



Umbrella Liability Insurance

Policy Wording



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Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507, a subsidiary of Zurich Financial Services Australia Limited (ZFSA). In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, mid-sized and large companies, including multinational corporations, in more than 170 countries.

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, 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.

Our contract with you

Your Policy is a contract of insurance between you and Zurich and contains all the details of the cover that we provide.

Your Policy is made up of:

- the Policy wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *proposal*, which is the information you provide to us when applying for insurance cover;
- your most current *schedule* issued by us. The *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the Policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.
- This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your Policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

Privacy

Zurich is bound by the Privacy Act 1988 (Cth). We collect, disclose and handle information, and in some cases personal or sensitive (eg health) information, about you ('your details') to assess applications, administer policies, contact you, enhance our products and services and manage claims ('Purposes'). If you do not provide your information, we may not be able to do those things. By providing us, our representatives or your intermediary with information, you consent to us using, disclosing to third parties and collecting from third parties your details for the Purposes.

We may disclose your details, including your sensitive information, to relevant third parties including your intermediary, affiliates of Zurich Insurance Group Ltd, other insurers and reinsurers, our banking gateway providers and credit card transactions processors, our service providers, our business partners, health practitioners, your employer, parties affected by claims, government bodies, regulators, law enforcement bodies and as required by law, within Australia and overseas.

We may obtain your details from relevant third parties, including those listed above. Before giving us information about another person, please give them a copy of this document. Laws authorising or requiring us to collect information include the Insurance Contracts Act 1984 (Cth), Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), Corporations Act 2001 (Cth), Autonomous Sanctions Act 2011 (Cth), A New Tax System (Goods and Services Tax) Act 1999 (Cth) and other financial services, crime prevention, trade sanctions and tax laws.

Zurich's Privacy Policy, available at www.zurich.com.au or by telephoning us on 132 687, provides further information and lists service providers, business partners and countries in which recipients of your details are likely to be located. It also sets out how we handle complaints and how you can access or correct your details or make a complaint.

General Insurance Code of Practice

We are signatories to the General Insurance Code of Practice (the Code) and support the Code.

The objectives of the Code are:

- to commit us to high standards of service;
- to promote better, more informed relations between us and you;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes you make about us; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers compliance with the Code.

Further information about the Code or the Code Governance Committee and your rights under it is available at <https://insurancecouncil.com.au/cop/> or by contacting us.

Complaints and Disputes Resolution process

If you have a complaint about an insurance product we have issued or the service you have received from us, please contact your intermediary to initiate your complaint with us. If you are unable to contact your intermediary, you can contact us directly on 132 687. We will acknowledge receipt of your complaint within 24 hours or as soon as practicable.

If you are not satisfied with our initial response, you may access our internal dispute resolution process. Please refer to the general insurance fact sheet available on our website for details of our internal dispute resolution process.

We expect that our internal dispute resolution process will deal fairly and promptly with your complaint, however, you may take your complaint to the Australian Financial Complaints Authority (AFCA) at any time.

AFCA is an independent external dispute resolution scheme. We are a member of this scheme and we agree to be bound by its determinations about a dispute. AFCA provides fair and independent financial services complaint resolution that is free to you.

Their contact details are:

Website: www.afca.org.au

Email: info@afca.org.au

Freecall: 1800 931 678

In writing to: The Australian Financial Complaints Authority, GPO Box 3, Melbourne, Victoria 3001.

If your complaint or dispute falls outside the AFCA Rules, you can seek independent legal advice or access any other external dispute resolution options that may be available to you.

Umbrella Liability Insurance Umbrella Liability Insurance

In consideration of the *insured* having paid or agreed to pay the premium, Zurich, on the basis of all information provided to us, agrees with the *insured* to provide insurance as follows, subject to the provisions of this Policy and on the basis that this Policy will not be in force unless it has been signed by an authorised Zurich official.

1. Insuring Clause

- 1.1 Zurich, subject to the terms and conditions of this Policy, will pay the *ultimate net loss* in excess of the *insured's retained limit* which the *insured* becomes legally liable to pay as *compensation* arising out of:
- 1.1.1 *personal injury*;
 - 1.1.2 *property damage*; or
 - 1.1.3 *advertising liability*,
- happening during the *period of insurance* within the *territorial limits* as a result of an *occurrence* in connection with the *business* or *products*.

2. Limits of Liability

- 2.1 Our liability to pay *compensation* as a result of an *occurrence* will not exceed the Limits of Liability specified in the *schedule*, in excess of the *insured's retained limit*.
- 2.2 Our total aggregate liability to pay *compensation* in respect of or in any way related to *products* will not exceed the Limits of Liability specified in the *schedule*, in excess of the *insured's retained limit*.
- 2.3 In the event that the aggregate limits of liability in the policy(ies) of Underlying Insurance specified in the *schedule* are reduced because of payment of compensation claims, this Policy will continue in excess of the reduced Underlying Insurance or, in the event of exhaustion, in force as Underlying Insurance for the remainder of the *period of insurance*.

3. Extensions of Cover

3.1 Defence – Settlement – Additional payments

In respect of a liability covered by this Policy that is not covered by the policy(ies) of Underlying Insurance specified in the *schedule*, we:

- 3.1.1 may, at our own cost and at our option, elect to defend in the *insured's* name any claim or legal proceeding against the *insured* seeking *compensation*, even if such claim or legal proceeding is groundless, false or fraudulent;
- 3.1.2 may, at our own cost and at our option, elect to investigate, negotiate, and/or settle any claim or legal proceeding against the *insured*; and
- 3.1.3 in addition to the Limits of Liability specified in the *schedule*, will pay as additional payments:
 - (i) if we do not elect to take over conduct of the defence of a claim, reasonable legal costs and expenses incurred by the *insured* with our prior written consent, which shall not be unreasonably withheld or delayed, in the defence of any claim against the *insured*;
 - (ii) expenses incurred by the *insured* for first aid to others;
 - (iii) reasonable expenses incurred by the *insured* for the temporary repair or shoring up or preservation of property which has been damaged; and
 - (iv) interest accruing after entry of judgment against the *insured* until we have paid, tendered or deposited in court such part of the judgment as does not exceed the Limits of Liability specified in the *schedule*,

on the basis that:

- 3.1.4 if a payment exceeding our Limits of Liability specified in the *schedule* has to be made to dispose of a claim against the *insured*, our liability to pay any additional payments specified in extension 3.1.3 will be limited to that proportion of those amounts as the Limits of Liability bear to the amount paid to dispose of the claim;
- 3.1.5 in the event of a claim covered by this Policy being made against the *insured* in any court or before any other legally instituted body in *North America*, the Limits of Liability specified in the *schedule* will apply to such claim inclusive of all additional payments; and
- 3.1.6 we will not be obligated to pay any *compensation*, additional payments, or judgment, or to defend any claim or legal proceeding against the *insured* after our Limits of Liability specified in the *schedule* have been exhausted by payment of claims, judgments and/or settlements.

4. Definitions

When used in this Policy, its *schedule* and its Endorsements, the following definitions will apply:

4.1 Act of terrorism

act of terrorism means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- 4.1.1 involves violence against one or more persons;
- 4.1.2 involves damage to property;
- 4.1.3 endangers life other than that of the person committing the action;
- 4.1.4 creates a risk to health or safety of the public or a section of the public; or
- 4.1.5 is designed to interfere with or to disrupt an electronic system.

4.2 Advertising liability

advertising liability means:

- 4.2.1 infringement of copyright of, or passing off of a title or slogan;
- 4.2.2 unfair competition, piracy or idea misappropriation contrary to an implied contract;
- 4.2.3 invasion of privacy; or
- 4.2.4 defamation, libel, slander,

committed or alleged to have been committed during the *period of insurance* in any advertisement, publicity article, broadcast or telecast arising out of the *insured's* advertising activities or any advertising activities conducted on the *insured's* behalf, in the course of advertising the *products* or the goods or services related to those *products*.

4.3 Aircraft

aircraft means any vessel, craft or thing made, or intended, to fly or move in or through the atmosphere or space.

4.4 Business

business means all activities and operations specified in the *schedule* and includes:

- 4.4.1 the provision and management of catering, social, sports, welfare, childcare, theatrical and related facilities including galas for the benefit of *employees*;
- 4.4.2 the provision of fire, first aid, ambulance and security services;
- 4.4.3 at the *insured's* discretion, private work carried out by an *employee* for a director or partner or *employee* of the *insured*;

- 4.4.4 the ownership, maintenance, repair and occupation of premises or facilities belonging to the *insured*;
- 4.4.5 attendance at or participation in trade fairs, shows and exhibitions by any *employee* or director in connection with their employment; and
- 4.4.6 provision of sponsorship.

4.5 Communicable disease

communicable disease means illness, syndrome, disease, physical distress or *personal injury* caused or aggravated, or contributed to, by the spread of any *infectious agent*. This includes, but is not limited to, the spread of an *infectious agent* from one person to another person, or from organism to organism, whether directly or indirectly or by any intermediate transmission medium, substance or agent.

4.6 Compensation

compensation means monies paid, or agreed to be paid, by judgment or settlement for:

- 4.6.1 *personal injury*;
- 4.6.2 *property damage*; and
- 4.6.3 *advertising liability*.

4.7 Computer virus

computer virus means an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host, program or other computer code or data, causing undesired program or computer system operation.

4.8 Cyber event

cyber event means any *occurrence* in any way connected with:

- 4.8.1 an *IT Network*; or
- 4.8.2 *computer virus*.

4.9 Employee

employee means:

- 4.9.1 any person under a contract of service or apprenticeship with the *insured*;
- 4.9.2 any labour master or person supplied, or any person supplied by a labour only sub-contractor;
- 4.9.3 any self-employed person working under contract with the *insured* and under its direction;
- 4.9.4 any person hired by the *insured* from another employer subject to a written agreement under which the person is deemed to be employed by the *insured*;
- 4.9.5 any student or person undertaking work for the *insured* under a work experience or similar scheme; or
- 4.9.6 any voluntary helper;

whilst engaged in connection with the *business*.

4.10 Employment practices

employment practices mean any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment, or discrimination in respect of employment by the *insured*.

4.11 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 force.

4.12 Infectious agent

infectious agent means any pathogen, virus, bacteria, protein, parasite or any other biological or non-biological agent or organism, whether living or not, that may cause, contribute to, or aggravate, illness, syndrome, disease, physical distress or *personal injury*.

4.13 Insured

insured means the *Insured* named in the *schedule*, and includes:

- 4.13.1 any of the *insured's* subsidiary companies (including subsidiaries thereof) and any other entity under the *insured's* control, and over which the *insured* exercises active management;
- 4.13.2 any of the *insured's* directors, officers, *employees* or partners but only whilst acting within the scope of their duties in such capacity;
- 4.13.3 any person, principal, organisation, trustee or estate to whom or to which the *insured* is obligated by virtue of a written contract to provide insurance as is afforded by this Policy, but only to the extent that is required by such contract and in any event only for such coverage and Limits of Liability as provided in this Policy;
- 4.13.4 any social and/or sporting clubs, first aid, fire and ambulance services formed with the *insured's* consent and includes any office bearer or member thereof in their respective capabilities as such;
- 4.13.5 any of the *insured's* directors or senior executives in respect of private work undertaken by the *insured's employees* for such director or senior executive; and
- 4.13.6 any partnership or joint venture named in the *schedule* as the *Insured* and includes any partner or member thereof, but only with respect to their liability incurred in the operation of that partnership or joint venture.

4.14 Insured's retained limit

insured's retained limit means the greater of:

- 4.14.1 Underlying Insurance – the amount equal to the Limit of Liability in the policy(ies) of Underlying Insurance specified in the *schedule*; or
- 4.14.2 Self *Insured* Retention – the amount stated in the *schedule* in respect of an *occurrence* not covered in the policy(ies) of Underlying Insurance specified in the *schedule*.

4.15 Internet operations

internet operations means:

- 4.15.1 transfer of computer data or programmes by use of electronic mail systems by the *insured* or the *insured's employees*, including for the purpose of this definition only, part-time and temporary staff, contractors and others within the *insured's* organisation whether or not such data or programs contain any malicious or damaging code, including but not limited to *computer virus*, worm, logic bomb or Trojan horse;
- 4.15.2 access through the *insured's* network to the world wide web or a public internet site by the *insured* or the *insured's employees*, including for the purposes of this definition only, part-time and temporary staff, contractors and others within the *insured's* organisation;
- 4.15.3 access to the *insured's* intranet (meaning internal company information and computing resources) which is made available through the world wide web for the *insured's* customers or others outside the *insured's* organisation; and
- 4.15.4 the operation and maintenance of the *insured's* web site.

4.16 IT network

IT network means any computer hardware (or components thereof), software (or components thereof), communication system networks, *internet operations*, websites whosoever hosted, online or offline media libraries, data, or any other peripheral devices.

4.17 Motor vehicle

motor vehicle means any type of machine and attachments thereto including a trailer designed for use on land only, and which travels on wheels or on self laid tracks and is propelled by other than manual or animal power.

4.18 North America

North America means:

4.18.1 the United States of America and/or Canada; and

4.18.2 any state or territory incorporated in, or administered by, the United States of America or Canada.

4.19 Occurrence

occurrence means an event, including continuous or repeated exposure to conditions, which results in *personal injury*, *property damage* or *advertising liability* neither expected nor intended from the *insured's* standpoint, during the *period of insurance*.

With respect to *personal injury* or *property damage*, all such exposure to substantially the same general conditions will be deemed one *occurrence*.

With respect to *advertising liability* all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants, will be deemed to arise out of one *occurrence*.

4.20 Period of insurance

period of insurance means the Period of Insurance stated in the *schedule*.

4.21 Personal injury

personal injury means:

4.21.1 bodily injury, death, disease, illness, disability, nervous shock, mental anguish or loss of consortium;

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

4.21.3 wrongful entry or wrongful eviction or other invasion of privacy;

4.21.4 defamation, libel or slander; and

4.21.5 assault and/or battery committed by or at the direction of the *insured* whilst engaged in the *business* and for the purpose of preventing or eliminating danger to persons or property.

4.22 Pollutants

pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals, or waste. Waste includes but is not limited to material to be recycled, reconditioned, or reclaimed.

4.23 Products

products mean any goods or products manufactured, grown, extracted, produced, processed, treated, altered, handled, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by the *insured* (including packaging and containers) in connection with the *business* in or from the *territorial limits*, and after it has ceased to be the *insured's* property, or in the *insured's* custody or legal control.

4.24 Property damage

property damage means:

- 4.24.1 physical damage to, or loss of or destruction of tangible property, including the subsequent loss of use of that property;
- 4.24.2 loss of use and/or loss of value of tangible property that has not been physically damaged, physically lost or physically destroyed provided such loss of use and/or loss of value is caused by physical damage to, physical loss of or physical destruction of other tangible property and includes denial of access to property, premises, services or facilities, interference with or stoppage of vehicular or pedestrian traffic; and
- 4.24.3 trespass, nuisance, or interference with right of way or right to light, air or water, easement, or quasi-easement.

4.25 Schedule

schedule means the Schedule attaching to and forming part of this Policy, including any Schedule substituted for the original Schedule.

4.26 Silica

silica means silicon dioxide, (occurring in crystalline, amorphous, and impure forms), silica particles, silica dust or silica compounds.

4.27 Silica related dust

silica related dust means a mixture or combination of *silica* and other dust or particles.

4.28 Territorial limits

territorial limits means anywhere in the world, except *North America*, where this Policy will only apply in respect of *products* exported into those countries.

4.29 Ultimate net loss

ultimate net loss means the sum actually paid or payable in the settlement or satisfaction of losses for which the *insured* is legally liable either by adjudication or compromise with Zurich's prior written consent, after making proper deductions for all recoveries and salvages collectible, but excluding all loss expenses and legal expenses (including legal fees, court costs and interest on any judgment or award) and all salaries of employees and office expenses of the *insured*, Zurich or any Underlying Insurers so incurred.

4.30 Watercraft

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

5. Exclusions

Zurich will not be liable under this Policy in respect of:

5.1 Advertising liability

advertising liability directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.1.1 failure of performance of contract, but this exclusion will not apply to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;
- 5.1.2 incorrect description of any article or commodity; or
- 5.1.3 mistake in advertised price.

5.2 Aircraft products

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the *insured's products* which, with the *insured's* knowledge, are intended for incorporation into any critical part, the structure, machinery or controls of any *aircraft*.

5.3 Aircraft, watercraft, hovercraft

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the ownership, maintenance, possession, use or operation, loading or unloading, of any *aircraft, watercraft* or *hovercraft* (other than *watercraft* not exceeding 15 metres in length for use on inland or coastal waters).

However, this Exclusion does not apply:

- 5.3.1 to the extent that such cover is otherwise provided under any policies specified in the *schedule* as Underlying Insurance; or
- 5.3.2 to non-owned *aircraft, watercraft* or *hovercraft* hired, leased or chartered by the *insured* with a pilot/master and crew, to the extent that such cover is otherwise provided under any policies specified in the *schedule* as Underlying Insurance.

5.4 Asbestos

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from asbestos or asbestos products or asbestos contained in any products.

5.5 Communicable diseases

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any claim or claims against any *insured* alleging negligence or other wrongdoing in the:

- 5.5.1 supervising, hiring, employing, training, or monitoring of others that may be infected with and spread a *communicable disease*;
- 5.5.2 testing for a *communicable disease*;
- 5.5.3 failure to prevent the spread of a *communicable disease*; or
- 5.5.4 failure to report a *communicable disease* to authorities.

5.6 Contractual liability

any liability or obligation assumed by the *insured* under any agreement or contract except to the extent that:

- 5.6.1 the liability or obligation would otherwise have been implied by law;
- 5.6.2 the liability or obligation arises from a provision in a contract for lease of real or personal property other than a provision which obliges you to effect insurance or provide indemnity in respect of the subject matter of the contract;
- 5.6.3 the liability or obligation is assumed by the *insured* under any warranty required by Federal or State legislation in respect to product safety; or
- 5.6.4 the liability or obligation is assumed under those agreements specified in the *schedule*.

5.7 Custody and control

property damage to property owned by, hired to or in the custody or control of the *insured* or any *employee* or any party acting on behalf of the *insured*, other than:

- 5.7.1 guests', visitors', directors', officers', *employees*' or partners' personal effects;
- 5.7.2 *motor vehicles* in a car park, unless the car park is owned or operated by the *insured* for reward;
- 5.7.3 premises at which the *insured* is undertaking work in connection with the *business*; or
- 5.7.4 any building (including its fixtures and fittings) leased, hired or rented to the *insured* provided Zurich will not be liable in respect of liability assumed by the *insured* under a tenancy or other agreement which would not have attached in the absence of such agreement.

5.8 Cyber risks

any liability of whatsoever nature in connection with or contributed to, or from a *cyber event*.

5.9 Deliberate acts

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any deliberate act or omission of the *insured* or any *employee* and which could reasonably have been expected, having regard to the nature and circumstances of such an act or omission.

5.10 Injury to employees

any liability to indemnify or pay *compensation* arising out of:

- 5.10.1 *personal injury* where any *insured* or *employee* is indemnified or entitled to be indemnified under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not the *insured* is a party to such contract of insurance;
- 5.10.2 any scheme created by legislation to provide *compensation* to persons who sustain *personal injury* arising out of or in the course of their employment; or
- 5.10.3 any claim for *employment practices*.

This Policy will not be drawn into contribution with such insurance or scheme.

This Exclusion does not apply with respect to liability of others assumed by the *insured* under any written contracts.

However, if the *insured*:

- (i) is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or any common law liability (whether limited or not) for *personal injury*; or
- (ii) is not required to so insure or otherwise fund such liability by reason only that the *personal injury* is to a person who is not a "worker" or "employee" within the meaning of the relevant workers' compensation law or the *personal injury* is not an injury which is subject to such law,

then this Policy will cover liability for *personal injury* to the extent that the *insured's* liability would not have been covered under any such fund, scheme, policy of insurance or self insurance arrangement had the *insured* complied with its obligations pursuant to such law.

5.11 Liquidated or punitive damages

any liability for any amount in respect of:

- 5.11.1 fines or penalties; or
- 5.11.2 liquidated, punitive, or exemplary damages, or multiplication of awards.

5.12 Loss of use

any liability for any amount in respect of loss of use of tangible property which has not been damaged, lost or destroyed as a result of:

- 5.12.1 a delay in or lack of performance by or on behalf of any *insured* in respect of any contract or agreement; or
- 5.12.2 the failure of the *products* to meet the level of performance, quality, fitness, or durability expressly or impliedly warranted or represented by an *insured*.

However, Exclusion 5.12.2 above does not apply to loss of use of other tangible property resulting from the sudden and accidental damage to or destruction of the *products*, after such *products* have been put to use by any person or organisation other than the *insured*.

5.13 Motor vehicle liability

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the use of a *motor vehicle* owned by, or in the physical or legal control of the *insured*:

5.13.1 which is required by law to be registered; or

5.13.2 in respect of which insurance is required by virtue of any legislation.

However this Exclusion does not apply to:

5.13.3 a *motor vehicle* (other than a *motor vehicle* owned or used by or on behalf of the *insured*) whilst that *motor vehicle* is in a car park owned or operated by the *insured* other than for income or reward as a car park operator;

5.13.4 *personal injury* where:

- (i) any compulsory liability insurance or statutory indemnity does not provide indemnity; and
- (ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach of legislation relating to *motor vehicles* by the *insured*;

5.13.5 *personal injury* or *property damage* occurring during the loading or unloading of a *motor vehicle* caused by or arising from the collection or delivery of any goods from or to the *motor vehicle* where such *personal injury* or *property damage* occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability;

5.13.6 *personal injury* or *property damage* caused by or arising from the use of any *motor vehicle* which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by or on behalf of the *insured* within the confines of the *insured's* premises.

5.13.7 *personal injury* or *property damage* caused by or arising from the use of:

- (i) any *motor vehicle* whilst being used as a tool; or
- (ii) plant forming part of any *motor vehicle* being used as a tool within the confines of the *insured's* premises or at any premises temporarily occupied by the *insured* for the purpose of the *business*;

5.13.8 accidental or erroneous failure to maintain insurance required by virtue of any legislation; or

5.13.9 *personal injury* or *property damage* where insurance in respect of such liability is provided by an Underlying Policy specified in the *schedule*, but then only to the extent of the cover provided by such policy.

5.14 Pollution

any liability arising out of:

5.14.1 *personal injury* or *property damage* directly or indirectly caused by, in connection with or contributed to by or arising from the discharge, seepage, migration, dispersal, release or escape of *pollutants* into or upon any property, land, the atmosphere or any watercourse or body of water (including ground water);

5.14.2 *personal injury* or *property damage* directly or indirectly caused by, in connection with or contributed to by or arising from the discharge, seepage, migration, dispersal, release or escape of *pollutants* caused by any product that has been discarded, dumped, abandoned or thrown away by others;

5.14.3 the cost of removing, nullifying, or cleaning up *pollutants*; or

5.14.4 the cost of preventing the escape of *pollutants*.

Exclusions 5.14.1 and 5.14.3 above will not apply where the *occurrence* arises from a sudden identifiable, unintended and unexpected event from the *insured's* standpoint which takes place in its entirety at a specific time and place during the *period of insurance* and occurs outside of *North America*. However, the total aggregate Limits of Liability during any one *period of insurance* will not exceed the Limits of Liability specified in the *schedule*.

5.15 Professional liability

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the rendering or failure to render professional advice or service by the *insured*, or any error or omission in connection herewith. However, this Exclusion will not apply to:

- 5.15.1 the *insured's* liability in respect of *personal injury* or *property damage* resulting from the provision of professional advice or services, or any error or omission in connection with the *insured's products* which is not given for a fee; or
- 5.15.2 the rendering or failure to render professional advice by any *employee* or to provide first aid or other medical services at the *insured's* premises.

Medical services excludes advice or services provided by a qualified medical practitioner, nurse or first aid attendant.

5.16 Radioactive contamination

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.16.1 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 5.16.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

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

5.17 Repair and replacement

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.17.1 the cost of rectifying defective work carried out by or on behalf of the *insured*;
- 5.17.2 *property damage* to any of the *insured's products* causing *personal injury* or *property damage*; or
- 5.17.3 the costs or expenses of recalling, removing, repairing, recovering, altering, or replacing the *insured's products* arising from a defect in or an error in connection with the sale or supply of such *products* or the guaranteed performance of the *insured's products* or the unsuitability thereof for the use for which they are supplied.

5.18 Silica

any liability 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, actual, alleged, threatened, or suspected inhalation or absorption of *silica* or *silica related dust*.

5.19 Specific products and substances

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.19.1 urea formaldehyde;
- 5.19.2 silicon based human implants;
- 5.19.3 AIDS, HIV or HIV related illness;
- 5.19.4 contraceptives and medical abortion drugs, including RU 486 or Mifepristone;
- 5.19.5 human biological materials including extracts thereof (e.g., blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);

- 5.19.6 genetically modified seeds or organisms;
- 5.19.7 vaccines;
- 5.19.8 application or use of:
 - (a) polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
 - (b) per- and poly-fluoroalkyl substances (also referred to as PFAS) including perfluorooctanoic acid (also referred to as PFOA) and perfluorooctane sulphonic acid (also referred to as PFOS); or
 - (c) any product containing glyphosate, atrazine, dicamba, neonicotinoids, paraquat and chlorpyrifos;
- 5.19.9 tobacco, tobacco related products or tobacco substitute products (e.g. filters, paper for cigarettes, e-cigarettes, vaping products and the like); or
- 5.19.10 the manufacture or supply of all pharmaceutical active ingredients including medical implants; or
- 5.19.11 Diethylstilbestrol (also referred to as DES) and orally taken oxychinoline.

5.20 Terrorism

any injury, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any *act of terrorism*, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion also excludes injury, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

5.21 War

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by, or arising from, any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

6. General Conditions

6.1 Action against Zurich

Zurich will pay any amounts it is liable to pay as *compensation* once the amount of *compensation* has been finally determined, either by judgment against the *insured* or by written agreement between the *insured* and the claimant for which the *insured* has obtained Zurich's prior written consent, such consent not to be unreasonably withheld or delayed.

To limit the risk of financial prejudice which could result in a reduction or decline of cover, the *insured* should notify Zurich of *occurrences* or claims against it promptly and/or make any claim for any *personal injury, property damage* or *advertising liability* as soon as practicable after such final determination.

If the *insured* does not comply fully with all provisions of this Policy, then Zurich will be entitled, to the extent permitted by law, to reduce the amount of its liability in proportion to the financial prejudice caused by the *insured's* non-compliance.

6.2 Appeals

If the *insured's* Underlying Insurer elects not to appeal a judgment in excess of the *insured's retained limit*, Zurich may elect to do so at our own expense. Under no circumstances will Zurich's liability for the *ultimate net loss* exceed the applicable Limits of Liability specified in the *schedule*, plus the taxable costs, disbursements and interest incidental to such appeal.

6.3 Cancellation

The *insured* may cancel this Policy at any time by giving notice in writing to us.

Zurich may cancel this Policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (Cth), and such cancellation to take effect within 30 days from the time of notification received by the *insured*.

6.3.1 After cancellation by the *insured*, we will be entitled to retain:

- (i) the pro rata premium for the period during which this Policy has been in force; and
- (ii) any tax or duty paid or owing for which we are unable to obtain a refund.

6.3.2 After cancellation by us, you will be entitled to a refund of the premium on a pro rata basis in relation to the unexpired *period of insurance*, excluding any tax or duty paid or owing for which we are unable to obtain a refund.

6.4 Change in risk

Any change affecting the facts or circumstances existing at the commencement of or during the course of this Policy, or at any subsequent renewal date, which is likely to materially increase the risk we insure you for must be notified to Zurich as soon as practicable after such change comes to the *insured's* notice.

Zurich reserves the right to assess the risk associated with any such notified material change and to accept or deny coverage at the time of such notification and/or, with the *insured's* agreement, to vary the terms of coverage or recalculate the rate and/or premium to account for any increase or reduction of risk.

6.5 Claims assistance and cooperation

The *insured* must fully and promptly comply with all of Zurich's reasonable requests for assistance and cooperation in relation to a claim on the Policy, including:

6.5.1 supplying us with all information and assistance we may reasonably require;

6.5.2 allowing us to negotiate, defend or settle a claim against the *insured*:

- (i) in the *insured's* name and on the *insured's* behalf; or
- (ii) in the name of and on behalf of any other party covered by the *insured's* policy;

however, Zurich will not settle any claim against any *insured* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed;

6.5.3 sending to us any claim, writ, summons or full details of other relevant legal or other proceedings such as an impending prosecution or inquest of which the *insured* is notified or becomes aware of; and

6.5.4 as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until Zurich has had a reasonable opportunity of inspection.

6.6 Control of claims

The *insured* must not, without Zurich's prior written consent, such consent not to be unreasonably withheld or delayed, admit or repudiate liability, negotiate, or make any offer, promise or payment in connection with any claim against it or *occurrence*.

Zurich will be entitled, but not obligated, to take over and conduct in the *insured's* name, the defence or settlement of any claim against the *insured*, or to prosecute in the name of the *insured* at Zurich's own expense and for its own benefit any claim for indemnity or damages or otherwise against any persons.

If Zurich elects to take conduct of the defence of any claim or legal proceeding against the *insured*, we will, whenever reasonably practical, inform the *insured* of the progress of that, and/or consult with the *insured* as to its interests or concerns in relation to any claim, defence or prosecution, but the *insured* agrees that we will have ultimate discretion in the conduct and settlement of any proceedings or claim we have elected to take conduct of, save that we will not settle a claim or legal proceedings against an *insured* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed.

If Zurich does not elect to take over conduct of the defence or settlement of any claim or legal proceeding which is covered or, if sustained, would be covered, under the Policy, we have the right to:

- 6.6.1 be provided with all such information as we reasonably require;
- 6.6.2 be kept fully informed as to all matters relating to or concerning the investigation, defence or settlement of the claim or proceeding and the right to receive copies of all relevant documentation relating thereto; and
- 6.6.3 associate effectively with the *insured* in the defence, investigation and the negotiation of any settlement. No settlement is to be entered into without Zurich's prior written consent, such consent not to be unreasonably withheld or delayed.

6.7 Cross liability

For the purpose of this Policy, when an *insured* consists of more than one party, the *insured* will be considered as a separate *insured* as though a separate policy had been issued to each of the said parties but nothing herein contained will operate to increase our Limits of Liability.

6.8 Discharge of any liability

Zurich may at any time pay the Limits of Liability specified in the *schedule* (after deduction of sum or sums already paid), or any lesser sums for which any claim or claims can be settled, and will then be under no further liability in respect thereof except for any payment under Extension of Cover 3.1 'Defence – Settlement – Additional payments' incurred prior to such payment.

In the event of a claim or series of claims arising from an *occurrence* resulting in liability of the *insured* to pay a sum in excess of the Limits of Liability specified in the *schedule*, Zurich's liability for any payment under Extension of Cover 3.1 'Defence – Settlement – Additional payments' will not exceed an amount being in the same proportion as Zurich's payment bears to the total payment made by or on behalf of or to be made by the *insured* in satisfaction of the claim or claims.

6.9 Fraud

If the *insured* or anyone acting on the *insured's* behalf:

- 6.9.1 makes a fraudulent or exaggerated claim under this Policy;
- 6.9.2 uses fraudulent means or devices including the submission of false or forged documents in support of a claim whether or not the claim is itself genuine;
- 6.9.3 knowingly makes a false statement in support of a claim whether or not the claim is itself genuine;
- 6.9.4 submits a claim under this Policy for loss or damage which the *insured* or anyone acting on the *insured's* behalf or in connivance with the *insured* deliberately caused;
- 6.9.5 realises after submitting what the *insured* reasonably believed was a genuine claim under this Policy and then fails to tell us that the *insured* has not suffered any loss or damage; or
- 6.9.6 suppresses information which the *insured* knows would otherwise enable us to refuse to pay a claim under this Policy;

we will be entitled, to the extent permitted by law, to reduce the amount of any claim in proportion to the financial prejudice caused by the fraud, or to refuse to pay the whole of the claim and recover any sums that we have already paid in respect of the claim.

Where permitted to do so under the Insurance Contracts Act 1984, we may also notify the *insured* that we will be treating this Policy as having terminated with effect from the date of any of the acts or omissions set out in this condition.

If we terminate this Policy under this condition the *insured* will have no cover under this Policy from the date of termination and not be entitled to any refund of premium.

If any fraud is perpetrated by or on behalf of any *insured(s)* under this Policy without the knowledge of and not on behalf of any other *insured(s)*, this condition should be read as if it applies only to the claim of the fraudulent *insured(s)* and references to this Policy in this clause should be read as if they were references to the cover effected for the fraudulent *insured(s)* and not to the Policy as a whole.

6.10 Headings

Headings have been included for ease of reference, but do not form part of this Policy.

6.11 Insured's retained limit

Zurich will be liable only for the *ultimate net loss* in excess of the *insured's retained limit*.

The Self *Insured* Retention specified in the *schedule* applies to each *occurrence* and is payable by the *insured* at such time as is required by Zurich. Zurich's liability to indemnify the *insured* under this Policy is over and above the Self *Insured* Retention.

6.12 Inspection and audit

Zurich will be permitted but not obligated to inspect the *insured's* property and operations with notice to the *insured* and at any reasonable time agreed with the *insured*, such consent not to be unreasonably withheld. Neither our right to make inspections nor the making thereof nor any report thereon will constitute an undertaking on behalf of or for the benefit of an *insured* or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation.

Zurich may examine and audit the *insured's* books and records, as far as they relate to the subject matter of this Policy, at any time during the *period of insurance* and within three years after the final termination of this Policy. Zurich will provide notice of any such examination or audit and the timing of such examination or audit will be agreed with the *insured*, such agreement not to be unreasonably withheld or delayed.

6.13 Non-Imputation

Where there is more than one legal entity, company or person named on the *schedule* as the *insured*:

6.13.1 each *insured* shall be covered as if it made its own proposal for this insurance;

6.13.2 any declaration, statement, representation, non-disclosure or omission made in any proposal or in respect of a renewal or extension of this Policy shall be construed as a separate declaration, statement, representation, non-disclosure or omission by each *insured*; and

6.13.3 any knowledge possessed by any *insured(s)* shall not be imputed to the other *insured(s)*.

6.14 Liability not to be admitted

The *insured* must not admit liability for or offer to or agree to settle any claim without Zurich's prior written consent, such consent not to be unreasonably withheld or delayed. Zurich will be entitled to take over and defend any claim, with full discretion in the conduct of that claim.

6.15 Maintenance of Underlying Insurance

The Underlying Insurance specified in the *schedule* must be maintained in force as valid collectible insurance during the currency of this Policy, except for any reduction of the aggregate limits contained therein solely by reason of payment of claims. Failure to comply with the foregoing, or bankruptcy or insolvency of any of the Underlying Insurers will not invalidate this Policy but, in the event of such circumstances, Zurich will be liable only to the extent that we would have been liable had such circumstances not existed during the *period of insurance*.

The *insured* must give Zurich written notice as soon as practicable of any change in the scope of coverage or in the amount of Limits of Liability in the Underlying Insurance, and/or of the termination of any coverage, and/or exhaustion or likely exhaustion of aggregate Limits of Liability of any Underlying Insurance.

6.16 No cover under this Policy

Where the *insured* is not entitled to be indemnified under this Policy, Zurich owes no duty of any kind and has no liability of any kind to the *insured*.

6.17 Notice and proof of claim

Upon the discovery of any *personal injury, property damage, advertising liability* or loss or circumstance giving rise to, or which may give rise to, a claim on this Policy (whether or not the *insured* believes the claim amount might fall within the Limits of Liability of the Underlying Insurance specified in the *schedule* or within the Self *Insured* Retention amount stated in the *schedule*) under this Policy, the *insured* must:

- 6.17.1 give notice in writing to Zurich as soon as practicable after the *insured* becomes aware of such loss or circumstance and within 30 days thereafter (unless the *insured* can satisfy us why it is unable to meet that timeframe and, in that case, as soon as practicable) provide a written statement detailing all relevant information to the best of the *insured's* knowledge, including:
 - (a) the nature, cause and the amount of loss;
 - (b) the details of any actual or potential third party claimants;
 - (c) the date and manner the *insured* first became aware of the circumstance, loss or claim; and
 - (d) any other proof or information with respect to the claim reasonably requested by Zurich;
- 6.17.2 furnish to us details of any other insurance covering or which may cover the same loss;
- 6.17.3 take reasonable steps to prevent further loss; and
- 6.17.4 at all reasonable times permit us or our agents to reasonably inquire into, investigate and examine the circumstances of any loss or claim.

6.18 Payments in respect to Goods and Services Tax

When Zurich makes a payment under this Policy for the acquisition of goods, services or other supply, Zurich will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth), in relation to that acquisition, whether or not that acquisition is actually made.

When Zurich makes a payment under this Policy as *compensation* instead of payment for the acquisition of goods, services or other supply, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or supply.

6.19 Adjustment of Premium

If the first premium or any renewal premium for this Policy has been calculated, in whole or in part, based on estimates provided by the *insured*, the *insured* shall keep a record of all particulars relevant to that estimate and shall, at Zurich's reasonable written request, allow us to inspect that record.

Unless otherwise stated, the premium is adjustable at the end of the *period of insurance* based on the *insured's* actual turnover for the *period of insurance* plus statutory charges. Where applicable, the rate and basis of the adjustment is set out on the *schedule* to this Policy.

Any difference in premium shall be paid by or allowed to the *insured*, provided that the adjusted premium will not be less than any minimum premium which was agreed between the *insured* and Zurich at inception or the last renewal date of the Policy.

The *insured* shall, within 90 days after the expiry of each *period of insurance*, provide such information as Zurich may reasonably request to adjust the premium and shall, at Zurich's reasonable written request, allow Zurich to inspect records relating to the factors on which the premium will be adjusted for this purpose.

6.20 Proper law and jurisdiction

The construction, interpretation, and meaning of the provisions of this Policy will be determined in accordance with Australian law.

In the event of any dispute arising under this Policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, the *insured* will submit to the exclusive jurisdiction of any competent court in the Commonwealth of Australia.

A reference to any statute, regulation or subordinate legislation includes any amendment, replacement, successor or equivalent to or of that statute, regulation, or subordinate legislation.

6.21 Reasonable precautions

It is a condition precedent to Zurich's liability under this Policy that the *insured* will, at its own expense:

6.21.1 take, and cause to be taken, reasonable precautions to prevent *personal injury, property damage* and/or *advertising liability*;

6.21.2 comply with all statutory or local authority law, obligations and requirements, or equivalent;

6.21.3 take, and cause to be taken, reasonable precautions to prevent the manufacture, sale, or supply of defective *products*; and

6.21.4 take, and cause to be taken, reasonable precautions to withdraw, inspect, repair, replace, trace, recall, or modify any of the *products* containing any defect or deficiency of which the *insured* has knowledge or has reason to suspect.

6.22 Sanctions regulation

Notwithstanding any other terms or conditions under this Policy, Zurich will not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any *insured* or any other party to the extent that such cover, payment, service, benefit and/or any *business* or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.

6.23 Subrogation

Zurich waives all rights of subrogation under this Policy against:

6.23.1 any corporation or organisation, the majority of whose capital stock is owned or controlled by the *insured*; and

6.23.2 any corporation or organisation which, or person who, owns or controls the majority of the capital stock of any corporation or organisation to which, or person to whom, protection is afforded under this Policy, except that if such corporation, organisation or person is protected from such loss by any other policy of indemnity or insurance, Zurich's right of subrogation is not waived to the extent and up to the amount of such other policy.

6.24 Valuation and foreign currency

All premiums, limits, retentions, indemnity, and other amounts referred to in this Policy are expressed and payable, where due, in Australian currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated, or an element of loss under this Policy is stated in a currency other than Australian dollars, payment under this Policy will be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars as published or reported by the Reserve Bank of Australia on the date the final judgment is reached, the amount of the settlement is agreed upon, or the element of loss is due, as the case may be.

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