

# PUBLIC AND PRODUCTS LIABILITY

INSURANCE AT LLOYD'S

Newline Australia Insurance Pty Ltd ABN 81 118 089 651

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THIS IS TO CERTIFY that in accordance with the authorisation granted under Contract Number XXXXXX to the undersigned by certain Underwriters at Lloyd's, whose names and the proportions underwritten by them, can be ascertained by reference to the attached schedule or the said Contract which bears the Seal of the Lloyd's Policy Signing Office, and in consideration of the premium specified herein, the said Underwriters are hereby bound, each for his own part and not for one another, their Heirs, Executors and Administrators, to insure as attached:

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SIGNED for and on behalf of certain Underwriters at Lloyd's

BY

AT

ON this

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The subscribing Underwriters obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

All enquiries regarding this Insurance should be addressed to Newline Australia Insurance Pty Ltd. ABN 81 118 089 651  
Level 31, 570 Bourke Street, Melbourne, VIC 3000

## Schedule

<b>Policy Number:</b>	XXXXX
<b>Name Insured:</b>	XXXXX
<b>Address of Name Insured:</b>	XXXXX
<b>Business:</b>	XXXXX
<b>Broker:</b>	XXXXX
<b>Period of Insurance:</b>	From 4.00pm on XXXXX to 4.00pm on XXXXX Local standard time Any subsequent period for which the Insured shall pay and the Underwriters shall agree to accept a renewal premium
<b>Limits of Indemnity:</b>	<b>AUD\$XXXXX</b> any one Occurrence or all Occurrences of a series consequent upon one source or original cause.  PROVIDED THAT:  <b>a)</b> The liability of the Underwriters shall not exceed <b>AUD\$XXXXX</b> in the aggregate for any one Period of Insurance in respect of liability arising from the Products.  <b>b)</b> The liability of the Underwriters shall not exceed <b>AUD\$XXXXX</b> in the aggregate for any one Period of Insurance in respect of liability arising from Pollution or Contamination.  The Limits of Indemnity are inclusive of the Deductible
<b>First Premium:</b>	As agreed
<b>Policy Territory:</b>	This Policy shall only apply to Occurrences happening <b>(1)</b> in the Commonwealth of Australia <b>(2)</b> anywhere in the world in respect of liability arising from <b>(i)</b> the Products sold supplied or distributed by the Insured from any premises within (1) above <b>(ii)</b> business visits by directors of the Insured or non-manual employees ordinarily resident in any of the territories specified in (1) above <b>(3)</b> anywhere within the World arising from Business visits by manual employees ordinarily resident in any of the territories specified in (1) above Subject to the terms of Condition (12)
<b>Deductible:</b>	<b>AUD\$XXXXX</b>
<b>Underwriters:</b>	100% - Lloyd's Syndicate 1218 ODY.

**Memoranda attaching to and forming part of Policy No XXXXX in the name of XXXXX**

**1. Premium payment warranty**

It is warranted that all Premiums due to the Underwriters under this Policy are paid within 45 days from inception of the Period of Insurance.

It is further noted that payment of premium is a condition precedent for coverage to have the effect of being bound and valid under this Policy and that no cover is bound and the Policy is not valid until payment of premium.

Non-receipt by Underwriters of such Premium by 4.00pm of the date 45 days from inception of the Period of Insurance shall render this Policy void with effect from its inception.

**2. United States of America/Canada Exclusion Clause**

Notwithstanding anything previously contained in the Policy herein, this Policy does not apply to any claim judgement award or settlement made within any country or territory which operates under the laws of the United States of America or Canada or to any order made anywhere in the world to enforce such judgement award or settlement either in whole or in part, except for liability arising from business visits by directors of the Insured or non-manual employees ordinarily resident in the Commonwealth of Australia.

**All Memoranda are subject otherwise to the terms, exceptions and conditions of the Policy.**

Date

Signed  
For and on behalf of the  
Certain Underwriters at Lloyd's

## PUBLIC AND PRODUCTS LIABILITY INSURANCE

### *Important Notice to the Insured*

*Please read this policy carefully to ensure that it is in accordance with your requirements and that you understand its terms and conditions. The Underwriters should be contacted immediately if any correction is necessary.*

The **Underwriters** in consideration of the payment of premium by the **Insured** and subject to all terms Definitions Limits of Indemnity Exceptions Conditions and any Memoranda endorsed hereon will indemnify the **Insured** against all sums that the **Insured** shall become legally liable to pay for damages or compensation and claimants costs and expenses for accidental **Bodily Injury** or **Property Damage** or **Other Contingencies** arising out of an **Occurrence** within the Policy Territory during the Period of Insurance in connection with the **Business**. The **Underwriters** will also pay **Legal Costs** in addition to the Limits of Indemnity.

### DEFINITIONS

- (1) The **Insured** shall mean any person or company named in the Schedule and at the request of the **Insured** shall include:
  - (a) directors, partners and stockholders whilst acting in their respective capacities for the **Insured**;
  - (b) any **Person Employed** including **Medical Persons** but only whilst acting within the scope of their duties but only in respect of legal liability for which the **Insured** would have been entitled to indemnity under this Policy if the claim for which indemnity is sought had been made against the **Insured**;
  - (c) the officers, committees and members of the **Insured's** canteen, social, sports, educational and welfare organisations and first aid, fire security and ambulance services in their respective capacities as such;
  - (d) any director, partner or Employee of the **Insured** in respect of private work undertaken by any **Person Employed** for such director partner or Employee with the prior consent of the **Insured**;each of whom shall as if they were the **Insured** be subject to the terms of this Policy in so far as they can apply.
- (2) **Bodily Injury** shall mean accidental personal injury, sickness, disease or death and shall include but not by way of limitation mental injury, mental anguish, shock, false arrest or invasion of the right of privacy.
- (3) **Property Damage** shall mean accidental damage to loss of or destruction of material property.
- (4) The **Business** shall mean the business as stated in the Schedule and shall include:
  - (a) ownership, repair, maintenance and decoration of the **Insured's** own property and premises occupied by the **Insured** in connection with the **Business**;
  - (b) provision and management of canteen, social, sports, educational and welfare organisations for the benefit of any **Person Employed** and first aid fire security and ambulance services in connection with the **Business**;
  - (c) participation in exhibitions anywhere in the world in connection with the **Business**;
  - (d) private work undertaken by any **Person Employed** for any director, partner or employee of the **Insured** with the prior consent of the **Insured** in connection with the **Business**.
- (5) **Product** (or **Products** where applicable) shall mean goods including containers and packaging manufactured, sold, supplied, distributed, altered, constructed, erected, repaired, serviced, designed, tested, installed or processed by or on behalf of the **Insured** and which are not in the possession of the **Insured** at the time of the **Occurrence**.
- (6) **Occurrence** shall mean an accident or event including continuous or repeated injurious exposure to substantially the same general conditions which results during the Period of Insurance in **Bodily Injury** or

**Property Damage** or **Other Contingencies** neither expected nor intended from the standpoint of the **Insured**.

- (7) **Legal Costs** shall mean:
- (a) costs of legal representation at:
    - (i) any coroner's inquest or inquiry in respect of any death;
    - (ii) proceedings in any court arising out of any alleged breach of statutory duty resulting in any **Occurrence**;  
which may be the subject of indemnity under this Policy;
  - (b) all other **Legal Costs** and expenses incurred by or on behalf of the **Insured** in relation to any **Occurrence** which may form the subject of a claim for indemnity under this Policy;  
provided in each case they are incurred with the written consent of the **Underwriters**.
- (8) **Medical Persons** shall mean doctors, medical nurses and dentists.
- (9) **Deductible** shall mean the amount(s) which the **Insured** agrees to pay for each **Occurrence** in respect of all damages, compensation, claimant's costs and expenses and **Legal Costs** before the **Underwriters** shall be liable to make any payment.
- (10) **Person Employed** shall mean any:
- (a) employee being a person under a contract of service or apprenticeship with the **Insured**;
  - (b) person supplied under any Youth Training or similar government scheme;  
while working under the control of the **Insured** in connection with the **Business**.
- (11) **Other Contingencies** shall mean accidental nuisance, trespass or interference with any easement or right of air light water or way.
- (12) **Underwriters** shall mean certain **Underwriters** at Lloyds as stated in the Schedule of Subscribing **Underwriters**.

## EXTENSIONS

Unless otherwise stated the following Extensions are subject always to the terms Conditions and Exceptions contained in this Policy.

(1) **INDEMNITY TO PRINCIPAL**

As far as is necessary to meet the requirements of any contract or agreement entered into by the **Insured** with any Principal, the **Underwriters** will at the request of the **Insured** treat the Principal as though the Principal were also the **Insured** but only in respect of liability (as provided for herein) arising out of the performance of such contract by the **Insured** in connection with the **Business** provided that the Principal shall observe fulfil and be subject to the terms of this Policy insofar as they apply.

(2) **CROSS LIABILITIES**

Where there is more than one **Insured** this Policy shall apply to each **Insured** as though a separate policy had been issued to each provided always that the total liability of the **Underwriters** shall not exceed the Limits of Indemnity.

(3) **CONTINGENT MOTOR LIABILITY**

Notwithstanding Exception (7) (d) the **Underwriters** will provide indemnity to the **Insured** against legal liability arising out of the use in the course of the **Business** of any motor vehicle not the property of nor provided by the **Insured**.

The indemnity will not apply to legal liability:

- (a) in respect of **Property Damage** to such vehicle or to property conveyed therein;
- (b) in respect of which the **Insured** is entitled to indemnity under any compulsory motor insurance or indemnity under any other insurance;
- (c) arising from the use of any motor vehicle outside the Commonwealth of Australia.

For the purposes of this Extension the term "**Insured**" shall mean only the **Insured** named in the Schedule and no other party.

**(4) DAMAGE TO LEASED OR RENTED PREMISES**

Exception (9) shall not apply to **Property Damage** to premises (and/or fixtures and fittings thereof) leased or rented to the **Insured**.

Provided that this Extension shall not apply in respect of:

- (a)** liability which attaches solely by virtue of a contract and/or agreement;
- (b)** the first \$1,000 of each and every **Occurrence** caused otherwise than by fire or explosion;
- (c)** **Property Damage** to any such premises arising from any perils which the **Insured** is required to insure against under the terms of the lease or rental agreement.

## EXCEPTIONS

The **Underwriters** shall not be liable for:

- (1)** notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes any loss, damage or injury, cost or expense of whatsoever nature directly or indirectly caused by or resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a)** war invasion acts of foreign enemies hostilities or warlike operations (whether war be declared or not) civil war rebellion revolution insurrection civil commotion assuming the proportions of or amounting to an uprising military or usurped power; or
- (b)** any act of terrorism.

For the purpose of this Insurance, an act of terrorism means an act including but not limited to the use of force or violence and/or the threat thereof of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) committed for political religious ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

This Insurance also excludes loss, damage, bodily injury, cost or expense of whatsoever nature directly or indirectly caused by or resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to **(a)** and/or **(b)** above.

If the **Underwriters** allege that by reason of this exclusion any loss, damage, injury, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this Exception is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- (2)** any legal liability of whatsoever nature, directly or indirectly caused by or contributed to 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 explosive nuclear assembly or nuclear component thereof;
  - (c)** the furnishing by the **Insured** of service materials, parts or equipment in connection with planning, construction, maintenance or use of any nuclear facility including any nuclear reactor or device designed or used for:
    - (i)** separating the isotopes of uranium plutonium;
    - (ii)** processing or utilising spent fuel; or
    - (iii)** handling processing or packaging nuclear waste.
- (3)** **Bodily Injury** sustained by any **Person Employed**.
- (4)** legal liability arising under workers' compensation, unemployment compensation, disability benefits law or any similar law.
- (5)** **Property Damage** to any **Product** caused by any defect therein or the unsuitability thereof to fulfil its intended purpose.

- (6) the costs of recall, removal, repair, alteration, replacement or reinstatement of any **Product** necessitated by any defect therein or the unsuitability thereof to fulfil its intended purpose.
- (7) legal liability arising out of the ownership, possession, maintenance or use by or on behalf of the **Insured** of any:
- (a) aircraft or other aerial device;
  - (b) water-borne vessel or craft other than those used for business entertainment;
  - (c) hovercraft;
  - (d) arising out of the ownership, possession or use by or on behalf of the **Insured**, or any person or party entitled to indemnity, of any motor vehicle or trailer which is registered or is required to be registered by law, including vehicles subject to an unregistered vehicle permit, other than legal liability:
    - (i) arising out of the use of a vehicle off any road or road related area where such vehicle is subject to an unregistered vehicle permit;
    - (ii) in respect of liability for **Bodily Injury** only, liability which may be incurred under an agreement where the liability would not have arisen in the absence of the agreement;
    - (iii) the use of plant as a tool of trade;
    - (iv) the loading or unloading of any vehicle;
 except where indemnity is provided by any motor insurance policy or where insurance or security is required by law.
- (8) **Occurrences** arising out of or in connection with:
- (a) advice; } provided for a fee only
  - (b) design; } and not in connection with the
  - (c) specification; } supply of a **Product**.
- (9) **Property Damage** to property owned by or leased or rented to or in the care, custody or control of the **Insured** other than:
- (a) employees, directors, partners and/or visitors property;
  - (b) premises not owned by or leased or rented to the **Insured** at which the **Insured** is undertaking work in connection with the **Business**.
- (10) fines, penalties, aggravated, exemplary, punitive, multiple or liquidated damages.
- (11) **Occurrences** arising from any **Products** which to the knowledge of the **Insured** are for use in or incorporation into any aircraft or other aerial device.
- (12) **Occurrences** arising out of Pollution or Contamination other than caused by a sudden identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance.
- All Pollution or Contamination which arises out of one incident shall be deemed to have occurred at the time such incident takes place.
- The liability of the Company for all damages and compensation payable in respect of all Pollution or Contamination which is deemed to have occurred during the Period of Insurance shall not exceed the sum stated in the Schedule as the Limit of Indemnity for any one **Occurrence**.
- For the purpose of this Policy "Pollution or Contamination" shall be deemed to mean:
- (a) all Pollution or Contamination of buildings or other structures or of water or land or the atmosphere; and
  - (b) all loss or damage or injury directly or indirectly caused by such pollution or contamination.
- (13) legal liability assumed by the **Insured** by agreement (other than liability arising out of a condition or warranty of goods implied by law) and which would not have attached in the absence of such agreement.
- (14) **Occurrences** arising out of passing off or infringement of patent copyright trade mark or trade name.
- (15) any legal liability of whatsoever nature, directly or indirectly caused by or contributed to by or arising from:
- (a) asbestos, asbestos fibres, asbestos dust, or any materials containing asbestos;
  - (b) Chlorofluorocarbons, Chloro Fluoride Carbons (CFCs) or Chlorinated Hydrocarbons;

- (c) Chromated Copper Arsenate (CCA);
  - (d) electromagnetic fields (EMFs);
  - (e) Hepatitis Human T-Cell Lymphotropic Virus Type iii (HTLV iii) or Lymphadenopathy Associated Virus (LAV) or the mutants' derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome or any syndrome or condition of a similar kind howsoever it may be named;
  - (f) latex and/or latex protein and/or latex derivatives and/or latex substances, howsoever the latex, latex protein, latex derivatives or latex substances are named identified described or classified;
  - (g) lead;
  - (h) Methyl Tertiary Butyl Ether (MTBE);
  - (i) toxic mould or fungi and/or black mould or fungi;
  - (j) Polychlorinated Biphenyls (PCBs) also known as Askarels including polychlorinated biphenyl generated dibenzofurans and dioxins or any polychlorinated biphenyls-containing **Product** or material or derivative thereof or the presence of or the actual or threatened use installation withdrawal or disposal of any such **Product** or material;
  - (k) any **Product** containing silicone which is in any form implanted or injected in the body;
  - (l) tobacco or any tobacco **Products** (or ingredients thereof);
  - (m) Transmissible Spongiform Encephalopathy (TSE) Creutzfeldt-Jakob Disease (CJD) variant Creutzfeldt-Jakob Disease (vCJD) or new variant Creutzfeldt-Jakob Disease (nvCJD);
  - (n) Urea Formaldehyde or any **Products** containing Formaldehyde.
- (16) **Occurrences** arising directly or indirectly out of or alleged to have arisen from any wrongful act of directors or officers of the **Insured** in the discharge or performance of their duties as such other than claims for damages or compensation and claimant's costs and expenses consequent upon **Bodily Injury** or **Property Damage** or **Other Contingencies**.
- For the purpose of this Exception, "wrongful act" shall mean any actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty by the directors or officers in the discharge of their duties individually or collectively or any matter claimed against them solely by reason of their being directors or officers of the **Insured**.
- (17) This policy does not cover liability in respect of:
- (a) **Bodily Injury** or **Property Damage** arising, directly or indirectly out of, or in any way involving the **Insured's** "Internet Operations". This exclusion does not apply to **Bodily Injury** or **Property Damage** arising out of any material which is already in print by the manufacturer in support of its **Product**, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.  
 "Internet Operations" means the following:
    - (i) transfer of any computer data or programs by use of electronic mail systems by the **Insured** or the **Insured's** employees, including part-time and temporary staff, contractors and others within the **Insured's** operation 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;
    - (ii) access through the **Insured's** network to the world wide web or a public internet site by the **Insured's** employees, including part-time and temporary staff, contractors and others within the **Insured's** organisation;
    - (iii) 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
    - (iv) the operation and maintenance of the **Insured's** web site.

This exclusion does not apply to liability which arises irrespective of the **Insured's** internet operations.

Nothing in this exclusion shall be construed to extend coverage under this policy to any liability which would have not been covered in absence of this exclusion.
  - (b) **Property Damage** to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
    - (i) the use of any computer hardware or software;

- (ii) the provision of computer or telecommunication services by the **Insured** or on the **Insured's** behalf;
- (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

## CONDITIONS

- (1) This Policy and the Schedule shall be read together as one document and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear.
- (2) The **Insured** has a duty of disclosure under the Insurance Contracts Act 1984 and should the **Insured** fail to comply with that duty of disclosure or make a misrepresentation to the **Underwriters** before this Policy was entered into and such failure was fraudulent, then **Underwriters** may void the Policy Upon receipt of this Policy, the **Insured** agrees that it has been issued upon the truth of its declarations and representations made to the **Underwriters** or any of its agents relating to this Insurance.
- (3) The terms of this Policy shall not be waived altered or changed in any way except by Memoranda issued by the **Underwriters** and as soon as practicable within the Period of Insurance the **Insured** must notify **Underwriters** of every change that materially varies any of the facts or circumstances existing at the commencement of this Policy including but not limited to any merger or acquisition of another business and material change to the services offered or the entering into voluntary or involuntary bankruptcy receivership or liquidation.
- (4) If any part of the Deposit Premium is based on estimates furnished by the **Insured**. The **Insured** shall keep an accurate record containing all relevant particulars and shall allow the **Underwriters** to inspect such record. Within one month of the expiry of the Period of Insurance the **Insured** shall furnish such information as the **Underwriters** may require. The Deposit Premium shall thereupon be adjusted and the difference paid by or allowed to the **Insured** subject to the retention by the **Underwriters** of any Minimum Premium.
- (5) The **Insured** shall take reasonable precautions to prevent any event which may give rise to liability under this Policy and to maintain all buildings, furnishings, ways, works, machinery, plant and vehicles in sound condition and as soon as possible after discovery, cause, any defect or danger to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances may require.
- (6) The **Insured** shall as a condition, precedent to their right to be indemnified under this Policy, give to the **Underwriters** notice in writing as soon as possible of any **Occurrence** which may give rise to a claim.
- (7) No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the **Insured** without the written consent of the **Underwriters**. The **Underwriters** shall be entitled to conduct in the name of the **Insured** the defence or settlement of any claim or to prosecute in the name of the **Insured** for its own benefit any claim and shall have sole discretion in the conduct of any proceedings and in the settlement of any claim save as hereinafter provided in Conditions (8) and (9).
- (8) The **Insured** shall give all such assistance to deal with claims and conduct of legal proceedings arising therefrom as the **Underwriters** and/or its legal advisers and consultants may require.
- (9) In connection with any claims against the **Insured**, the **Underwriters** may at any time pay to the **Insured** the Limit of Indemnity or any lesser amount for which such claims can be settled and thereupon the **Underwriters** shall relinquish the control of such claims and be under no further liability in connection therewith except for costs and expenses which the **Underwriters** have already agreed to bear in respect of matters prior to the date of such payment.
- (10) The insurance afforded by this Policy is excess over and reduced by any other valid and collectable insurance available to the **Insured**. Valid and collectable insurance includes any self insurance plan which would be applicable to the loss.
- (11) The **Underwriters** or the **Insured** may cancel this Policy subject to the provisions of the Insurance Contracts Act 1984 after deducting the premium for the Period of Insurance up to the date of cancellation

calculated at pro rata for the period insured plus 25% always subject to a minimum premium being 25% of the annual premium.

- (12) Where any claim arises from an **Occurrence** outside the Commonwealth of Australia:
- (a) the **Insured** will be required to handle the defence and investigation of any claim where the **Underwriters** are by law or circumstance prevented from indemnifying the **Insured** locally;
  - (b) the **Underwriters** will indemnify the **Insured** in the Commonwealth of Australia in respect of any claim where the **Underwriters** are by law or circumstance prevented from indemnifying the **Insured** locally.
- (13) In the event of a dispute arising under this Policy such a dispute will be subject solely to the jurisdiction of any competent Court in the Commonwealth of Australia Any Summons notice or process to served upon **Underwriters** may be served at the:

**Lloyds General Representative,  
Suite 2, Level 21 Angel Place,  
123 Pitt Street, Sydney,  
NSW 2000, Australia**

who has authority to accept service and to enter an appearance on the **Underwriters** behalf and who is directed at the request of the **Insured** to give a written undertaking to the **Insured** that they will enter an appearance on the **Underwriters** behalf.