

EXCLUSIONS

Updated 1 July 2023

This Policy does not cover any liability directly or indirectly caused by, arising out of or in any way connected with:

Advertising Injury

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

- Failure of performance of contract, but this shall not relate to claims resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;
- Incorrect description of any article or commodity; or
- Mistake in advertised price.

Aircraft and Watercraft Products

Any Product which is incorporated into the structure, machinery or controls of any Aircraft, aerial device, Watercraft or hovercraft.

Aircraft, Watercraft, Hovercraft

The ownership, maintenance, operation, possession or use by or on behalf of the Insured of:

- Any Aircraft or aerial device;
- Any Watercraft exceeding 10 metres in length; or
- Any hovercraft.

Asbestos

Any Asbestos.

Change in Business

Any change in the nature of the Insured's Business which:

- Occurred during the Period of Insurance; and
- Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy.

For the purposes of this exclusion, where the Insured is a corporate body, the knowledge of any director or officer of the Insured shall be deemed to be the knowledge of the Insured.

Contractual Liability

Liability assumed under the terms of a contract, agreement, guarantee or warranty unless, and then only to the extent that, the Insured would have been liable in the absence of such contract, agreement, guarantee or warranty; or

Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.

Electronic Data

Injury, Damage, Advertising Injury or any other loss, cost or expense of whatsoever nature directly or indirectly caused by or resulting from or in connection with any actual or alleged:

Unauthorized or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of Electronic Data, including, but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non- public information;

Violation of any statute, regulation, common law, or any other law regulating or protecting access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of Electronic Data.

This Exclusion applies to, among other things, damages or amounts associated with any notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other loss, cost or expense, whether incurred by the Insured or others, arising out of any access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information that is subject to this Exclusion. However, this Exclusion will not apply to any resultant Injury as defined in Sub- Section 2.10.1 or Damage as defined in Sub-Section 2.5.1.

Faulty Workmanship

Any liability arising out of or in any way connected with the cost of reinstating, repairing, replacing, performing, completing, correcting or improving any faulty work done or undertaken by or on behalf of an Insured.

Fraud

Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Section 3 of this Policy.

Injury to Workers

Injury to any Worker, provided that if the Insured:

- Is required by law to insure or otherwise fund, whether through self- insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or
- Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or employee within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such law, then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, policy of insurance or self-insurance arrangement had the Insured complied with its obligations pursuant to such Law.

Liquidated or Punitive Damages

Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.

Loss of Use

The loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or
- The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical Damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.

Nuclear

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

- Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission or fusion; or
- The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

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

Pollution

The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

Testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising Pollutants or their effect; or

The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others.

Provided that this Exclusion 7.14.1, 7.14.3, 7.14.4 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place during the Period of Insurance and outside of the United States of America, Canada and their respective protectorates and territories.

The total aggregate liability of the Insurer for all claims covered in any one Period of Insurance in respect of Exclusion 7.14 shall not exceed the Limit of Indemnity shown in the Schedule.

Prior Claims

Claims made prior to or pending at the inception of this Policy;

Claims arising out of, based upon or attributable to any circumstance which may reasonably be expected by any Insured to give rise to a Claim, that is known to the Insured prior to inception of the Policy; or

Claims derived from the same or essentially the same facts as alleged in any Claim made prior to or pending at the inception of the Policy.

Product Guarantee

Any product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Australian Federal, State or Territory legislation with respect to Product safety and information.

Professional Indemnity

The rendering of or failure to render professional advice or service or any error or omission connected therewith.

However, this Exclusion shall not apply to:

- the Insured's liability in respect of Injury, Damage, Advertising Injury resulting from the provision of professional advice or services, or any error or omission in connection with the Insured's Products, which advice or professional service is not given for a fee; or
- the rendering of first aid or medical services on the Insured's premises by persons employed by the Insured. For the purpose of this Sub- Section medical services excludes advice or services provided by a qualified medical practitioner.

Property in Custody or Control

Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:

- Premises (or to contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical Damage to or destruction of that part of any premises or contents on which the Insured is or has been working if the physical Damage or destruction arises from such work;
- Premises tenanted by the Insured;
- Directors', employees' and visitors' clothing and personal effects; or

- Other property not owned by the Insured temporarily in the Insured's possession provided:
7.18.4.1 No indemnity is granted for liability in respect of physical Damage to or destruction of that part of any property upon which the Insured is or has been working if the physical Damage or destruction arises from such work; and

Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.

The Insurer's Limit of Indemnity under this Sub-Section 7.18.4 does not exceed \$500,000 each and every Occurrence and in the aggregate for any one Period of Insurance.

Recall of Products

The withdrawal, recall, inspection, repair, adjustment, removal, replacement or loss of use of any Product or work completed for the Insured and/or the withdrawal or recall of any property of which such Product forms a part.

Reinstatement, Repair or Replacement of Products

Damage to any Product or any property of which such Product forms a part if such Damage is attributable to any defect therein or the harmful nature or unsuitability thereof, however this Exclusion shall not apply to Damage to other property resulting therefrom.

Damage to any part of any property that must be repaired, reconditioned, reinstated, corrected or replaced by reason of incorrect work performed by the Insured or on the Insured's behalf, or by reason of materials or equipment which are or are proved to be defective or inadequate in connection with such work, however this Exclusion does not apply to Damage resulting from such work.

Retroactive Date

any Occurrence happening prior the Retroactive Date.

Sanctions

Any coverage of whatsoever nature that is in violation of any applicable trade or economic sanctions, law or regulation including but not limited to sanctions administered and enforced by the United Nations, the United States Treasury Department's Office of Foreign Assets Control (OFAC), or underlaws or regulations of the European Union, United Kingdom, New Zealand or Australia.

Terrorism

Injury, Damage, Advertising Injury or any other loss, cost or expense of whatsoever nature directly or indirectly caused by or resulting from or in connection with Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss. This Exclusion also excludes any Injury, Damage, Advertising Injury or any other loss, 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 Terrorism. If the Insurer alleges that by reason of this exclusion any Injury, Damage, Advertising Injury loss, cost or expense is not covered by this Policy, the burden of proving the contrary shall be upon the Insured. In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

Tobacco

Injury sustained due to 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.

Vehicles

The ownership, maintenance, operation, possession, use by or on behalf of the Insured of any Vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there exists a statutory scheme providing compensation for Injury, but this exclusion does not apply to:

- Injury for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to that law requiring a policy of liability insurance to be in force;
- Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any Vehicle or trailer for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to that law requiring a policy of liability insurance to be in force;
- Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any Vehicle or trailer;
- Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any Vehicle or trailer or of the load carried thereon; or Damage to any Vehicle or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking which Damage arises directly out of such parking.

War

Injury, Damage, Advertising Injury or any other loss, 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 war and military action, which include without limitation the following:

- War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or Damage to property by or under the order of any government or public or local authority;

Bushfire

The following Exclusion is added to the Policy:

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with Bushfire or escape of Bushfire.

For the purposes of this endorsement, Bushfire means any fire in any area of vegetation of any type, howsoever such fire was caused and notwithstanding whether such fire was natural or manmade (whether accidental, intentional, or the result of a controlled burn), in whole or in part, including, but not limited to, the following types of fires: scrub fire, bush fire, desert fire, escaped prescribed fire, forest fire, grass fire, ground fire, hill fire, range fire, woodland fire or fire at the interface of any woodland and urban area. Bushfire also includes all smoke, heat, soot, fumes or other by-products associated with or resulting in any way from such bushfire.

Sexual Abuse

The following Exclusion is added to the Policy:

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with Sexual Abuse or allegation of Sexual Abuse.

For the purposes of this endorsement, Sexual Abuse means any assault, abuse or conduct of a sexual nature, any type of molestation, indecent exposure, sexual harassment or intimidation, whether such act is the subject of criminal investigation or not.

Underground Services (without enquiry)

The following Exclusion is added to the Policy:

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with Damage to existing underground services, including, but not limited to, water, gas, sewerage or fuel pipes, electric or telephone cables, optic or telecommunication wires or cables and any such service's supports and other apparatus used therewith or any underground property or structure including their contents.

Provided that this Exclusion does not apply if, prior to the commencement of any work, the Insured has enquired with the relevant public authority or owner of such service, property or structure as to:

the exact location of such service, property or structure;

- has traced their existence and identified their location insitu; and
- has taken all precautions to avoid such service, property or structure.

All other terms and conditions of this Policy remain unchanged.

Welding

The following Exclusion is added to the Policy:

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with the use of any electric, oxy-acetylene or similar welding or cutting equipment, including any allied processes, by or on behalf of the Insured unless such welding or cutting was done in full compliance with Australian Standard AS1674 "Safety in Welding and Allied Processes", including any amendments thereto, or any reissuance or replacement thereof.

Communicable Disease

The following Exclusion is added to the Policy:

This Policy does not cover any liability directly or indirectly caused by, arising out of or in any way connected with an actual or alleged Communicable Disease.

This Exclusion applies even if the claims against the insured allege negligence or wrongdoing in the:

- supervising, hiring, employing, training or monitoring of others that may be infected with and spread a Communicable Disease;

- testing for a Communicable Disease;
- failure to prevent the spread of a Communicable Disease; or
- failure to report a Communicable Disease to authorities. For the purposes of this endorsement, Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
 - the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not; and
 - the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and
 - the disease, substance or agent can cause or threaten damage to human health or human welfare.

The following are additional exclusions that apply (see the full policy schedule for all terms and conditions:

- Sexual/escort services exclusion
- Medical Malpractice/Medical treatment risk exclusion
- Water activities exclusion
- Injury to worker Exclusion
- Silica dust exclusion
- Tax notices exclusion