controlled by the Insured and over which the Insured assumes active management; and

8.9.3 any joint venture in which the Insured has an interest, subject to the prior agreement of Underwriters.

8.10 **Limit of Indemnity** means the amount stated in the Schedule as the Limit of Indemnity.

- 8.11 **Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage neither expected nor intended from the standpoint of the Insured. A series or number of events having the same original cause or attributable to the one source shall be construed as one Occurrence.
- 8.12 **Pollution** means any pollution or contamination of the atmosphere or of any water, land or other tangible property.
- 8.13 **Premium** means the amount stated in the Schedule as the Premium.
- 8.14 **Principal** means, where the Insured is an individual, that individual, where the Insured is a firm, a partner of that firm, or where the Insured is a company, any director or executive officer of that company.
- 8.15 **Product** means any physical property after it has left the custody or control of the Insured, which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured, but shall not include food or drink supplied by or on behalf of the Insured primarily to the Insured's employees as a staff benefit.
- 8.16 **Proposal** means the written proposal bearing the date stated in the Schedule together with any supplementary information submitted to ProRisk by or on behalf of the Insured. The Proposal shall be construed as incorporated into and forming part of this Policy.
- 8.17 **ProRisk** means Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076.
- 8.18 **Schedule** means the current Schedule to this Policy issued by ProRisk.
- 8.19 **Terrorism** means an act, including but not limited to the use of force or violence and or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes including the intention to influence any government and or to put the public or any section of the public in fear.
- 8.20 **Underwriters** means certain Underwriters at Lloyd's participating in this contract of insurance.