

# Broadform Public and Products Liability **Insurance Policy** Liability solutions



# Broadform Public and Products Liability Insurance Policy

<b>Introduction</b>	<b>2</b>
<b>Policy wording</b>	<b>2</b>
<b>1. Insuring clauses</b>	<b>2</b>
<b>2. Extensions to Section B – Products liability</b>	<b>2</b>
<b>3. Limits of liability</b>	<b>3</b>
<b>4. Defence costs and supplementary payments</b>	<b>3</b>
<b>5. Deductible</b>	<b>4</b>
<b>6. Exclusions</b>	<b>4</b>
6.1 Aircraft, watercraft and hovercraft	4
6.2 Defective work	4
6.3 Products liability	4
6.4 Property in the insured’s care, custody or control	4
6.5 Vehicles	4
6.6 Aircraft products	5
6.7 Product recall or replacement	5
6.8 Public liability	5
6.9 Advertising injury	5
6.10 Asbestos	5
6.11 Defamation	5
6.12 Electronic data	5
6.13 Employers liability	6
6.14 Liability under agreement	6
6.15 Loss of use	6
6.16 Penalties and punitive damages	6
6.17 Pollution	6
6.18 Professional duty and errors or omissions	6
6.19 Radioactive contamination	6
6.20 Terrorism	7
6.21 War	7
<b>7. Definitions</b>	<b>7</b>
<b>8. Conditions</b>	<b>10</b>
8.1 Adjustment	10
8.2 Cancellation	10
8.3 Claims conditions	10
8.4 Cross liability	10
8.5 Currency	11
8.6 Goods and Services Tax	11
8.7 Law and jurisdiction	11
8.8 Material facts	11
8.9 Reasonable care	11
8.10 Subrogation rights	11
8.11 Endorsements	11
8.12 Payment of premium	11
8.13 Other insurance	11
<b>Notices</b>	<b>12</b>

# Introduction

Please read the policy carefully to ensure that it meets your requirements. The insurer will provide insurance in accordance with the terms of this policy.

The policy, endorsements and the schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear that specific meaning wherever it may appear. The singular shall include the plural and vice versa.

Where headings are used in this policy, they are purely descriptive in nature and are not intended to be used for interpretative purposes.

The named insured received important notices about their duty of disclosure and our privacy statement prior to purchasing this policy. The notices are replicated at the back of this document for your reference.

Also included in the notices is important information relating to 'Extension 2 – Errors or omissions coverage' which is issued on a claims made and notified basis.

## Policy wording

The **Named Insured** and the **Insurer** agree that the **Insurer** will provide insurance in accordance with the terms, conditions, exclusions, definitions and **Limits of Liability** of this **Policy**.

### 1. Insuring clauses

#### Section A – Public liability

The **Insurer** 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**, or
- b. **Damage to Property**, or
- 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

The **Insurer** 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. Extensions to Section B – Products liability

These 'Extensions' are subject to the terms, conditions, exclusions and definitions of the **Policy**, unless otherwise stated.

The total of all payments made under the 'Extensions' will be part of and not in addition to the **Limit of Liability** in respect of 'Section B – Products liability'.

#### Extension 1 – Product recall expense coverage

The **Insurer** 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 bodily injury, death, illness or disability or physical damage to or destruction of tangible property due to:

1. 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
2. any unintentional error or deficiency in the manufacture, design, blending, mixing, compounding or labelling of the **Product**; or
3. 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 1 or 2 above.

Coverage under this extension 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 bodily injury, death, illness or disability or physical damage to or destruction of tangible property; and
- b. the bodily injury, death, illness or disability or physical damage to or destruction of tangible property being indemnifiable under 'Section B – Products liability'; and
- c. the **Insurer's** maximum liability in respect of this extension for all **Product Recall Expenses** during the **Period of Insurance** not exceeding \$1,000,000, or as otherwise stated in the **Schedule**, whichever is greater.

## Extension 2 – Errors or omissions coverage

The **Insurer** 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**.

Coverage under this extension is subject to:

1. such act, error or omission occurring after the inception date of this **Policy** or the retroactive date specified in the **Schedule**, whichever the earlier; and
2. such act, error or omission occurring within the **Territorial Limits**; and
3. a demand for **Compensation** being first made against the **Insured** and notified to the Insurer during the **Period of Insurance**; and
4. The **Insurer's** maximum liability in respect of this extension for all claims payable during the **Period of Insurance** not exceeding \$500,000, or as otherwise stated in the **Schedule**, whichever is greater.

## 3. Limits of liability

Unless otherwise stated in the **Policy**, the **Insurer's**:

1. liability to indemnify the **Insured** will not exceed the **Limit of Liability** in respect of any one **Occurrence**; and
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**.

## 4. Defence costs and supplementary payments

With respect to claims for which indemnity is available under this **Policy**, the **Insurer** 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** and/or **Advertising Injury** or any other loss or damage covered under 'Extension 2 – Errors or omissions coverage' and seeking **Compensation** on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent and pay:

- 4.1 all costs and expenses incurred by the **Insurer** and/or by the **Insured** with the **Insurer's** written consent;
- 4.2 all interest accruing on the **Insurer's** portion of any judgment until the **Insurer** has paid, tendered or deposited in court that part of such judgment which does not exceed the **Limit of Liability**;
- 4.3 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 the **Insurer** shall have no obligation to apply for or furnish any such bond or security;
- 4.4 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 the **Insurer** which the **Insurer** is prevented from paying by law);
- 4.5 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 **Policy**;
- 4.6 all costs incurred by the **Insured** with the **Insurer's** 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
- 4.7 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 **Policy**.

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

1. The **Insurer** is not obliged to pay any 'Defence costs and supplementary payments' or to defend any suit after the **Insurer's** liability under this **Policy** to indemnify the **Insured** has been exhausted;
2. If a payment exceeding the **Insurer's** liability under this **Policy** to indemnify the **Insured** has to be made to dispose of a claim, the **Insurer's** liability in respect of 'Defence costs and supplementary payments' is limited to the proportion that the **Insurer's** liability to indemnify the **Insured** under this **Policy** bears to that payment;
3. 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 the **Insurer** under this **Policy** including 'Defence costs and supplementary payments' will not exceed the **Limit of Liability**; and
4. In jurisdictions where the **Insurer** is not legally permitted to, or cannot for any other reason, defend any claim or suit against the **Insured**, the **Insurer** will reimburse the **Insured** for the expense of such defence provided that such expenses are incurred with the **Insurer's** written consent.

## 5. Deductible

The **Deductible** applies to:

- a. each **Occurrence** and/or payment in respect of 'Defence costs and supplementary payments'; and
  - b. each claim in respect of 'Extensions to Section B – Products liability',
- and is payable by the **Insured** at such time required by the **Insurer**.

## 6. Exclusions

### Exclusions applicable to Section A – Public liability

The **Insurer** does not cover any liability:

#### 6.1 Aircraft, watercraft and hovercraft

directly or indirectly caused by or arising from:

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

3. **Watercraft** used in operations carried out by an independent contractor for whose conduct the **Insured** is legally liable; or
4. **Watercraft** and **Hovercraft** owned and operated by others and used by the **Insured** for the purposes of business entertainment only.

#### 6.2 Defective work

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

#### 6.3 Products liability

indemnifiable under 'Section B – Products liability' or any extension thereto.

However this exclusion 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.

#### 6.4 Property in the insured's care, custody or control

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

1. premises tenanted, leased or hired by the **Insured**;
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;
3. clothing and personal effects of the **Insured's** directors, employees and visitors; or
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 the **Insurer's** maximum liability for such property damage being \$500,000 for each and every **Occurrence**, or as otherwise stated in the **Schedule**, whichever is greater.

However this **Policy** 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.

#### 6.5 Vehicles

directly or indirectly caused by or arising from 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:

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;
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;
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
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 extensions thereto

The **Insurer** does not cover any liability:

## 6.6 Aircraft products

directly or indirectly caused by or arising from 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**.

## 6.7 Product recall or replacement

1. for 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:

- a. 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; or
  - b. where coverage is provided under 'Extension 1 – Product recall expense coverage'.
2. for **Product Recall Expense** directly or indirectly caused by or arising from:
- a. any **Product** of the same trade or brand name but which is of a different batch, code or other identification from the **Product** for which **Product Recall Expense** cover has been provided;
  - b. inherent deterioration or decomposition of any **Product** or its packaging;
  - c. loss of customer approval or confidence, or any costs incurred to regain customer approval, or other consequential loss;
  - d. knowledge of the **Insured** at the inception of this **Policy** of any pre-existing condition of the **Product** that may result in a claim under this **Policy**;
  - e. mislabelling or non-labelling of any **Product** or any container or packaging in relation to a 'use by' or 'best before' date authorised or required by a government agency or other statutory or regulatory authority;
  - f. continued use by the **Insured** of materials that have been banned or declared unsafe by a government agency or other responsible body; or
  - g. errors 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.

This exclusion 6.7.2 applies to 'Extension 1 – Product recall expense coverage.'

## 6.8 Public liability

indemnifiable under 'Section A – Public liability'.

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

The **Insurer** does not cover any liability:

## 6.9 Advertising injury

for **Advertising Injury** directly or indirectly caused by, or arising from:

1. 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;
2. infringement of trade mark, service mark or trade name, however this exclusion shall not apply to titles or slogans;
3. incorrect description of any good or **Product**; or
4. mistake in advertised price.

## 6.10 Asbestos

directly or indirectly caused by, arising from or in connection with asbestos or materials containing asbestos.

## 6.11 Defamation

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

1. made prior to the commencement of the **Period of Insurance**;
2. made at the direction of the **Insured** with knowledge of the falsity thereof; or
3. where the occupation or business of the **Insured** is advertising, broadcasting, publishing or telecasting.

## 6.12 Electronic data

directly or indirectly caused by or arising from :

1. the communication, display, distribution or publication of **Electronic Data**;
2. the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of **Electronic Data**;
3. an error in creating, amending, entering, deleting or using **Electronic Data**; or
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.

### 6.13 Employers liability

1. 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;
2. 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
3. relating to **Employment Practices**.

### 6.14 Liability under agreement

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

1. effect insurance over property; or
2. accept liability regardless of fault. However this exclusion does not apply where:
  - a. that liability would otherwise exist at law in the absence of the contract or agreement; or
  - b. 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.

### 6.15 Loss of use

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

1. delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement;
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**.

### 6.16 Penalties and punitive damages

for fines, penalties, aggravated, exemplary, punitive or liquidated damages.

### 6.17 Pollution

1. 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
2. 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, Canada and their respective protectorates and territories.

### 6.18 Professional duty and errors or omissions

1. 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:

- a. 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;
  - b. **Personal Injury** or **Damage to Property** where such breach of duty arises out of advice or services given gratuitously; or
  - c. coverage provided under 'Extension 2 – Errors or omissions coverage'.
2. in respect of coverage provided under 'Extension 2 – Errors or omissions coverage', directly or indirectly caused by or arising from:
    - a. claims made or threatened or in any way intimated against the **Insured** before commencement of the **Period of Insurance**;
    - b. claims made 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**;
    - c. claims arising from facts or circumstances existing prior to the **Period of Insurance** and which the **Insured** knew or reasonably should have known which were likely to give rise to a claim against the **Insured**; or
    - d. claims or possible claims notified to the **Insurer** after expiry of the **Period of Insurance**.

### 6.19 Radioactive contamination

directly or indirectly caused by or arising from:

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

## 6.20 Terrorism

directly or indirectly caused by or arising from 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**.

## 6.21 War

directly or indirectly caused by or arising from 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.

# 7. Definitions

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

**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.

**Advertising Injury** means:

any unintentional:

1. libel, slander, defamation;
2. infringement of copyright or passing off of title or slogan;
3. piracy, unfair competition, idea misappropriation or invasion of rights of privacy;
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.

**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.

**Business** means:

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

1. any prior operations or activities which have ceased or have been disposed of where the **Insured** retains a legal liability;
2. the ownership of premises and/or the tenancy thereof by the **Insured**;
3. participation in any exhibition or conference by or on behalf of the **Insured**;
4. first aid, medical, ambulance or fire fighting services;
5. the provision of sponsorships by or on behalf of the **Insured**;
6. private work undertaken by the **Insured's** employees for any of the **Insured's** directors, partners, proprietors, officers or executives; and
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.

**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:

1. **Personal Injury**; or
2. **Damage to Property**; or
3. **Advertising Injury**; or
4. coverage provided under 'Extension 2 – Errors or omissions coverage';

in respect of which this insurance applies.

**Damage to Property** means:

1. physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; and/or
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.



**Deductible** means:

the amount stated in the **Schedule** payable by the **Insured**.

**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.

**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.

**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.

**Incidental Contracts** means:

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;
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;
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
4. contracts specified in the **Schedule**.

**Insured** means:

1. the **Named Insured**;
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;
3. 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 Liability** 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 Liability** as is provided by this **Policy**;
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 **Policy**; 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 **Policy**;
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. 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.

**Insurer** means:

GIO General Limited ABN 22 002 861 583, AFSL 229873.

**Limit of Liability** means:

the limit of liability stated in the **Schedule**.

**Medical Persons** means:

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

**Named Insured** means:

the persons, organizations or entities named in the **Schedule**.

The **Named Insured** includes:

1. subsidiary companies and any other organisation under the control of the **Named Insured**;
2. subsidiary and/or controlled corporations which are constituted or acquired by the **Named Insured** during the **Period of Insurance**; and
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.

**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**.

**Period of Insurance** means:

the period stated in the **Schedule** and any extension thereof which may be agreed in writing between the **Insured** and the **Insurer**.

**Personal Injury** means:

1. bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium resulting therefrom;
2. the effects of false arrest, false imprisonment, wrongful detention, wrongful entry or wrongful eviction, malicious prosecution or humiliation;
3. the effects of libel, slander, defamation of character or invasion of privacy;
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
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.

**Policy** means:

the contract of insurance between the **Insurer** and the **Insured** which comprises this policy wording, the **Schedule** issued by the **Insurer** (including any **Schedule** replacement or renewal) and any endorsement or document issued by the **Insurer** varying coverage.

**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.

**Premium** means:

the amount payable for this **Policy**. It includes all relevant government charges.

**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.

**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:

1. communications to customers and the public, including media announcements;
2. external advice to prepare such communications;
3. transporting any recalled **Product** to a place designated by the **Insured**;
4. 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;
5. additional remuneration paid to employees (other than salaried employees);
6. expenses incurred by employees for transport and accommodation; and
7. disposing of any recalled **Product** that cannot be reused.

**Schedule** means:

the schedule issued by the **Insurer** in connection with this **Policy**.

**Territorial Limits** means:

1. anywhere in the world except the United States of America, Canada and their respective protectorates and territories;
2. the United States of America, Canada and their respective protectorates and territories if the **Personal Injury** or **Damage to Property** arises from:

- a. **Products** exported into such countries;
- b. 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.

**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.

**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.

## 8. Conditions

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

### 8.1 Adjustment

If the **Premium** for this **Policy** has been calculated on estimates provided by the **Named Insured** and the **Policy** 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 the **Insurer** such information as the **Insurer** may require for such expired period and the **Premium** for such period shall be adjusted by the **Insurer** 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 the **Insurer** to inspect such record.

### 8.2 Cancellation

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

The **Insurer** may cancel this **Policy** in any of the circumstances set out in the Insurance Contracts Act 1984.

A refund of **Premium** will be allowed 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 the **Insurer** 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.

Where the **Premium** is being paid by monthly instalments refer to Notices for details of return premium entitlements in the event of cancellation.

### 8.3 Claims conditions

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.
2. Subject to paragraph 3 below for claims made under 'Extension 2 – Errors or omissions coverage', the **Insured** must give notice in writing to the **Insurer** as soon as possible of every **Occurrence** or loss likely to give rise to a claim under this **Policy** and must immediately forward to the **Insurer** all documents and information relevant to each such **Occurrence** or loss including but not limited to every demand, writ, summons, proceedings, notice of prosecution, inquest or inquiry and all associated information.
3. 'Extension 2 – Errors or omissions coverage' is issued on a 'claims made and notified' basis. In the event of a claim under this Extension, the notice of claims must comply with the 'Claims made and notified basis of coverage' notice attached to this **Policy**.
4. The **Insured** must not, without the **Insurer's** prior written consent, make any admission, offer, promise or payment in connection with any **Occurrence** or loss.
5. 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 the **Insurer** until the **Insurer** has had an opportunity of inspection.
6. In respect of any **Occurrence** or loss covered under this **Policy**, the **Insurer** has the right, if it so elects, 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 it deems expedient. However the **Insurer** is not obligated to pay any claim or judgment or to defend any suit after the **Insurer's** liability under this **Policy** in respect of the claim has been exhausted.
7. The **Insured** must cooperate with the **Insurer** and comply with the terms and conditions of this **Policy**, and assist as necessary in enforcing any right to contribution or indemnity from any person, corporation or organisation.

### 8.4 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 policy 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 **Policy**; and
2. nothing contained in this clause will operate to increase the **Insurer's** liability under this **Policy**.

## 8.5 Currency

All amounts referred to in this **Policy** 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 the **Insurer** 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**.

## 8.6 Goods and Services Tax

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

The **Named Insured** must inform the **Insurer** 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 **Policy**. 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 the **Insurer** of its entitlement or correct entitlement to an input tax credit.

Despite the other terms of this **Policy**, the **Insurer's** 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.

## 8.7 Law and jurisdiction

Should any dispute arise concerning this **Policy**, the dispute will be determined in accordance with the law of the applicable State or Territory of Australia. In relation to any such dispute the parties agree to submit to the jurisdiction of any competent court in a State or Territory of Australia.

## 8.8 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 the **Insurer** in writing as soon as possible after such change comes to the notice of the **Insured**.

## 8.9 Reasonable care

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

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

## 8.10 Subrogation rights

In the event of any payment under this **Policy**, the **Insurer** 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.

The **Insurer** agrees 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.

## 8.11 Endorsements

An endorsement does not affect or increase the **Limit of Liability** or any other term of this **Policy**, 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 **Policy**.

## 8.12 Payment of premium

The **Named Insured** must pay the **Premium** specified in the **Schedule** for the **Period of Insurance** to the **Insurer** by the due date. If the **Named Insured** does not pay the **Premium** by the due date, the **Insurer** is entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

## 8.13 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 **Policy**) in respect of a claim for which indemnity would be available under this **Policy**, this **Policy** will not apply and will provide no cover for that claim.

In the event of any claim being made under this **Policy**, the **Insured** must notify and give details of to the **Insurer** of any other insurance policy or policies insuring the same risk insured under this **Policy**.

# Notices

These notices do not form part of the policy.

## 1. 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 insurance, and if so, on 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 any 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 his business, ought to know, or
- 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 its liability under the contract in respect of a claim, refuse to pay the 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.

## 2. Claims made and notified basis of coverage

'Extension 2 – Errors or omissions coverage' is issued on a 'claims made and notified' basis.

This means that coverage under this extension only responds to:

- a. claims first made against you during the period of insurance and notified to the insurer during the period of insurance, provided that you were not aware at any time prior to the policy inception of circumstances which would have put a reasonable person in your position on notice that a claim may be made against you; and
- b. written notification of facts pursuant to section 40(3) of the Insurance Contracts Act 1984. The facts that you may decide to notify, are those which might give rise to a claim against you. Such notification must be given as soon as reasonably practicable after you become aware of the facts and prior to the period of insurance expiring. If you give written notification of facts the policy will respond even though a claim arising from those facts is made against you after the policy has expired. For your information, s40(3) of the Insurance Contracts Act 1984 is set out below:

'Where the insured gave notice in writing to the insurer of facts that might give rise to claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim when made by reason only that it was made after the expiration of the period of the insurance cover provided by the contract.'

When the period of insurance expires, no new notification of facts can be made on the expired policy even though the event giving rise to the claim against you may have occurred during the period of insurance.

## 3. Privacy statement

Your privacy is important to both Resilium and your insurer GIO General Limited (GIO) ("We/us/our" for the purpose of this statement, unless the context provides otherwise). GIO and Resilium are members of the Suncorp Group (the 'Group').

### Purpose of collection

Resilium and GIO collect your personal information for the purposes of:

- establishing your requirements and providing the appropriate product or service;
- setting up, administering and managing our products and services; and
- understanding your needs and improving our financial products and services, including training and developing our staff and representatives.

GIO also collects your personal information for the purpose of assessing and investigating, and if accepted, managing a claim made by you under one of these products.

We may be required by Anti-Money Laundering/Counter Terrorism Financing legislation to collect your personal information.

### Consequences if personal information is not provided

If we request personal information about you and you do not provide it, we may not be able to provide you with the insurance product or service you request, manage your insurance product or provide you with the full range of services we offer. As insurer, GIO may not be able to issue your insurance cover or manage or pay any claim under an insurance product.

### Disclosure

We use and disclose your personal information for the purposes we collected it.

We may also use and disclose your personal information for a secondary purpose related to the purpose for which we collected it, where you would reasonably expect us to use or disclose your personal information for that secondary purpose. In the case of sensitive information, any secondary purpose, use or disclosure will be directly related to the purpose of collection.

**When necessary and in connection with purposes listed above, we may disclose your personal information to and/or collect your personal information from:**

- other companies within the Group;
- information technology providers, including hardware and software vendors and consultants such as programmers;
- customer research and development organisations;
- intermediaries including your agent, adviser, a broker, a representative acting on your behalf, or our authorised representatives and our agents;
- government, law enforcement, regulatory or statutory bodies;
- other insurers, financial institutions, insurance and claims reference agencies, credit agencies loss assessors, financiers or investigative service providers;
- hospitals, medical and health professionals;
- printers, mail service and delivery providers for the mailing of documents; and
- other service providers.

**Disclosure overseas**

There are also instances where we may have to send your personal information overseas or collect personal information from overseas. These instances include:

- sending to other companies in the Group;
- when you have asked us to do so;
- when we are authorised or required by law to do so;
- when we have outsourced a business activity or function to an overseas service provider with whom we have a contractual arrangement;
- certain electronic transactions; or
- when it is necessary in order to facilitate a transaction on your behalf.

We will only send your personal information overseas or collect personal information about you from overseas for the purposes in this statement and in compliance with the privacy regime.

**Contact and Access**

Please contact us to:

- request access to the personal information we hold about you; or
- obtain more information about our privacy practices by asking for a copy of our Privacy Policy.

You can contact us by calling 131 436.

GIO and Resilium both comply with the Suncorp Group Privacy Policy. This can be found at [http://www.gio.com.au/gio/privacy\\_security.html](http://www.gio.com.au/gio/privacy_security.html).

## 4. General insurance code of practice

We support and adhere to the General Insurance Code of Practice. By incorporating these standards into our business, we are committed to providing the highest level of service to our customers, every time. Access a copy of the Code at <http://www.codeofpractice.com.au/> or alternatively, contact the Insurance Council of Australia on 9253 5100.

## 5. Our complaints handling procedures

### Resolving your complaints

If you think we have let you down in any way, or our service is not what you expect (even if through one of our agents or representatives), please tell us so we can help. You can tell us by phone, in writing or in person.

Should you tell us in writing it will help to send us the full details of your complaint together with any supporting documents and an explanation of what you want us to do. If you would like to come in to talk to us face to face, please call and we will arrange an appointment for a meeting.

### What we will do to resolve your complaint

When you first let us know about your complaint or concern the person trying to resolve your complaint will listen to you, consider the facts and contact you to resolve your complaint as soon as possible, usually within 24 hours.

If you are not satisfied with this person's decision on your complaint, then it will be referred to the relevant operational manager, who will contact you within 5 working days.

Should you not be satisfied with the operational manager's decision, then it will be referred to the general manager (or their delegate). We will send you our final decision within 15 working days from the date you first made your complaint.

### What if you are not satisfied with our final decision?

We expect our procedures will deal fairly and promptly with your complaint. However if you are not satisfied with our final decision there are external dispute remedies such as mediation, arbitration or legal action.

## 6. Where you have elected to pay by monthly instalments

Where the Policy is an annual contract that will be paid by monthly instalments from the Insured's nominated account the Policy may require payment of an annual minimum premium, plus GST, plus stamp duty. The Insured's first payment will be charged to the Insured's account approximately 2 days after the Insured has authorised payment. Two payments may be charged in the first month depending on the Insured's payment date. Subsequent payments will be charged on the same payment date each month. A fee of \$2.75 (including GST) per month per policy applies to monthly instalments. No discounts apply to this fee.

Please note that if the Insured cancels the policy with the Insurer or the Policy is cancelled by the Insurer, the Insured is required to pay the Insurer the premium due as calculated from the date of the last successful payment up to and including the date of cancellation. An annual minimum premium being 75% of the annual premium plus stamp duty applies to this Policy. If the Policy is cancelled prior to its expiry, the Insured may be required to pay any difference between the annual minimum premium amount and the total amount of instalments the Insured has paid.

Paying by monthly instalments will affect the Insured in a number of important ways:

- a. If an instalment remains unpaid for a period of at least 14 days the Insurer may refuse to pay a claim.
- b. If an instalment remains unpaid for a period of at least 14 days the Insurer may cancel the policy.

Contact your  
Resilium Adviser or:

**phone** Customer Service 131 436 or  
Claims 131 437

**web** [www.resilium.com.au](http://www.resilium.com.au)