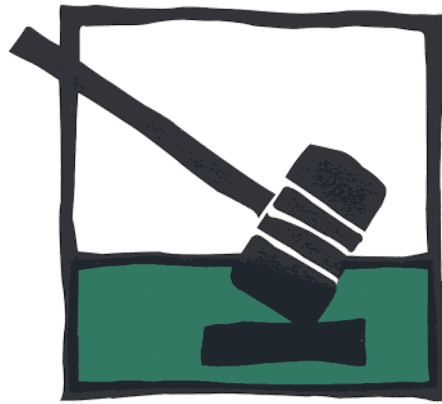


LIABILITY

P O L I C Y



*...covering most
areas of potential
liability to third
parties for personal
injury and/or
damage to property,
arising out of your
business.*

AON

This
LIABILITY POLICY

has been
developed and arranged by



one of Australia's leading insurance brokers

Underwritten by
THE INSURERS SHOWN ON THE SCHEDULE

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GENERAL PUBLIC AND PRODUCTS LIABILITY POLICY

1. THE COVER

LEGAL LIABILITY: In consideration of the Named Insured having paid or agreed to pay the premium stated in the Schedule and subject to the terms, Definitions, Exceptions, Conditions, provisions and Limits of Liability set out in this policy, the Insurer shall indemnify the Insured against the legal liability of the Insured to pay damages or compensation in respect of:

- (a) Injury to any Person;
- (b) Damage to property;
- (c) Advertising Injury,

occurring within the Geographical Limits during the Period of Insurance as a result of an Occurrence happening in connection with the Insured's Business.

1.2 **OTHER COSTS:** In addition to any indemnity pursuant to clause 1.1 the Insurer shall pay in connection therewith:-

- (a) all legal costs and other expenses incurred with the written consent of the Insurer;
- (b) all charges expenses and legal costs recoverable from the Insured by claimants in connection therewith;
- (c) all costs and expenses incurred by the Insured for legal representation at any coroner's inquest, fatal accident inquiry or court of summary jurisdiction;
- (d) expenses incurred by the Insured for first aid rendered for injury to others at the time of an Occurrence.

Even if the allegations of a suit are groundless, false or fraudulent, the Insurer has the right and duty to defend any Suit against the Insured for compensation or damages to which indemnity under this Policy applies (or would apply if the claim was sustained) and the Insurer may make such investigations and settlement of any claim as the Insurer deems expedient.

2. DEDUCTIBLE(S)

When specified in the Schedule each claim (or series of claims arising out of continuous or repeated exposure to substantially the same general conditions) arising under clauses 1.1 and/or 1.2 is subject to the Deductible shown. Should more than one Deductible apply under this Policy for any claim (or series of claims arising out of continuous or repeated exposure to substantially the same general conditions) such Deductibles shall not be aggregated and the highest single level of Deductible only shall apply.

3. LIMITS OF LIABILITY

The limit of the Insurer's liability in respect of any one Occurrence shall not exceed the Limit of Liability stated in the Schedule. All Injury to any Person, Damage to property or Advertising Injury arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.

The total aggregate liability of the Insurer during any one Policy Period for all claims arising out of the Products shall not exceed the Limit of Liability stated in the Schedule.

4. INTERPRETATION

4 DEFINITIONS

For the purpose of this Policy, the following definitions apply:

"INSURED" means:

- (a) The Named Insured stated in the Schedule and/or
- (b) (i) any subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management provided such companies are incorporated in the Commonwealth of Australia;

(ii) any new organisations acquired by the Insured described in (a) and (b) (i) above during the Policy Period, through consolidation, merger, purchase of the assets of or assumption of control and active management, provided that such acquisition or assumption is;

1. reported to the Insurer within ninety (90) days after it is acquired;

endorsed on this Policy;

in a business similar to the Business stated in the Schedule.

- (c) any director, officer, employee, partner or shareholder of the Named Insured or of a company designated in paragraph (b) above, but only whilst acting within the scope of their duties in such capacity.
- (d) any Person in respect of their liability arising out of the performance by the Insured designated in (a) and (b) above, of any contract or agreement for the performance of work for such person, but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as provided in this Policy.
- (e) any office bearer or member of the Insured's social and/or sporting clubs, first aid, fire and ambulance services, welfare or child care facilities formed with the consent of the Insured (other than an Insured designated in paragraph (d) above) in respect of claims arising from duties connected with activities of any such club or facility.
- (f) at the request of the Named Insured, any director or executive officer of the Named Insured or of a company designated in paragraph (b) above in respect of private work undertaken by the Insured's employees for such persons.
- (g) if the Insured is declared in the Schedule as a partnership or joint venture, any partner or member thereof but only with respect to their liability as a partner or member of such partnership or joint venture.
- (h) the personal representatives of the Insured in respect of liability incurred by the Insured whilst acting on behalf of the Insured.

PROVIDED THAT in relation to the foregoing:

- (i) such person(s) shall comply with and be subject to the terms, Definitions, Exceptions, Conditions and provisions of this Policy insofar as they can apply.
- (ii) each party comprising the Insured shall be considered as a separate and distinct insured party and the words "the Insured" shall be construed as applying to each insured party as if a separate policy had been issued to each of them and the Insurer waives all rights, remedies or relief to which the Insurer may become entitled by subrogation against any of the Insured in respect of any claim except with respect to any Person who is an Insured by way of Definition 4.1(d) where such waiver of subrogation shall only apply to claims which arise by virtue of Definition 4.1(d).
- (iii) nothing contained in this Definition or Provisos (i) or (ii) above shall operate to increase the Insurer's Limit of Liability.

"**THE INSURER**" is the company or companies named in the Schedule. If there is more than one company, each company shall be separately liable only to indemnify the Insured for that proportion of any claim as is set out in the Schedule.

"**ADVERTISING INJURY**" means:

libel, slander or defamation

(b) infringement of copyright or of title or of slogan

piracy or unfair competition or idea misappropriation under an implied contract

(d) invasion of privacy

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of the Insured's advertising activities or any advertising activities conducted on behalf of the Insured, in the course of advertising the Products, goods or services.

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

"BUSINESS" includes the provision and management of canteens, social sports and welfare organisations for the benefit of the Insured's employees and first aid, fire and ambulance services and maintenance of the Insured's premises and private work undertaken by the Insured's employees for any director or executive officer of the Insured.

"DAMAGE" to property means;

physical injury to or loss of or destruction of tangible property including loss of use at any time resulting therefrom;

- (b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an Occurrence and does not result from:
 - (i) delay in or lack of performance by or on behalf of the Insured of any contract or agreement;
 - (ii) the failure of the Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured. However this does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Products after such products have been put to use by any Person or organisation other than the Insured.

"EMPLOYEE" means any Person under a contract of service or apprenticeship with the Insured.

"GEOGRAPHICAL LIMITS" means anywhere in the World except the United States of America and Canada.

PROVIDED THAT

- (a) if the Insured has no legal presence, whether by an attorney or registered company, parent company or subsidiary in the United States of America or Canada, the Geographical Limits shall include the United States of America and Canada but only in respect to;
 - (i) Products exported to the United States of America and Canada without the knowledge of the Insured, the Insured's agents or employees;
 - (ii) Business visits by directors and employees normally resident in the Commonwealth of Australia other than employees who are engaged in manual labour during such visits;
- (b) the indemnity granted by this Policy in respect of any judgement, award or settlement made within countries which operate under the laws of the United States of America and/or Canada (or any Order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part) is subject to the following additional terms and exceptions in respect of such judgement, award or settlement;
 - (i) the Limit of Liability is inclusive of Other Costs as described in clause 2 of this Policy;
 - (ii) liability for Injury to any Person and/or Damage to property arising out of contamination or pollution as defined in exception 5.7.1 is hereby excluded. It is further agreed that the cost of preventing, removing, nullifying or cleaning up any seeping, contaminating or polluting substances shall also form part of this exception and shall not be recoverable under this policy;
 - (iii) in respect of all claims which fall to be considered under the terms of this proviso, it is hereby declared and agreed that should a dispute arise between the Insured (or any of them) and the Insurer over the application of this Policy, such dispute shall be determined in accordance with the law and practice of the Commonwealth of Australia.

"INJURY" means:

- (a) assault or battery except where committed by or at the direction of the Insured for any purpose other than the prevention or elimination of danger to persons or property;
- (b) bodily injury including illness, disability, shock, fright, mental anguish or mental injury and death and loss of services resulting therefrom;
false or wrongful arrest, detention or imprisonment and malicious prosecution;
- (d) libel, slander or defamation except where:
 - (i) the first publication or utterance happened prior to the commencement of this Policy; or
 - (ii) the injury arises out of Advertising Injury as defined herein.

"OCCURRENCE" means an event including continuous or repeated exposure to substantially the same general conditions which results in Injury to any Person, Damage to property or Advertising Injury where such injury, damage or Advertising Injury is neither expected nor intended from the standpoint of the Insured.

"PRODUCT" means anything after it has left the custody of the Insured which has been grown, manufactured, constructed, erected, installed, sold, supplied, distributed, treated, serviced, altered or repaired by the Insured and includes containers, labels and packing materials, directions, instructions and advice given or omitted to be given in connection with such Products.

"VEHICLE" means any type of machine on wheels or on self laid tracks made or intended to be propelled other than by manual or animal power and any trailer or other attachment whilst attached thereto.

"WATERCRAFT" means any vessel, craft or thing in excess of 8 metres in length made or intended to float on or travel on or through water.

- 4.2 **HEADINGS:** clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this Policy.
- 4.3 **PLURAL AND SINGULAR:** words importing the singular number shall include the plural and vice versa.
- 4.4 **SCHEDULES:** any schedules to this Policy and the provisions and conditions contained in such schedules shall have the same effect as if set out in the body of this Policy.
- 4.5 **PARTIES:** references to parties are reference to parties to this Policy.
- 4.6 **CLAUSES AND SCHEDULES:** references to clauses and schedules are reference to clauses and schedules respectively of this Policy.
- 4.7 **PERSONS:** references to persons shall be deemed to include references to individuals, companies, corporation, firms, partnerships, joint ventures, associations, organisation, trusts, states or agencies of state, government departments and local and municipal authorities.
- 4.8 **DEFINED EXPRESSIONS:** expressions defined in the main body of this Policy bear the defined meaning in the whole of this Policy including the recitals and any reference to such expressions in this Policy shall have that same defined meaning.

5. EXCEPTIONS TO INDEMNITIES

The Liability of the Insurer to indemnify the Insured pursuant to clause and to pay other costs pursuant to clause 1.2 shall not extend to any of the following:

5.1 AIRCRAFT AND WATERCRAFT

liability arising from the ownership, possession or use by the Insured of any Aircraft or Watercraft but this Exception shall not apply to Watercraft which are not owned by the Insured when such craft are;

- (a) operated by independent contractors provided that the Insured has not entered into a charter party agreement with such contractors; or
- (b) used by the Insured for business entertainment.

5.2 VEHICLES

Injury to any Person or Damage to property arising from the ownership, possession or use by the Insured of any Vehicle which is required by law to be registered.

If no indemnity is afforded by any other motor vehicle insurance or fund, this Exception 5.2 shall not apply where such injury and/or damage:

- (a) is caused by or arises from the delivery or collection of goods to or from any Vehicle where such damage occurs beyond the limits of any carriageway or thoroughfare;
- (b) arises out of the loading or unloading of or the delivery or collection of goods to or from any Vehicle used in work undertaken by or on behalf of the Insured but not in the physical or legal control of the Insured;
- (c) is caused by or arises out of or in connection with any Vehicle working as a tool of trade on any site where the Insured is undertaking work or at the premises of the Insured.

5.3 EMPLOYER'S LIABILITY

5.3.1 Injury to any Employee caused by or arising out of the employment of such Employee.

5.3.2 liability for which the Insured is entitled to seek indemnity under:

- (a) 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;
- (b) any scheme created by legislation to provide compensation to persons who sustain injuries arising out of or in the course of their employment.

and this Public and Products Liability Policy shall not be drawn into contribution with such insurance or scheme.

but Exceptions 5.3. and 5.3.2 shall not apply with respect to;

- (a) liability of others assumed by the Insured under written contract;
- (b) claims for loss of consortium from the spouse of such Employee.

5.4 INDUSTRIAL AWARDS

liability to or of any Employee of the Insured imposed by the provisions of any industrial award or agreement or determination where such liability would not otherwise have attached.

5.5 PROPERTY OWNED BY OR IN CARE, CUSTODY OR CONTROL OF THE INSURED

Damage to property owned by the Insured or held in trust or in the custody or control of the Insured but this Exception 5.5 does not apply to:

- (a) personal effects of directors, employees and visitors of the Insured;
- (b) premises (including fixtures and fittings) not owned by the Insured;
 - (i) at which the Insured is undertaking work in connection with the Business but no indemnity is granted for damage to that part of the property on which the Insured is working and which arises out of such work;
 - (ii) which are leased or rented to the Insured.
- (c) Vehicles (including spare parts and accessories thereon) not owned or used by the Insured in connection with the Business whilst within a car park belonging to or under the control of the Insured provided that such car park is not used by the Insured for reward.
- (d) any other property except property owned by the Insured and property described in (a), (b) and (c) above but the Insurer's liability in respect of this clause 5.5 (d) shall not exceed the Limit of Liability stated in the Schedule against this clause 5.5 (d).

5.6 PRODUCTS AND WORK PERFORMED

liability for:

- (a) the cost of making good, replacing or reinstating workmanship performed by the Insured which is or is alleged to be or was faulty;
but this exception 5.6 (a) does not apply to Damage to property resulting from but not within the scope of the foregoing paragraph.
- (b) the cost of making any refund of the price paid for any Products;
the cost of or damages claimed in relation to the withdrawal, recall, inspection, repair, replacement or loss of use of the Products or 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;
- (d) Damage to the Products other than those products repaired, serviced or treated by the Insured after such products were originally sold, supplied or distributed.

POLLUTION AND CONTAMINATION

5.7.1 liability arising out of discharge, dispersal, seepage, release or escape of smoke, vapours, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere, or water; but this Exception 5.7.1 does not apply where the liability arises from a sudden identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place.

5.7.2 any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this Exception 5.7.2 does not apply where clean-up, removal or nullifying expenses are incurred consequent upon a sudden identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place.

CONTRACTUAL LIABILITY

liability assumed by the Insured under any contract or agreement in connection with the Products but this Exception 5.8 does not apply to:

- (a) the extent that such liability would have been implied by law;
- (b) liability assumed by the Insured under a warranty of fitness or quality.

5.9 PROFESSIONAL LIABILITY

liability arising out of the rendering of or failure to render professional advice or service by the Insured or error or omission connected therewith, but this Exception 5.9 does not apply to:

- (a) Injury to any Person or Damage to property arising therefrom providing such professional advice or service is not given for a specified fee; or
- (b) 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.

5.10 REQUIREMENT TO INSURE

Damage to property rented to, leased to, occupied by, or used by, or in the care, custody or control of the Insured to the extent the Insured is under contract to provide insurance thereof.

5.11 FINES, PENALTIES AND/OR LIQUIDATED DAMAGES

finest, penalties and/or liquidated damages imposed by law or assumed by the Insured under any contract, warranty or agreement.

5.12 AGGRAVATED, PUNITIVE OR EXEMPLARY DAMAGES

aggravated, punitive or exemplary damages.

5.3 ADVERTISING INJURY

liability arising out of Advertising Injury for:

- (a) offences committed prior to the inception date of this Policy
- (b) offences made at the direction of the Insured with knowledge of the illegality or falsity thereof
breach of contract, other than misappropriation of advertising ideas under an implied contract
- (d) incorrect description of the price of the Products, goods or services
- (e) infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the Products, goods or services sold, offered for sale or advertised, but this Exception 5.13 does not apply to titles or slogans
- (f) failure of the Products, goods or services to conform with advertised performance, quality, fitness or durability
- (g) any Insured whose business is advertising, broadcasting, publishing or telecasting.

4 WAR

any consequence of war invasion act of foreign enemy hostilities (whether war declared or not) civil war rebellion revolution insurrection or military or usurped power.

5.15 RADIOACTIVITY

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 component thereof.

5.16 ASBESTOS

Injury to any Person or Damage to property caused by or arising directly or indirectly out of or in connection with:

- (a) any mining, handling, processing, manufacture, sale, transportation, distribution, storage or use of asbestos, asbestos products or asbestos contained in any products;
- (b) any process of decontamination, treatment, removal or control of asbestos or materials containing asbestos. This exclusion shall only apply to those claims arising in consequence of inhalation of asbestos fibre or Damage to or loss of use of property due to the presence of asbestos in any form.

5.17 AIRCRAFT PRODUCTS

Injury to any Person or Damage to property caused by or arising out of or in connection with the Products which the Insured knew or had reasonable cause to believe would be or are installed in any Aircraft unless such products do not affect the flying capabilities of the Aircraft.

6. GENERAL CONDITIONS

6. NOTIFICATION

On the Insured becoming aware of any Occurrence giving rise or likely to give rise to a claim under this Policy or upon receipt by the Insured of notice of any claim or subsequent proceeding, the Insured shall as soon as practicable thereafter:

- (a) give notice thereof in writing to the Insurer;
- (b) preserve any Property or things which might prove necessary or useful by way of evidence in connection with any claim and, so far as may be reasonably practicable, no alteration or repairs shall without the consent of the Insurer be made after the Occurrence until the Insurer shall have had an opportunity of inspection.
- (c) forward to the Insurer every letter, writ, summons or process as soon as practicable after receipt thereof and give notice to the Insurer in writing as soon as practicable after the Insured shall have knowledge of an impending prosecution or inquest in connection with any Occurrence.
- (d) when called upon to do so furnish to the Insurer in writing all details of the Occurrence together with such evidence and explanations as the Insurer may reasonably require.

6.2 SUBROGATION AND SETTLEMENT OF CLAIMS

6.2.1 No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of the Insurer who shall have the right and duty to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for the Insurer's own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the Insured shall give all such information and assistance as the Insurer may require.

6.2.2 The Insurer may pay to the Insured, the amount of the applicable Limit of Liability of the Insurer or such lesser sum for which the claim can be settled subject in either case to deduction of any sum or sums already paid as compensation in respect of such claim and the Insurer shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which the Insurer is liable hereunder incurred prior to the date of such payment.

6.3 PRECAUTIONS BY INSURED

The insured shall:

- (a) take reasonable precautions to prevent or minimise liability and maintain efficient ways, works, machinery, fencing and plant and shall make reasonable endeavours to comply with all statutory obligations and regulations imposed by any authority;
- (b) at its own expenses take reasonable action to trace recall or modify any of the Products containing any defect or deficiency of which the Insured has knowledge or has reason to suspect, including (but not limited to) any Products subject to Government or statutory ban.

6.4 OBSERVANCE OF TERMS AND CONDITIONS

A breach of, or failure to observe and fulfil the terms of this policy by any party comprising the Insured shall not prejudice the rights of the remaining parties comprising the Insured.

6.5 INSOLVENCY OR BANKRUPTCY

The insolvency or bankruptcy of any party comprising the Insured shall not release the Insurer from any of its obligations hereunder.

6.6 ADJUSTMENT OF PREMIUM

Where this Policy is arranged on an adjustable basis the Insured shall keep accurate records and make declarations to the Insurer in respect of the Period of Insurance so that the necessary adjustment of premium may be made subject to the application of any minimum premium required.

6.7 SERVICE OF LEGAL PROCESS

The Insured may effect service of any legal process in connection with this Policy upon the Insurer or any of them by delivering that process by hand or by post to the address for service stated in the Schedule and such service shall be deemed to be personal service upon the Insurer or any of them as the case may be.

6.8 AUSTRALIAN JURISDICTION

The Insurer and the Insured hereby submit to the jurisdiction of all Australian Courts in relation to all matters arising under this Policy.

6.9 NOTICES

The Insured may give any notice or advice to be given under this Policy to the Insurer by giving the same to the office of the Insurer at the address for service stated in the Schedule.

6.10 CANCELLATION

This Policy may be cancelled at any time at the request of the Insured in which case the Insurer shall retain premium commensurate with the risk attaching for the period this contract was in force.

The Insurer may also cancel this Policy on any grounds subject to the Insurance Contracts Act where the Insurer has given the Insured written notice of such Cancellation in accordance with the Act.

The Insurer's notice of cancellation takes effect the earlier of the following times:

- (i) the time when another Policy of insurance between the Insured and the Insurer or some other insurer, being a Policy that is intended by the Insured to replace this Policy is entered into; or
- (ii) 4.00 o'clock in the afternoon of the thirtieth business day after the day on which notice was given to the Insured.

In the event that the Insurer cancel this Policy the Insurer will repay on demand a rateable proportion of the premium for the unexpired period of insurance from the date of cancellation.

7. ENDORSEMENTS TO THE POLICY

The following endorsements to the standard cover will be deemed to be incorporated in this contract only when specified in the Schedule by the appropriate number and title.

7.1 PRODUCTS EXPORTED TO THE UNITED STATES OF AMERICA OR CANADA

Proviso (a) (i) appearing in the Definition of Geographical Limits is amended to read:

'Products exported to the United States of America or Canada'

Aon Risk Services Australia Limited A.C.N. 000 434 20

Offices located throughout Australia

AON