

S U R A COMMERCIAL



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ABOUT SURA COMMERCIAL

ABOUT SURA COMMERCIAL

SURA Commercial is a Trading Name of SURA Pty Ltd (SURA) ABN 36 115 672 350 AFSL 294313 and has developed this SURA General Liability Insurance Policy which is underwritten CGU.

SURA Commercial has an authority from CGU to arrange, enter into / bind and administer this insurance (including handling and settling claims).

SURA Commercial's contact details are:

Level 14 / 141 Walker Street
North Sydney NSW
PO Box 1813
North Sydney 2059
Telephone. 02 9930 9500

ABOUT CGU

This insurance is underwritten by Insurance Australia Limited ABN 11 000 016 722, AFSL 227681 trading as CGU Insurance (CGU) an authorised Australian insurer, regulated by the Australian Prudential Regulation Authority ('APRA').

CGU Insurance has been providing insurance to Australians for over 160 years and is part of the Insurance Australia Group (IAG).

CGU contact details are:

388 George Street,
Sydney, NSW 2000
Telephone. (02) 8224 4000

You should contact SURA Commercial in the first instance in relation to this insurance.

CODE OF PRACTICE

SURA Commercial and CGU proudly support the General Insurance Code of Practice. The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

The Code aims to improve:

- the quality, comprehension and accuracy of policy documents and other information provided to consumers;
- employee and agent training and supervision;
- claims handling and dispute resolution.

For further information relating to the Code, please visit www.codeofpractice.com.au or alternatively the Insured can request a brochure on the Code from SURA Commercial.

YOUR DUTY OF DISCLOSURE

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of its business, ought to know;
- as to which compliance with your duty is waived by the insurer.

NON DISCLOSURE

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

DISPUTE RESOLUTION

SURA Commercial and CGU view seriously any complaint made about our products or services and will deal with it promptly and fairly.

If the Insured has a complaint please first try to resolve it by contacting the relevant member of SURA Commercial's staff.

If the matter is still not resolved, please then contact:

SURA Commercial's Internal Disputes Resolution Officer on: (02)9930 9500

who will seek to resolve the matter in accordance with the General Insurance Code of Practice and our Dispute Resolution procedures.

IMPORTANT INFORMATION

If the Insured is not satisfied with the Internal Dispute Resolution Officer's decision, the Insured may contact the Financial Ombudsman Service; a free independent external disputes resolution service provided to customers to review and resolve complaints where SURA Commercial has been unable to satisfy the Insured's concerns.

For details visit www.fos.org.au or contact them at:

The Financial Ombudsman Service
PO Box 3 Melbourne,
VIC, 3001
Telephone. 1300 78 08 08
Email. info@fos.org.au

The Insured can contact SURA Commercial for more information on these procedures.

PREVENTING OUR RIGHTS OF RECOVERY

If You have agreed not to seek compensation from another person or entity who is liable to compensate You for any loss, damage or liability which is covered by this Policy We will not cover You under this Policy for that loss, damage or liability, except in the following circumstances:

We will waive any rights and remedies or relief to which We are or may become entitled by subrogation against:

- any co-insured (including its directors, officers and employees);
- any corporation or entity (including its directors, officers and employees) owned or controlled by any Insured or against any co-owner of the property insured.

You may without prejudicing Your position under this Policy:

- release any statutory governmental, semi- governmental or municipal authority from any liability if required by any contract to do so;
- agree to enter into a contract for storage of goods or merchandise if the terms of the contract include a disclaimer clause;
- agree to enter into a lease for occupancy of any building or part of a building or a lease or hiring of property where the terms of the lease or hiring include a disclaimer clause in favour of the lessor or the owner.

GST

The amount payable by You for this Policy includes an amount for GST.

The Limit of Liability and all other limits applicable to this Policy are GST inclusive.

When We pay a Claim, Your GST status will determine the amount We pay.

If You are:

- not registered for GST, the amount We will pay is the Limit of Liability or the other limits applicable to this Policy being inclusive of GST.
- registered for GST, We will pay the Limit of Liability or the other limits applicable to this Policy less any Input Tax Credit (ITC) to which You are entitled or would be entitled if You made a relevant Acquisition. This ITC may be claimable within Your Business Activity Statement (BAS).

You must advise Us of Your correct Australian Business Number and Taxable Percentage. Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of a Claim is less than the Limit of Liability or the other limits applicable to this Policy, We will only pay the GST (less Your ITC credit) applicable to the settlement. This means that if these amounts are not sufficient to cover the Claim, We will only pay the GST relating to Our settlement of the Claim. We will pay the Claim by reference to the GST exclusive amount of any supply made by any business of Yours which is relevant to the Claim.

GST, ITC, BAS and Acquisition have the same meaning as given to those words or expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is Your entitlement to an Input Tax Credit on Your premium as a percentage of the total GST on that premium.

PRIVACY STATEMENT

In this Privacy Statement the use of “We”, “Our” or “Us” means SURA Commercial and CGU unless specified otherwise.

In this Privacy Statement the use of “personal information” includes sensitive information.

SURA Commercial and CGU are committed to protecting the privacy of the personal information You provide to Us.

The Privacy Act 1988 contains the Australian Privacy Principles which require Us to tell You that We collect, handle, store and disclose Your personal and sensitive information for the specific purpose of:

- deciding whether to issue a policy;
- determining the terms and conditions of your Policy;
- compiling data to help develop and identify other products and services that may interest clients;
- and handling Claims.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information or opinion is true or not;
- whether the information or opinion is recorded in a material form or not.

Sensitive information includes, amongst other things, information about an individual’s racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

You have given Us Your consent to collect, use and disclose Your personal and sensitive information in order to provide You with the relevant services and/or products.

When You give us personal information about other individuals, We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant personal information to Us.

We disclose personal information to other parties and service providers whom We believe are necessary to assist Us and them in providing the relevant services and/or products. For example, in handling Claims, We may have to disclose Your personal and

other information to other parties and service providers such as Our claim management partner, other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents, facilitators, assessors or other parties as required by law. We limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it.

We may disclose Your personal information to Our insurers, reinsurers, related entities and service providers overseas, including but not limited to New Zealand, Singapore, United Kingdom, the Philippines, the European Union and the United States of America.

If You do not provide the personal information requested and/or do not provide Us with Your consent to the use and disclosure of Your personal information as set out in this Privacy Statement, Your insurance application may not be accepted, or We may not be able to administer Your Policy, or You may be in breach of Your duty of disclosure, the consequences of which are set out under the heading Duty of Disclosure in this document.

If You would like a copy of Our Privacy Policies, would like to seek access to or correct Your personal information, opt out of receiving materials We send, complain about a breach of Our privacy or You have any query on how Your personal information is collected or used, or any other query relating to Our Privacy Policies, please contact Us.

TERMS OF POLICY

In consideration of the payment to Us of the amounts payable for this insurance, We will indemnify the Insured in accordance with this Policy.

SECTION ONE COVERAGE

1. WHAT YOU ARE INSURED AGAINST

1.1 Liability

We will cover You for Your legal liability to pay all sums by way of compensation awarded against You in respect of:

- Personal Injury;
- Property Damage;
- Advertising Liability

happening during the Period of Insurance and caused by an Occurrence within the Territorial Limits in connection with Your Business or Products.

1.2 Defence of Claims

If We agree to cover You We will:

- a) defend in Your name and on Your behalf any claim or legal action against You seeking damages for Personal Injury, Property Damage and/or Advertising Liability even if the action is groundless, false or fraudulent, and We will investigate, negotiate and settle any claim or legal action as We see fit;
- b) pay all legal costs and expenses incurred by Us and all interest accruing after entry of judgement until We have paid, tendered or deposited in court such part of the judgement as does not exceed the Limit of Liability;
- c) reimburse You for all reasonable expenses, including loss of earnings (but not exceeding \$1,000 per day), incurred by You with Our consent which shall not be unreasonably withheld in connection with the defence of a claim or legal action;
- d) pay reasonable expenses incurred by You for first aid to others at the time of Personal Injury caused by an Occurrence (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973);
- e) pay all legal costs incurred by You with Our consent for Your representation:
 - i. at any coroner's inquest or other fatal accident inquiry; or
 - ii. in a court of summary jurisdiction or an indictment in a higher court, arising out of any alleged breach of a statutory duty resulting in Personal Injury or Property Damage which may be the subject of indemnity under this Policy;
- f) pay all costs incurred by You for temporary repairs, shoring up or protection of property of others that has been damaged as a result of an Occurrence which may be the subject of indemnity under this Policy.

We will do this, provided that:

- a) judgment or to defend any claim or legal action after the Limit of Liability has been exhausted by payment of judgments or settlements;
- b) if a payment exceeding the Limit of Liability has to be made to dispose of a claim, Our liability to pay any costs, expenses and interest under a) to f) in 'Defence of Claims' above will be limited to that proportion of those costs, expenses and interest as the Limit of Liability bears to the amount paid to dispose of the claim.

Except with respect to or in relation to any:

- a) claims made or actions instituted within the United States of America or Canada or any other territory coming within the jurisdictions of the courts of the United States of America or Canada; or
- b) claims or actions to which the laws of the United States of America or Canada apply;

any amount We pay, other than payments in settlement of claims, suits and all costs awarded against You, are payable by Us in addition to the Limit of Liability set out in the Policy Schedule.

2. WHAT WE WILL PAY

2.1 Limit of Liability

- a) Our maximum liability in respect of any claim or any series of claims for Personal Injury, Property Damage and/or Advertising Liability caused by or arising out of an Occurrence will not exceed the Limit of Liability shown on Your Policy Schedule.
- b) Our total aggregate liability during any one Period of Insurance for Personal Injury and/or Property claims arising out of Your Products will not exceed the Limit of Liability shown on Your Policy Schedule.

The applicable Limit of Liability will not be reduced by the amount of any Deductible paid by You.

3. WHAT YOU MUST PAY IF YOU MAKE A CLAIM

3.1 Deductible

For claims You make on this Policy, You will have to pay the Deductible which is shown on Your Policy Schedule. If more than one Deductible is payable under this Policy for any claim or series of claims arising from the one Occurrence You must pay the highest Deductible, but You pay only one Deductible.

SECTION 2 DEFINITIONS

Some key words and terms used in this Policy have a special meaning. Wherever the following words or terms are used in the Policy, they mean what is set out below:

4.1 Advertising Liability or Advertisement

Liability arising out of one or more of the following in advertising Your Products:

- a) defamation;
- b) infringement of copyright, title or slogan;
- c) unfair competition, misappropriation of advertising ideas or style of doing business; or
- d) invasion of privacy; committed or alleged to have been committed in any Advertisement and arising out of any advertising activities conducted by You or on Your behalf, in the course of carrying out Your Business.

For the purposes of this Definition, Advertisement means any manner of communication given to the public including by way of any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet, worldwide web or exhibit.

4.2 Aircraft

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

4.3 Business

The business described in the Policy Schedule including:

- a) ownership or occupation of premises and the repair or maintenance of property owned or for which such responsibilities exist, the installation and maintenance of plant and equipment and all other activities incidental to the conduct of Your occupation or trade;
- b) participation in exhibitions;
- c) construction, erection, demolition, alteration or addition, not exceeding in cost the sum of \$2,000,000, of or to buildings owned by You;
- d) the provision and management of canteens, social, sports and welfare organisations primarily for the benefit of Your Employees, first aid, fire and ambulance services;
- e) private work undertaken by any Employee of Yours, for any of their directors or senior executives;
- f) hire or loan of plant, equipment or goods to other parties;
- g) conducted tours of Your Premises; and
- h) the erection, use and/or maintenance by You or on Your behalf of advertising and directional signs, their frames, supports and appurtenances.

4.4 Deductible

The amount You first bear in relation to each Occurrence. The Deductible applies to all amounts payable under this Policy including the indemnity provided under 'Defence of Claims'.

4.5 Employee

Any person engaged under a contract of service or apprenticeship with You, but does not include any person employed under such contract who is excluded from the definition of 'worker' under any workers' compensation legislation while working for You in connection with the Business.

4.6 Employment Practices

Any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to or in respect of employment or prospective employment of any person or persons by You.

4.7 Endorsement

Any document so designated and issued to You, that amends the Policy wording or any details specified in the Policy Schedule.

4.8 Hovercraft

Any vessel, craft or thing made or intended to float on water and travel over water or land supported on a cushion of air.

4.9 Incidental Contracts

- a) Any written agreement for the lease of real property which does not impose upon You as lessee:
 - i. an obligation to insure such property; or
 - ii. any liability regardless of fault;
- b) any written contract with any public supplier for the supply of water, gas or electricity, sewerage or waste removal services, telephone, telex or other communications services, except contracts with such suppliers for the performance of work by You; and
- c) any written contract with any railway authority, railway company or other independent carrier for the loading, unloading and/or transport of Your Products, including any such contracts relating to the operation of railway sidings.

4.10 Limit of Liability

The applicable Limit of Liability specified in the Policy Schedule.

4.11 Medical Persons

Qualified medical practitioners, nurses, dentists and first aid attendants.

4.12 Occurrence

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.

4.13 Period of Insurance

The period specified in the Policy Schedule.

4.14 Personal Injury

- a) Bodily injury (and this expression includes death, disease and illness), disability, loss of consortium, shock, fright, mental anguish or mental injury;
- b) the effects of false arrest, wrongful detention, false imprisonment, malicious prosecution or humiliation;
- c) the effects of wrongful entry upon, wrongful eviction from or other invasion of right to private occupancy of property;
- d) the effects of a publication or utterance of defamatory or disparaging material; and
- e) the effects of assault and battery not committed by You or at Your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

Personal Injury, if relating to a latent injury, a latent illness, a latent disease or a latent disability, shall be deemed to have happened at the time when such injury, illness, disease or disability was first medically diagnosed.

4.15 Policy

This Policy wording, the Policy Schedule and any Endorsements We issue to You which amend this Policy wording or the Policy Schedule.

4.16 Policy Schedule

The document so designated that We issue to You, whether for the first Period of Insurance or on any renewal of the contract or variation by way of Endorsement, that specifies the Policy number and other details of the cover provided by this Policy.

4.17 Pollutants

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

4.18 Property Damage

Physical damage to or loss or destruction of tangible property including any resulting loss of use at any time of that property; or

loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an Occurrence.

4.19 Subsidiary

- a) Any entity which by virtue of any applicable legislation or law is deemed to be Your Subsidiary (where You are a company); and
- b) any entity over which You (where You are a company) are in a position to exercise effective direction or control.

4.20 Territorial Limits

Anywhere in the world subject to exclusion 5.18 (Territorial Limits).

4.21 Vehicle

Any type of machine on wheels or self laid tracks or on skis, made or intended to be propelled by other than manual or animal power and any trailers or other attachment made or intended to be drawn by any such machine.

4.22 Watercraft

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

4.23 We, Our, Us

Means SURA Commercial acting under a binder as an agent of CGU.

4.24 Worksite

Any premises or site where work is performed by You in connection with the Business and includes any surrounding area or premises used by You to undertake such work.

4.25 You, Your, Yours, Insured

- a) The person(s), companies or firms named on the current Policy Schedule as the Insured;
- b) all the Subsidiary companies (including subsidiaries thereof), now or subsequently constituted, of the named Insured specified in the Policy Schedule provided their places of incorporation are within Australia or any Territory of Australia;
- c) every director, executive officer, Employee, partner, shareholder or voluntary worker of parties shown in paragraph 4.25 a) and 4.25 b) above, but only while acting within the scope of their duties in such capacity;
- d) every principal, in respect of that principal's vicarious liability for the acts or omissions of the parties shown in paragraph 4.25 a) and 4.25 b) in the performance by them of work for that principal, but subject always to the extent of coverage and the Limit of Liability provided by this Policy;

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- e) each partner, joint venturer, co-venturer or joint lessee of the Insured named in the Policy Schedule but only if We agree to insure them and the Insured named in the Policy Schedule agrees to pay the premium We require;
 - f) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with Your consent (other than one of the parties shown in paragraphs 4.25 c) or 4.25 d) above) in respect of claims arising from their duties connected with the activities of any such club, organisation or service;
 - g) any director or senior executive or partner of the parties shown in paragraph 4.25 a) and 4.25 b) above in respect of private work undertaken by an Employee of those parties for such director or senior executive;
 - h) if a party named in the Policy Schedule as an insured party is an individual, the personal representative of that individual in the event of the death of that individual, but only in respect of liability incurred by that individual;
 - i) any person whilst working for a party any organisation or entity designated in paragraph 4.25 a) and 4.25 b) of this definition, for the purpose of gaining work experience.

However, You/Your does not include the interest of any other person other than as described in this definition.

4.26 Your Products

Anything (after it has ceased to be in Your possession or under Your control), which is or is deemed to have been manufactured, grown, extracted, produced, processed, imported, exported, constructed, assembled, erected, installed, repaired, serviced, renovated, treated, sold, supplied or distributed by You or on Your behalf including labels, packaging or any container thereof, the design, specification or formula of the products and directions, instructions or advice given or omitted to be given in connection with such products.

SECTION 3 EXCLUSIONS

WHEN YOU ARE NOT COVERED

The following exclusions will apply to this Policy.

This Policy does not cover liability in respect of:

5.1 Advertising Liability or Advertisement

Advertising Liability caused by or resulting from:

- a) circumstances where the acts committed or alleged to have been committed prior to the inception date of this Policy;
- b) statements made at Your direction with knowledge that such statements are false;
- c) failure of performance of contract. However this exclusion 5.1 c) shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
- d) any incorrect description of Products or services;
- e) any mistake in advertised price of Products or services;
- f) the failure of Your Products or services to conform with advertised performance, quality, fitness or durability; or
- g) liability incurred by You if Your Business is advertising, broadcasting, publishing or telecasting.

5.2 Aircraft, Aircraft Products, Watercraft & Hovercraft:

Personal Injury, Property Damage and/or Advertising Liability arising directly or indirectly out of or in connection with:

- a) the ownership, maintenance, operation, refuelling, possession or use by You or on Your behalf of any Aircraft or Hovercraft;
- b) the ownership, operation or use by You of any Watercraft, exceeding 10 metres in length, while afloat except:
 - i. Watercraft owned or operated by others and used by You for Business entertainment; or
 - ii. floating jetties and/or floating pontoons and/or pontoons and/or buoys; or
- c) Your Products that are Aircraft component parts used for maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery, which to Your knowledge are incorporated in an Aircraft.

5.3 Asbestos

- a) Personal Injury arising directly or indirectly out of or in connection with any actual or alleged:
 - i. inhalation or ingestion of any asbestos fibre(s) or asbestos in any form whatsoever by any person(s); or
 - ii. exposure or fear of exposure of any person(s) to asbestos fibre(s) or asbestos in any form whatsoever; or
 - iii. presence or existence of asbestos fibre(s) or asbestos in any form whatsoever.
- b) Property Damage arising directly or indirectly out of or in connection with:
 - i. any actual or alleged discharge, dispersal, release, seepage, migration, escape or movement of asbestos fibre(s) or asbestos in any form whatsoever into or upon land, the atmosphere or any water course or body of water; or

- ii. any actual or alleged exposure to asbestos fibre(s) or asbestos in any form whatsoever; or
- iii. any actual or alleged presence or existence of asbestos fibre(s) or asbestos in any form whatsoever; or
- iv. any of the Insured's Products that contain asbestos fibre(s) or asbestos in any form whatsoever.

5.4 Contractual Liability

Any liability expressly assumed by You under a contract, warranty or agreement unless such liability would have attached to You notwithstanding such contract, warranty or agreement.

This exclusion does not apply to:

- a) liability under any warranty of goods implied by law, liability assumed by You under a warranty of fitness or quality as regards Your Products;
- b) liabilities assumed by You under Incidental Contracts; or
- c) liabilities assumed by You under those written contracts specified in the Schedule.

5.5 Defamation

The publication or utterance of defamatory or disparaging material:

- a) made prior to the effective date of this Policy; or
- b) made by You or at Your direction with knowledge of its falsity; or
- c) related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf.

5.6 Internet Operations

Personal Injury and/or Property Damage arising directly or indirectly out of or in connection with Your internet operations, including but not limited to business conducted and/or transacted via the internet, intranet, extranet and/or via Your own website, internet site, web address and/or via the transmission of electronic mail or documents via electronic means.

Provided that this exclusion 5.6 shall not apply to:

- a) Personal Injury and/or Property Damage caused by or arising out of Your Products; or
- b) liability for Personal Injury and/or Property Damage that arises independently of Your internet operations.

5.7 Employment Liability

- a) Personal Injury to any of Your Employees arising out of, or in the course of their employment in Your Business.
- b) Personal Injury to any person who is deemed to be Your Employee pursuant to any legislation relating to workers' compensation.
- c) Claims which You are entitled to seek indemnity under any Policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not You are a party to such Policy of insurance.
- d) Liability imposed by the provisions of any workers'

compensation legislation or any industrial award or agreement or determination.

- e) Any liability howsoever or whatsoever for claims related to or arising from Employment Practices.

5.8 Faulty Workmanship

The cost of re-performing, correcting or improving any work undertaken by You.

5.9 Fines & Penalties

Fines, penalties or liquidated damages.

5.10 Loss of Use

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

- a) a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- b) the failure of Your Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You, but this exclusion 5.10 b) does not apply to the loss of use of other tangible property resulting from the sudden, unexpected and unintended physical damage to or loss or destruction of Your Products or work performed by You or on Your behalf after such Products or work have been put to use by any person or organisation other than You as defined under the definition of 'You', 'Your', 'Yours' or 'Insured'.

5.11 Pollution

- a) Personal Injury or Property Damage caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water, but this exclusion does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.
- b) Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this exclusion does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury and/ or Property Damage.
- c) 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.
- d) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants in the United States of America or Canada or in any country to which the laws of the United States of America or Canada apply.

5.12 Product Defect

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

This exclusion 5.12 is restricted to the defective or harmful or unsuitable part of a damaged Product and does not apply to any resultant damage caused to the remainder of the Product.

5.13 Product Recall

Loss, cost or expense incurred by You arising out of or resulting from the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of Your Products or of any property of which they form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

5.14 Professional Liability

The rendering of or failure to render professional advice or service by or on behalf of the Insured or any related error or omission. Provided that this exclusion does not apply to:

- a) the rendering of or failure to render professional medical advice by Medical Persons (not being a qualified medical practitioner) employed by the Insured to provide first aid and other medical services to Employees on the Insured's premises other than premises where the Insured's primary occupation involves the provision of health care; or
- b) Personal Injury or Property Damage arising therefrom but only if such professional advice or service is not given for a fee.
- c) Advice given in respect of the use or storage of Your Products

5.15 Property in Custody or Control

Property Damage to property owned by or leased or rented to You, or property in Your physical or legal control, but this exclusion 5.15 does not apply to liability for Property Damage to:

- a) premises or part of premises (including landlord's fixtures and fittings) which are leased, rented or loaned to You for the purposes of the Business;
- b) premises (or their contents) not owned or leased by or rented to You but temporarily occupied by You for the purpose of carrying out work, and other property temporarily in Your possession for work thereon;
- c) Vehicles (not belonging to or used by You) in Your physical or legal control where the Property Damage occurs while the Vehicles are in a car park owned or operated by You, unless You own or operate the car park for reward;
- d) the property of an Employee of the parties shown in paragraph 4.25 a) and 4.25 b) of Definitions of 'You', 'Your', 'Yours' or 'Insured'; or
- e) other property temporarily in Your physical or legal control provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which You are or have been working and Our limit under this clause 5.15 does not exceed \$100,000 (unless

a different amount is stated in the Policy Schedule) for any one Occurrence and in the aggregate for any one Period of Insurance.

5.16 Punitive Damages

Punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

5.17 Radioactivity

Personal Injury and/or property Damage arising directly or indirectly out of or in connection with:

- a) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion 5.17 a) only, combustion shall include any self-sustaining process of nuclear fission; or
- b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

Provided that exclusion 5.17 does not apply to low level radiation from any radioactive materials or compounds, such as can be found in measurement and control technology used in the medical sector, and used away from the place where such are made or produced.

5.18 Territorial Limits

- a) Claims made or actions instituted within any country, state or territory (outside Australia) that require insurance to be arranged or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance.
- b) Claims made and actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the courts of the United States of America or Canada.
- c) Claims and actions to which the laws of the United States of America or Canada apply.

Provided that:

- d) exclusions 5.18 b) and 5.18 c) above do not apply to claims and actions arising from:
 - i. The presence outside Australia of any of Your Employees and/or directors, partners or proprietors who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in the United States of America or Canada.
 - ii. Products exported to the United States of America or Canada without Your knowledge.

The Limit of Liability in respect of coverage provided under paragraph 5.18 d) is inclusive of all costs, expenses and interest as set out in 'Defence of Claims' of this Policy.

5.19 Terrorism

Personal Injury and/or Property Damage arising directly or indirectly out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- a) any act of terrorism; or
- b) any action taken in controlling, preventing, suppressing or in any way relating to an act of terrorism.

For the purpose of this exclusion 5.19, "act of terrorism" means:

- i. an act which is deemed by the government of the country where such act occurred to be an act of terrorism; or
- ii. an act, including but not limited to 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, 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, in fear.

5.20 Vehicle

Personal Injury and/or Property Damage arising out of the ownership, possession, or use by You of any Vehicle:

- a) that is registered or which is required under any legislation to be registered; or
- b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).

Exclusions 5.20 a) and 5.20 b) above do not apply to claims:

- c) for Personal Injury where:
 - i. compulsory liability insurance or statutory indemnity does not provide indemnity; and
 - ii. the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles;
- d) arising out of and during the loading or unloading of goods to or from any Vehicle;
- e) caused by or arising from the operation or use of any Vehicle which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by You or on Your behalf within the confines of Your premises;
- f) caused by or arising out of the use of:
 - i. any Vehicle whilst being used as a tool; or
 - ii. plant forming part of any Vehicle being used as a tool within the confines of Your premises or at any Worksite; or
- g) for Property Damage arising out of the movement by You or by any Employee(s) of Yours of any Vehicle or trailer not belonging to You which is interfering with access to or from Your premises or any site where You are carrying out work.

5.21 War

Personal Injury and/or Property Damage arising directly or indirectly out of or in connection with war, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.

SECTION 4 CONDITIONS

GENERAL CONDITIONS

6.1 Observance of Terms & Conditions

Any failure by any of You to observe obligations of disclosure, good faith and/or compliance with the terms and conditions of the Policy shall not prejudice the rights of any other of You under the Policy.

6.2 Changing Your Policy

If You want to make a change to this Policy, the change becomes effective when We agree to it in writing.

6.3 Other Interests

You cannot transfer any interests in this Policy without Our written consent.

Any person whose interests You have told Us about and whom We have noted on Your Policy Schedule is bound by the terms of this Policy.

6.4 Other Insurance

Following an Occurrence which may give rise to a claim under this Policy, You are required, as soon as it is reasonably practical to do so, to notify Us the full details of any other insurance that also provides You with an indemnity for the Occurrence as provided for in this Policy.

6.5 Cancelling Your Policy

How You may Cancel this Policy

- a) You may cancel this Policy at any time by telling Us in writing that You want to cancel it.
- b) Where 'You' involves more than one person, We will only cancel the Policy when a written agreement to cancel the Policy is received from all persons named as the Insured.

How We may Cancel this Policy

- a) We may cancel this Policy in any of the circumstances permitted by law by informing You in writing.
- b) We will give You this notice in person or send it to Your address last known to Us.

The Premium

We will refund to You the proportion of the premium for the remaining Period of Insurance, provided We shall be entitled to retain the agreed minimum premium. When the premium is subject to adjustment, cancellation will not affect Your obligation to supply to Us 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.

Premium Funders

If the premium has been funded by a premium funding company which holds a legal right over the Policy by virtue of a notice of assignment and irrevocable power of attorney, a refund of any return premium due on cancellation of this Policy, will be made to the premium funding company but only to the extent of any remaining financial interest in the Policy held by that party.

6.6 Notices

Any notice We give You will be in writing, and it will be effective if it is:

- a) delivered to You personally; or
- b) delivered or posted to Your address last known to Us.

It is important for You to tell Us of any change of address as soon as possible.

6.7 Changes to Information Previously Advised

- a) You must tell Us as soon as possible if circumstances occur, or if changes or alterations are intended or made which increase the risk of loss, damage or injury.
- b) You must tell Us immediately in writing of:
 - i. every Occurrence, claim, writ, summons, proceeding, impending prosecution, and inquest together with all relevant information which may result in a claim under this Policy, whether or not You believe any claim amount might fall below the Deductible; and
 - ii. every change that comes to Your knowledge which materially varies any of the facts or circumstances existing at the commencement of this Policy.

6.8 Jurisdiction

All disputes arising out of or under this Policy will be subject to determination by any court of competent jurisdiction within Australia.

6.9 Joint Insureds/Cross Liability

Where more than one party comprises the Insured each of the parties will be considered as a separate and distinct unit and the words 'You', 'Your', 'Yours' or 'Insured' will be considered as applying to each party in the same manner as if a separate Policy had been issued to each of them, provided that nothing in this clause will result in an increase of Our Limit of Liability in respect of any Occurrence or Period of Insurance.

6.10 Subrogation Waiver

We hereby agree to waive all Our rights of subrogation under this Policy against:

- a) each of the parties described under the Definition of 'You', 'Your', 'Yours', Insured; and
- b) any corporation, organisation or person which or who owns or controls the majority of the capital stock of any

corporation or organisation to which or to whom protection is afforded under this Policy.

Where such corporation, organisation or person is protected from liability insured against hereunder by any other Policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other Policy.

6.11 Claims

- a) The Insured shall not, without the consent in writing of Us, make any admission, offer, promise, or payment in connection with any Occurrence or Claim and We, if it so desires, shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any Claim.
- b) The Insured shall use its best endeavours to preserve all property, products, appliances 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 shall be effected without the consent of Us until We shall have had an opportunity of inspection.
- c) We shall be entitled to prosecute in the name of the Insured at Our expense and for Our benefit any claim for indemnity or damages or otherwise.
- d) We 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 We may require in the prosecution, defence or settlement of any Claim.

6.12 Discharge of Liabilities

At any time We can pay to You or on Your behalf, for all claims made against You for any one Occurrence:

- a) the Limit of Liability, after deducting any amounts already paid; or
- b) any lower sum for which the claim can be settled.

If We do so:

- a) the conduct of any outstanding claim(s) will become Your responsibility; and
- b) We will not be liable to pay any further amounts under that other than costs, charges, or expenses that We agreed to pay before We made the payment referred to above.

6.13 Reasonable Care

You must:

- a) exercise reasonable care that only competent Employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- b) take all reasonable precautions to prevent Personal Injury and Property Damage, to prevent the manufacture, sale or supply of defective Products, and to comply with and to ensure that Your Employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant

public authorities for the:

- i. safety of persons or property;
 - ii. disposal of waste products; and
 - iii. handling, storage or use of flammable liquids or substances, gases or toxic chemicals; and
- c) at Your own expense take reasonable action to trace, recall or modify any of Your Products containing any defect or deficiency of which You have knowledge or have reason to suspect, including (but not limited to) any of Your Products subject to governmental or statutory ban.

6.14 Inspection of Property

- a) We will be permitted but not obligated to inspect Your property and operations at any reasonable time.
- b) Neither Our right to inspect nor Our failure to inspect nor the making of any inspection nor any report of an inspection may be used by You or others in any action or proceeding involving Us.
- c) We may examine and audit Your books and records at any time during the Period of Insurance and within one year thereafter but that examination and audit will be restricted to matters which in Our opinion are relevant to the Policy.

6.15 Adjustment of Premium

Where the Policy Schedule shows premium for the Policy has wholly or partly been calculated on estimates You must, within sixty (60) days after the expiry of each Period of Insurance, provide to Us such matters, particulars and information relevant to the Policy as We may reasonably require. The premium for the Period of Insurance will then be adjusted and any difference paid by or allowed to You, as the case may be, provided that the adjusted premium will not be less than any minimum premium specified in the Policy Schedule.

You must keep a record of all matters, particulars and information requested by Us and must on reasonable notice allow Us or Our nominee to inspect and make copies of those records.

6.16 Additions and/or Alterations to Buildings & Plant

Where additions and/or alterations to buildings or plant are being performed at the location by any contractor employed by You, notwithstanding the definition of Business (clause 4.3), this Policy extends to indemnify You against any claim for Your legal liability to pay compensation for Personal Injury and/or Property Damage arising from an Occurrence happening in connection with the conduct of the Business during the period of the contract works, that is independent of the contractor's performance.

Provided also that nothing in this clause will result in an increase in Our Limit of Liability in respect of any Occurrence or Period of Insurance.

6.17 Insurance Contracts Act 1984

Nothing contained in this Policy is to be construed to reduce or waive either Your or Our privileges, rights or remedies available under the Insurance Contracts Act, 1984.

6.18 Headings

The headings and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purposes of its construction or interpretation, except for the headings contained in the "Definition" Section of this Policy.

6.19 Words - Gender

- a) Words importing persons shall include corporations and other legal entities.
- b) The singular includes references to the plural and vice versa and any gender includes reference to all other genders.

6.20 Due Observance

If the insured fails to comply with any term, condition or provision of this Policy, We may refuse to indemnify the Insured in relation to any Claim or make any payment pursuant to the terms of this Policy, but in any event. Our rights will be subject to the provisions of Section 54 of the Insurance Contracts Act 1984.

SURA COMMERCIAL

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NORTH SYDNEY NSW 2059
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VICTORIA

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MELBOURNE VIC 3000
TELEPHONE. 03 8823 9400
FACSIMILE. 03 8823 9440

QUEENSLAND

LEVEL 8/500 QUEEN STREET
BRISBANE QLD 4000
TELEPHONE. 07 3434 2626

WESTERN AUSTRALIA

LEVEL 1/35 HAVELOCK STREET
WEST PERTH WA 6005
TELEPHONE. 08 6380 6600