

public and
products liability
excess loss

FOCUS
underwriting

**POLICY
WORDING**



Important Information

Introduction

Focus Underwriting is a trading division of IBL Limited AFS
Licence number: 231203

You can contact us at enquiries@focusuw.com.au or on 1800 234 338 or at Level 21, 41 Exhibition Street Melbourne 3000.

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Important information

About this insurance policy

If **we** issue **you** with an insurance policy, **you** will be given a **policy schedule**. The **policy schedule** sets out the specific terms applicable to **your** cover and should be read together with the **policy** terms and conditions.

The **policy** terms and conditions, the **policy schedule** and any **endorsements** form **your** legal contract with **us**.

Please keep these documents for future reference. **You** must read this entire document to understand the full terms and conditions of **your policy**.

Agent of the insurer

Please note that in arranging the contract of insurance, we are acting under an authority given to us by the **insurer**, and we will be effecting the contract of insurance as agent of the **insurer**, and not as **your** agent.

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.

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

This insurance complies with the Insurance Council of Australia's General Insurance Code of Practice, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

Privacy

IBL Limited, trading as Focus Underwriting (Focus), is committed to protecting **your** privacy in accordance with the Privacy Act 1998 (Cth) and the Australian Privacy Principles. Our Privacy Policy describes our current policies and practices in relation to the collection, handling, use and disclosure of personal information. It also deals with how **you** can complain about a breach of the privacy laws and how you can access the personal information we hold and how to have that information corrected.

Our contact details for all privacy enquiries are:

Focus Underwriting
Level 21 41 Exhibition Street Melbourne 3000
Phone: 1800 234 338
Email: enquiries@focusuw.com.au
Web: www.focusuw.com.au

Our full Privacy Policy is contained on our website and we encourage you check regularly for any updates.

What information do we collect and how do we use it?

We collect from **you** all information we need to assess **your** application for insurance and to administer **your** insurance policy and any claims **you** may make. We provide any information that the **insurer** who provide our capacity require to enable them to decide whether to insure **you** and on what terms. This **insurer** may in turn pass on this information to their reinsurers. Some of these companies are located outside Australia.

When **you** make a claim under your policy, we assist you by collecting information about your claim. Sometimes we also need to collect information about **you** from others. We provide this information to **your insurer** (or anyone **your insurer** has appointed to assist it to consider your claim, e.g. loss adjusters or legal advisers etc) to enable it to consider your claim. Again this information may be passed on to reinsurers.

Important Information

What if you don't provide some information to us?

We can only fully consider your risk if we have all relevant information. The insurance laws also require **you** to provide **your insurers** with all the information they need in order to be able to decide whether to insure **you** and on what terms. **You** have a duty to disclose the information which relevant to the **insurer's** decision to insure **you**. If **you** provide inaccurate or incomplete information we may not be able to provide you with our products or services.

Your consent

By asking us to assist with your insurance needs, you consent to the collection and use of the information you have provided to us for the purposes described above.

General Terms and Conditions

General policy conditions

The following general conditions apply to this **policy**.

1.1 Cancelling your policy

How you may cancel

You may cancel the **policy** at any time by telling **us** in writing that **you** want to cancel it. Where **you** involves more than one person, **we** will only cancel the **policy** when written instructions to cancel the **policy** is received from all persons named as the **insured**.

How we may cancel

We may only cancel a **policy** when the law says **we** can. Such cancellation shall take effect at the earlier of the following times:

- a. the time when another policy of insurance between **you** and **us** or some other insurer, being a policy that is intended by **you** to replace this policy, is entered into; or
- b. at 4.00 pm on the thirtieth (30th) business day after the day on which notification was given to **you**.

We will cancel **your policy** by telling **you** so in writing, either in person or by post to **your** last known address.

Return Premium

We will retain the pro-rata premium for the time the policy has been in place subject to any minimum premium.

We will return the premium that **you** have paid for the rest of the **period of insurance** (along with GST and any relevant charges where this is allowed).

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.

You are not entitled to receive a refund of any underwriting levy charged.

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, the return of premium calculated on the basis set out above shall be made to the premium funding company.

1.2 Claims

You must:

- a. notify **us** in writing immediately of every occurrence claim, writ, summons, proceeding, impending prosecution, and/or inquest and give **us** all the known details of the event that **you** believe is likely to involve this **policy**;

- b. use **your** best endeavours to preserve all property, products, plant and all other things that may assist **us** in investigating or defending a claim against **you**, including assisting in determining if there are rights of recovery against another entity or person.
- c. co-operate with **us** fully in any investigation, negotiation, defence or settlement of any claim or any recovery action **we** may pursue. This may include attending court to give evidence.

You must not:

- a. admit liability for any loss, damage or injury;
- b. make an admission, offer, promise or payment;
- c. settle or attempt to settle or defend any claim;
- d. carry out any alteration or repair until **we** have had an opportunity to inspect such property, products or plant;
- e. enter into any agreement or make any admissions that have the effect of limiting or excluding **your** rights and **our** rights to recover payments and expenses

without **our** written consent.

We may:

- a. appoint legal or other representatives to assist in the conduct of a claim;
- b. refuse to pay a claim if **you** are in breach of **your** Duty of Disclosure or any of the conditions of this **policy**, including any **endorsements** noted on or attached to the **policy schedule**. **We** pay only once for loss or damage from the same event covered by this **policy**. **We** may be entitled to refuse to pay or to reduce the amount of a claim if:
 - i. it is in any way fraudulent;
 - ii. any fraudulent means or devices are used by **you** or anyone acting on **your** behalf to obtain any benefits under this **policy**.

We have:

- a. the right and full discretion to conduct claims; and,
- b. the right to negotiate and settle any claim on terms **we** consider appropriate, and
- c. the right to take action or institute legal proceedings, in **your** name, for the recovery of payments made and expenses incurred in relation to any claim insured by this **policy**, against any person, company or entity legally liable to **you** in respect of that claim. **You** must provide **us** with full information and all reasonable assistance in the recovery of those payments or expenses.

1.3 Complaints resolution

Any enquiry or complaint relating to this Insurance should be referred to Focus Underwriting in the first instance. If this does not resolve the matter or **you** are not satisfied with the way a complaint has been dealt with, **you** should contact:

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Lloyd's Underwriters' General Representative in Australia
Level 9, 1 O'Connell Street
Sydney NSW 2000

Telephone Number: (02) 8298 0783

Who will refer your dispute to Policyholder & Market Assistance at Lloyd's.

Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

1.4 Changes to the policy

This **policy** is subject to the same terms, conditions and exclusions (except for the **limit of liability**, the premium or any agreement to renew) as are contained in the **primary policy** (except where amended by this **policy** its definitions, exclusions, or general conditions) No amendment to the **primary policy** that required the payment of an additional premium during the **period of insurance** shall be effective in extending this **policy** until **we**:

- a. agree to it; and
- b. give **you** a new **policy schedule** and/or an **endorsement** schedule detailing the change.

1.5 Defence costs

In the event of any claim(s) against **you** which appear to exceed the limit of liability available under the **primary policy(s)** **we** will not be liable for costs and expenses incurred in the defence or settlement of such claim(s). However, in the event **we** provide **you** with **our** written consent, **we** will contribute to the costs and expenses incurred in such claim(s) in the proportion that **our** share of the loss as finally settled bears to the total sum payable. If however any claim(s) are settled within the indemnity available under the **primary policy(s)** then no costs and expenses will be payable by **us**.

1.6 Discharge of liabilities

At any time **we** can pay to **you** or on **your** behalf, all claims made against **you** for any one occurrence:

- a. the **limit of liability**, after deducting any amounts already paid;
- b. any lower sum for which the claim may 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 in relation to that occurrence other than costs, charges, or expenses that **we** agreed to pay before or when **we** made the payment referred to in this General Condition.

1.7 Exhaustion of primary policy annual aggregate

We agree that if by reason of the payment of claim(s) by the **primary policy**, during the **period of insurance** which results in the reduction or exhaustion of the aggregate limit/s of liability under the primary policy **we** will, subject to **our limit of liability** stated in the **policy schedule**:

- a. pay the excess over and above the reduced **primary policy(s)** in the event of reduction, or
- b. on exhaustion of the total limit of liability of the **primary policy(s)** this **policy** shall continue in force as the **primary policy**.

The cover provided by clause 1.7 a) and b) is subject to the terms, conditions, definitions and exclusions of the **primary policy(s)** except where amended by this **policy**.

1.8 Governing law

The **policy** will be governed in accordance with the laws of Australia. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

1.9 How Goods and Services Tax (GST) affects any payments we make

In addition to the premium, **we** will charge **you** an amount on account of GST.

You must inform **us** of the extent to which **you** are entitled to an input tax credit for that GST amount each time that **you** make a claim under this **policy**. No payment will be made to **you** for any GST liability that **you** may have on the settlement of a claim if **you** do not inform **us** of **your** entitlement or correct entitlement to an input tax credit.

Despite the other provisions of this insurance (including provisions in the **policy** wording, the **policy schedule** and any **endorsement**), **our** liability to **you** will be calculated taking into account any input tax credit to which **you** are entitled for any acquisition which is relevant to **your** claim, or which **you** would have been entitled were **you** to have made a relevant acquisition

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

1.10 Insurers several liability

The subscribing insurers' obligations under this policy to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

General Terms and Conditions

1.11 Jurisdiction

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

1.12 Notices

Any notice given by **us** to the first named **insured** within the **policy schedule** will be treated as notice to all parties comprising '**you**', '**your**' '**insured**', and it will be effective:

- a. immediately if it is delivered to **you** personally;
- b. if it is posted to **your** address last known to **us**, three business days after having been posted by **us**;
- c. immediately if it is sent by electronic communication

1.13 Premium

We charge **you** a premium for the cover **we** provide **you** under this **policy**. The total premium **we** charge **you** will include any government charges such as stamp duty and GST. **We** may charge an underwriting levy which will also be included in **your** total premium. **Your** total premium and the breakdown of government and other charges is shown in **your policy schedule**.

Your insurance intermediary may also charge **you** a service or administration fee. This fee is not included in **your** premium shown in your **policy schedule**.

Factors that affect the premiums charged include:

- **Your** risk profile including **your** claims history
- The limits of indemnity selected by **you**
- Costs of reinsurance
- Any minimum premiums that apply
- Government taxes and duties

When **you** apply for this insurance **we** will tell you the total premium payable. **We** will also tell you when and how this premium is to be paid. If **you** fail to pay the premium or if your payment is dishonored the **policy** will not operate and there will be no cover.

1.14 Preventing our right of recovery

If **you** have agreed not to seek compensation from another person 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.

1.15 Primary policy

The **primary policy (s)** referred to in the **policy schedule** and any renewal thereof must be maintained by **you** in full effect during the **period of insurance** without alteration of terms and conditions (except for any reduction of the aggregate limit following payment of a claim or claims). Failure by **you** to comply with the foregoing shall not invalidate this **policy** but in the event of such failure, **we** will only be liable to the same

extent as **we** would have been liable had **you** complied with this clause.

1.16 Service of suit

The **insurers** hereon agree that:

- a. in the event of a dispute arising under this Insurance, the **insurers** at the request of the **insured** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- b. any summons notice or process to be served upon the **insurers** may be served upon:

Lloyd's Underwriters' General Representative in Australia

Level 9, 1 O'Connell Street

Sydney NSW 2000

Telephone Number: (02) 8298 0700

who has authority to accept service and to enter an

appearance on the **insurers'** behalf, and who is

directed at the request of the **insured** to give a written

undertaking to the **insured** that he will enter an

appearance on the **insurers'** behalf.

- c. if a suit is instituted against any one of the **insures**, all **insurers** hereon will abide by the final decision of such Court or any competent Appellate Court.

General Definitions

General Definitions

These meanings apply to the following words or terms used in this **policy**.

2.1 Act of Terrorism	an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, 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, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.
2.2 Electronic Data	facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.
2.3 Endorsement/s	Documentary evidence of an alteration to the policy which forms part of the policy .
2.4 Limit of Liability	the applicable limit of liability specified in the policy schedule
2.5 Medical Persons	qualified medical practitioners, nurses, dentists and first aid attendants.
2.6 Period of Insurance	the period shown in the policy schedule at your principal place of business.
2.7 Policy	this booklet, your policy schedule and any endorsement attached or intended to be attached to it.
2.8 Policy Schedule	The record of the particulars of your insurance which forms part of this policy . The policy schedule is issued when we have accepted your insurance. At each renewal of your policy , the renewal schedule becomes your current policy schedule .
2.9 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.

2.10 Primary policy/s	A policy of liability insurance listed in the policy schedule or included by endorsement to this policy .
2.11 Territorial limits	anywhere in the world subject to the Territorial Limits Exclusion
2.12 We, Our, Us, Insurer/s	certain underwriters at Lloyd's via Focus Underwriting
2.13 You, Your, Yours, Insured	The insured named in the policy schedule

Policy Coverage and General Exclusions

Your insurance under this policy

3.1 What we cover

We will cover **you** for **your** legal liability to pay amounts in excess of the total limit of liability under **your primary policy(s)** provided that:

- the insurer(s) of **your primary policy(s)** has paid or been held liable to pay the total limit of liability under **your primary policy(s)**;
- this **policy** is subject to the same terms, limitations, exclusions, conditions and definitions as the **primary policy(s)** except where amended by this **policy**.

In the event of any conflict between the provisions of this **policy** and your **primary policy(s)**, the provisions of this **policy** will apply.

3.2 Limit of liability

Our maximum liability in respect of any claim or any series of claims will not exceed the **limit of liability** shown on **your policy schedule**.

General Exclusions

These exclusions apply to this **policy**.

This **policy** does not cover liability in respect of:

4.1 Asbestos

Claims directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

4.2 Electronic data

- communication, display, distribution or publication of **electronic data**, provided that this Exclusion 4.2 a) does not apply to personal injury or advertising liability resulting therefrom;
- total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation, or misappropriation of **electronic data**;
- error in creating, amending, entering, deleting or using **electronic data**;
- total or partial inability or failure to receive, send, access or use **electronic data** for any time or at all;

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

4.3 Fines, penalties, punitive, exemplary or aggravated damages

Fines, penalties punitive, exemplary or aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

4.4 Liquidated damages

Liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

4.5 Pollution

- personal injury or property damage directly or indirectly 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. Provided that this Exclusion 4.5 a) 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 and which occurs outside of the United States of America or Canada;
- any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution. Provided that this Exclusion 4.5 b) 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 and which occurs outside of the United States of America or Canada
- the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants caused by your product that has been discarded, dumped, abandoned or thrown away by you or on your behalf.
- Our** liability under this Exclusion 4.5 a) and b) in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of pollutants during any one period of insurance will not exceed the **limit of liability**.

4.6 Professional liability

The rendering of or failure to render professional advice or service by **you** or any related error or omission, provided that this Exclusion 4.6 shall not apply to:

- personal injury** and/or **property damage** arising from such rendering of or failure to render professional advice or service, providing such professional advice or service is not given for a fee;
- medical advice by **medical persons** employed by **you** to provide first aid and other medical services on **your** premises providing **your** business is not involved in the provision of medical services.

General Exclusions

4.7 Radioactivity

Liability directly or indirectly caused by, contributing to or arising from:

- a. ionising 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 only, “combustion” shall include any self-sustaining process of nuclear fission;
- b. the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

4.9 Sanctions

Any claim or provide any benefit and there is no provision of coverage, to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

4.10 Territorial limits

- a. claims made or actions instituted within any Country, State or Territory (outside Australia) where the laws of that Country, State or Territory require insurance to be effected 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 Exclusion 4.10 b) and c) do not apply to:

- a. claims and actions arising from the presence outside Australia of any of **your** employees and/or directors or partners who are normally resident in Australia and who are not undertaking manual work or supervision work of any kind while in the United States of America or Canada;
- b. claims for personal injury, property damage or advertising liability caused by or arising out of **your** products not knowingly exported by **you** or on **your** behalf to the United States of America or Canada.

4.11 Terrorism

Loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any **act of terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion 4.11 also excludes loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting

from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any **act of terrorism**.

4.12 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.