



## **CGU Insurance Limited Intermediary Business, Corporate NSW Broadform Liability Insurance Policy**

The Insured named in the Schedule having made to CGU Insurance Limited A.B.N. 27 004 478 371 (the Company) a written proposal which is deemed to be incorporated herein and having paid the premium stated in the Schedule then subject to the terms conditions and exclusions contained in or endorsed on this Policy the Company will pay to or on behalf of the Insured all sums provided by the Policy which the Insured shall become legally liable to pay as compensation for Personal Injury or Property Damage caused by an Occurrence within the Geographical Limits as stated herein in connection with the Insured's Business.

### **Limit of Liability**

The limit of the Company's liability in respect of any one Occurrence shall not exceed the Limit of Liability stated in the Schedule for Public Liability or Products Liability. All Personal Injury and Property Damage 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 limit of the Company during any one Policy Period for all claims arising out of Products Liability shall not exceed the Limit of Liability stated in the Schedule.

Provided that the Limit of Liability in respect of Occurrences in the United States of America or Canada or their Protectorates or Territories will be inclusive of Supplementary Payments and will apply in the aggregate to all claims in any one Policy Period.

### **Supplementary Payments**

The Company will pay in addition to the applicable Limit of Liability

1. all expenses incurred by the Company, all costs taxed against the Insured in any suit defended by the Company, and all interest on the entire amount of any judgement which occurs after the entry of the judgement and before the Company has paid or tendered or deposited in Court that part of the judgement which does not exceed the limit of the Company's liability thereon,
2. expenses incurred by the Insured for the first aid to others at the time of an Occurrence for Personal Injury covered by this Policy,
3. reasonable expenses incurred by the Insured at the Company's request in assisting the Company in the investigation or defence of any claim excluding loss of earnings.

The Company shall have the right and duty to defend any suit against the Insured seeking compensation on account of such Personal Injury or Property Damage even if the allegations of the suit are groundless, false or fraudulent and may make such investigation and settlement of any claim or suit as it deems expedient. The Company shall not be obliged to pay any claim or judgement or to defend any suit after the Company has discharged its liability under this Policy.



## Geographical Limits

This Policy applies in respect of Occurrences anywhere in the world but does not apply to or insure any liability or claims arising from or in respect of:

1. the Business carried on by the Insured at or from any premises situated outside Australia, or
2. any contract entered into by the Insured under the terms of which work is to be performed outside Australia, or
3. any exports by the Insured, his agents or servants to the United States of America or Canada.

## Definitions

Where appearing in the Policy the following words shall mean -

### 1. "Insured"

Each of the following is insured under this Policy to the extent set forth below:

- (a) The Named Insured stated in the Schedule;
- (b) All subsidiary companies (now or hereafter constituted) of the Named Insured whose place of incorporation is within Australia and whose business falls within the definition of the Named Insured's Business;
- (c) Any Director, Executive Officer, Employee, Partner or Shareholder of the Named Insured or of any company designated in paragraph (b) above but only while acting within the scope of their duties in such capacity;
- (d) Any party with whom the Named Insured (or any company designated in paragraph (b) above) has entered into an agreement for the purpose of the Business, but only for Occurrences for which the Named Insured above would be liable in the absence of the agreement and only to the extent that the agreement requires the Named Insured to indemnify that party in relation to the Occurrence;
- (e) any incorporated or unincorporated association or organisation including their office bearers and members organised by the Insured (other than an Insured designated in definition 1(d)) or their employees with the consent of the Insured for the purpose of providing canteen, social, sports, welfare and or child care organisations or first aid, medical, fire or ambulance services for such employees.

### 2. "Personal Injury" means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury;
- (b) false arrest, false imprisonment, malicious prosecution and humiliation;
- (c) libel, slander, defamation of character;
- (d) wrongful entry or wrongful eviction or other invasion of the right of private occupancy;
- (e) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property, which occurs during the Policy Period.

### 3. "Property Damage" means:

- (a) physical injury to or destruction or loss of tangible property which occurs during the Policy Period and any loss of use of that property resulting therefrom; or
- (b) loss of use of tangible property which has not been physically injured or destroyed or lost which is caused by physical injury to or destruction or loss of other tangible property which occurs during the Policy Period.

### 4. "Occurrence" means an event including continuous or repeated exposure to substantially the same general conditions, which causes Personal Injury or Property Damage neither of which is expected or intended from the standpoint of the Insured.

### 5. "Medical Persons" means medical doctors, medical nurses, dentists and first aid attendants.



6. **"Public Liability"** means liability covered by this Policy but does not include Products Liability.
7. **"Products Liability"** means Personal Injury or Property Damage:
  - (a) caused by any defect, or the harmful nature of any of the Insured's Products;
  - (b) resulting from any defect or deficiency in any direction or advice given at any time or intended to be given by the Insured concerning the use or storage of the Insured's Products.
8. **"Insured's Products"** means anything, including any packaging or container thereof (after it has ceased to be in the possession or control of the Insured) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by the Insured.
9. **"Vehicle"** means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.
10. **"Policy Period"** means the duration of this Policy as stated in the Schedule incorporated into the Policy.
11. **"Business"** means the business stated in the Schedule and shall include the activities of any canteen, social, sports, welfare, and /or child care organisation or first aid, medical, fire or ambulance services.
12. **"Watercraft"** means any vessel, craft or thing made or intended to float on or in or travel on or through water.
13. **"Aircraft"** means any vessel, hovercraft, craft or thing designed to transport persons or property in or through the air or space.
14. **"Schedule"** means New Policy Schedule, Renewal Schedule or Endorsement Schedule issued by the Company.
15. **"Deductible"** means the amount payable by the Insured in respect to each Occurrence and includes all Supplementary Payments.
16. **"Tool of Trade"** means any vehicle which has a tool or plant forming part of or attached to or used in connection with it while such tool or plant is engaged on a work site, but does not include:
  - (a) Vehicles whilst in transit to or from any worksite; or
  - (b) Vehicles used for transport or haulage.

## Exclusions

The Company shall not be liable to indemnify the Insured in respect of -

### 1. Employer's Liability

- (a) Liability for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in the Insured's service, or through the breach of any duty owed to that person, where the Insured
  - (1) is indemnified or entitled to be indemnified (either in whole or in part) in respect for claims for damages under a policy of insurance (which expression includes arrangements made by the Insured to provide accident insurance for the Insured's workers under a licence to self insure) arranged (whether required by law or not) in accordance with any workers' compensation legislation or accident compensation legislation ; or
  - (2) would have been indemnified or entitled to be indemnified had the Insured arranged a policy of insurance as required by such legislation.



- (b) Liability for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in the Insured's service in Western Australia, other than a person of whom the Insured is deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Rehabilitation Act 1981 (WA);
- (c) Liability for mental anguish suffered by any person arising out of, or in the course of, that person's employment by or service to the Insured;
- (d) Liability for Personal Injury arising out of the harassment, libel, slander, defamation or humiliation of, or discrimination against, any person while in the Insured's service or while employed by the Insured;
- (e) Liability of a type in respect of which indemnity previously would have been provided under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current Policy Period; and
- (f) Any other liability imposed by the provisions of any workers compensation legislation or accident compensation legislation or industrial award, agreement or determination.

This exclusion does not apply to the liability of others assumed by the Insured under a written contract where the contractual liability has been notified and specifically accepted by the Company.

## **2. Motor Vehicles**

Liability to pay compensation for:

- (a) Personal Injury arising out of the ownership, operation or use by the Insured of any Vehicle where such Personal Injury occurs in circumstances in which such Vehicle is required by law to have compulsory insurance against such Personal Injury, or where such insurance cover is in force or
- (b) Property Damage arising out of the ownership, operation or use by the Insured of any Vehicle that is registered.

Provided that this exclusion does not apply to Vehicles whilst being operated or used by the Insured as a Tool of Trade.

## **3. Aircraft and Watercraft**

Liability to pay compensation for Personal Injury or Property Damage arising from the ownership, maintenance, possession, operation, use or legal control by the Insured of:

- (a) any Aircraft, or
- (b) any Watercraft or vessel exceeding eight (8) metres in length.

## **4. Property in Physical or Legal Control**

Liability to pay compensation for Property Damage to:

- (a) property owned by the Insured
- (b) property leased, rented or in the physical or legal control of the Insured.

This exclusion shall not apply to liability for Property Damage to:

- (1) premises which are leased or rented by the Insured for the purpose of the Insured's Business;
- (2) vehicles (not belonging to or used by or on behalf of the Insured) in the physical or legal control of the Insured where such property damage occurs whilst any such vehicle is in a car park owned or operated by the Insured;
- (3) any property not under lease or rental agreement in the physical or legal control of the Insured up to a limit of \$100,000 (or any other amount if specified in the Schedule) for any one Occurrence.



**5. Faulty Workmanship**

Any liability for the cost of performing, completing, correcting or improving any work done or undertaken by the Insured.

**6. Damage to Insured's Products**

Liability to pay compensation for:

- (a) physical injury to or destruction or loss of the Insured's Products or any part of those Products arising out of them or any part of them;
- (b) loss of use of any tangible property caused by physical injury to or destruction or loss of the Insured's Products or any part of those Products arising out of them or any part of them.

**7. Product Recall and Repair**

Liability to pay compensation for damages claimed for the withdrawal, inspection, repair, replacement or loss of use of the Insured's Products.

**8. Aircraft Products**

Any liability arising out of the selling, leasing, hiring or manufacture and/or supply of parts and/or products that are used with the Insured's knowledge in Aircraft or any aerial device.

**9. Contractual Liability**

Liability to pay compensation for Personal Injury or Property Damage where the liability has been assumed solely under an agreement unless such liability

- (a) would have attached in the absence of such agreement, or
- (b) is specifically allowed by the Company's written endorsement, or
- (c) is assumed by the Insured under a warranty of fitness or quality, or is implied by law, in respect of the Insured's Products.

**10. Professional Liability**

Liability to pay compensation for the rendering of or failure to render professional advice or service by the Insured or error or omission connected therewith, but this Exclusion does not apply to the rendering 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.

**11. Libel and Slander**

Any liability to pay compensation arising out of the publication or utterance of a libel or slander:

- (a) made prior to the Policy commencing on the date stated in the Schedule, or
- (b) made at the direction of the Insured with the knowledge of the falsity thereof, or
- (c) related to advertising, publishing or printing, broadcasting or telecasting activities conducted by or on behalf of the Insured.

**12. Fines and Punitive Damages**

Any liability for fines, penalties, punitive, exemplary, or aggravated damages.

**13. Pollution**

- (a) Liability to pay compensation for Personal Injury or Property Damage caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater) but this exclusion does not apply if the actual discharge, dispersal, release or escape
  - (1) is neither reasonably expected nor intended by the Insured; and,
  - (2) is the consequence of a sudden and instantaneous cause which takes place at a clearly identifiable point in time during the Policy Period;
- (b) Liability for any costs or expenses incurred in the preventing, removing, nullifying, or cleaning up any discharge, dispersal, release or escape as described in (a) above, unless such costs or expenses are consequent upon an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identifiable point in time during the Policy Period and results in Personal Injury or Property Damage neither of which is otherwise excluded by this Policy:



Provided that the total aggregate liability of the Company during any one Policy Period in respect of all claims arising out of such Personal Injury or Property Damage or such costs or expenses shall not exceed the Limit of Liability stated in the Policy Schedule.

**14. Asbestos**

Liability to pay compensation for Personal Injury or Property Damage caused by, arising out of, or in connection with, the use or presence of asbestos.

**15. Nuclear**

Liability to pay compensation for Personal Injury or Property Damage of whatsoever nature directly or indirectly caused or contributed to by or arising from ionising radiation, or contamination by radioactivity from nuclear fuel or from any nuclear waste. For the purpose of this Exclusion combustion shall include any self-sustaining process of nuclear fission.

**16. War**

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

**17. Terrorism**

Liability to pay compensation for Personal Injury or Property Damage directly or indirectly caused by or contributed to, by, or arising from or happening through or in connection with any act of terrorism. Terrorism is defined as being an act, which may include but is not limited to an act involving the use of force or violence and/or 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) which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, to fear.

In accordance with the Terrorism Act 2003 this exclusion will not apply in respect of an act deemed by the Federal Treasurer to be a declared terrorist incident.

**18. Electronic Data**

Liability to pay compensation for Personal Injury or Property Damage in respect of any claim of whatsoever nature which consists of or arises directly out of or in connection with:

1. total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data and/or software,
2. error in creating, amending, entering, deleting or using Electronic Data and/or Software, or
3. total or partial inability or failure to receive, send, access or use Electronic Data and/or Software from any time or at all,

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation, or processing by electronic or electromechanical data processing or electronically controlled equipment.

Software means programs, procedures, and routines associated with the operation of electronic or electromechanical data processing or electronically controlled equipment, including any operating system.



## Conditions

### 1. Claims Control

Notice in writing shall be given as soon as possible to the Company of every Occurrence, claim, writ, summons, impending proceedings, impending prosecution and/or inquest in respect of which there may arise a liability under this Policy.

- (a) The Insured shall not without the Company's consent in writing make any admission, offer, promise or payment in connection with any Occurrence or claim and if the Company so desires it shall be entitled to take over and conduct in the Insured's name the defence or settlement of any claim and the Company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient.
- (b) The Insured shall use the best endeavours to preserve any property, products, appliances, plant or other 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 repair shall be effected without the Company's consent until the Company shall have had the opportunity of inspection.
- (c) The Company shall be entitled to prosecute in the Insured's name at the Company's own expense and for the Company's own benefit any claim for indemnity for damages or otherwise.
- (d) The Company shall have full discretion in the conduct of any proceedings in connection with any claim and the Insured shall give all information and assistance as the Company may require in the prosecution, defence or settlement of any claim.
- (e) In the event of an Occurrence, the Insured shall promptly take at the Insured's expense all reasonable steps to prevent other Personal Injury or Property Damage arising out of the same or similar conditions, but such expense shall not be recoverable under this Policy.
- (f) The Company shall be entitled to attend any inquest in respect of which there may arise liability under this Policy.

### 2. Discharge of Liabilities

The Company may at any time pay to the Insured in respect of all claims against the Insured arising directly or indirectly from the one source or original cause the amount of the liability or such other amount specified in respect thereof (after deduction of any sum or sums already paid by the Company which sum or sums would reduce the amount of the Company's unfulfilled liability in respect thereof) or any lesser sum for which the claim or claims can be settled and upon such payment the Company shall relinquish conduct or control of and be under no further liability under the Policy in connection with such claim or claims except for costs charges or expenses recoverable from the Insured in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently) or incurred by the Company or by the Insured with the Company's written consent prior to the date of such payments.

### 3. Reasonable Care

The Insured shall

- (a) take all reasonable precautions to
  - (1) prevent Personal Injury and Property Damage;
  - (2) prevent the manufacture, sale or supply of defective products; and
  - (3) comply and ensure that the Insured's workers, servants and agents comply with all Statutory Obligations, By-Laws or Regulations imposed by any Public Authority in respect thereof for the safety of persons and property;
- (b) at the Insured's own expense take reasonable action to trace, recall or modify any products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.



**4. Cross Liabilities**

Where more than one party comprises the Insured each of the parties shall be considered as a separate and distinct unit and the word Insured shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties provided that nothing in this clause shall result in the increase of the Company's Limit of Liability in respect of any Occurrence or Policy Period.

**5. Alteration of Risk**

The Insured must provide the Company with immediate written notice of:

- (a) every change which materially varies any of the facts or circumstances existing at the commencement of this Policy that comes to the Insured's knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be the Insured's knowledge; and
- (b) If the Insured does not provide such notification before the happening of an Occurrence giving rise to a claim under this Policy then, subject to the Insurance Contracts Act, 1984, the Company may refuse to pay a claim, either in whole or in part.

**6. Subrogation**

In the event of payment under this Policy to or on behalf of the Insured, the Company shall be subrogated to all the Insured's rights of recovery against all persons and organisations and the Insured shall execute and deliver instruments and papers and do all that is necessary to assist in the exercise of such rights.

**7. Other Insurances**

If the Insured makes a claim under this Policy in respect of an Occurrence recoverable under this Policy which Occurrence is or may be covered in whole or in part by any other Insurance, then the Insured must advise the Company of the full details of such other Insurance when making a claim under this Policy.

Subject to the Contracts Act, 1984, the Company reserves the rights to seek contribution from the other insurer(s).

**8. Insurance Arranged By Principal**

If the Insured enters into an agreement with any other party (who for the purpose of this clause is called the "Principal") pursuant to which the Principal has agreed to provide a policy of insurance which is intended to indemnify the Insured for any loss or liability arising out of the performance of the said agreement then the Company will (subject to the terms and conditions of this Policy) only indemnify the Insured for loss or liability not covered by the policy of insurance provided by the Principal.

**9. Cancellation**

The Named Insured may cancel this Policy by giving thirty (30) days notice in writing to the Company.

After cancellation by the Insured the premium for the period to cancellation shall be adjusted on a pro-rata basis plus ten per cent (10%) of the premium for the unexpired period.

The Company may cancel this Policy in any of the circumstances set out in the Insurance Contracts Act, 1984.

When the premium is subject to adjustment, cancellation will not affect the Insured's obligation to supply such information as the Company may require for the adjustment of the premium.

Cancellation will not affect the Insured's obligations to pay the amount of adjustment applicable up to the date of cancellation.

**10. Inspection and Premium Adjustment**

The Company shall be permitted but not obligated to inspect the Insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe. The Company may



examine and audit the Insured's books and records at any time during the Policy Period and extensions thereof and within three (3) years after the final termination of this Policy, as far as they relate to the subject matter insured.

If the first or renewal premium for the Policy or part thereof shall have been calculated on estimates furnished by the Insured, then the Insured shall keep an accurate record containing all particulars relative thereto and shall at all times allow the Company to inspect such records. The Named Insured shall within thirty (30) days after the expiry of each Policy Period furnish to the Company such particulars and information as the Company may require. The premium for such period shall thereupon be adjusted and any difference paid or allowed to the Insured as the case may be subject to receipt and retention of any minimum premium charged by the Company.

**11. Insurance Contracts Act**

Nothing contained in this Policy shall be construed to reduce or waive either the Insured's or the Company's privileges, rights or remedies available under the Insurance Contracts Act, 1984 as amended.

**12. Agreement Limiting Rights**

If the Insured has entered into any agreement which excludes or limits a right which the Insured may have against any party, then, subject to the Insurance Contracts Act, 1984, the Company will not be liable for any claim under the Policy to the extent of such exclusion or limitation.

**13. Headings**

The headings in this policy are for ease of reference only and shall not be deemed any part of the context or to effect the interpretation of this Policy.

**14. Australian Jurisdiction**

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

**15. Goods and Services Tax**

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

Where the Company makes a payment under this policy as compensation instead of payment for the acquisition of goods, services or other supply, the Company will reduce the amount of payment by the amount of any imput tax credit that the Insured would have been entitled to under A New tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.