Berkley Insurance Australia
| a Berkley Company

Public & Products Liability Insurance

Policy Wording

Wording Document

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Public & Products Liability Insurance

Policy Wording

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Public & Products Liability Insurance

Policy Wording

Important Information

Please read the following information

A. Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know that may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

B. Subrogation Agreements

Where another person would be liable to compensate you for any loss or damage otherwise covered by the insurance, but you have agreed with that person either before or after the loss or damage occurred that you would not seek to recover any monies from that person, We will not cover you under the insurance for such loss or damage.

C. Privacy Statement

Berkley Insurance Australia handles your personal information in a responsible manner and in accordance with the *Privacy Act 1988 (Cth).*

Consent

By requesting us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure of personal information you have provided to us for the purposes set out in our Privacy Policy.

How we collect your personal information

Generally we collect personal information from you or your agents. Personal information may also be collected by us from our agents and service providers; other insurers and insurance reference bureaus; third parties who may claim under your policies; service providers who assist us in investigating, processing and settling claims; third parties who may be arranging cover for a group that you are part of; statutory, regulatory and law enforcement bodies and from publicly available sources.

Why we collect personal information

The personal information we collect enables us to provide our products and services. This may include processing and settling claims; offering products and services that may be of interest to you and conducting market research for products and services that may be relevant to you.

You can choose not to receive product or service offering from us by calling (02) 92758500 Eastern Standard Time 9am to 5pm Monday to Friday inclusive. For further information, you can access our Privacy Policy at www.berkleyinaus.com.au

Who we disclose your personal information to

Your personal information may be disclosed to other parties with whom we have business arrangements for purposes set out in the paragraph above. These parties may include insurers, intermediaries, reinsurers, related companies, our advisers and parties involved in claims assessment, processing, investigation and settlement. Where required by law, we may also disclose information to government, law enforcement, dispute resolution and statutory or regulatory bodies.

Personal information about others

Where you provide personal information about others, you represent to us that you have made them aware that you will do so, the types of third parties we may disclose it to together with the purposes we and our third parties use it for, how they can access such information and how complaints can be made

Where you provide sensitive information about others, you represent to us that you have obtained their consent. If you have not, and will not do so, you must tell us before you provide the sensitive information.

Overseas Disclosure

Your personal information may be disclosed to other companies in the Berkley group, reinsurers and service providers that may be located in Australia and overseas. The countries this information may be disclosed may vary from time to time but may include the United States of America and other countries where the Berkley group has a presence.

Any information disclosed may only be used for the purposes detailed above.

Accessing your personal information and dealing with complaints

You may request access to the personal information we hold about you by calling us at any time.

Our Privacy Policy details how you can make a complaint about a breach of the privacy principles as set out in the *Privacy Act 1988 (Cth)* and our complaints process.

Our Privacy Policy is available at www.berkleyinaus.com.au

D. Contact Details

Berkley Insurance Australia

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Web site: www.berkleyinaus.com.au

1. Policy Information

The following is provided for information purposes only and does not form part of the Policy.

This Policy details the type of cover available and your rights and obligations in relation to your insurance. Please read it carefully to ensure that it meets your requirements.

1.1 This Policy consists of:

1.1.1 the Schedule which shows who is the Insured, the Business being covered and other Policy particulars such as the Period of Insurance, the Indemnity Limits and certain amounts for which the Insured may be responsible

1.1.2 the Insuring Clauses which explain the basis on which the cover is provided;

1.1.3 the Extensions and Exclusions which give precise details of the cover being provided under this Policy;

1.1.4 the Definitions and Interpretations which detail the words within the policy which have special meanings;

1.1.5 the General Conditions which incorporate terms that apply to the whole Policy; and

1.1.6 any endorsement which has been applied to expand or restrict coverage.

Notice should be given to Us as soon as practicable of any changes which may affect the insurance provided by this Policy.

Alterations in the cover required after the Policy has been issued will be confirmed by separate endorsement which you should file with the Policy. You should refer to these endorsements and the Policy to ascertain precise details of cover currently in force.

Your insurance broker will be able to provide any help or information that you might require.

2. Insuring Clauses

2.1 Public & Products Liability Insuring Clause

We will indemnify the Insured up to the Indemnity Limit in respect of all sums which they shall become legally liable to pay for Compensation arising from;

2.1.1 Personal Injury;

2.1.2 Property Damage; or

2.1.3 Advertising Injury;

first happening during the Period of Insurance, caused by or resulting out of an Occurrence within the Territorial Limits; and

a) in connection with the Business; or

b) caused by any Product.

2.2 Defence Costs Insuring Clause

We will also pay, in addition to the Indemnity Limit, Defence Costs where such costs have been incurred with Our prior written consent, PROVIDED THAT We will not be obligated to pay any Defence Costs after the Indemnity Limit has been exhausted by payment of judgments or settlements.

3. Extensions

We will provide the following cover under this section, PROVIDED THAT:

a. the cover provided by each Extension is subject to the Schedule, Insuring Clauses, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the Policy (unless otherwise expressly stated); and

b. the inclusion of any Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

3.1 Movement of Obstructing Vehicles

Insuring Clause 2.1 provides cover for liability caused by or arising from any vehicle (not owned, hired by or lent to the Insured) being driven by the Insured or by any Employee with the Insured's permission whilst such vehicle is being moved for the purpose of allowing free movement of any vehicles or pedestrians, PROVIDED THAT:

3.1.1 movements are limited to vehicles parked on or obstructing the Insured's premises or any site at which the Insured is working; and

3.1.2 the vehicle causing obstruction will not be driven by any person unless such person is licensed and competent to drive the vehicle; and

3.1.3 the vehicle causing obstruction is driven by use of the owner's ignition key; and

3.1.4 We shall not provide indemnity against liability;

a) in respect of damage to such vehicle, or

b) in respect of which compulsory insurance or security is required under any legislation governing the use of the vehicle.

The cover provided by this extension is not subject to Exclusion 4.13.

3.2 Overseas Personal Liability

We will indemnify:

3.2.1 where the Named Insured is a natural person, the Named Insured; or

3.2.2 any director, officer or partner of the Named Insured; or

3.2.3 at the request of the Named Insured;

a) any Employee of the Named Insured normally resident in the Commonwealth of Australia; or

b) any spouse or child of the persons referred to in clause 3.2.1, 3.2.2 or 3.2.3 a) above who are normally resident in the Commonwealth of Australia and accompanying such persons in respect of liability incurred by such persons in a personal capacity;

in connection with an event occurring in a country outside of the Territorial Limits whilst on a temporary visit to such country in connection with the Business. In addition, We will indemnify the Named Insured for any liability arising out of any event for which the persons referred to in clauses 3.2.2 or 3.2.3 are or would, at the request of the Named Insured, be entitled to be indemnified under this extension.

PROVIDED THAT:

3.2.4 any person entitled to indemnity under this extension shall as though they were the Insured be subject to the terms (including without limitation the Conditions and the Exclusions) of this Policy insofar as they can apply; and

3.2.5 nothing in this extension shall increase Our liability to pay any amount exceeding the Indemnity Limit regardless of the number of persons claiming to be indemnified; and

3.2.6 We shall not provide indemnity against;

a) any Contractual Liability but only to the extent to which it would not have attached in the absence of such contract or agreement;

a) liability for which indemnity is provided by any other insurance;

b) liability in respect of Property Damage to property belonging to or in the custody or under the control of any person entitled to indemnity under this extension;

c) liability in respect of Personal Injury to any person entitled to indemnity under this extension; or

d) liability caused by or arising from:

(i) the ownership or occupation of land or buildings;

(ii) the carrying on of any business, profession, trade or employment; or

(iii) the ownership possession or use of animals other than horses or domestic dogs or cats.

3.2.7 if the event occurs in the United States of America or Canada or their respective protectorates and territories for which Compensation is otherwise payable by Us under this Policy, Defence Costs shall form part of and not be payable in addition to the Indemnity Limit.

3.2.8 The cover provided by this extension is not subject to Exclusion 4.23.

3.3 Costs of Court Attendance

In the event of any of the under-mentioned persons attending court as a witness at Our request in connection with a claim in respect of which the Insured is entitled to indemnity under this Policy, We will reimburse the Insured at the following rates per day for each day on which attendance is required:

3.3.1 any director, officer or partner of the Insured $650;

3.3.2 any Employee $250.

3.4 Indemnity to Other Persons

We will also indemnify as if a separate Policy had been issued to each:

3.4.1 the legal personal representatives of the Insured or any other person entitled to indemnity under this Policy but only in respect of liability incurred by the Insured or such other person; and

3.4.2 any owner of plant hired to the Insured but only to the extent required by the conditions of any written contract or agreement of hire; and

3.4.3 any officer or member of the Insured's catering, social, sports, educational, medical, dental and welfare organisations, fire, security, first aid and ambulance services in their respective capacity as such but not any medical or dental practitioner in respect of medical or dental services provided;

PROVIDED THAT:

a) any persons specified above shall as though they were the Insured be subject to the terms (including without limitation the Conditions and the Exclusions) of this Policy insofar as they can apply; and

b) nothing in this extension shall increase Our liability to pay any amount exceeding the Indemnity Limit regardless of the number of persons claiming to be indemnified.

3.5 Cross Liabilities

If the Insured comprises more than one party We will provide indemnity to each such Insured in the same manner and to the same extent as if a separate Policy had been issued to each of them, PROVIDED THAT nothing in this extension shall increase Our liability to pay any amount exceeding the Indemnity Limit regardless of the number of persons claiming to be indemnified.

4. Exclusions

We will not provide indemnity against liability:

4.1 Advertising Injury

directly or indirectly arising out of or in connection with:

4.1.1 the failure of performance of any contract, but this exclusion does not apply to claims for unauthorised appropriation of ideas based upon breach of an implied contract;

4.1.2 any infringement of trade mark, service mark or trade name, but this shall not relate to titles or slogans;

4.1.3 any incorrect description of any good or product;

4.1.4 any mistake in advertised price;

4.1.5 any publication or utterance or testimonial used or made at the Insured's direction and with the Insured's knowledge of the inaccuracy or falsity of the publication, utterance or testimonial;

4.1.6 the failure of any Product or the Insured's services to conform with advertised performance, quality, fitness or durability; or

4.1.7 the Business if the principal business is advertising, broadcasting, publishing or telecasting.

4.2 Aircraft and Watercraft

caused by, arising out of or in connection with the ownership possession maintenance operation or use by or on behalf of the Insured of any:

4.2.1 airlines, Aircraft, aerodromes, airports, and/or other aviation risks, spacecraft, launch sites and/or other space risks; or

4.2.2 hovercraft or Watercraft other than hand propelled Watercraft or other Watercraft not exceeding 8 metres in length.

4.3 Asbestos

directly or indirectly arising out of resulting from in consequence of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

4.4 Aviation or Aero Spatial Devices or Purposes

caused by arising out of or in connection with any Product which to the knowledge of the Insured is intended for:

4.4.1 use in or on any aircraft or aero spatial device; or

4.4.2 aviation or aero spatial purposes.

4.5 Contractual Liability

assumed under an agreement unless such liability:

4.5.1 would have attached in the absence of such agreement;

4.5.2 arises out of a condition or warranty of goods implied or imposed by statute;

4.5.3 has been assumed under an Incidental Contract; or

4.5.4 has been agreed in writing by Us.

4.6 Cyber Liability

directly or indirectly arising out of the alteration of, damage to, or a reduction in functionality, availability or operation of a "computer system" as a result of the Insured's "e-activities".

For the purpose of this exclusion, "e-activities" shall mean any use of or Business undertaken by the Insured or by any person, persons, partnership, firm or company acting for or on behalf of the Insured in connection with electronic networks including the internet and private networks intranets extra-nets electronic mail worldwide web and similar medium.

4.7 Cyber Liability & Social Engineering

directly or indirectly arising out of, related to or in connection with:

4.7.1 the unauthorised access to or use of any Computer System owned, operated by or licensed to the Insured; or

4.7.2 Social Engineering Fraud.

4.8 Employer's Liability

directly or indirectly:

4.8.1 caused by, arising out of or in connection with Personal Injury to any Employee or person arising out of and in the course of employment by the Insured where the Insured is indemnified or would be entitled to be indemnified (either in whole or in part) in accordance with insurance arranged or required to be arranged in respect of any workers' compensation law; or

4.8.2 caused by, arising out of or in connection with Personal Injury to any Employee for mental anguish, harassment, libel, slander, defamation, humiliation or discrimination whilst in the Insured's service or while employed by the Insured; or

4.8.3 imposed by the provisions of any workers' compensation law or accident compensation legislation or industrial award, agreement or determination.

4.9 Fines, Penalties, Punitive and Liquidated Damages

to pay fines, penalties, punitive, liquidated, exemplary, or aggravated damages or any additional damages resulting from the multiplication of compensatory damages.

4.10 Libel, slander or defamatory material

directly or indirectly arising out of caused by or in connection with the publication or utterance of libel or slander or other defamatory material.

4.11 Listed Human Disease

directly or indirectly arising out of, related to or in connection with a Listed Human Disease or any directly or indirectly related condition or threat or fear thereof (whether actual or perceived.

4.12 Loss of Use

for any claim in respect of loss of use of tangible property which has not been physically injured or destroyed resulting from:

4.12.1 a delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or

4.12.2 the failure of any Product to meet the level of performance, quality, fitness or durability warranted or represented by the Insured.

This Exclusion shall 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 Products or work have been put to their intended use by any entity other than the Insured.

4.13 Mechanically Propelled Vehicle

caused by, arising out of or in connection with the ownership possession operation or use by or on behalf of the Insured of any Mechanically Propelled Vehicle:

4.13.1 for which compulsory insurance or security is required under any legislation governing the use of the vehicle; or

4.13.2 where indemnity is provided by any other insurance effected by or on behalf of the Named Insured or the Insured.

PROVIDED THAT this Exclusion shall not apply to liability caused by or arising from:

a) the use of vehicles whilst being operated as a Tool of Trade at the Insured's premises or on any site at which the Insured is working; or

b) the loading or unloading of any vehicle or the bringing to or taking away of a load from any vehicle; or

c) damage to any building, bridge, weighbridge, road or to anything beneath caused by vibration or by the weight of any vehicle or of its load.

4.14 Molestation

directly or indirectly caused by, arising out of, contributed to by, or in connection with the molestation of or interfering with any person

4.15 Other Insurance

to the extent that indemnity is available to the Insured (or other person entitled to make a claim on the Policy) for such liability under some other contract of insurance PROVIDED THAT this exclusion shall not operate in respect of a claim by the Named Insured where the Named Insured has entered into the other contract of insurance.

4.16 Pollution or Contamination

4.16.1 directly or indirectly caused by, arising from or contributed to by the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon buildings or structures, water, land or the atmosphere; or

4.16.2 for any costs incurred in removing nullifying or cleaning up Pollutants; or

4.16.3 for any costs incurred in preventing the escape of Pollutants; or

4.16.4 directly or indirectly caused by, arising from or contributed to by the discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any products which have been discarded, dumped, abandoned or thrown away by others.

Provided that, exclusions 4.16.1 and 4.16.2 shall not apply where the claim arises from a sudden, identifiable,

unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance and occurs outside of the United States of America, Canada and their respective protectorates and territories.

4.17 Product Recall

caused by, arising out of or in connection with the withdrawal, recall, inspection, repair, replacement, alteration, removal, rectification, reinstatement or reinstallation of any Product, or any refund made in respect of any Product.

4.18 Professional Liability

caused by or arising out of the rendering of or failure to render professional advice, design, specification or service for a fee but this exclusion shall not apply to claims arising out of:

4.18.1 the Insured providing or failing to provide first aid on Your premises; or.

4.18.2 advice given in respect of the use or storage of Your Products.

4.19 Property Damage

caused by, arising out of or in connection with Property Damage to property:

4.19.1 belonging to the Insured; or

4.19.2 in the physical or legal care, custody or control of the Insured or any Employee of the Insured, other than;

a) personal effects of any visitor, director, partner or Employee of the Insured;

b) premises (including their fixtures and fittings) leased or rented to the Insured;

c) premises and their contents not belonging to, leased or rented to the Insured, at which the Insured is conducting work as part of their usual Business;

d) buildings (including contents therein) which are not owned leased or rented by the Insured but are temporarily occupied by the Insured for the purpose of maintenance alteration extension installation or repair;

e) vehicles (and their contents) on the Insured's premises, but not in any car parks owned or operated by the Insured for reward; or

f) all other property up to a limit of $250,000 in the aggregate in any one Period of Insurance.

4.20 Property Damage to Your Products

caused by, arising out of or in connection with property damage to any Product if the damage is attributable to any fault or defect in them or to their harmful nature or unsuitability.

4.21 Radioactive Contamination

of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

4.21.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

4.21.2 the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or

4.21.3 exposure to magnetic, electric or electromagnetic fields or radiation.

4.22 Rectification of faulty work

arising from any claim in respect of the rectification of faulty work performed by or on behalf of the Insured.

4.23 United States of America or Canada

4.23.1 caused by, arising from or in connection with any Occurrence in the United States of America or Canada and their respective protectorates and territories; or

4.23.2 any action brought in any court of the United States of America or Canada or their respective protectorates and territories or any judgment registered or lodged in any jurisdiction in connection with such an action.

4.23.3 This exclusion shall not apply:

a) to extension 3.2; or

b) where We have agreed by endorsement to extend coverage to Products supplied for use in, or supply to the United States of America or Canada and their respective protectorates and territories unless otherwise agreed to in writing by Us.

4.24 War and Terrorism

directly or indirectly arising out of, related to or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence any of the following:

4.24.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law;

4.24.2 riots, strikes or civil commotion;

4.24.3 any Act of Terrorism; or

4.24.4 any action taken in controlling, preventing, suppressing, retaliating against or responding to or in any way relating to those things in 4.24.1 to 4.24.3 above.

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5. Definitions and Interpretations

Headings and notes are for information purposes only and are not to be construed as part of this insurance. The following definitions of each word, words or phrase appearing in the title are applicable to all Policy sections. All words appearing in the title also include the plural or singular of those words.

5.1 Act of Terrorism

shall mean the actual or threatened:

5.1.1 use of force or violence against persons or Property;

5.1.2 commission of an act dangerous to human life or Property; or

5.1.3 commission of an act that interferes with or disrupts an electronic or communication system;

undertaken by any person or group whether or not acting on behalf of or in connection with any organisation government power authority or military force and the reasonably apparent intent of effect is to:

5.1.4 intimidate or coerce a government or organisation or to disrupt any segment of the economy;

5.1.5 cause alarm fright fear of danger or apprehension of public safety in one or more distinct segments of the general public or to intimidate or coerce one or more such segments; or

5.1.6 further political ideological religious or cultural objectives or to express support for (or opposition to) a philosophy ideology religion or culture.

5.2 Advertising Injury

shall mean any unintentional;

5.2.1 defamation;

5.2.2 breaches of the misleading and deceptive conduct provisions of the Competition and Consumer Act 2010 (Cth) or any State or Territory Fair Trading Act or similar legislation of any country, state or territory;

5.2.3 infringement of copyright or passing off of title or slogan;

5.2.4 unfair competition, piracy or idea misappropriation; or

5.2.5 invasion of a right to privacy;

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 in connection with the Business or Products.

5.3 Aircraft

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

5.4 Business

shall mean the Insured's business as described in the Schedule and shall include:

5.4.1 the provision and management of catering, social, sports, educational, medical, dental and welfare services for the benefit of the Insured's Employees; and

5.4.2 fire, security, first aid and ambulance services provided by the Insured for the benefit of the Insured's Employees; and

5.4.3 the ownership, repair, maintenance and decoration of the Insured's premises; and

5.4.4 private work carried out by any Employee of the Insured (with the consent of the Insured) for any director, partner or senior official of the Insured.

5.5 Compensation

shall mean all sums which the Insured shall be legally liable to pay by judgment or agrees to pay by settlement (with Our prior written consent), including claimant's costs and expenses for:

5.5.1 Personal Injury; or

5.5.2 Property Damage; or

5.5.3 Advertising Injury

to which coverage under this Policy applies, PROVIDED THAT, Compensation does not include:

a) fines or penalties;

b) punitive, liquidated, exemplary or aggravated damages; or

c) any additional damages resulting from the multiplication of compensatory damages.

5.6 Computer System

shall mean an information technology system made up of one or more items of computer hardware, software, or programmes and the electronic data stored thereupon that share a central storage system, and any other peripheral devices. Computer System shall also include any electronic devices and/or electrical equipment.

5.7 Conditions

shall mean the General Conditions.

5.8 Contractual Liability

shall mean liability which attaches by virtue of a contract or agreement.

5.9 Defence Costs

shall mean all reasonable and necessary costs and expenses incurred in the investigation, reporting on, defence or settlement of any claim in respect of which We are liable to indemnify the Insured under this Policy. This also includes reporting in writing to Us on the investigation, defence or settlement of any claim.

5.10 Employee

shall mean:

5.10.1 any person under a contract of service or apprenticeship with the Named Insured;

5.10.2 any person under a contract of service or apprenticeship with another employer who is hired to or borrowed by the Named Insured;

5.10.3 any self-employed person working under contract with and under the direction of the Named Insured;

5.10.4 any person or student undertaking work for the Named Insured under a work experience agreement, government training or similar scheme; or

5.10.5 any volunteer of the Named Insured;

whilst they are engaged in connection with the Business.

5.11 Endorsement

shall mean any endorsement which might apply to this Policy.

5.12 Excess

shall mean the total amount shown in the Schedule payable by the Insured or any other person entitled to indemnity. The Excess applies to each Occurrence or Claim as specified in the Schedule and is payable at such time required by Us.

If any payment made by Us includes the amount for which the Insured or any other person entitled to indemnity is responsible such amount shall be repaid to Us forthwith.

5.13 Exclusions

shall mean the Exclusions detailed in Section 4.

5.14 Incidental Contracts

shall mean:

5.14.1 any written rental, lease, or hire agreement of real or personal property, other than with respect to any term or condition contained in such rental, lease or hire agreement that requires the Insured to insure such property.

5.14.2 any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities.

5.14.3 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.

5.14.4 those contracts designated in the Schedule

5.15 Indemnity Limit

shall mean the limit as specified in the Schedule.

5.16 Insured

shall mean:

5.16.1 the Named Insured;

5.16.2 any partner, officer, director, or Employee of the Named Insured while acting within the scope of their duties for the Named Insured;

5.16.3 any Principal of the Named Insured but only in respect of the liability of such principal arising out of the performance by the Named Insured of any contract or agreement for the performance of work or services in connection with the Business;

5.16.4 all subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Named Insured during the Period of Insurance; and

5.16.5 any subsidiary and/or controlled corporation and/or other organisation of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to the date of divestment.

5.17 Listed Human Disease

shall mean:

5.17.1 any disease identified or listed at any time as a human disease under the Biosecurity Act 2015 (Cth) or its current equivalent, as amended or replaced from time to time, or

5.17.2 any disease identified or listed in a state of emergency, public health emergency or pandemic declared by any governmental authority or identified by the World Health Organisation or its current equivalent as amended or replaced;

regardless of when the disease is so listed or identified.

5.18 Mechanically Propelled Vehicle

shall mean any type of machine on wheels, skis or on self-laid tracks made or intended to be propelled other than by manual or animal power.

5.19 Named Insured

shall mean the person or corporate body named as such in the Schedule.

5.20 Occurrence

5.20.1 shall mean an event, including continuous or repeated exposure to substantially the same general conditions, which result in Personal Injury or Property Damage that is neither expected nor intended from the Insured's standpoint.

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

5.20.3 All Advertising Injury consequent on or attributable to one source or original cause is deemed to be one Occurrence.

5.21 Period of Insurance

shall mean the period specified in the Schedule.

5.22 Personal Injury

shall mean:

5.22.1 bodily injury, death illness, disease, or disability;

5.22.2 mental injury mental anguish or shock;

5.22.3 false arrest, false imprisonment, wrongful detention, malicious prosecution, or humiliation;

5.22.4 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;

5.22.5 wrongful eviction, entry or other invasion of privacy;

5.22.6 unintentional libel or slander;

5.22.7 racial, religious, sexual or age discrimination not committed by or at the direction of the Insured; or

5.22.8 loss of consortium resulting from any of the circumstances described in clauses (5.22.1) to (5.22.4) above.

5.23 Policy

shall mean:

5.23.1 all terms (including without limitation the Insuring Clauses, Definitions and Interpretation, Extensions, Conditions, Exclusions and Indemnity Limit) set out in this document;

5.23.2 the Schedule; and

5.23.3 all Endorsements applied to and issued from time to time for application to this document;

all of which shall be read together and constitute the contract of insurance.

5.24 Pollutant

shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals or waste materials, including materials that are intended to be recycled, reconditioned or reclaimed.

5.25 Premium

shall mean the amount payable by the Insured specified as such in the Schedule or any Endorsement.

5.26 Principal

shall mean any person, employer, firm, company, ministry or authority for whom the Insured is carrying out a contract or agreement for the performance of work.

5.27 Product

shall mean any product or item (after it has ceased to be in the possession of the Insured) sold, supplied, erected, repaired, altered, treated, installed, processed, manufactured, tested, serviced, hired out, stored, transported or delivered by or through the Insured (including containers packaging or labelling thereof) in the course of the Business in or from the Territorial Limits and also includes:

5.27.1 any design, formula or specification of such Product; and

5.27.2 anything in respect of which the Insured is deemed to be the manufacturer by operation of a law of the Commonwealth of Australia or its external territories.

5.28 Property Damage

shall mean:

5.28.1 physical injury to, destruction of or loss of tangible property including the resultant loss of use of that property; or

5.28.2 loss of use of tangible property that is not physically damaged, lost or destroyed PROVIDED THAT such loss of use is caused by physical damage to or destruction of other tangible property.

5.29 Schedule

shall mean the Schedule attached to this Policy.

5.30 Social Engineering Fraud

shall mean any fraudulent or dishonest instruction to the Insured or its agents which purports to be from a legitimate or trusted source authorised to make such instruction and which results in the Insured:

5.30.1 transferring, paying or delivering any money or securities from an account maintained by the Insured to another person or entity;

5.30.2 transferring or delivering any property to another person or entity;

5.30.3 revealing confidential information; or

5.30.4 changing or altering bank account or payment details of any person or entity.

5.31 Territorial Limits

shall mean anywhere in the world except the United States of America, Canada and their respective protectorates and territories.

5.32 Tool of Trade

shall mean any Mechanically Propelled Vehicle which has mechanical digging, scraping, drilling equipment or any tool or plant attached but only when it is being used by the Insured on any worksite at which work is performed for or in connection with the Business.

5.33 Watercraft

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

5.34 We, Us, Our

shall mean Berkley Insurance Company (trading as Berkley Insurance Australia) ABN 53 126 559 706.

References in this Policy to any statute, statutory provision, directive or other legislation include a reference to that statute, statutory provision, directive or legislation as amended extended consolidated or replaced from time to time (whether before or after the date of this Policy) and include any order regulation instrument or other subordinate legislation made under the relevant statute statutory provision directive or legislation.

6. General Conditions

The following conditions apply to all sections of this Policy, except where indicated.

6.1 Alteration to risk

The Insured will give Us written notice as soon as reasonably practicable of any material alteration to the risk during the Policy Period including but not limited to:

6.1.1 an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings; and

6.1.2 any material change in the nature of the Business offered by an Insured.

Where the Insured fails to notify Us as required under this clause or there is any material alteration to the risk during the Policy Period, We may be entitled to cancel this policy in accordance with the Insurance Contracts Act 1984 (Cth).

Where such notice is not provided by the Insured before the happening of a Claim or a notification giving rise to a Claim under this Policy, We may refuse to pay a Claim either in whole or in part or We may reduce our liability to pay a Claim in accordance with the Insurance Contracts Act 1984 (Cth).

6.2 Premium Adjustment

If the Premium is based on estimates, an accurate record containing all particulars relative thereto shall be kept by the Insured. The Insured shall at all times allow Us to inspect such record and shall supply such particulars as We may require within one month from the expiry of the Period of Insurance. The Premium may thereupon be adjusted by Us. At Our request, the Insured shall supply Us with an auditor's certificate in support of such particulars.

If the Insured fails to supply such particulars within the period stated We shall be entitled to make a reasonable estimate of such particulars and adjust the Premium accordingly.

6.3 Reasonable Care

The Insured shall take all reasonable care:

6.3.1 to prevent any event which may give rise to a claim under this Policy;

6.3.2 to maintain the premises plant and everything used in the Business in proper repair;

6.3.3 in the selection and supervision of Employees;

6.3.4 to comply with all statutory and other obligations and regulations imposed by any authority; and

6.3.5 to make good or remedy any defect or danger which becomes apparent and take such additional precautions as the circumstances may require.

6.4 Claims (Notice in Writing from the Insured)

The Insured or their legal personal representatives shall give notice in writing to Us as soon as possible after any Occurrence or event which may give rise to liability under this Policy with full particulars of such Occurrence or event. Every claim, notice, letter, writ, process or other document served on the Insured shall be forwarded to Us as soon as practicable upon receipt by the Insured.

Notice in writing shall also be given to Us as soon as practicable by the Insured of any impending prosecution inquest or fatal inquiry in connection with any such event.

Notice of any claim will be provided in writing to:

National Head of Claims
australiaclaims@berkleyinaus.com.au
Berkley Insurance Australia
PO Box Q296
QVB NSW 1230

6.5 Claims (Conduct and Control)

No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without Our written consent.

We shall be entitled if We so desire to take over and conduct in the name of the Insured, the defence or the settlement of any claim and to prosecute in the name of the Insured for its own benefit, any claim for indemnity or damages or otherwise against all other parties or persons. We shall have full discretion in the conduct of any proceedings and in the settlement of any claim against the Insured and the Insured shall give all such information and assistance as We may require.

6.6 Claims (Discharge of Liability)

We may at any time at Our sole discretion pay to the Insured the Indemnity Limit (less any sum or sums already paid in respect or in lieu of Compensation) or any lesser sum for which the claim or claims against the Insured can be settled. Upon such payment We shall not be under any further liability in respect of such claim or claims except for Defence Costs for which We may be responsible incurred prior to such payment. PROVIDED THAT in the event of a claim or series of claims resulting in the liability of the Insured to pay a sum in excess of the Indemnity Limit Our liability for Defence Costs shall not exceed an amount being in the same proportion as Our payment to the Insured bears to the total payment made by or on behalf of the Insured in settlement of the claim or claims.

6.7 Premium

The Insured must pay all Premiums plus an applicable tax (General Insurance Tax) to Us within 30 days.

6.8 Subrogation

In the event of any payment under this Policy, We shall be subrogated to all the Insured's rights of recourse against any other entity, person or organisation. We shall be entitled to pursue and enforce such rights in the name of the Insured who shall provide us with all reasonable assistance in order to secure those rights. The Insured is not to waive or release any right of recourse against any other entity without first obtaining Our permission in writing.

6.9 Cancellation

6.9.1 The Insured may cancel this Policy by notifying Us in writing, and We will allow a pro rata refund of Premium relating to the unexpired proportion of the Period of Insurance. Cancellation will be effective from the date that We are notified of the cancellation.

6.9.2 We may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984 (Cth) and will provide a pro rata refund of Premium for the unexpired Period of Insurance.

6.9.3 The Insured will not be entitled to a refund of premium under clause 6.9.1 and 6.9.2 if the Insured has made a notification under this Policy or if We have made any payments under this Policy.

6.10 Notification of Other Insurances

If at the time of any Personal Injury or Property Damage which is indemnifiable, or but for Exclusion 4.15 would be indemnifiable, under this Policy there exists any other insurance policy which would provide indemnity to the Insured, then the Insured must provide full details of any such insurance policy to Us when making any claim under this Policy.

6.11 Jurisdiction and service

In the event of a dispute arising under or in connection with this Policy, We at the request of the Insured will submit to the jurisdiction of competent courts in the Commonwealth of Australia. The dispute shall be determined in accordance with the law and practice of that jurisdiction, as applied in those courts.

6.12 Indemnity Limit

6.12.1 Our liability for Compensation in respect of any one Occurrence in connection with the Business shall not exceed the Public Liability Indemnity Limit specified in the Schedule.

6.12.2 Our liability for Compensation in respect of any one Occurrence caused by a Product shall not exceed the Products Liability Indemnity Limit specified in the Schedule. Our aggregate liability for Compensation in respect of any one Occurrence caused by a Product shall not exceed the Products Liability Indemnity Limit specified in the Schedule.

6.12.3 In the event of an Occurrence happening in the United States of America, Canada and/or their respective protectorates and territories, the Indemnity Limit shall be inclusive of Defence Costs, claimant's costs and expenses and will apply in the aggregate to all claims during the Period of Insurance.

6.13 Sanctions

We are not liable to make any payment under this Policy where such payment would be in violation of any sanction, prohibition or restriction with which We are required to comply, including but not limited to United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or the United States of America.