



# Chubb Broadform Liability Insurance Policy Schedule and Wording

CHUBB®

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## Important Notices

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### Duty of Disclosure

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#### *Your Duty of Disclosure*

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

#### *What you do not need to tell us*

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

#### *If you do not tell us something*

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

### General Insurance Code of Practice

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We are a signatory to the General Insurance Code of Practice (the Code). The objectives of the Code are to further raise standards of service and promote consumer confidence in the general insurance industry. Further information about the Code and your rights under it is available at [www.codeofpractice.com.au](http://www.codeofpractice.com.au) and on request.

## Privacy Statement

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Chubb Insurance Australia Limited (Chubb) is committed to protecting your privacy. This document provides you with an overview of how we handle your personal information. Our Privacy Policy can be accessed on our website at [www.chubb.com/au](http://www.chubb.com/au).

### Personal Information Handling Practices

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#### *Collection, Use and Disclosure*

We collect your personal information (which may include sensitive information) when you are applying for, changing or renewing an insurance policy with us or when we are processing a claim in order to help us properly administrate your insurance proposal, policy or claim.

Personal information may be obtained by us directly from you or via a third party such as your insurance intermediary or employer (e.g. in the case of a group insurance policy).

When information is provided to us via a third party we use that information on the basis that you have consented or would reasonably expect us to collect your personal information in this way and we take reasonable steps to ensure that you have been made aware of how we handle your personal information.

The primary purpose for our collection and use of your personal information is to enable us to provide insurance services to you. Sometimes, we may use your personal information for our marketing campaigns, in relation to new products, services or information that may be of interest to you.

We may disclose the information we collect to third parties, including service providers engaged by us to carry out certain business activities on our behalf (such as assessors and call centres in Australia). In some circumstances, in order to provide our services to you, we may need to transfer personal information to other entities within the Chubb Group of companies (such as the regional head offices of Chubb located in Singapore, UK or USA), or third parties with whom we or those other Chubb Group entities have sub-contracted to provide a specific service for us, which may be located outside of Australia (such as in the Philippines or USA). Please note that no personal information is disclosed by us to any overseas entity for marketing purposes.

In all instances where personal information may be disclosed overseas, in addition to any local data privacy laws, we have measures in place to ensure that those parties hold and use that information in accordance with the consent you have provided and in accordance with our obligations to you under the Privacy Act 1988 (Cth).

#### *Your Choices*

In dealing with us, you agree to us using and disclosing your personal information as set out in this statement and our Privacy Policy. This consent remains valid unless you alter or revoke it by giving written notice to our Privacy Officer. However, should you choose to withdraw your consent it is important for you to understand that this may mean we may not be able to provide you or your organisation with insurance or to respond to any claim.

#### *How to Contact Us*

If you would like a copy of your personal information, or to correct or update it, please contact our customer relations team on 1800 815 675 or email [CustomerService.AUNZ@chubb.com](mailto:CustomerService.AUNZ@chubb.com).

If you have a complaint or would like more information about how we manage your personal information, please review our Privacy Policy for more details or contact the Privacy Officer, Chubb Insurance Australia Limited, GPO Box 4907, Sydney NSW 2001, Tel: +61 2 9335 3200 or email [Privacy.AU@chubb.com](mailto:Privacy.AU@chubb.com).

## Policy Wording

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In consideration of the payment of the premium and in reliance upon all statements and declarations made and information provided to Chubb Insurance Australia Limited (ABN 23 001 642 020) (**Chubb**) and subject to all the terms, conditions and limitations of this **Policy**, **Chubb** agrees with the **Insured** as follows:

### Insuring Agreement

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1.1 **Chubb** shall indemnify the **Insured** against all sums which the **Insured** shall become legally liable to pay as **Compensation** in respect of:

- a) **Personal Injury**
- b) **Property Damage**
- c) **Advertising Injury**

first happening during the **Policy Period** within the **Policy Territory** as a result of an **Occurrence** in connection with the **Business**.

### Definitions

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Wherever appearing in this **Policy**, the following definitions apply:

**2.1 Act of Terrorism** means

Any act, including but not limited to the use of force or violence or threat thereof, of any person, people or group of people, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons, including the intention to influence any government or to put the public, or any section of the public, in fear.

**2.2 Advertising Injury** means

Any unintentional libel, slander, defamation, infringement of copyright, title or slogan, piracy, unfair competition, idea misappropriation or invasion of rights of privacy, arising out of the **Insured's** advertising activities.

**2.3 Aircraft** means

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

**2.4 Business** means:

All activities and operations of the **Business** stated in the **Schedule** and that shall include:

- a) ownership and occupation of premises for the purposes of the **Business**;
- b) ownership, repair, maintenance and decoration of the **Insured's** own property and premises occupied by the **Insured** in connection with the **Business**;
- c) participation in exhibitions in connection with the **Business**;
- d) private work undertaken by any person employed for any director, partner or employee of the **Insured** with the prior consent of the **Insured** in connection with the **Business**;
- e) provision or management of canteen, social, sports, welfare or child care services or activities for the **Insured's** employees and internal first aid, fire, security and ambulance services.

**2.5 Compensation** means

Monies paid or payable by judgment or settlement together with any liability on the **Insured's** part to pay legal costs and expenses (other than **Defence Costs**).

**2.6 Deductible** means

The corresponding amount stated in the **Schedule** which is borne and payable by the **Insured**. The **Deductible** is payable by the **Insured** at such time required by **Chubb**. The **Deductible** applies to **Defence Costs** as well as **Compensation**. **Chubb's** liability to indemnify the **Insured** under this **Policy** applies only in respect of the amount of **Defence Costs** and **Compensation** that exceeds the **Deductible**.

**2.7 Defence Costs** means

All reasonable legal costs and expenses incurred by **Chubb** or by the **Insured** with the written agreement of **Chubb**:

- a) in defending or appealing a claim against the **Insured**; and
- b) for legal representation of the **Insured** at any coronial inquest or other fatal accident inquiry.

**2.8 Employment Practices** means

Any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising harassment (sexual or otherwise) or discrimination in respect of employment or prospective employment by the **Insured**.

**2.9 Incidental Contract** means

- a) any written rental agreement or lease of real property;
- b) any written contract with any public authority for the supply of water, gas, electricity or telephone services except those contracts in connection with work done for such authorities;
- c) any written contract with any railway authority for the loading, unloading and/or transport of any **Product**, including contracts relating to the operation of railway sidings.

**2.10 Insured** means

- a) The **Insured** named in the **Schedule**;
- b) any subsidiary company (including subsidiaries thereof) of the **Insured** named in the **Schedule** and any other organisation under the control of the **Insured** named in the **Schedule** and over which it is exercising active management;
- c) any new organisation acquired by the **Insured** during the **Policy Period** through consolidation, merger, purchase of the assets, assumption of control and active management or creation, provided that:
  - i. such acquisition is notified to **Chubb** in writing within 90 days; and
  - ii. **Chubb** gives notice in writing to the **Insured** that such new organisation shall be covered by the **Policy**; and
  - iii. the **Insured** pays any additional premium that may be required by **Chubb** in respect of such new organisation;
- d) any director, officer, employee, voluntary worker, work experience person, partner or shareholder of the **Insured**, but only whilst acting within the scope of their duties in such capacity;
- e) any social or sporting clubs, first aid, fire and ambulance services formed with the consent of the **Insured** including any office bearer or member thereof in their respective capacities as such.

**2.11 Limits of Liability** means

- a) The amount stated in **Limits of Liability** (a) of the **Schedule** which is the maximum amount **Chubb** shall indemnify the **Insured** in respect of all **Compensation** arising out of any one **Occurrence**.
- b) The amount stated in **Limits of Liability** (b) of the **Schedule** which is the maximum aggregate amount **Chubb** shall indemnify the **Insured** in respect of all **Compensation** for **Personal Injury, Property Damage** and **Advertising Injury** first happening during the **Policy Period** arising out of the **Insured's Products**.

**2.12 Occurrence** means

An event including continuous or repeated exposure to substantially the same general conditions which results in **Personal Injury** or **Property Damage** or **Advertising Injury** neither expected nor intended from the standpoint of the **Insured**. All events of a series consequent on or attributable to one source or original cause are deemed one **Occurrence**.

**2.13 Personal Injury** means

- a) bodily injury, death, illness, disability, shock, fright, mental anguish or mental injury;
- b) false arrest, detention, false imprisonment, malicious prosecution or humiliation;



- c) the unintentional publication or utterance of libel or slander, or of other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:
  - i. when the first such publication or utterance is related to any publication or utterance made prior to the **Policy Period**; or
  - ii. when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the **Insured**;
- d) wrongful entry or wrongful eviction or other invasion of the right to 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;
- f) discrimination as a result of race, religion, sex, age, marital status, intellectual or physical impairment or disability.

**2.14 Policy means**

This **Policy** wording including the **Schedule** and any endorsement hereto.

**2.15 Policy Period means**

The period stated in the **Schedule** or such further period for which this **Policy** has been extended as agreed by **Chubb** in writing.

**2.16 Policy Territory means**

Anywhere in the world except the United States of America, Canada and their respective protectorates and territories.

**2.17 Pollutants means**

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

**2.18 Product means**

Any goods or products (after they have ceased to be in the possession or under the control of the **Insured**) manufactured, constructed, erected, installed, repaired, serviced, treated, grown, extracted, produced, processed, assembled, imported, sold, supplied or distributed by the **Insured** (including any labelling, packing materials, instructions and directions associated therewith) and any container thereof other than a vehicle associated with such container.

**2.19 Property Damage means**

- a) physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom;
- b) loss of use of tangible property which has not been physically damaged or destroyed, provided such loss of use is caused by physical damage of other tangible property.

**2.20 Schedule means**

The **Schedule** issued with this **Policy** wording or any subsequent or amended version of that schedule issued by **Chubb**.

**2.21 Vehicle means**

Any type of machine on wheels or on caterpillar tracks made or intended to be self-propelled by mechanical power.

**2.22 Watercraft means**

Any vessel, craft or thing made or intended to float on or in or travel on, through or under the water.

## Exclusions

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This **Policy** does not indemnify the **Insured** or any third party beneficiary for any liability directly or indirectly caused by, arising out of or in any way connected with:

### 3.1 Advertising Liability

- a) any failure of performance of contract but this Exclusion 3.1(a) does not apply to claims for unauthorised appropriation of ideas based upon breach of an implied contract;
- b) any infringement of trade mark, service mark or trade name, but this shall not relate to titles or slogans;
- c) any incorrect description of any good or product (including any **Product**);
- d) any mistake in advertised price.

### 3.2 Aircraft

the ownership, operation or navigation of any **Aircraft** or hovercraft.

### 3.3 Aircraft Products

any **Product** that is incorporated with the **Insured's** knowledge in an **Aircraft** which is connected with the safety, propulsion, navigation or flying capabilities of an **Aircraft**.

### 3.4 Asbestos

asbestos or materials containing asbestos.

### 3.5 Contractual Liability

liability assumed under any contract, agreement or warranty except to the extent that such liability would have been implied by law in the absence of such contract, agreement or warranty.

### 3.6 Employment Liability:

- a) any liability in respect of which the **Insured** is or would be entitled to indemnity under any fund, scheme, policy of insurance or self-insurance pursuant to or required by any legislation relating to workers' compensation whether or not such insurance has been effected.
- b) any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination.
- c) any **Employment Practices**.

### 3.7 Fines, Penalties and Damages

finest, penalties, punitive, exemplary, liquidated or aggravated damages or multiplication of compensatory damages.

### 3.8 Loss of Use

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

- a) a delay in or lack of performance by or on behalf of the **Insured** in respect of any contract or agreement; or
- b) the failure of a **Product** or work performed by or on behalf of the **Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured**; but this Exclusion 3.8(b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the **Product** or work performed by or on behalf of the **Insured** after the **Product** or work has been put to its intended use by any person or organisation other than the **Insured**.

### 3.9 Pollutants

- a) the discharge, dispersal, release, seepage, migration or escape of **Pollutants**, including the cost of testing, monitoring, treating, detoxifying, removing, neutralising or cleaning up **Pollutants**;
- b) the cost of preventing the escape of **Pollutants**.



### 3.10 Product Defect

**Property Damage** to:

- a) any **Product** or any part of it if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof however this Exclusion shall not apply to **Personal Injury** or **Property Damage** resulting therefrom; or
- b) any part of any property that must be repaired, reconditioned 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, but this Exclusion 3.10(b) does not apply to **Property Damage** resulting from such work.

### 3.11 Product Guarantee

any product guarantee or warranty given by or on behalf of the **Insured**, but this Exclusion 3.11 does not apply to legislative requirements concerning product safety and information.

### 3.12 Product Recall

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

### 3.13 Professional Liability

the rendering of or failure to render professional advice or service by the **Insured**, but this Exclusion 3.13 only applies to:

- a) the rendering of or failure to render medical advice or service by qualified medical practitioners, dentists, nurses and first aid attendants employed by the **Insured**, but this does not apply to the provision of first aid on the **Insured's** premises; or
- b) professional advice or service given for a fee.

### 3.14 Property in the Insured's Care, Custody or Control

**Property Damage** to property owned by the **Insured** or in the **Insured's** care custody or control.

### 3.15 Radioactivity

ionising radiation or contamination by radioactivity from any nuclear fuel, weapon or waste whether occurring naturally or otherwise; the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or the storage, transport, assembly, disassembly, maintenance or operation of any nuclear weapon or nuclear component thereof.

### 3.16 Sanctions

**Chubb** shall not be deemed to provide cover and **Chubb** shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose **Chubb**, or its parent to any sanction, prohibition or restriction implemented pursuant to resolutions of the United Nations or the trade and economic sanctions, laws or regulations of Australia, the European Union, United Kingdom, or United States of America.

### 3.17 Terrorism

any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss or any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

### 3.18 Vehicles

the use of any **Vehicle** owned by, or in the physical or legal control of the **Insured**:

- a) which is required by law to be registered; or
- b) in respect of which insurance is required by virtue of any legislation

but this Exclusion 3.18 does not apply to:

- i. a **Vehicle** (other than a **Vehicle** owned or used by or on behalf of the **Insured**) whilst that **Vehicle** is in a car park owned or operated by the **Insured** other than for income or reward as a car park operator; or
- ii. **Personal Injury** or **Property Damage** occurring during the loading or unloading of a **Vehicle** caused by or arising from the collection or delivery of any goods from or to the **Vehicle** where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability; or
- iii. **Personal Injury** or **Property Damage** caused by the use of any tool, plant or equipment forming part of or attached to or used in connection with any **Vehicle** and where applicable legislation does not require insurance against such liability; or
- iv. **Personal Injury** where the insurance required by virtue of any legislation does not provide indemnity, and the lack of indemnity is not due to a breach of legislation relating to **Vehicles**; or
- v. accidental or erroneous failure to maintain such statutory insurance.

### 3.19 War

war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any act of any person or persons acting on behalf of or in connection with any organisation the objects of which are to include the overthrowing or influencing of any de jure or de facto government by terrorism or by any violent means.

### 3.20 Watercraft

the ownership, operation or navigation of any **Watercraft** exceeding 15 metres in length while on, in or under the water. However, this Exclusion 3.20 will not apply to **Watercraft** not owned or operated by the **Insured** but used by the **Insured** for business entertainment purposes.

## Extensions

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Each of the following Extensions automatically applies unless otherwise stated in the endorsements. Each Extension is, unless otherwise stated, subject to the Insuring Agreement and all other terms, exclusions and limitations of this **Policy**, including any applicable limit of liability.

### 4.1 Defence Costs

In respect of any liability for **Compensation** indemnifiable under this **Policy**, **Chubb** will pay **Defence Costs**, subject to the following:

- a) **Chubb** is not obliged to pay any **Defence Costs** or to defend any suit after the **Limits of Liability** has been exhausted;
- b) If a payment exceeding the **Limits of Liability** has to be made to dispose of a claim, the liability of **Chubb** for **Defence Costs** is limited to the proportion that **Chubb's** liability to indemnify the **Insured** for **Compensation** under this **Policy** bears to that payment; and
- c) In the event of a claim being made against the **Insured** in any Court or before any other legally constituted body in the United States of America, Canada or their respective protectorates and territories, the total amount payable by **Chubb** in respect of any one **Occurrence** including **Defence Costs** will not exceed the **Limit of Liability**.

### 4.2 Excess Motor Liability

Exclusion 3.18 does not apply to **Property Damage** resulting from the ownership, possession, control or use by or on behalf of the **Insured** of any **Vehicle** or trailer attached thereto provided that:

- a) there is separate motor insurance in force that responds in respect of such liability with a limit of indemnity of at least AUD10,000,000; and
- b) this Extension shall apply only to amounts in excess of such limit of indemnity; and

- c) the maximum aggregate liability of **Chubb** under this Extension in respect of all damages payable as a result of any one **Occurrence** shall be the difference between such limit of indemnity as stated in 4.2 (a) above and the **Limit of Liability** stated in 7(a) of the **Schedule**.

#### 4.3 Indemnity to Principals and Others

The definition of the **Insured** is extended to include any principal, person or company to whom or to which the **Insured** (as defined in 2.10(a), (b) or (c)) is obligated by virtue of a written agreement to provide insurance as is afforded by this **Policy**, but only to the extent and limit required by such contract and subject to the terms and conditions of this **Policy**.

Any principal, person or company covered pursuant to this Extension will be subject to all terms of the **Policy** in so far as they can apply, as though that party was the **Insured**.

#### 4.4 Incidental Contracts

Exclusion 3.5 shall not apply to **Incidental Contracts**.

#### 4.5 Property in the Insured's Care Custody or Control

Exclusion 3.14 shall not apply to:

- a) premises tenanted, leased or hired by the **Insured**;
- b) **Vehicles** (other than **Vehicles** owned or used by or on behalf of the **Insured**) in the **Insured's** care custody or control but only whilst such **Vehicles** are in a car park owned or operated by the **Insured** other than for income or reward as a car park operator; or
- c) directors', employees' and visitors' clothing and personal effects; or
- d) other property (not owned by the **Insured**) temporarily in the **Insured's** possession but:
  - i. this **Policy** does not cover legal liability arising out of or in any way connected with **Property Damage** to that part of any property upon which the **Insured** is or has been working; and
  - ii. **Chubb's** maximum liability for any cover provided under Extension 4.5(d) is stated in the applicable Sub Limit in the **Schedule**.

#### 4.6 Sudden and Accidental Pollution

Exclusion 3.9(a) shall not apply to **Personal Injury** or **Property Damage** which:

- a) arises from a sudden, identifiable, unintended and unexpected event from the standpoint of the **Insured**; and
- b) which takes place in its entirety at a specific time and place and occurs outside of the United States of America, Canada and their respective protectorates and territories.

#### 4.7 USA/Canada Coverage

Definition 2.16 **Policy Territory** is hereby extended to include the United States of America, Canada and their respective protectorates and territories if the **Personal Injury** or **Property Damage** arises from:

- a) **Products** exported into such countries, or
- b) the activities of travelling executives and salesmen on **Business** who are non resident in such countries.

#### 4.8 Vendors Indemnity

The definition of the **Insured** is extended to include any person who, or organisation which, distributes or sells the **Insured's Products** in the regular course of their business (herein referred to as 'vendor') but only with respect to **Personal Injury** or **Property Damage** arising out of the distribution or sale of the **Insured's Products**, and only to the extent and limit required by the contract between the **Insured** and the vendor, and subject to this **Policy**, provided that:

- a) this Extension shall not apply in respect of liability arising from:
  - i. any express warranty unauthorised by the **Insured**;
  - ii. any physical or chemical change in the form of the **Product** intentionally made by the vendor;

- iii. repacking unless unpacked solely for the purpose of inspection demonstration testing or the substitution of parts under instruction from the **Insured** and then repacked in the original container;
  - iv. demonstration, installing, servicing or repair operations except demonstration performed at the vendor's premises in connection with the sale of the **Product**;
  - v. **Products** which after distribution or sale by the **Insured** have been labelled or relabelled or used as a container part or ingredient of any other thing or substance by or for the vendor.
- b) this Extension shall not apply to any person or organisation from whom the **Insured** has acquired such **Products** or any ingredient part or container entering into accompanying or containing such **Products**.
  - c) any vendor covered pursuant to this Extension will be subject to all terms of the **Policy** in so far as they can apply, as though that party was the **Insured**.

## Conditions

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### 5.1 Changes

Every change materially affecting the facts or circumstances existing at the commencement of this insurance, or at any subsequent renewal date, must be notified to **Chubb** in writing immediately after such change comes to the notice of the **Insured's** officer responsible for insurance.

### 5.2 Insured's duties in the event of an Occurrence, Claim or Suit

- a) In the event of an **Occurrence** or if an **Occurrence** appears reasonably likely to take place the **Insured** must immediately take at its own expense all responsible steps to prevent or minimise **Personal Injury, Property Damage, Advertising Injury** and any other loss, damage or expense.
- b) The **Insured** must give notice in writing to **Chubb** immediately of every **Occurrence** likely to give rise to a claim under this **Policy** and must immediately forward to **Chubb** all documents and information relevant to each such **Occurrence** including but not limited to every demand, writ, summons, proceedings, notice of prosecution, inquest or inquiry and all associated information.
- c) The **Insured** must give notice in writing to **Chubb** immediately of every **Occurrence** involving serious **Personal Injury** (including, but not limited to quadriplegia, paraplegia, brain damage and loss of a limb) or substantial **Property Damage** (including, but not limited to substantial damage to buildings, structures or equipment caused by fire, collapse, explosion and loss of support) and must immediately forward to **Chubb** all information relevant to the **Occurrence** held by the **Insured**.
- d) The **Insured** must not, without **Chubb's** prior written consent, make any admission, offer, promise or payment in connection with any **Occurrence**.
- e) The **Insured** must use its best endeavours to preserve all property, any **Product**, appliance and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair is to be effected without the consent of **Chubb** until **Chubb** has had an opportunity of inspection.

### 5.3 Right to defend, assistance and co-operation of the Insured

- a) In respect of any **Occurrence** covered under this **Policy**, **Chubb** has the right, if it so elects, to defend any suit against the **Insured** seeking **Compensation** or reimbursement of expenses for an **Occurrence** and to bring any cross claim in the name of the **Insured** even if any of 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; but **Chubb** is not obligated to pay any claim or judgment or to defend any suit after **Chubb's** liability under this **Policy** in respect of the claim has been exhausted.
- b) If the cost of any **Occurrence** and **Defence Costs** are not likely to exceed the **Deductible**, **Chubb** may elect not to defend the suit. In these circumstances and, subject to the provisions of

this **Policy**, the **Insured** is responsible for the handling and payment of the claim and its **Defence Costs** up to the amount of the **Deductible**.

- c) The **Insured** must co-operate with **Chubb** and comply with the terms and conditions of this **Policy**, and assist as necessary in enforcing any right to contribution or indemnity from any person, corporation or organisation.

#### 5.4 Subrogation

In the event of any payment under this policy, **Chubb** will be subrogated to all the **Insured's** rights of recovery against any person or organisation and the **Insured** shall execute and deliver any appropriate instruments and papers and do whatever else is necessary to secure such rights. Any amount so recovered shall be applied in accordance with the provisions of s.67 of the Insurance Contracts Act 1984 (Cth).

#### 5.5 Assignment

Assignment of an interest under this **Policy** does not bind **Chubb** until its consent is endorsed on the **Policy**. If the **Insured** dies or is adjudged bankrupt or insolvent, this insurance will cover:

- a) the **Insured's** legal representative acting on behalf of the **Insured** or the **Insured's** estate;
- b) any person or corporation having lawful temporary custody of property which is or was before the **Insured's** death owned or possessed by the **Insured** until the appointment of a legal representative.

#### 5.6 Cross Liability

Each of the parties comprising the **Insured** is considered a separate legal entity and the word "**Insured**" applies to each party as if a separate policy had been issued to each of the said parties but nothing contained in this clause will operate to increase **Chubb's** liability under this **Policy**.

#### 5.7 Statutory Requirements

The **Insured** must take reasonable measures to comply with all statutory obligations and regulations imposed by any statutory or governmental authority.

#### 5.8 Cancellation

- a) The **Insured** may cancel this **Policy** by giving notice in writing to **Chubb**. If such notice is given, the cancellation will take effect on the day the notice is received by **Chubb**.
- b) **Chubb** may cancel this **Policy** in any of the circumstances set out in the Insurance Contracts Act 1984. Such cancellation is to take effect 30 days from the time notification is received by the **Insured**.
- c) Upon cancellation by the **Insured** or **Chubb** the **Insured** will receive a pro rata refund of premium for the unexpired **Policy Period** subject to the **Insured** complying with 5.8 (d).
- d) When the premium is subject to adjustment, cancellation will not affect the obligation of the **Insured** to supply to **Chubb** such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

#### 5.9 Applicable Law

Should any dispute arise concerning this **Policy**, the dispute will be determined in accordance with the law of Australia and the States and Territories thereof. In relation to any such dispute the parties agree to submit to the exclusive jurisdiction of any competent court in a State or Territory of Australia.

#### 5.10 Insurance Contracts Act 1984

Nothing contained in this **Policy** is to be construed to reduce or waive either the **Insured's** or **Chubb's** privileges, rights or remedies available under the Insurance Contracts Act 1984.

#### 5.11 Limits of Liability

- a) The amount stated in **Limits of Liability** (a) of the **Schedule** is the maximum amount **Chubb** shall indemnify the **Insured** for in respect of all **Compensation** arising out of any one **Occurrence**.
- b) The amount stated in **Limits of Liability** (b) of the **Schedule** is the maximum amount **Chubb** shall indemnify the **Insured** for in respect of all **Compensation** for **Personal Injury**,



**Property Damage and Advertising Injury** first happening during the **Policy Period** arising out of the **Insured's Products**.

#### 5.12 Deductible

The **Deductible** is the corresponding amount stated in the **Schedule** which is borne and payable by the **Insured** arising from each and every **Occurrence**. The **Deductible** is payable by the **Insured** at such time required by **Chubb**. The **Deductible** applies to **Defence Costs** as well as **Compensation**. **Chubb's** liability to indemnify the **Insured** under this **Policy** applies only in respect of the amount of **Defence Costs** and **Compensation** that exceeds the **Deductible**.

#### 5.13 Foreign Entity Loss

Notwithstanding anything contained herein to the contrary:

- a) **Chubb** will indemnify the **First Named Insured** for an **Insured Loss**, the value of which is conclusively agreed and shall be equal to:
  - i. where at the time of the **Foreign Entity Occurrence** the **Ownership Interest** is a **Controlling Interest**, the **Foreign Entity Loss**; or
  - ii. subject to (b)(i) below, where at the time of the **Foreign Entity Occurrence** the **Ownership Interest** is not a **Controlling Interest**, the **Ownership Interest** multiplied by the **Foreign Entity Loss**.
- b) if, at the date of the **Foreign Entity Occurrence**:
  - i. the **First Named Insured** does not have an **Ownership Interest** or has an **Ownership Interest** which is not a **Controlling Interest** but, in either case, the **First Named Insured** or an intervening subsidiary is responsible:
    1. for reimbursing the **Foreign Entity** for the **Foreign Entity Loss**; or
    2. for obtaining liability insurance for the **Foreign Entity** pursuant to some form of responsibility which the **First Named Insured** or an intervening subsidiary has in relation to the **Foreign Entity**; or
  - ii. the **First Named Insured** has an **Ownership Interest** which is not a **Controlling Interest** and the **First Named Insured** or an intervening subsidiary is responsible for obtaining liability insurance for the **Foreign Entity**, (an "Obligation"),

**Chubb** will indemnify the **First Named Insured** for the **Insured Loss**, the value of which is agreed and shall be deemed conclusively to be equal to the **Foreign Entity Loss** to the extent that the **First Named Insured** has an Obligation to pay.

- c) **Chubb** will treat any **Foreign Entity Loss** in accordance with all of the terms and conditions of this **Policy**, including, but not limited to, exclusions and other limitations in this **Policy**, as if the **Foreign Entity Loss** occurred to the **First Named Insured**.
- d) Information material to this insurance which is known to the **Foreign Entity** shall be deemed to be known to the **First Named Insured**.
- e) The **First Named Insured** shall, when directed by **Chubb**:
  - i. retain in its own name, but at **Chubb's** expense, a loss adjusting expert ("loss adjuster"), authorized in the jurisdiction in which the **Foreign Entity Loss** occurred and approved by **Chubb**, to adjust the **Foreign Entity Loss**;
  - ii. where permitted by applicable law, grant **Chubb** the full right to collaborate with such loss adjuster;
  - iii. grant **Chubb** full access to any records produced by such loss adjuster; and
  - iv. obtain the right to control the investigation, adjustment, defence and settlement of a **Foreign Entity Loss**, including access to books, records, bills invoices, vouchers and other information.



- f) The **First Named Insured** shall make best endeavours to ensure that the **Foreign Entity** shall, to the extent permitted by the laws and/or regulations to which the **Foreign Entity** is subject, do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by **Chubb** for the purpose of enforcing any rights and remedies, or of obtaining relief, indemnity or settlement sums from other parties in each case in priority to the insurer with whom the **Local Policy** is written.

In the event any such recovery is subsequently received by the **Foreign Entity** in respect of which a payment or settlement is or has been made by **Chubb** to the **First Named Insured** in relation to the **Foreign Entity Loss**, the **First Named Insured** shall immediately pay to **Chubb** a sum equivalent to such payment or settlement.

- g) Where a claim covered under the terms and conditions of a **Local Policy** is made under such policy, and is not paid due to the financial impairment of the **Local Insurer** of the **Local Policy**, this **Policy** will provide an indemnity, but only to the extent that the **Chubb** would have accepted the claim had it been made under this **Policy**, and (if the **Local Insurer** is not an **Affiliate of Chubb**) less any amount retained by the **Local Insurer** or ceded to an entity other than **Chubb** or an **Affiliate of Chubb**.

**Chubb** shall not be liable to pay the amount of any deductible that would have applied under such **Local Policy**. This provision shall not apply to any claim by any conservator, liquidator or statutory successor of any insurer of a **Local Policy**.

As a condition precedent to the application of this clause 5.13(g), the **Insured** must:

- i. Give **Chubb** immediate written notice as soon as the **Insured** becomes aware of any financial impairment of any insurer of a **Local Policy**;
  - ii. Pursue all rights available under the **Local Policy** and take all necessary steps to ensure the insured under the **Local Policy** pursues all rights available under the **Local Policy**;
  - iii. Comply with all duties and obligations under this **Policy** and take all necessary steps to ensure the **Insured** under the **Local Policy** complies with all duties and obligations under such **Local Policy**;
  - iv. Submit, if requested by **Chubb**, a sworn statement of loss, even if such a statement has already been submitted by the **Insured** under the **Local Policy**;
  - v. Co-operate with **Chubb**, and take all necessary steps to obtain for **Chubb's** benefit, all possible recoveries or indemnification from whatever source, including without limit governmental or state entities, including guarantee funds;
  - vi. Reimburse **Chubb** for any payment made under this provision if payment is ultimately made with respect to a previously uncollectible claim under a **Local Policy**.
- h) **Definitions applicable to this Condition 5.13**

**First Named Insured** means the **Insured** named in the **Schedule**.

**Foreign Entity** means an entity (located in a country or territory in which **Chubb** is not lawfully permitted to insure that entity) in which the **First Named Insured** has an economic interest as a result either of benefiting financially from the continued operation of the **Foreign Entity** or of being prejudiced by loss or damage to or liability of a **Foreign Entity** or its business or for which the **First Named Insured** is responsible for arranging liability insurance.

**Foreign Entity Loss** means the **Compensation, Defence Costs** and expenses that a **Foreign Entity** has incurred or become legally obligated to pay because of injury, damage, loss, or liability to which this insurance would apply if the **First Named Insured** were directly liable for such amounts.

**Insured Loss** means the decrease in the value of the economic interest of the **First Named Insured** in the **Foreign Entity** as a result of the **Foreign Entity Loss**.

**Local Insurer** means any **Chubb** Group Company or **Chubb** affiliate or and insurer as notified to **Chubb** that issues a **Local Policy**.

**Local Policy** means a public and products liability insurance policy purchasable by a **Foreign Entity** from an insurer licenced and authorised to issue and make payments under such policy in the jurisdiction of the **Foreign Entity**.

**Foreign Entity Occurrence** means an event which may result in a **Foreign Entity Loss**.

**Ownership Interest** means the percentage ownership interest that the **First Named Insured** has in the **Foreign Entity**, either directly or through intervening subsidiaries.

**Controlling Interest** means an **Ownership Interest** which is either (i) greater than 50 per cent.; or (ii) greater than 15 per cent, provided that such ownership interest is the largest shareholding in the Foreign Entity.

## About Chubb in Australia

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Chubb is the world's largest publicly traded property and casualty insurer. Chubb, via acquisitions by its predecessor companies, has been present in Australia for over 50 years. Its operation in Australia (Chubb Insurance Australia Limited) provides specialised and customised coverages include Marine, Property, Liability, Energy, Professional Indemnity, Directors & Officers, Financial Lines, Utilities as well as Accident & Health, for a broad client base, including many of the country's largest companies.

More information can be found at [www.chubb.com/au](http://www.chubb.com/au)

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