



ZURICH

Because life changes.

AllGuard Business Insurance

Liability Section

Introduction

This Cover Section forms part of Your Policy and must be read together with the General Conditions and Limitations of Cover, the Schedule, the Proposal and any Endorsements.

This Cover Section only forms part of Your Policy when LIABILITY SECTION is shown in the Schedule and is limited to the Period of Insurance indicated.

Definitions

The following definitions shall apply to words used in this Cover Section and to words used in Endorsements that apply to this Cover Section.

ADVERTISING LIABILITY

Advertising Liability means:

- (a) infringement of copyright of or passing off of title or slogan;
- (b) unfair competition, piracy or idea misappropriation contrary to an implied contract; or
- (c) invasion of privacy,

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities conducted by or on behalf of You, in the course of advertising Your Products.

AIRCRAFT

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

BUSINESS

Business means all activities and operations of Your Business shown in the Schedule including the ownership and tenancy of premises, private work carried out with Your consent by Your employees for any of Your directors or senior executive officers, the provision or management of canteen, social or sports organisations for Your employees, and internal first aid given by Your Medical Persons, fire services and ambulance services.

EXCESS

Excess means the amount You first bear in relation to each Occurrence. The Excess applies to all amounts payable under this Cover Section including the indemnity provided under additional payments.

HOVERCRAFT

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

INCIDENTAL CONTRACTS

Incidental Contracts means:

- (a) any written agreement or lease of real or personal property which does not impose on You;
 - (i) an obligation to insure such property; or
 - (ii) any liability regardless of fault;
- (b) any written contract with any public authority for the supply of water, gas or electricity, but only to the extent of indemnifying any such authority in respect of liability arising out of Your Business other than contracts for the performance of work or provision of services by You.

INSURED PERSON

Insured Person means You and the parties described under the heading Cover For Others.

MEDICAL PERSONS

Medical Persons means legally qualified medical practitioners, legally qualified registered nurses, dentists and first aid attendants.

NORTH AMERICA

North America means:

- (a) the United States of America and Canada; and
- (b) any state or territory incorporated in, or administered by, the United States of America or Canada.

OCCURRENCE

Occurrence means an event or series of events including continuous or repeated exposure to substantially the same general conditions which results, unexpectedly and unintentionally from Your standpoint, in Personal Injury or Property Damage or Advertising Liability during the Period of Insurance.

All Personal Injury or Property Damage happening during the Period of Insurance attributable to one source or to a common cause or to the same general conditions shall be deemed to be 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 shall be deemed to arise out of one Occurrence.

PERSONAL INJURY

Personal Injury means:

- (a) bodily injury, death, sickness, disease, shock, fright, mental anguish or mental injury;
- (b) false arrest, false detention, wrongful imprisonment, malicious prosecution;
- (c) wrongful entry or wrongful eviction or other invasion of privacy;
- (d) defamation, libel and slander;
- (e) assault and/or battery.

PRODUCTS

Products means anything which is or is deemed to have been manufactured, grown, extracted, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by You (including packaging or containers) in the course of Your Business and after it has ceased to be in Your physical custody or under Your legal control.

PROPERTY DAMAGE

Property Damage means:

- (a) physical injury to or loss of or destruction of tangible property including loss of use of that property 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 physical damage to or destruction of other tangible property.

TERRITORIAL LIMITS

Territorial Limits means anywhere in the world.

TOOL OF TRADE

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

YOU or YOUR

You or Your for the purpose of this Cover Section only, the definition of You or Your is extended to include any of Your subsidiary companies now or hereinafter formed or constituted.

Provided that:

- (a) any such incorporation is notified to Us within 90 days of the incorporation date;
- (b) the newly incorporated company conducts the same type of business as Your Business;
- (c) the newly incorporated company is incorporated in the Commonwealth of Australia.

VEHICLE

Vehicle means any machine and attachments thereto including a trailer designed to travel on wheels or on self-laid tracks and to be propelled by other than manual or animal power.

WATERCRAFT

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

Cover

Subject to the Limits of Liability stated in the Schedule and the terms and conditions of this Cover Section, We will pay all sums which the Insured Person shall become legally liable to pay for compensation in respect of:

- Personal Injury
- Property Damage
- Advertising Liability

happening during the Period of Insurance within the Territorial Limits as a result of an Occurrence in connection with Your Business or Products.

Extensions of Cover

Additional Payments

In addition to the Limits of Liability stated in the Schedule We will pay as additional payments all:

- reasonable legal costs and expenses incurred by the Insured Person with Our written consent in the defence of any claim;
- expenses incurred by the Insured Person for first aid to others;
- reasonable expenses incurred by You for the temporary repair or shoring up or preservation of property which has been damaged;
- interest accruing after entry of judgment against the Insured Person until We have paid, tendered or deposited in court such part of the judgment as does not exceed the Limit of Liability;

resulting from an Occurrence which is covered by this Cover Section,

provided that;

- (a) if a payment exceeding the Limit of Liability has to be made to dispose of a claim, Our liability to pay any additional payments shall be limited to that proportion of the those amounts as the Limit of Liability bears to the amount paid to dispose of the claim;
- (b) in the event of a claim covered by this Cover Section being made against an Insured Person in any Court or before any other legally instituted body in North America, the Limits of Liability shall apply to such claim inclusive of all additional payments;
- (c) We shall not be obligated to pay any compensation or additional payments, or judgment or to defend any suit after Our Limits of Liability have been exhausted by payment of claims, judgments and/or settlements.

Cover For Others

This Cover Section is extended to cover the following:

- (a) any of Your directors, executive officers or employees but only whilst acting within the scope of their duties in such capacity;
- (b) any office bearer or member of the canteen, social, or sports organisations for Your employees and internal first aid given by Your Medical Persons, fire or ambulance services formed with Your consent, but only whilst acting within the scope of their activities in such capacity;
- (c) any of Your directors or senior executives in respect of private work undertaken by Your employees for such director or senior executive, but only after they have obtained Your prior consent to this private work to be undertaken;
- (d) any principal but only for their liability for Personal Injury or Property Damage that is directly caused by Your performance of the work for that principal and only to the extent that We would cover You under this Cover Section for Your liability to that principal had the principal made a claim against You in respect of the circumstances giving rise to the principal's liability;

Provided that:

the work was carried out by You in an attempt to comply with a contract to perform work that was made between You and the principal; and

Our liability shall not exceed the lesser of the minimum amount of liability insurance cover required by the contract to perform the work and the Limit of Liability shown in the Schedule; and

for avoidance of doubt it is further provided that where a principal makes a claim under this clause, the Employer's Liability Exclusion shall apply so that We will not pay for that principal's liability for Personal Injury to any person in the service of either:

- (i) You; or
- (ii) that principal.

Limit of Liability

Our liability to pay compensation as a result of an Occurrence shall not exceed the Limit of Liability stated in the Schedule.

Our total aggregate liability to pay compensation in respect of or in any way related to Your Products during any one Period of Insurance shall not exceed the Limit of Liability stated in the Schedule.

Exclusions

We will not pay anything in respect of:

1. Employer's Liability

- (a) Personal Injury to any person arising out of, or sustained in the course of the employment of such person in the service of any Insured Person or through the breach of any duty owed to that person, where any Insured Person:
 - (i) is indemnified or entitled to be indemnified (either in whole or in part) in respect of claims for damages under a policy of insurance (which expression includes arrangements made by any Insured Person to provide accident insurance for any Insured Person's workers under a licence to self insure) arranged (whether by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
 - (ii) would have been indemnified or entitled to be indemnified (either in whole or in part) had any Insured Person arranged a policy of insurance as required by such legislation.
- (b) Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in any Insured Person's service in Western Australia, other than a person of whom any Insured Person is deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Rehabilitation Act 1981 (WA).

- (c) mental anguish, shock or fright suffered by any person arising out of, or in the course of, that person's employment by, or service to, any Insured Person.
- (d) Personal Injury arising out of the wrongful or unfair dismissal, denial of natural justice, harassment, libel, slander, defamation, misleading representation, misleading advertising or humiliation of, or discrimination against, any person while in any Insured Person's service, prospective employment or while employed by any Insured Person.
- (e) which indemnity previously would have been provided in whole or in part 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 Period of Insurance of this Cover Section.
- (f) the imposition of any liability by the provisions of any workers' compensation legislation or accident compensation legislation or any industrial award, agreement or determination.

2. Vehicles

Personal Injury or Property Damage caused by or arising out of the use of or operation by an Insured Person of any Vehicle which is registered or in respect of which insurance is required by virtue of any legislation.

Exclusion 2. shall not apply to an Insured Person's liability for Personal Injury or Property Damage arising from:

- (a) the actual loading, unloading, delivery or collection of goods to or from any Vehicle;
- (b) the use of any Tool of Trade either on any site where an Insured Person is undertaking work or at Your premises;

Proviso (b) does not extend cover to the use of any Tool of Trade, either on any site where an Insured Person is undertaking work or at Your Premises, whilst in transit or whilst being used for transport or haulage.

- (c) the use or operation of any unregistered forklift either on any site where an Insured Person is undertaking work or at Your Premises.

3. Property in Physical or Legal Control

Property Damage to the following property that is not owned by You but which is in Your physical or legal control:

- (a) any Aircraft;
- (b) any Hovercraft;
- (c) any Watercraft that is not on dry land;
- (d) any Vehicle leased to You;
- (e) any Vehicles in a car park owned or operated by You for reward as a principal part of Your Business;
- (f) all other property,

provided that We do cover Your liability for:

- (i) Property Damage to:
 - premises leased or rented to You;
 - premises that You temporarily occupy in order for You to carry out work; and
 - personal effects of Your directors, employees and visitors;
 up to the Limit of Liability for General Liability;
- (ii) Property Damage to all other property,

but subject to cover being limited to a maximum of \$100,000 any one Occurrence and in the aggregate during any one Period of Insurance for such property Damage.

4. Property Worked Upon

- (a) Property Damage to that part of any property upon which an Insured Person is or has been working where the Property Damage arises from that Insured Person's work; or
- (b) the cost of performing, correcting or improving any work undertaken by an Insured Person.

5. Damage to Products

Property Damage to Products if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

6. Recall of Products

the withdrawal, recall, inspection, repair, adjustment, replacement, removal, disposal or loss of use of the Products or of any property of which such Products form a part.

7. Products Guarantee

any Products warranty or guarantee given by You or on Your behalf.

Exclusion 7. shall not apply to the requirements of any Federal or State legislation as to product safety.

8. Pollution

- (a) Personal Injury or Property Damage directly or indirectly arising out of 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);
- (b) Personal Injury or Property Damage directly or indirectly arising out of 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;
- (c) the cost of removing, nullifying or cleaning up Pollutants;
- (d) the cost of preventing the escape of Pollutants.

Exclusion 8. (a) and (c) shall not apply where the claim arises from a sudden identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place and occurs outside of North America, however the total aggregate Limit of Liability during any one Period of Insurance shall not exceed the Limit of Liability stated in the Schedule.

9. Professional Liability

the rendering of or failure to render professional advice or service provided by or on behalf of an Insured Person or any error or omission connected therewith.

Exclusion 9. shall not apply in respect to:

- (a) Personal Injury or Property Damage arising therefrom providing such professional advice or service is not given for a fee; or
- (b) the rendering of or the failure of professional medical advice by Medical Persons employed by You to provide first aid or medical services on Your premises.

10. Design, Specification, Formula

any design, plan, specification, formula or pattern provided by an Insured Person or any error or omission connected therewith.

Exclusion 10. shall not apply in respect of any design, plan, specification, formula or pattern about any Products, which is not given for a fee.

11. Aggravated, Punitive or Exemplary Damages, Fines or Penalties

any fines, penalties, exemplary, punitive, liquidated or aggravated damages.

12. Computers, Computer Software and Computer Consulting

- (a) Property Damage to electronic data, or any consequential loss resulting from such Property Damage, resulting from an Insured's Person's use of any computer hardware and/or software;
- (b) any claims based upon or arising from any act, error, or omission in the provision of computer services by any Insured Person or on their behalf.

13. Watercraft, Aircraft, Hovercraft

Personal Injury or Property Damage caused by or arising directly or indirectly out of or in connection with:

- (a) (i) any Watercraft exceeding 8 metres in length,
except where such Watercraft are owned and operated by others and used by an Insured Person for Business entertainment;
- (ii) any Hovercraft;
- (iii) any Aircraft;
- (iv) any property used for the purpose of an airport or any Aircraft landing strip.
- (b) Your Products which an Insured Person knew or has reasonable cause to believe would be, or are installed in any Hovercraft, Aircraft or other aerial device.

14. Defamation, Libel, Slander

the publication or utterance of a defamation, libel or slander:

- (a) made prior to the commencement of the Period of Insurance;
- (b) made by an Insured Person at Your direction or with Your authority with knowledge of its falsity; or
- (c) related to advertising, broadcasting, publishing or telecasting activities conducted by You or on Your behalf.

15. Advertising Liability

Advertising Liability:

- (a) for statements made at the direction of an Insured Person with the knowledge of the illegality or falsity thereof;

- (b) for breach of contract, other than misappropriation of advertising ideas contrary to an implied contract;
- (c) for infringement or passing off of a trade mark, service mark or trade name on any Products, goods or services sold, offered for sale or advertised. This does not apply to infringement of titles or slogans;
- (d) arising from the export of the Products to, or business visits by executives or salespersons to North America, notwithstanding the terms of sub paragraphs (i) and (ii) of Exclusion 22;
- (e) for any Insured Person whose Business is advertising, broadcasting, publishing or telecasting;
- (f) for incorrect description of the price of Products, goods or services;
- (g) for failure of Products, goods or services to conform with advertised performance, quality, fitness or durability;
- (h) for acts, errors or omissions committed prior to the inception date of this Cover Section.

16. Contractual Liability

any liability or obligation assumed by an Insured Person under any agreement or contract except to the extent that:

- (a) the liability or obligation would have been implied by law;
- (b) the liability or obligation arises from Incidental Contracts;
- (c) the liability or obligation is assumed by an Insured Person under any warranty under the requirement of Federal or State legislation in respect to product safety;
- (d) the liability or obligations is assumed under those agreements specified in the Schedule.

17. Tobacco

the inhalation or ingestion of, or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

18. Construction

Personal Injury or Property Damage caused by the demolition, underpinning, removal of support, dewatering, alteration, renovation, construction, erection of and/or addition to any building, structure, plant or equipment by or on behalf of an Insured Person except for contracts for alterations or renovations not exceeding in total cost the sum of \$100,000.

19. Assault and Battery

Personal Injury or Property Damage arising directly or indirectly out of assault and battery committed by an Insured Person.

Exclusion 19. shall not apply when such assault and battery is committed for the purpose of preventing or eliminating danger to persons or property.

20. Intentional Conduct

any alleged or actual fraudulent, dishonest, malicious, intentional or criminal act or omission of an Insured Person.

21. Loss of Use

loss of use of tangible property which has not been physically injured, or lost or destroyed resulting from:

- (a) a delay in or lack of performance by or on behalf of an Insured Person in relation to any contract or agreement;
- (b) the failure of the Products to meet the level of performance, quality, fitness or durability expressly or implied, warranted or represented by an Insured Person.

Proviso (b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Products after such Products have been put to use by any person or organisation other than You.

22. Territorial Limits

any liability:

- (a) occurring in North America;
- (b) caused by or arising out of the Products knowingly exported by the Insured Person or its agents to North America;
- (c) where claims are made upon an Insured Person outside Australia where the Insured Person is represented by a branch or company or firm or individual holding the Insured's power of attorney; or
- (d) where claims arise out of any contract entered into by an Insured Person under the terms of which work is to be performed outside Australia.

Exclusion 22. shall not apply to:

- (i) Products exported to North America without the knowledge of You, Your agents or employees;
- (ii) Business visits by executives and salespersons normally resident in the Commonwealth of Australia.

23. Asbestos

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

- (a) mining, processing, transport, distribution, handling, storage and/or use of asbestos, asbestos Products, Products containing asbestos or asbestos contained in Products;
- (b) manufacture, processing and/or sale of asbestos, asbestos Products, materials or Products containing asbestos or asbestos contained in Products; or
- (c) any process of removal, decontamination, treatment or control of asbestos or materials containing or covered with asbestos;

Exclusion 23. shall only apply to those claims arising out of:

- (i) the inhalation, ingestion or digestion of asbestos fibre's or asbestos material;
- (ii) any injury or disease caused, aggravated, accelerated or exacerbated, in whole or in part, by exposure to asbestos; or
- (iii) Damage to, loss of use of, or diminution in value of property due to the presence of asbestos.

Special Conditions

1. Reasonable Care and Precautions

Notwithstanding, Condition 1. - Precautions, noted in the General Conditions and Limitations, the following is applicable for this Cover Section.

- (a) You must exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition.
- (b) The Insured Persons shall take all reasonable care and precautions:
 - (i) to prevent Personal Injury, Property Damage or Advertising Liability losses;
 - (ii) to prevent the manufacture, sale or supply of defective Products;
 - (iii) to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.

- (c) You shall at Your own expense withdraw, inspect, repair, replace, trace, recall or modify any of the Products containing any defect or deficiency of which You have knowledge or have reason to suspect.

2. Liability not to be Admitted

The Insured Persons shall not admit liability for or offer to or agree to settle any claim without Our written consent. We shall be entitled to take over and defend, any claim with full discretion in the conduct of that claim.

3. Subrogation

Any Insured Person shall at any time, at the request and expense of Us, permit all reasonable steps required to enforce any rights to which We would be entitled.

4. Proper Law and Jurisdiction

- (a) The construction, interpretation and meaning of the provisions of this Cover Section shall be determined in accordance with Australian law.
- (b) In the event of any dispute arising under this Cover Section, including but not limited to its construction and/or validity and/or performance and/or interpretation, You will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

5. Cross Liability

When an Insured Person consists of more than one party, the Insured Person shall be considered as a separate Insured Person as though a separate policy had been issued to each of the said parties,

provided that Our Limits of Liability and Additional Payments will apply as though there were not separate policies issued to each party.