



**BUSINESS GUARD™
LIABILITY POLICY**

**PRODUCT DISCLOSURE
STATEMENT AND
POLICY WORDING**

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Transcorp Underwriting Agency Pty Ltd

Transcorp Underwriting Agency Pty Ltd (Transcorp), ABN 30 094 737 970, AFS Licence No. 247121, is an underwriting agency which is authorised by AIG to issue contracts of insurance on behalf of AIG. Transcorp does not act as **Your** agent. Claims will be handled and settled by AIG. If **You** need information about this insurance, in the first instance contact Transcorp.

Our Head Office is located at :

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Privacy

We (Transcorp and the Insurer) are bound by the Privacy Act 1988 when **We** collect and handle **Your** personal information.

We collect personal information for the purpose of providing insurance, including arranging insurance, policy administration and claims handling.

We disclose personal information to insurers, reinsurers, insurance intermediaries, insurance reference bureaus, credit reference agencies, **Our** and **Your** advisers and those involved in the claims handling process, for the purposes of assisting **Us** and them in providing relevant services and products, and for the purposes of litigation. **We** limit the use and disclosure of any personal information provided by **Us** to them to the specific purpose for which **We** supplied it. By providing personal information to **Us** or **Our** agent, **You** consent to **Us** making these disclosures.

Without this information, **We** may not be able to provide **You** with the services **You** require.

When **You** give **Us** personal information about other individuals, **We** rely on **You** to have made or make them aware that **You** will or may provide their information to **Us** and the types of third parties **We** may provide it to, the relevant purposes **We** and the third parties will use it for, and how they can access it. If **You** have not done or will not do either of these things, **You** must tell **Us** before **You** provide the relevant information.

If **You** would like to find out more please contact **Us**.

Our Agreement with You

This policy incorporates the Policy Schedule, Cover, Definitions, Conditions, Exclusions, Endorsements and any other terms attached which are to be read together. Any word or expression to which a specific meaning has been given in any part of this policy shall bear this meaning whenever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

Throughout this policy the words "**We**," "**Us**" and "**Our**" refer to American Home Assurance Company.

Throughout this policy the words "**You**" and "**Your**" refer to the **Insured**.

Words and phrases that appear in **bold** print have special meaning as detailed under Definitions of the policy.

AMERICAN HOME ASSURANCE COMPANY

549 St Kilda Road, Melbourne. Vic. 3004

ABN 67 007 483 267 AFSL 230903

Trading as AIG Australia (Incorporated with limited liability in the USA)

A Member of American International Group, Inc.

1. DEFINITIONS

1.1 Aircraft

Aircraft means a vehicle designed to be used primarily in the air and to be supported by the dynamic reaction of the air upon the vehicle's wings or rotor-blades, and/or by the vehicle's buoyancy in the air. The term Aircraft, however, excludes missiles, spacecraft and the ground support or control equipment used therewith.

1.2 Aircraft Products

Aircraft products means

- a) **Aircraft** and any ground support or control equipment used therewith;
- b) Any **Insured Product** furnished by the **Insured** and installed in **Aircraft** or used in connection with **Aircraft**;
- c) any tooling used for the manufacture of (a) or (b) above;
- d) any ground handling tools and equipment used in connection with (a) or (b) above including training aids, navigational aids, instruction or manuals;
- e) blueprints, engineering or other data furnished by the **Insured** in connection with (a), (b), (c) or (d) above;
- f) any advice, service and/or labour furnished by the **Insured** in connection with (a), (b), (c), (d) or (e) above.

1.3 Business

Business means all usual activities and operations of the **Named Insured** as described at Item 2 in the Policy Schedule and includes:

- a) The ownership, tenancy or occupation of premises of the **Named Insured**;
- b) Private work carried out with the consent of the **Named Insured** for any director, partner or senior official of the **Named Insured** by an Employee;
- c) The provision or management of canteen, social or sports organisations for the **Named Insured's Employees**; and
- d) The provision of the **Named Insured's** own internal fire, first aid, medical, security and ambulance services.

1.4 Claim

Claim means a written demand, notice or other written communication received by the **Insured** seeking a remedy and/or alleging liability or responsibility on the **Insured's** part for an **Occurrence**.

1.5 Deductible

Deductible means the uninsured first portion of each and every Claim that the **Insured** must pay. The amount of the **Deductible** is shown in item 5 of the Policy Schedule.

1.6 Employee

Employee means:

- a) Any person under a contract of service or apprenticeship with the **Named Insured**;
- b) Any person hired or borrowed by the **Named Insured** from another employer under an agreement by which the person is deemed to be employed by the **Named Insured**;
- c) Any person under a work experience or similar scheme while engaged and working under the direction and control of the **Named Insured** in connection with and in the course of the **Business**.

1.7 Financial Loss

Financial Loss means a pecuniary or economic loss or expense.

1.8 Grounding

Grounding means the withdrawal of one or more **Aircraft** from flight operations or the imposition of speed, passenger or load restrictions on such **Aircraft**, by reason of the existence of or alleged or suspected existence of any defect, fault or condition in such **Aircraft** or any part thereof sold, handled or distributed by the **Insured** or manufactured, assembled or processed by any other person or organisation according to the **Insured's** specifications, plans, suggestions, orders or drawings or with tools, machinery or other equipment furnished to such persons or organisations by the **Insured**, whether such **Aircraft** so withdrawn are owned or operated by the same or different persons, organisations or corporations. A **Grounding** will be deemed to commence on the date of an **Occurrence** which discloses such condition or on the date an **Aircraft** is first withdrawn from service on account of such condition, whichever occurs first.

1.9 Hovercraft

Hovercraft means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

1.10 Incidental Contracts

Incidental Contracts means:

- a) Any written agreement or lease of real or personal property which does not impose upon the **Named Insured**:
 - i) An obligation to insure such property; or
 - ii) Any liability regardless of fault;
- b) Any written contract with any entity for the supply of water, gas or electricity but only to the extent of indemnifying any such entity in respect of liability arising out of the **Business** other than contracts for the performance of work or provision of services by the **Named Insured**.

1.11 Insured

Insured means:

- a) The **Named Insured** as listed in the Policy Schedule;
- b) Any organisation in which the **Named Insured** maintains an interest of more than fifty percent (50%) as of the effective date;
- c) If the **Named Insured** is an individual, the **Named Insured's** spouse, but only with respect to the conduct of a **Business** of which the **Named Insured** is the sole owner;
- d) If the **Named Insured** is an individual and dies, the **Named Insured's** legal representative but only with respect to the legal representatives duties in administering or undertaking the **Named Insured's Business**;
- e) The **Named Insured's** partners, executive officers, **employees**, directors, shareholders or volunteers while acting within the scope of their duties on behalf of the **Named Insured's Business**;
- f) Any person or organisation to whom the **Named Insured** is obligated by a written **Insured Contract** to provide insurance, but only with respect to their liability arising out of operations conducted by the **Named Insured** or on their behalf and not to any greater extent than required by the contract or agreement; and
- g) Any office bearer or member of social and/or sporting clubs formed with the written consent of the **Named Insured** in respect of **Claims** arising from duties connected with activities of any such club. Cover shall not apply to **Personal Injury** to or **Property Damage** of any participants of any game, match, race, practice or trial.

1.12 Insured Contract

Insured Contract means that part of any contract or agreement pertaining to the **Named Insured's Business** under which the **Named Insured** assumes the tort liability of another party to pay for **Personal Injury** or **Property Damage** to a third person or organisation. However, the **Personal Injury** or **Property Damage** must arise out of an **Occurrence** that takes place subsequent to the execution of the **Insured Contract**. Tort liability means a liability that would be imposed by law upon the other party in the absence of any contract or agreement.

1.13 Insured's Products

Insured's Products means any goods or products (after they have ceased to be in the **Insured's** possession or under the **Insured's** control) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, treated, imported, exported, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the **Insured**. **Insured Products** includes any packaging or containers, designs, formulae or specifications

thereof, directions, instructions or advice given or omitted to be given in connection with such things other than a **Vehicle** or vending machine.

1.14 Legal Proceedings

Legal Proceedings mean litigation, arbitration, mediation, adjudication or any other process of dispute resolution.

1.15 Medical Persons

Medical Persons means medical doctor, medical nurses, dentists and first aid attendants.

1.16 Named Insured

Named Insured means the entity set forth in item 1 in the Policy Schedule.

1.17 North America

North America means:

- a) The United States of America and Canada;
- b) Any state, territory or protectorate incorporated in, or administered by, the United States of America or Canada; and
- c) Any country or territory subject to the laws of the United States of America or Canada.

1.18 Occurrence

Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended from the **Insured's** standpoint.

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

1.19 Personal Injury

Personal Injury includes:

- a) Bodily Injury which means death, injury, sickness or disease or death sustained by a person resulting from such injury, sickness or disease and shall include mental injury, mental anguish and shock
- b) False arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation.
- c) Libel, slander, defamation of character or invasion of privacy; and
- d) 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.

1.20 Policy Period

Policy Period means the period set forth in Item 3 of the Policy Schedule, or any shorter period arising as a result of Cancellation of this Policy.

1.21 Pollutants

Pollutants means but is not limited to any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids or alkalis of any sort, chemicals and waste. Waste includes but is not limited to, material to be recycled, reconditioned or reclaimed.

1.22 Products Hazard

Products Hazard means **Personal Injury** or **Property Damage** arising out of the **Insured's Products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **Personal Injury** or **Property Damage** occurs away from premises owned by, leased to, rented to or occupied by the **Insured** and after physical possession of such products has been relinquished to others.

1.23 Property Damage

Property Damage means:

- a) Physical injury to or destruction of tangible property including the loss of use thereof at any time resulting therefrom; or
- b) Loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by physical injury to or destruction of other tangible property.

1.24 Territorial Limits

Territorial Limits means anywhere in the world other than **North America** but only in respect of **Claims** or **Legal Proceedings** arising out of:

- a) **Insured Products** exported with the knowledge of the **Insured** to **North America**;
- b) Any operation or premises of the **Insured** in **North America**

1.25 Tool of Trade

Tool of Trade means any **Vehicle** which has attached as an integral part of such **Vehicle** any equipment for mechanical digging, scraping, grading, slashing, mowing, drilling, lifting or levelling, whilst such equipment is being used for the purpose for which it was designed.

1.26 Vehicle

Vehicle means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.

1.27 Watercraft

Watercraft means any vessel or craft made to or intended to float on or in or travel on or through or under water.

2. COVER

Subject to all provisions, terms, exclusions, and conditions of this Policy **We** agree to indemnify the **Insured** for all amounts which the **Insured** shall become legally liable to pay as a result of **Claims** or **Legal Proceedings** for **Personal Injury** or **Property Damage** happening during the **Policy Period** and caused by an **Occurrence** within the **Territorial Limits** and arising from and within the course of the **Business** and provided that the **Claim** or **Legal Proceedings** are brought against the **Insured** in a court of law within the **Territorial Limits**.

3. DEFENCE PROVISIONS

- 3.1 **We** shall defend at **Our** cost any **Claim** or **Legal Proceeding** against the **Insured** that seeks compensation covered by this Policy, even if the **Claim** or **Legal Proceeding** is groundless, false or fraudulent.
- 3.2 In the defence of any **Claim** or **Legal Proceeding** against the **Insured** that seeks compensation covered by this Policy, **We** will:
 - a) Investigate, negotiate and settle the **Claim** or **Legal Proceeding** as **We** deem expedient; and
 - b) Pay the following supplementary payments:
 - i) all costs taxed against the **Insured** in the **Claim** or **Legal Proceeding**;
 - ii) pre-judgement interest awarded against the **Insured** on that part of the judgement **We** pay;
 - iii) post-judgement interest that accrues after entry of judgement and before **We** have paid, offered to pay or deposited in court that part of the judgement that is within the applicable Limits of Liability; and
 - iv) the **Insured** expenses incurred at **Our** request or with **Our** written consent (including actual loss of wages or salary, but not loss of other income).

Notwithstanding, **We** will only be liable for the amount of damages and claimants' costs and expenses arising from an **Occurrence** that is in excess of the **Deductible**. The **Deductible** amount shall be borne by the **Insured** and shall remain uninsured, with regard to all payments for which the **Insured** shall be liable.

- 3.3 **We** may undertake investigations, conduct negotiations and with the written consent of the **Insured** settle any **Claim** or **Legal Proceedings** where settlement has been agreed to by the parties being indemnified or has been recommended by a Senior Counsel. If consent to such settlement is still withheld by the **Insured** then **Our** liability on account of that **Claim** or **Legal Proceeding** shall not exceed the amount for which **We** could have settled the **Claim** or **Legal Proceeding** plus the costs and expenses incurred to the date such settlement was recommended in writing to the **Insured**.

- 3.4 We will not defend any **Claim** or **Legal Proceeding** or investigate any **Claim** or **Legal Proceeding** after the exhaustion of the applicable Limits of Liability of this section by the payment of loss.

4. LIMITS OF LIABILITY

- 4.1 Our liability in respect of any one **Occurrence** shall not exceed the Limit of Liability as set forth in item 4 (i) of the Policy Schedule. All **Personal Injury** and **Property Damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one **Occurrence**.
- 4.2 Our total aggregate liability during any one **Policy Period** for all **Occurrences** involving the **Products Hazard** shall not exceed the Limit of Liability as set forth in item 4(ii) of the Policy Schedule.
- 4.3 Expenses incurred to defend or investigate any **Claim** or **Legal Proceeding** will be in addition to the applicable Limits of Liability. Provided however that, in the event of any **Claim** or **Legal Proceeding** being made against the **Insured** in any court or before any other legally constituted body in **North America**, the Limits of Liability shall apply to such **Claim** or **Legal Proceeding** inclusive of expenses to defend or investigate any **Claim** or **Legal Proceeding**.
- 4.4 The Limits of Liability apply separately to each **Policy Period** as shown in the Policy Schedule.

5. EXCLUSIONS

This policy excludes all liability for:

5.1 Aircraft, Hovercraft and Watercraft

Personal Injury or **Property Damage** caused by or arising out of the ownership, possession, maintenance, operation or use by or on behalf of the **Insured**:

- a) of any **Aircraft** or **Hovercraft**; or
- b) any **Watercraft** or vessel exceeding eight (8) metres in length.

Provided that this Exclusion 5.1 (b) shall not apply with respect to:

- i) operations by independent contractors;
- ii) **Watercraft** owned by others and used by the **Insured** for entertainment purposes related to the **Business**; or
- iii) Hand propelled or sailing craft.

This proviso 5.1 (b) (i), (ii) and (iii) shall only apply where such **Watercraft** are sailing or operating in Australian territorial or inland waters.

5.2 Aircraft Products

The supply, distribution, sale or manufacture of **Aircraft Products** or reliance upon any representations or warranties made by the **Insured** with respect to **Aircraft Products** or arising out of the **Grounding** of any **Aircraft**.

5.3 Asbestos

Mesothelioma, asbestosis or for any death, disease, loss of use of property, or damage to property (including consequential loss) arising directly or indirectly out of or in connection with or in consequence of:

- a) Inhaling, ingesting or physical exposure to asbestos or goods or products containing asbestos; or
- b) The use of asbestos in constructing or manufacturing any good, product or structure; or
- c) The removal of asbestos from any good, product or structure; or
- d) The manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos; or
- e) The presence of asbestos in any building.

5.4 Contractual Liability

Personal Injury or **Property Damage**:

- a) Where the **Insured** assumes liability under any contract or agreement.

But this Exclusion 5.4 shall not apply to those written contracts:

- i) designated under item 6 of the Policy Schedule;
- ii) where such liability would have been implied by law;
- iii) where the **Insured** assumes liability under a warranty of fitness or quality as regards the **Insured's Products**;
- iv) to **Incidental Contracts** entered into by the **Named Insured**;
- v) to **Insured Contracts** entered into by the **Named Insured** where the **Named Insured** is obligated to provide insurance as is afforded by this policy, to any person or organisation, but only with respect to their liability arising out of operations conducted by the **Named Insured** or on their behalf and not to any greater extent than required by the contract or agreement;
- b) Where the **Insured** has waived any rights, which but for the existence of such waiver would accrue to the **Insured**.

5.5 Expected or Intended

Personal Injury or Property Damage expected or intended from the standpoint of the **Insured**. However, this exclusion does not apply to:

- a) **Personal Injury or Property Damage** resulting from the use of reasonable force to protect persons or property; or
- b) Liability of the **Insured** for compensation as the result of an act committed by the **Insured's Employee(s)** which results in **Personal Injury or Property Damage** expected or intended from the standpoint of the **Insured's Employee(s)**, provided such act was not committed at the direction of the **Insured**.

5.6 Financial Loss

Financial Loss, unless such loss is a direct result of **Personal Injury or Property Damage** for which indemnity is provided by this Policy.

5.7 Fines, Penalties, Punitive, Aggravated, Exemplary Damages & Taxes

- a) fines, penalties (civil or criminal), liquidated, punitive, aggravated or exemplary damages;
- b) taxes;
- c) non-pecuniary relief;
- d) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

5.8 Dangerous Goods

Personal Injury or Property Damage arising directly or indirectly out of or caused by the carrying or storage of any Dangerous Goods other than when all requirements and procedures of the Australian Code for the Transport of Dangerous Goods by Road or Rail and/or any statute or law relating to or in respect of the transportation or storage of Dangerous Goods have been complied with.

For the purposes of this exclusion the term "Dangerous Goods" shall mean any goods codified under the "Australian Code for the Transport of Dangerous Goods by Road or Rail" or any liquid fuel, liquid gas, toxic chemicals, acids, inflammable substances below 12.70 flash point, compressed gases, organic peroxides, explosives and any other oxidising infectious or radioactive substance.

5.9 Internet Operations

Personal Injury or Property Damage arising directly or indirectly out of or caused by or in connection with the **Insured's** internet operations, including but not limited to **Business** conducted and/or transacted via the internet, intranet, extranet, and/or via the **Insured's** own website, internet site, web address and/or via the transmission of electronic mail or documents by electronic means.

5.10 Injury to Contractors

Personal Injury sustained to or by any contractor or their employees, subcontractor or their employees or person engaged in a form of Labour Hire by the **Insured** where the fees paid for such services or provision of labour exceed \$20,000 any one **Policy Period**.

For the purposes of this exclusion Labour Hire means any person engaged in any aspect of the **Business** by the **Insured** whilst employed by an employment agency, placement agency, labour hire company or any other company or person whose business is or includes the supply and/or provision of labour.

5.11 Libel and Slander

Personal Injury or Property Damage arising out of a libel or slander:

- a) Made prior to the effective date of this insurance; or
- b) Made by or at the **Insured's** direction with knowledge of the falsity or defamatory character thereof; or
- c) Related to advertising, broadcasting, publishing or telecasting activities including Internet activity, conducted by the **Insured** or on the **Insured's** behalf.

5.12 Loss of Use

Loss of use of any tangible property which has not been physically injured or destroyed resulting from:

- a) A delay in or lack of performance by the **Insured** or on the **Insured's** behalf of any contract or agreement; or
- b) The failure of the **Insured's Products** to meet the level of performance, quality, fitness or durability expressly or implied, warranted or represented by the **Insured**.

Provided that this Exclusion 5.12 (b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **Insured's Products** after such products have been put to use by any person or organisation other than the **Insured**.

5.13 Nuclear Liability

Claims or Legal Proceedings of whatsoever nature, directly or indirectly, caused by or contributed by or arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

5.14 Damage to Own Products

Property Damage to the **Insured's Products**.

5.15 Product Recall

Any cost or expense incurred or claimed for the withdrawal, inspection, repair, replacement, or loss of use of the **Insured's Products** or of any property of which such products form a part, if such products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

5.16 Professional Liability

Personal Injury or **Property Damage** arising out of the rendering of or failure to render professional advice or service by the **Insured**, or any error or omission arising from the rendering of professional advice, design specification or service for a fee.

Provided that this Exclusion 5.16 does not apply to the rendering of or failure to render professional medical advice by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

5.17 Property Owned or in the Insured's Physical or Legal Control

Property Damage to:

- a) Property owned by, leased or rented to the **Insured**; or
- b) Property belonging to the **Insured** or in the care, custody or control of the **Insured** or any **Employee** of the **Insured** other than:
 - i) premises which are leased or rented to the **Insured**; or
 - ii) premises and their contents not belonging to, leased or rented to the **Insured** at which the **Insured** is undertaking work in connection with the **Business**.
 - iii) **Vehicles** and their contents (not belonging to or used by or on behalf of the **Insured**) in the **Insured's** physical or legal control where such **Property Damage** occurs while any such **Vehicle** is in a car park owned or operated by the **Insured**. Cover under this section 5.17 (b) (iii) does not apply if the **Insured** as part of the **Business** owns or operates a car park for reward or if such damage is caused by:
 1. the **Insured's** use or operation of their own **Vehicle**, or
 2. goods falling from the **Insured's Vehicle**, or
 3. the operation of loading or unloading of the **Insured's Vehicle**
 - iv) **Vehicles** not belonging to or used by the **Insured** or on the **Insured's** behalf but in the care, custody or control of the **Insured** at the **Insured's** premises for the purpose of servicing, repairing and/ or testing as part of the **Insured's Business** subject to cover being limited to a maximum of \$50,000 each **Occurrence** and in the aggregate during any one **Policy Period** for such **Property Damage**;

v) goods, equipment, merchandise and property other than real property subject to cover being limited to a maximum of \$50,000 each **Occurrence** and in the aggregate during any one **Policy Period** for such **Property Damage**. However, cover is not provided for:

1. any **Vehicle** which is registered or required to be registered under any legislation
2. damage to or loss of property occurring while the property is in storage or during the course of transit or whilst being loaded or unloaded

c) That particular part of any real property on which the **Insured** or any contractors working directly or indirectly on the **Insured's** behalf are performing operations if the **Property Damage** arises out of those operations.

5.18 Pollution

In respect of **Personal Injury** or **Property Damage** directly or indirectly arising out of the:

- a) **Pollutants** directly or indirectly caused by or contributed to by or arising from the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants contaminants or pollutants into or upon land the atmosphere or any watercourse or body of water;
- b) the cost of removing, monitoring, testing, containing, treating, detoxifying, neutralizing, nullifying or cleaning up smoke, vapours, soot, mould, fungus, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or **Pollutants** discharged, dispersed, released or escaped into or upon land, the atmosphere or any watercourse or body of water;
- c) Fines, penalties, punitive, exemplary or multiple damages relating to the circumstances detailed in 5.18 (a) above.
- d) The cost of preventing the escape of **Pollutants**.

Exclusions 5.18(a) and 5.18(b) shall not apply where the **Claim** or **Legal Proceeding** arises from a sudden identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place and occurs outside of **North America**.

5.19 Silica

Claims or **Legal Proceedings** directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibers, silica dust or silica in any form, or to any obligation of the **Insured** to indemnify any party because of **Personal Injury** or **Property Damage** arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibers, silica dust or silica in any form.

5.20 Terrorism

Personal Injury or Property Damage arising directly or indirectly as a result of or in connection with Terrorism including, but not limited to, any contemporaneous or ensuing **Personal Injury or Property Damage** caused by fire, looting or theft.

Terrorism means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or 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, when the effect is to intimidate or coerce a government, the civilian population or any segment thereof, or to disrupt any segment of the economy.

Terrorism shall also include any act which is verified or recognised by the government of any country in which the **Insured** operates or exports products into, as an act of terrorism.

5.21 Vehicles

Personal Injury or Property Damage caused by or arising out of the use of or operation by the **Insured** of any **Vehicle**.

Provided that this Exclusion 5.21 shall not apply to the **Insured's** liability for **Personal Injury or Property Damage**:

- a) Arising from the actual loading, unloading, delivery or collection of goods to or from any **Vehicle**;
- b) Arising from the use of any **Tool of Trade** either on any site where the **Insured** are undertaking work or at the **Insured's** premises.

This proviso 5.21 (b) does not extend cover to the use of any **Tool of Trade**, either on any site where the **Insured** is undertaking work or at the **Insured's** premises, whilst in transit or whilst being used for transport or haulage.

5.22 War

Personal Injury or Property Damage directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (with or without the declaration of war), civil war, civil commotion, factional civil commotion, rebellion, revolution, insurrection, military or usurped power.

5.23 Workers Compensation and Employers Liability

- a) **Personal Injury** sustained by an **Employee** which arises out of or in the course of their employment by the **Insured**;
- b) **Claims or Legal Proceedings** arising from provisions imposed by:
 - i) workers' compensation legislation or any similar legislation;
 - ii) accident compensation legislation or any similar legislation;

iii) any industrial award, agreement or determination.

- c) any obligation for which the **Insured** may be held liable under any Worker's Compensation Law or under any similar law.

6. CONDITIONS

6.1 Alteration of Risk

The **Named Insured** shall notify **Us** in writing within thirty (30) days of any material changes to the **Business** description as stated in the Policy Schedule. **We** reserve the right to accept or deny coverage at the time of such notification and to establish a separate rate and premium for any such change in **Business** description as stated in the Policy Schedule.

6.2 Assignment

This policy and any rights hereunder cannot be assigned without **Our** prior written consent.

6.3 Assistance and Co-operation

The **Insured** shall co-operate with **Us** in all matters relating to this insurance. This may include, but is not limited to, attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements, and in conducting litigation, arbitration, or other proceedings.

6.4 Audit

We may audit and examine the **Named Insured's** books and records as they relate to this policy at any time during the **Policy Period** or anytime after the expiration or termination of this Policy.

6.5 Cancellation

The Policy may be cancelled at any time at the written request of the **Named Insured** in which case **We** shall retain the customary short rate proportion of the premium. **We** may cancel the Policy in accordance with Sections 59 and 60 of the Insurance Contracts Act 1984 (Cth) in which case **We** shall be entitled to retain the pro-rata proportion of the premium. However, if any **Claims or Legal Proceedings** have been notified to **Us** during the relevant **Policy Period** and prior to the date of cancellation, no refund of premium shall be made to the **Named Insured**.

6.6 Changes

This policy can be changed only by a written endorsement that **We** make to this policy.

6.7 Choice of Law and Forum

This policy shall be governed by and construed in accordance with the laws of the Commonwealth of Australia and the Courts of the said Commonwealth shall have exclusive jurisdiction in any dispute arising hereunder.

6.8 Cross Liability

If the **Insured** comprises more than one party, **We** will provide indemnity to each in the same manner and to the same extent as if a separate policy had been issued to each, provided that **Our** total liability for liability sustained by any or all of the **Insureds** shall not exceed the Limit of Liability stated in the Policy Schedule.

6.9 Currency

All premiums and payments made on **Claims** or losses are payable at the place and in the currency of the country where the policy was issued, unless otherwise agreed in writing by **Us** or an authorised representative of **Us**.

6.10 Duties in the Event of an Occurrence, Claim or Legal Proceeding

Upon the happening of an **Occurrence** which may give rise to a **Claim** or **Legal Proceeding** under this Policy the **Insured** must:

- a) as soon as reasonably practicable:
 - i) notify **Us** of such **Occurrence**;
 - ii) provide in writing as required all particulars and information as **We** may request;
- b) immediately:
 - i) on receipt forward to **Us** every letter, **Claim**, writ of **Legal Proceedings** or other document served on the **Insured** or their representative;
 - ii) notify **Us** of any impending prosecution, inquest, fatal inquiry or proceedings in any court;
- c) as **We** may require-
 - i) retain anything connected therewith;
 - ii) provide all assistance;
- d) Promptly take at the **Insured's** own expense, all reasonable steps to prevent other **Personal Injury** or **Property Damage** arising out of the same conditions, but such expense shall not be recoverable under this Policy.

The **Insured** shall not:

- a) make any admission of liability;
- b) take any action which may be construed as an admission of liability;
- c) repudiate or settle any **Claim** or **Legal Proceeding**; or
- d) waive any rights of recovery without **Our** prior written consent.

We have the right to:

- a) Defend any **Claim** or **Legal Proceeding** against the **Insured**;

- i) take over and conduct the defence or settlement of any **Claim** or **Legal Proceeding**;
 - ii) prosecute for its own benefit any **Claim** or **Legal Proceeding** for indemnity or damages or otherwise in the name of the **Insured**;
- b) Have subrogation of all the **Insured's** rights of recovery against any person or organisation, whether before or after, indemnification by **Us**;
 - c) Exercise full discretion in the conduct of any **Legal Proceedings** and in the settlement of any **Claim** or **Legal Proceeding**, whether before or after indemnification by **Us**.

6.11 Fraudulent Claim

If the **Insured** shall make any application for indemnity under this policy or submit any initial or final statement of loss or **Claim** knowing that such application or such initial or final statement of loss or **Claim** is false or fraudulent, **We** shall refuse to indemnify the **Insured** for any loss or **Claim** relating to or consequent upon or established by such application or such initial or final statement of loss or **Claim**.

6.12 Headings

The descriptions in the headings of this policy are solely for convenience and form no part of the terms and conditions of coverage. Words and expressions in the singular include the plural and vice versa. Words that are **bolded** with the exception of headings, have special meaning and are defined. Words that are not specifically defined in the policy have the meaning normally attributed to them.

6.13 How the Insurance Contracts Act may affect this Policy

Any terms and conditions of this Policy which are invalid, illegal or unenforceable as a result of the operation of the Insurance Contracts Act 1984 (as amended or modified from time to time or any other legislation enacted in substitution or replacement thereof) shall be ineffective only to the extent of the invalidity, illegality or unenforceability without invalidating the remainder of such term or condition or the remaining terms and conditions of this Policy.

6.14 Inspection

We have the right, but are not obligated, to inspect the **Insured's** premises and operations at any time without prior notice to the **Insured** subject to which **We** will use reasonable endeavours to give the **Insured** reasonable notice of any intended inspection. **Our** inspections are not safety inspections. They relate only to the insurability of the **Insured's** premises and operations and the premiums to be charged. The **Insured** will allow **Us**, **Our** agents, representatives, **Employees** or consultants (hereinafter referred to as the "Surveyor"):

- a) Access to its premises and other places of **Business**; and
- b) To conduct such enquiries as the Surveyor deems necessary, including (without limitation) by way of interviews with **Employees**; and generally
- c) Provide all reasonable cooperation and assistance as **We** or the Surveyor may require in a conduct of the Survey.

We may give the **Insured** reports on the conditions that **We** find. **We** may also recommend changes. **We** do not, however, undertake to perform the duty of any person or organisation to provide for the health or safety of the **Insured's Employees** or the public. **We** do not warrant the health and safety conditions of the **Insured** or **Insured's** premises or operations or represent that the **Insured** or **Insured's** premises or operations comply with laws, regulations, codes or standards.

6.15 Notice and Authority

It is agreed that the **Named Insured** acts on behalf of all **Insureds** with respect to the exercise of all their rights and the discharge of all their duties in respect of this policy, including but not limited to:

- a) negotiating the terms and conditions of cover;
- b) binding cover;
- c) the notification of a **Claim, Legal Proceeding**;
- d) the giving and receiving of any notice of cancellation;
- e) the payment of premium and the receipt of any refund of premium that may become due;
- f) the payment of the **Deductible**;
- g) the negotiation and receipt of any endorsement;
- h) the appointment of lawyers to defend a **Claim** or **Legal Proceeding** or ;
- i) the receipt of amounts payable by **Us** under this policy.

6.16 Notices

Except as indicated to the contrary herein, all notices, applications, demands or requests provided for in this policy will be in writing and will be given to or made upon either party at its address shown in the Policy Schedule.

6.17 Observance

By accepting this Policy the **Named Insured** agrees that the statements in the Proposal, broker submission, and any attachments are accurate and complete and acknowledges that **We** have issued this Policy in reliance upon those representations.

6.18 Occurrence or Claim within the Deductible

We have the right to assume the defence of any **Claim** or **Legal Proceedings** whether or not the **Claim** is considered to fall within the **Deductible** by the **Insured**.

6.19 Premium

Unless otherwise provided the premium for this policy is a flat premium and is not subject to adjustment except as provided in Condition 6.5 herein. If this policy is subject to audit adjustment, the premium may be based upon the rating basis as agreed prior to the **Policy Period**. Upon expiration of this policy or its termination during the **Policy Period**, or at the end of each policy year, the earned premium shall be computed as shown in the Policy Schedule. If the earned premium is more than the deposit premium paid, the **Named Insured** shall pay the excess to **Us**. If less, **We** shall return to the **Named Insured** the unearned portion, subject to the annual minimum premium set forth in item 10 of the Policy Schedule for each twelve months of the **Policy Period**.

6.20 Reasonable Care

The **Insured** shall take all reasonable care to prevent injury or loss or damage and to maintain the premises, plant and all other **Business** assets in good repair, and to comply with all statutory obligations and regulations.

The **Insured** shall make good or remedy any defect or danger and take such additional precautions as may be required as soon as possible after discovery but such expenses shall not be recoverable under this policy.

6.21 Reference to Statute

In this Policy references to any statutory provision are to be construed as references to that statutory provision as amended, supplemented, re-enacted, or replaced from time to time and are to include any orders, regulations, instruments or other subordinated legislation made under or deriving validity from that statutory provision.

6.22 Severability, Construction and Conformance to Statute

- a) If any provision contained in this policy is, for any reason, held to be invalid, illegal or unenforceable in any respect, it is hereby deemed to be severed and to have no effect on any other valid, legal and enforceable provision of this policy.
- b) If any provision contained in this policy is for any reason held to be invalid, illegal or unenforceable, it will be construed by limiting it so as to be valid, legal and enforceable to the extent compatible with applicable law.
- c) Any provisions of this Policy which are in conflict with the statutes or regulations of the state or country wherein this Policy is issued are hereby amended to conform to such statutes or regulations.

6.23 Statutory Requirements

The **Insured** will take all reasonable measures to comply with all statutory obligations and regulations imposed by any statutory or governmental authority.

6.24 Subrogation

If any payment is made in respect of a **Claim** or **Legal Proceedings** **We** shall be subrogated to all rights of recovery of the **Insured**, and **We** shall be entitled to pursue and enforce such rights in the name of the **Insured** who shall provide **Us** with all reasonable assistance and co-operation including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any such amount recovered in excess of **Our** total payment shall be restored to the **Insured** less the cost to **Us** of such recovery.