

# 360 Commercial Policy Wording

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360 Commercial Pty Ltd **ABN** 73 620 071 650 is an Authorised Representative (**AR** 1256191) of  
360 Underwriting Solutions Pty Ltd **ABN** 18 120 261 270, **AFSL** 319181  
The Forum, Level 3, 240 Pacific Highway, Charlestown, NSW 2290

# 360 Commercial Policy Wording



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# Important Information



## Coverage

This **360 Commercial** Insurance Policy provides **coverage** to the **Insured** on the terms of this **policy**.

Words used in this **policy** that appear in bold have special meanings described in Definitions.

## Policy Schedule

A numbered **policy** schedule will be issued by **360 Commercial** confirming the extent of **cover** and setting out information specific to the **Insured**.

## How to Make a Claim

The **Insured** must as soon as reasonably possible give **360 Commercial** notice of every **event** or **occurrence** that may result in a claim under this **policy**. The **Insured** must then:

- + cooperate fully with **360 Commercial** in claim settlement. **360 Commercial** will only request cooperation related to the **Insured's** claim and will explain why it is needed;
- + provide **360 Commercial** with all documentation requested in conjunction with the claim including information about any **double insurance**. **360 Commercial** will only request documentation related to the **Insured's** claim and will explain why it is needed;
- + as soon as reasonably possible send **360 Commercial** any court documents together with relevant information which may result in a claim under this **policy**;
- + on **360 Commercial's** request, attend hearings and trials and assist in effecting settlements, securing and giving evidence and obtaining the attendance of witnesses; and
- + as far as is within the **Insured's** power cause all persons including **employees** connected with any potential claim, to submit to examination by **360 Commercial** or its nominee.

The **Insured** must not make any admission of liability, offer, promise or payment in connection with any claim, without **360 Commercial's** agreement.

The **Insured** will be required to pay the **excess**.

Additional procedures and conditions affecting claim settlement are shown in the relevant Protection Sections.

## 360 Commercial Pty Ltd

**360 Commercial Pty Ltd** **ABN 73 620 071 650** (360 Commercial) is an Authorised Representative of 360 Underwriting Solutions Pty Ltd (360 Underwriting) **ABN 18 120 261 270 AFSL 319 181** and has developed this 360 Commercial Insurance **Policy** which is underwritten by Insurance Australia Limited trading as CGU Insurance (CGU).

In issuing this **Policy**, 360 Underwriting and its Authorised Representative **360 Commercial** will be acting under an authority given to it by CGU. This means that when issuing this **Policy**, 360 Underwriting and its Authorised Representative **360 Commercial** will be acting as an agent for CGU, not for **you**.

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

### 360 Commercial's contact details are:

The Forum, Suite 2, Level 3,  
240 Pacific Highway,  
Charlestown, NSW 2290  
PO Box 226, Charlestown, NSW 2290  
Telephone. (02) 4904 8330

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

### CGU contact details are:

Level 13, Tower Two, Darling Park,  
201 Sussex Street,  
Sydney, NSW 2000  
Telephone. 1800 045 517

**You should contact 360 Commercial** in the first instance in relation to this insurance.

## Duty of Disclosure

### Your Duty of Disclosure

Before **you** enter into a contract of insurance, **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 if **we** would not have issued **you** cover on the same terms had **you** complied with **your** duty of disclosure or reduce the amount **we** will pay **you** if **you** make a claim to the extent **we** are prejudiced by **your** noncompliance, or both.

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

The course of action **we** take when **you** do not comply with the terms and conditions of **your** policy will be considered in each circumstance based on what impact or effect **your** non-compliance caused or contributed to the claim or **our** decision to issue **your** policy.

### Dispute Resolution

**360 Commercial** and CGU view seriously any complaint made about **our** products or services and will deal with it promptly and fairly. If **you** have a complaint please first try to resolve it by contacting the relevant member of **360 Commercial's** staff. If the matter is still not resolved, please then contact **360 Commercial's** Internal Disputes Resolution Officer on [idr@360uw.com.au](mailto:idr@360uw.com.au) or **1800 411 580** who will seek to resolve the matter in accordance with the General Insurance Code of Practice and **our** Dispute Resolution procedures. **You** can contact **360 Commercial** for more information on these procedures or visit **our** website to view **our** Customer Satisfaction Policy.

If **you** are a natural person or small business, and **you** are not satisfied with the final decision, **you** may wish to contact the Australian Financial Complaints Authority (AFCA). The AFCA is a free independent external disputes resolution service provided to customers to review and resolve complaints where **we** have been unable to satisfy **your** concerns.

For further details **you** can visit their website at: [www.afca.org.au](http://www.afca.org.au) or contact them:

#### Australian Financial Complaints Authority (AFCA)

GPO Box 3,  
Melbourne, VIC 3001  
Telephone. 1800 931 678  
Email. [info@afca.org.au](mailto:info@afca.org.au)

## Privacy

In this Privacy Statement the use of "**we**", "**our**" or "**us**" means **360 Commercial** and CGU unless specified otherwise.

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

**360 Commercial** and CGU are committed to protecting the privacy of the personal information **you** provide to **us**, in accordance with the *Privacy Act 1988 (Cth)* including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation.

*The Privacy Act 1988 (Cth)* contains the Australian Privacy Principles which require **us** to tell **you** that **we** collect, handle, use, 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, store 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** will protect **your** information using physical, technical, and administrative security measures to reduce the risks of loss, misuse, unauthorised access, disclosure and alteration. Some of the safeguards that **we** use are firewalls and **data** encryption, physical access controls to **our data** centres, and information access authorisation controls.

**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 where it is reasonably necessary for, or directly related to, the functions, services or activities **we** provide to **you**. When **we** transfer **your** information to other countries, including countries which may not have **data** protection laws that provide the same level of protection that exists in Australia, **we** will protect the information as described in this Privacy Policy.

**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 European Union and the United States of America.

**We** will generally take reasonable steps to ensure that **we** have arrangements in place with such overseas third parties that prevent them from using or disclosing personal information for any purposes other than **our** own. However, by providing **your** personal information to **us**, **you** acknowledge that, while **we** will take reasonable steps, **we** may not always be able to guarantee that overseas parties are subject to the requirements similar to those contained in the Privacy Act and consent to the disclosure on this basis. If **you** would like further information about whether **your** information will be disclosed to overseas recipients, please contact **us**.

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.

**We** will notify **you** as soon as possible if **your** personal information is involved in a **data** breach that is likely to result in serious harm to **you**.

If **you** would like a copy of **our** Privacy Policy, 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, stored or used, or any other query relating to **our** handling of **your** Personal Information, please contact **us**.

This (insurance policy) is underwritten by CGU Insurance Australia Limited ABN 11 000 016 722 trading as CGU Insurance (CGU). We may disclose personal information that we collect from you to CGU. For further information on how CGU handles your personal information, please refer to CGU's Privacy Policy, which can be found at [cgu.com.au/privacy](http://cgu.com.au/privacy), or, alternatively, you can also request a copy by contacting CGU at mail to: [privacy@cgu.com.au](mailto:privacy@cgu.com.au) or 13 24 81.

## Subrogation

If the **Insured** has entered into an agreement with another party that prevents **us** from taking recovery action against that party, it may affect the **Insured's** rights to **coverage** under this **policy**.

## Under Insurance

It is the **Insured's** responsibility to ensure the adequacy of values reported to **us** to reinstate the **property**. If this is not done **coverage** may be insufficient and the **Insured** may not be **covered** for a total loss.

The **Insured** should re-assess the adequacy of values and relevant **limits** both during the **policy period** and prior to renewal of this **policy** to ensure they are adequate. Additional under insurance provisions apply to the **Asset Protection cover** in this **policy**.

## Code of Practice

**We** proudly support the General Insurance Code of Practice (the 'Code'). The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

The objectives of the Code are:

- + to commit CGU to high standards of services;
- + to promote better, more informed relations between CGU and **you**;
- + to maintain and promote trust and confidence in the general insurance industry;
- + to provide fair and effective mechanisms for resolving complaints **you** make about **us**; and
- + to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers' compliance with the Code.

### Our commitment to you:

**We** have adopted and support the Code and are committed to complying with it.

For further information relating to the Code or the Code Governance Committee, please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au) or alternatively **you** can request a brochure on the Code from **360 Commercial**.

## Calculating Your Premium

In order to calculate **your premium**, **we** take various factors into consideration, including the level of **cover** requested and the **property** to be insured.

Factors that increase the risk to **us** generally increase the **premium** (for example, high claims experience or higher sums insured) and factors that reduce the risk to **us** generally reduce the **premium** (for example, low claims experience or lower sums insured).

**Your premium**, including any discounts **you** may be eligible for, are subject to minimum **premiums**.

**We** consider the minimum amount **we** are prepared to sell the **policy** for and may adjust **your premium** to ensure it does not fall below the minimum amount. Any discounts will be applied to **your policy**, only to the extent any minimum **premium** is not reached. This means that any discount **you** may be eligible for may be reduced. When **we** determine **your premium** on renewal, **we** may also **limit** any increases or decreases in **your premium** by considering factors such as **your** previous year's **premium** amount.

**Your premium** also includes amounts that take into account **our** actual or estimated obligation to pay any relevant compulsory government charges, taxes or levies (for example stamp duty, GST and fire services levy). Where **we** are required to pay an estimated amount (for example, for fire services levies) based on criteria set by the State Governments, **we** allocate to the **policy our** estimate of the amount **we** will be required to pay. **We** may under or over recover in any particular year but **we** will not adjust **your premium** because of this. **You** can ask **us** for more details if **you** wish.

When **you** apply for this insurance, **you** will be advised of the **premium** payable, when it needs to be paid and how it can be paid. This amount will clearly set out in **your policy** schedule, which will be sent to **you** within 5 days of the issue of this **policy**. If **you** fail to pay, **we** may reduce any claim payment by the amount of **premium** owing and/or cancel the **policy** in accordance with the cancellation process outlined under **Premium** in the General Conditions section.

**You** may also be required to pay an **excess** in the **event** of a claim under this **policy**. The amount of any **excess** will be shown on **your policy** schedule.



# General Conditions



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

## Acquisitions

Any company where the **Insured** acquires more than 50% of share capital or the majority of the voting rights during the **policy period** is automatically an **Insured** from the date of such acquisition, provided that notice of acquisition is given to **us** within ninety days after the acquisition and provided that the **Insured** pays any additional **premium** as may be required by **us** to reflect any increased risk of loss or damage.

## Adjustment

Where **premium** (or any part) has been calculated on estimates, relating to the activities, turnover and/or size of the business, provided by the **Insured**, the **Insured** must keep accurate written records of all relevant particulars in relation to those estimates.

Within thirty days after the expiry of each **policy period** the **Insured** must provide the information reasonably required by **us** to enable the **premium** to be adjusted subject to any minimum **premium**.

## Alterations

The **Insured** must notify **us** as soon as reasonably possible of any change known to the **Insured** that materially varies the circumstances existing at the commencement of this **policy** and on which the **premium** and other terms for this **policy** were based.

**We** will not **cover** loss or damage or indemnify against legal liability under any section of the **policy** if the **Insured's business** is:

- + changed in such a way as to increase the risk of loss; or
- + permanently discontinued, ceased by will or operation of law or carried on by an insolvency practitioner except where **we** have agreed otherwise under the Income Protection insurance; unless **our** prior agreement to any such changes has been obtained.

When **we** receive notification of a change, **we** may decide to either:

- + continue **cover** with no change to the **premium** payable;
- + reduce the **premium** payable and return any refund to **you**;
- + charge **you** additional **premium** (**you** can cancel **your policy** if **you** do not accept the additional **premium**); or
- + cancel the **policy** if permitted in accordance with the provisions of the *Insurance Contracts Act 1984* and return to **you** a proportion of the **premium** for the unexpired **policy period**.

It is important for **you** to know that **we** may need to make changes to this **policy** if **you** notify **us** of any changes that alter **our** risk under this **policy**. When there is a change **we** will inform **you**.

## Accounts & Audit

The **Insured** must keep a record, for a minimum period of five years after expiry of this **policy**, of information which is relevant to this insurance and/or which may be required by **us** for the purposes of adjusting **premiums** based on estimates, or investigating or verifying any claim.

The **Insured** must, on reasonable notice, allow **us** or **our** nominee to examine, make copies, and/or audit such records as far as they relate to the subject matter(s) insured by this **policy** at any reasonable time and place.

Any particulars contained in the **Insured's** books of account or other documents certified by the **Insured's** auditors will be accepted by **us**.

## Cancellation

This **policy** (or any part) may be cancelled:

- + at the written request of the **Insured**, provided that such cancellation will take effect from the date the **Insured's** notice is received by **us** or any other date mutually agreed, in which case **we** will refund on a pro-rata basis the unearned **premium** subject to any minimum **premium** that may apply; or
- + by **us**, in the circumstances permitted in the *Insurance Contracts Act 1984 (Cth)* including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation, in which case **we** will refund on a pro-rata basis the unearned **premium**.

When the earned **premium** calculation is subject to reports of values, the **Insured** must, in the **event** of cancellation, report the values and pay **premium** due up to the date of cancellation.

## Goods & Services Tax (GST)

Where **we** make a payment under this **policy**:

- + for the acquisition of goods, services or other supply; or
- + as compensation instead of payment for the acquisition of goods, services or other supply.

**We** will reduce the amount of the payment by the amount of any income tax credit that the **Insured** would have been entitled to under *A New Tax System (Goods and Services) Tax Act 1999 (Cth)*, including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation, had the payment been applied to acquire such good services or other supply.

## Inspection

We may seek to inspect the **Insured's property** and **operations** subject to prior notice and agreement of an appropriate time at the **Insured's** convenience.

## Insurance Contracts Act

Nothing contained in this **policy** will be construed to reduce or waive either the **Insured's** or **360 Commercial's** or CGU's privileges, rights or remedies available under the *Insurance Contracts Act 1984 (Cth)*, including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation.

## Insured's Obligations

When the **Insured** takes out a **policy** with **us** or makes a claim, the **Insured** has certain responsibilities that are set out in this section. These responsibilities also apply to any person that is **covered** by the **policy**.

If the **Insured** does not meet these responsibilities, **we** may refuse to pay the claim or reduce what **we** pay for the claim. **We** may also decide to cancel the **policy**.

The **Insured** will be required to take reasonable care and or action to:

- + ensure that only competent **employees** are employed;
- + maintain all **property** in sound condition;
- + avoid or minimise loss or damage to **property**;
- + prevent **personal injury, property damage** and/or **advertising injury**;
- + prevent the manufacture, sale or supply of defective products;
- + trace, recall or modify any products containing any defect or deficiency of which the **Insured** has knowledge or has reason to suspect may exist; and
- + comply with all relevant statutory obligations that concern the safety of persons or **property**.

The course of action **we** take when the **Insured** fails to do or provide notification of these things will be considered in each circumstance based on what impact or effect the failure to do these things or provide this information caused or contributed to the claim or **our** decision to issue the **policy**.

## Jurisdiction

In the event of any dispute relating to this **policy**, the parties will submit to the exclusive jurisdiction of the courts of the state or territory in which this **policy** is issued. Such dispute will be determined in accordance with the law and practice applicable in such court.

## Premium

When **you** take out insurance, **you** need to pay **your** annual **premium** or any instalments by the due date specified on **your** Policy Schedule. An instalment is unpaid if it cannot be deducted from **your** nominated account or credit card. If **your premium** is overdue **we** will send **you** a notice outlining the overdue amount and when it needs to be paid.

If **your premium** remains unpaid after the time period specified in the notice **we** send, **we** will:

- + cancel **your policy** for non-payment; and
- + refuse to pay any claim for an incident occurring after the cancellation date.

If **you** need to make a claim when **your policy** is overdue, and before **your policy** has been cancelled for non-payment, **we** will require **you** to pay the overdue amount as part of the claim settlement process. Alternatively, where the settlement method allows **we** can reduce the settlement payment by the overdue amount.

**Your premium**, including any taxes and charges, will be listed on **your** Tax Invoice.

## Subrogation

In the **event** of any payment under this **policy**, **we** are subrogated to the extent of such payment, to all the **Insured's** rights of recovery against, or contribution from, any person or organisation.

The **Insured** must execute and deliver to **us** instruments and papers and do whatever else is necessary to secure such rights.

**We** will only request information and assistance relevant to handling the **Insured's** claim and will explain why it is needed.

The **Insured** must not do anything after a loss to prejudice such rights.

**We** waive any recovery rights and remedies to which **360 we** become entitled against any **Insured**.

## Third Parties

We will **cover** the insurable interest in **property** insured of only those lessors, financiers, trustees, mortgagees, owners and other parties specifically noted in the **Insured's** records.

No interest under this **policy** may be assigned without **our** consent.

## Unoccupied Building & Premises

We will not **cover** loss or damage or provide indemnity against legal liability if an **insured location** (other than an unnamed location) becomes vacant or if a location becomes more than 50% vacant by tenant count, the **Insured** must notify **360 Commercial** as soon as reasonably possible of any vacancy. If **we** agree to continue **cover**, **we** reserve the right to charge an appropriate additional **premium** to reflect any increased risk of loss or damage.

The **Insured** must:

- + secure the **premises** against illegal entry;
- + remove all waste and /or combustible material from the vacant area;
- + turn off any **essential services** other than those required to maintain fire protection, alarm systems, and maintain those services;
- + engage a managing agent, security company or inspect the **premises** monthly.

All claims are subject to an **excess** of \$10,000 or otherwise stated in the **policy** schedule where another **excess** amount is selected or imposed.

# General Exclusions

## Communicable Diseases

Your policy does not cover any actual or alleged loss, **destruction**, damage, liability, cost, expense or any other amounts of whatever nature directly or indirectly caused by, or arising from, contributed to by, or resulting from, or otherwise in connection with:

- a. disease;
- b. a **communicable disease** or the fear or threat (whether actual or perceived) of a **communicable disease** regardless of any other cause or **event** contributing concurrently or in any other sequence thereto;
- c. any disease determined to be a 'listed human disease' under, or any disease in respect of which a 'biosecurity emergency' or 'human biosecurity emergency' is declared under, the *Biosecurity Act 2015 (Cth)* including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation;
- d. any disease determined by the World Health Organisation to be a Public Health Emergency of International Concern (PHEIC);
- e. Highly Pathogenic Avian Influenza (HPAI) in humans;
- f. rabies;
- g. cholera;
- h. any pandemic, epidemic or any other outbreak of infectious disease; or
- i. any:
  - mutation of; or
  - fear or threat (actual or perceived) of; or
  - action taken to control or prevent or suppress, the diseases, conditions or circumstances described in this exclusion.

Provided that this exclusion will not apply to **property damage** to **your property** insured under Asset Protection insurance or loss and additional costs or expenses insured under Business Income Protection Insurance, as a consequence of **property damage covered** under Asset Protection insurance, caused by the following perils, subject to all other provisions of the **policy**:

fire, lightning, thunderbolt, **aircraft** or other aerial devices or articles dropped therefrom, earthquake, tsunami, subterranean fire, volcanic eruption, **storm**, tempest, rainwater, snow, sleet, wind, hail, water, liquids or substances discharged, overflowing or leaking from fixed apparatus, fixed appliances, fixed pipes or other systems, riots, civil commotions, strikes or locked out workers or persons taking part in labour disturbances, explosion, impact by **vehicles**, animals or trees or branches of trees, communication masts, towers, antennae, satellite dishes, **watercraft**, meteorites, or **theft of data** solely where such **theft** is accompanied by **theft** of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such **data**.

For the avoidance of doubt "loss, **destruction**, damage, liability, cost, expense or any other amounts" includes any cost to clean up, decontaminate, disinfect, remove, replace, monitor and/or test for such diseases, conditions or circumstances described in this exclusion.

This exclusion does not apply to Liability Protection insurance.

This exclusion does not apply to the '**Access Protection**' extension under the Business Income Protection insurance but only in respect of any **human infectious** or **contagious disease** not otherwise excluded by sub-clauses c., d., e., h. (as it relates to any pandemic or epidemic) or i. (as it relates to c., d., e. or h. as it relates to any pandemic or epidemic) above.

## Property Cyber & Data

We will not pay for any:

- + **cyber loss**, except that subject to all the terms, conditions, limitations and exclusions of this **policy** or any endorsement thereto, this **policy covers** any physical damage to **property** insured and any **time element loss** directly resulting therefrom where such physical damage is directly caused by the following perils if otherwise **covered** under the **policy**:
  - **theft** or burglary;
  - **storm**, windstorm, hail, tornado, cyclone, hurricane;
  - fire, lightning or explosion;
  - earthquake, volcanic eruption or tsunami;
  - **flood**, freeze or weight of snow;
  - **aircraft** impact or **vehicle** impact or falling objects;
  - water damage;
  - a change in temperature affecting refrigerated goods; or
  - machinery or electronic **breakdown**, including collapse or explosion of pressure **equipment**,

which directly results from a **cyber incident**, unless that **cyber incident** is caused by, contributed to by, resulting from, arising out of or in connection with a **cyber act** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **cyber act**; or

- + loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, or arising out of or in conjunction with any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any **data**, including any amount pertaining to the value of such **data**.

Provided however that subject to all the terms, conditions, limitations and exclusions of this **policy** or any endorsement thereto, should **data processing media** owned or operated by **you** suffer physical loss or physical damage insured by this **policy**, then this **policy** will **cover** the cost to repair or replace the **data processing media** itself plus the costs of copying the **data** from back up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling the **data**. If such media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank **data processing media**. However, this **policy** excludes any amount pertaining to the value of such **data**, to **you** or any other party, even if such **data** cannot be recreated, gathered or assembled.

This exclusion does not apply to Liability Protection insurance.

This endorsement supersedes and, if in conflict with any other wording in the **policy** or any endorsement thereto having a bearing on **cyber loss, data** or **data processing media**, replaces that wording.

## Sanction Regulation

Notwithstanding any other terms or conditions under this **policy**, **we** shall not be deemed to provide **coverage** and will not make any payments nor provide any service or benefit to **you** or any other party to the extent that such **cover**, payment, service, benefit and/or any business or activity **you** undertake, which would violate any applicable trade or economic sanctions, law or regulation.

# Definitions



Some words and terms used in this **policy** that appear in **bold** have a special meaning. Wherever the following words are used in the **policy** they mean what is set out below. Unless the context requires another meaning, a reference to the singular includes the plural and vice versa

**360, 360 Commercial** means:

360 Commercial Pty Ltd **ACN 620 071 650** (360 Commercial) as an Authorised Representative of 360 Underwriting Solutions Pty Ltd (360 Underwriting) **ABN 18 120 261 270 AFSL 319 181**.

**Accountant** means:

A professional accountant to be appointed by both **360 Commercial** and the **Insured** or failing such appointment nominated by the President of one of the professional accounting bodies in Australia.

**Accounts receivable** means:

Amounts due to the **Insured** that the **Insured** is unable to collect.

**Additional payments** means:

- + reasonable costs, charges or expenses (other than wages, salaries or fees paid or payable to the **Insured** or **employees**), incurred by **us** or with **our** written consent (which is not unreasonably withheld), in investigating, defending and/ or settling or in bringing or defending appeals in connection with claims;
- + reasonable costs, charges and expenses of legal representation, incurred by **us** or with **our** written consent (which is not unreasonably withheld), at any coroner's inquest, inquiry, prosecution or hearing which the **Insured** is legally compelled to attend or reasonably wishes to attend, which relates to a claim for **personal injury, property damage** and/ or **advertising injury**;
- + reasonable expenses incurred by the **Insured** for first aid to others at the time of the happening of **personal injury** (other than medical expenses prohibited by law); and
- + reasonable costs incurred by the **Insured** for temporary repairs, shoring up or protection of **property** of others that has been damaged.

**Advertisement** means:

Promoting of capabilities, services or products through advertising brochures, pamphlets and other fliers, email, billboards and other outdoor advertising, broadcast or telecast advertisements, direct mail advertising, display units, the internet, magazine and other print publication advertisements, merchandising, radio, cinema and trade exhibits.

**Advertising injury** means:

- + infringement of copyright, trademark, title or slogan;
- + piracy or unfair competition;
- + misappropriation of advertising ideas or style of doing business; and
- + invasion of privacy;

committed or alleged to have been committed in connection with the **Insured's advertisements** but does not include:

- + breach of any contract, other than misappropriation of advertising ideas contrary to a contract;
- + any infringement of a trade mark, service mark, copyright or trade name on any products, goods or services sold, offered for sale or advertised, other than infringement of titles or slogans;
- + any incorrect description of the price of the **Insured's products**, goods or services; or
- + failure of the **Insured's products**, goods or services to conform with advertised performance, quality, fitness or durability.

**Aircraft** means:

Any vessel, craft or thing made or intended to fly or move in or throughout the atmosphere or space, other than:

- + model aircraft; or
- + unmanned tethered balloons used of advertising purposes.

**Airport** means:

Any area of land or water used or intended for landing or take-off of civil aircraft with surfaced runways, buildings, control towers and associated facilities.

**Banking premises** means:

The interior of that portion of any **building** or **buildings** occupied by any bank, trust company or similar recognised place of safe deposit.

**Breakdown** means:

Breaking, seizing or burning out of any part of **equipment**.

**Building** means:

A roofed and walled structure including all permanently attached interior and exterior services and all man-made structures on the land (including **landscaping**) but does not include:

- + **contents**; or
- + anything excluded under **contents**; or
- + any unsealed road, driveway or carpark.

**Cover** for fabric and plastic structures, shade houses, fibreglass houses and glass houses is limited to \$5,000, or to the amount shown in the **policy** schedule, unless included as a **special asset**.

**Cover** for gates, fences, signs and retaining walls is limited to a maximum of \$25,000 in total, any one **event**.

**Business records** means:

Written, printed or otherwise inscribed documents and records, including books, books of account, maps, films, drawings, abstracts, deeds, mortgage documents and manuscripts, but not including:

- + **money, securities** or stamps; or
- + **electronic data**.

**Business recovery expenses** means:

Costs not otherwise recoverable and reasonably and necessarily incurred by the **Insured** in attempting to restore or maintain normal business **operations** and or services.

**Claims preparation expenses** means:

Expenses that the **Insured** reasonably and necessarily incurred for preparation and certifying of **covered** claims including:

- + professional fees for architects, engineers, surveyors;
- + **accountants**; and
- + executive overtime that the **Insured** necessarily incurs with **360 Commercial's** consent for mitigating claims under Asset Protection and Business Income Protection which are not otherwise recoverable under this **policy**.

**Communicable disease** means:

Any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- + the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not;
- + the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas between organisms; and
- + the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress or damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of **property**.

**Computer System** means:

Any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, **data** storage device, networking **equipment** or back up facility, owned or operated by the **Insured** or any other party.

**Contents** means:

**Property** other than **buildings** including:

- + added value attaching to labour, materials and services furnished by the **Insured** on **contents of others**;

- + tenant's leasehold improvements including improvements provided for the **Insured's** use;
- + **property** owned by any organisation established with the **Insured's** permission for the purpose of providing canteen, social, sports, welfare, child care, first aid, medical fire or ambulance services for **employees**;
- + personal effects of Directors and Officers of the **Insured**; and
- + personal effects of Directors, Officers and employees of the **Insured** used in the course of the **Insured's business**;

but does not include:

- + air or land;
- + **aircraft, vehicles** (other than mobile equipment), or **watercraft** in water;
- + **money** or **securities**;
- + **property** in unlocked and unattended **vehicles**;
- + **property** sold by the **Insured** under conditional sale, trust agreement, instalment payment or other deferred payment plan after delivery to customers;
- + **property** being shipped from a point outside Australia prior to either discharge from a carrier or termination of the risk assumed by cargo insurance;
- + **property** being shipped to a point outside Australia after being loaded onto a carrier or commencement of the risk assumed by cargo insurance; or
- + precious metals, gemstones, plants or animals unless included as **special assets**.

**Contents of others** means:

**Contents** not owned by the **Insured** but in the **Insured's** care, custody or control in the course of the **Insured's business**.

**Cost of sales** means:

The direct costs attributable to the production of the goods sold by the **Insured**. This amount includes the cost of the materials used in creating the goods. It excludes direct labour costs used to produce the goods and indirect expenses such as sales force and distribution costs.

**Cover/coverage/covered** means:

Loss or damage set out in the **Insured's policy**, but excluding loss or damage specified as not being covered under the **policy**.

**Cyber Act** means:

An unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **computer system**.

**Cyber Incident** means:

- + any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **computer system**; or

- + any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **computer system**.

**Cyber Loss** means:

Any loss, damage, liability, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any **cyber act** or **cyber incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **cyber act** or **cyber incident**.

**Data** means:

Information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **computer system**.

**Data processing media** means:

Any **property** insured by this **policy** on which **data** can be stored but not the **data** itself.

**Debris** means:

Residue of damaged **property** on the **Insured's premises** as a result of **covered** loss or damage, but not for any material which can cause **pollution** and which is deposited beyond the boundaries of the **Insured's premises**.

**Dependent business premises** means:

**Premises** (other than **essential services**) operated by others located within the geographical area stated in the **policy** schedule on whom the **Insured** depends to:

- + supply products or services;
- + purchase or accept the **Insured's products** or services;
- + deliver materials or services to or from the **Insured** or to others for the **Insured's** account; and/or
- + manufacture products or services for delivery to the **Insured's** customers under contract.

**Destruction or distortion** means:

- + total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **electronic data**;
- + error in creating, amending, entering deleting or using **electronic data**; or
- + total or partial inability or failure to receive, send access or use **electronic data** for any time at all;

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

**Discovery period** means:

The **policy period** plus the number of months stated in the **policy** schedule following termination of **coverage** for Crime Protection.

**Double insurance** means:

Insurance provided by an Insurer other than **us** which may respond in whole or in part to a claim under this **policy** and for which **we** reserve the right to seek contribution from the other Insurer.

**Electronic data** means:

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 programs, software and other coded instructions for the processing and manipulation of **data** or the direction and manipulation of such **equipment**.

**Employee** means:

Person in the service of the **Insured** in the ordinary course of the **Insured's business** during the **policy period**, whom the **Insured** compensates by salary, wages or commissions and whom the **Insured** has the right to govern and direct in the performance of such service.

For Liability Protection under *What's not Covered – Employer's Liability*, employee also means a deemed employee by reason of the *Western Australia Workers' Compensation and Rehabilitation Act 1981 (WA)* – Section 175 or any equivalent legislation in any other jurisdiction.

For Crime Protection employee also means:

- + any ex-employee during a period not exceeding 30 days following the termination of service of that employee;
- + any director or trustee of the **Insured** while performing acts coming within the scope of the usual duties of an employee or member of any committee duly elected or appointed to examine or audit or have custody of or access to any of the **Insured's property**;
- + any individual or individuals assigned to perform employee duties within the **premises** for the **Insured** by any agency furnishing temporary personnel on a contingent or part time basis, but not if such employee is also **covered** by any other insurance or bond held by the agency furnishing such temporary personnel; or
- + any volunteer worker of the **Insured** to the extent that such person may handle or have custody of **property** belonging to or held by the **Insured**.

Brokers, commission merchants, consignees, contractors, or other agents or representatives are not considered employees.

**Essential services** means:

**Premises** operated by others located on land within the Commonwealth of Australia on whom the **Insured** depends for, and which produce, deliver or supply:

- + electricity;
- + water or sewerage services; natural gas; or
- + communications;

including their transmission and distribution systems.



**Equipment** means:

Any mechanical or electrical device used for the generation, transmission or utilisation of mechanical or electrical power.

**Event** means:

Any one loss or series of losses arising out of any one event. All losses which occur during any 72 consecutive hours commencing on the first happening of such losses and which are caused by **flood**, earthquake or atmospheric disturbance constitute one loss for the purpose of application of any **limits** and **excesses**.

**Excess** means:

The amount of **money** specified in the **policy** schedule that the **Insured** will be required to contribute towards the cost of their claim on the **policy**.

For Liability Protection:

- + the amount of the excess is payable by the **Insured** within 14 days of the date of notification by the **Insured** of each **occurrence**, unless otherwise agreed; and
- + the excess shall apply on a costs inclusive basis.

**Expense savings** means:

Expenses ordinarily incurred in connection with the **Insured's business** but avoided as a result of loss or damage.

In the case of payroll, expenses saved will be calculated after the inclusion of payments made under industrial awards, determinations or agreements for severance pay and/or pay in lieu of notice to **employees** whose services are terminated.

**Fine arts** means:

Objects of art owned by the **Insured** or in the **Insured's** care, custody or control.

**Finished stock** means:

Goods manufactured by the **Insured** which are in their completed state and ready for sale, but does not include goods manufactured by the **Insured** which are in their completed state and ready for sale on the **premises** of any retail outlet **Insured** under Income Protection.

**Flood** means:

Covering of normally dry land by water that has escaped or been released from the normal confines of any of the following:

- + a lake (whether or not it has been altered or modified);
- + a river (whether or not it has been altered or modified);
- + a creek (whether or not it has been altered or modified);
- + another natural watercourse (whether or not it has been altered or modified);
- + a reservoir;
- + a canal;
- + a dam.

**Government action** means:

Confiscation, commandeering, nationalisation, requisition, **destruction** or damage by any action of any government whether lawfully constituted or otherwise or any public authority, but does not mean actions taken, and the removal of **debris**, for the purpose of:

- + preventing, diminishing, or inhibiting imminent damage by
- + any loss or damage; or
- + demolition of **property** deemed unsafe following **covered** loss or damage.

**Gross profit** means:

**Income** and/or rents received (including outgoings paid to others by tenants under the terms of a lease) in the course of the **Insured's business** less the **cost of sales**.

**Hovercraft** means:

Any vessel, craft or thing designed to transport persons or **property** over land or water supported on a cushion of air.

**Human infectious** or **contagious disease** means:

- + influenza but not Highly Pathogenic Avian Influenza in humans or human influenza with pandemic potential; or
- + viral gastroenteritis, norovirus and rotavirus; or
- + legionnaires' disease (legionellosis).

**Income** means:

Amounts, less discounts, paid or payable to the **Insured** for goods sold and delivered or for services rendered.

**Indemnity value** means:

Cost to repair or replace less an amount for age, wear and tear and depreciation and less an adjustment for general condition and remaining useful life at the time of loss.

**Insured** means:

The person, companies and any other entities specified in the **policy** schedule as the **Insured**.

For **Liability Protection** the following are also Insureds:

- + all subsidiary companies of the Insured, provided that their places of incorporation are within Australia and whose business falls within the definition of the **Insured's business**;
- + every director, executive officer, **employee**, partner, shareholder or voluntary worker of the Insured or of a subsidiary company designated above, but only whilst acting within the scope of their duties in such capacity;
- + every principal, in respect of the liability of such principal arising out of the performance by the Insured or by a subsidiary company described above of any agreement for the performance of work for such principal, but only to the extent required by such agreement;

- + every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with the Insured's consent in respect of claims arising from their duties connected with the activities of any such club, organisation or service; and
- + any director or senior executive of the **Insured**, in respect of private work undertaken by the Insured's **employees** for such director or senior executive.

**Insured locations** means:

All locations specified as an Insured location in the **policy** schedule.

**Insured's business** means:

The Insured's business specified in the **policy** schedule and any other activity incidental but related thereto including:

- + ownership and/or tenancy of **premises**;
- + provision of canteens, social, sports and welfare organisations for the benefit of the **employees**;
- + provision of first aid, fire and ambulance services; and
- + construction, demolition, alteration, addition, fit out, maintenance or repair of or to any **property** owned or leased by the **Insured** provided that the total cost of all work performed does not exceed the Liability Protection construction **limit**.

**Insured's products** means:

Anything, including any packaging or containers thereof (after they have ceased to be in the possession or control of the **Insured**) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, re-supplied or distributed by the **Insured** including all previously supplied products.

**In transit** means:

While being conveyed from one place to another within Australia.

**Landscaping** means:

Outdoor lawns, trees, plants and shrubs.

**Limit** means:

The amount stated in the **policy** schedule as the most **we** will pay in respect of all claims arising from the same:

- + **event** (including shipment, expense and other specified sub-limits) for **Asset Protection** and **Business Income Protection**;
- + **occurrence** for **Liability Protection**; or
- + loss (including limits applicable to **employee theft** and **money and securities**) for **Crime Protection**.

**Medical persons** means:

Medical doctors, medical nurses, dentists and first aid attendants.

**Merchandise** means:

Goods kept by the **Insured** which are not the product of manufacturing **operations** conducted by the **Insured**.

**Mobile equipment** means:

**Vehicles** including any attached machinery whether or not self-propelled, that are:

- + designed for use principally off public roads;
- + maintained for use exclusively on **premises** owned by or rented to the **Insured**, including the access immediately adjoining; or
- + designed or maintained for the sole purpose of affording mobility.

**Money** means:

Cash, coins or bank notes in any currency.

**Net realisable value** means:

The value of an asset that can be realised upon the sale of the asset, minus a reasonable and justifiable prediction of the costs associated with either the ultimate sale or the disposal of the asset at the time of loss or damage.

**Occurrence** means:

An **event** causing **personal injury**, **property damage** and/or **advertising injury** neither expected nor intended from the standpoint of the **Insured**.

The effects of assault and battery perpetrated for the purpose of preventing or eliminating danger to persons or **property** and committed by or at the direction of the **Insured** will be deemed to be **personal injury** neither expected nor intended from the standpoint of the **Insured**.

All **personal injury**, **property damage** and/or **advertising injury** arising out of or attributable to:

- + continuous or repeated exposure to substantially the same general conditions;
- + one source or the same originating cause; and/or
- + the same injurious material or act (regardless of the frequency, the number and kinds of media used, or the number of claimants);

will be considered to arise out of one occurrence.

**Operations** means:

**Insured's** activities occurring prior to loss or damage including their ability to obtain tenants for their **premises**.

**Patterns** means:

Patterns, models, moulds, plans and designs and other similar **property** usual to the **Insured's operations** that are owned by the **Insured** or are in the care, custody or control of the **Insured**.

**Period of recovery** means:

Period of time that begins with the date of **covered** loss or damage and continues even after this insurance expires until the earliest of:

- + the **Insured's business** is no longer affected as a result of **covered** loss or damage;
- + the expiry of the **period of recovery** plus the extended period as shown in the **policy** schedule throughout where the **Insured** can show that the effects of the **covered** loss or damage were still being experienced; or
- + the **Insured** ceases to carry on the **Insured's business**.

**Personal injury** means:

- + bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or injury;
- + false arrest, wrongful detention, false imprisonment, malicious prosecution and/or humiliation;
- + wrongful entry or eviction or other invasion of the right of privacy;
- + publication or utterance of defamatory or disparaging material or statement; and/or
- + assault and battery not committed by or at the direction of the **Insured** unless reasonably committed for the purpose of preventing or eliminating danger to persons or **property**.

**Policy** means:

The policy schedule, this document, and Special Conditions (if any) issued by us to the **Insured**.

**Policy period** means:

The duration of this **policy** as stated in the current **policy** schedule.

**Pollutant** means:

Smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals or any solid, liquid, gaseous or thermal irritant or contaminant of any type including waste or materials to be recycled, reconditioned or reclaimed.

**Pollution** means:

The actual, alleged or threatened **release** of **pollutants** into or upon any **property**, land, the atmosphere or any watercourse or body of water (including groundwater), including any expense to test for, monitor, clean up, remove, dispose of contain, treat, detoxify or neutralise **pollutants**.

**Premises** means:

That portion of any **building** occupied by the **Insured** in conducting the **Insured's business**.

**Premium** means:

The amount payable for this insurance shown on the Tax Invoice.

**Property** means:

**Buildings** and/or **contents** owned by the **Insured** or for which the **Insured** is responsible or has assumed responsibility to insure prior to a loss.

**Property damage** means:

- + physical damage to or loss of tangible **property** including any resultant loss of use of that tangible **property**; and/or
- + loss of use of tangible **property** that has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or **destruction** of other tangible **property**.

**Published** means:

Printed, published, exhibited, transmitted, displayed, stated or broadcast.

**Radioactivity** means:

Ionising radiations, or contamination by radioactivity from, any nuclear fuel or nuclear waste from the combustion of nuclear fuel including any self-sustaining process of nuclear fission and/ or the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof but does not include low level radioactive radiation, such as measurement and control technology used in the medical sector, and used away from the place where made or produced.

**Ratio of gross profit to income** means:

- + **published** ratios from **data** matched to businesses having the same ANZIC classification as the **Insured's business**; or
- + actual ratio of gross profit to income in the last financial year prior to loss or damage adjusted to reflect trends affecting the **Insured's** trading based on information supplied and certified by the **Insured's accountant**.

**Raw stock** means:

**Contents** comprised of material in the state in which the **Insured** receives it for conversion into **finished stock**.

**Reduction in trended income** means:

The difference between actual **income** received during the simplified settlement period following **covered** loss or damage and **income** for a corresponding period immediately before the date of the loss or damage adjusted to reflect the trends in the business in order to arrive at the same result that would have been attained had **covered** loss or damage not occurred based on information supplied and certified by the **Insured's accountant**.

**Release** means:

Release, discharge, dispersal, disposal, seepage, migration, escape or movement.

**Securities** means:

All negotiable and non-negotiable instruments or contracts representing either **money** or other **property**, including stamps in current use and tokens and tickets, but not including **money**.

**Special assets** means:

Assets defined and valued in the **event** of a loss or damage as stated in the **policy** schedule.

**Stock** means:

**Contents** consisting of **raw stock**, **stock in process**, **finished stock** and **merchandise** including supplies used in their packing or shipping.

**Stock in process** means:

**Raw stock** which has undergone any aging, seasoning, mechanical or other process of manufacture but which has not become **finished stock**.

**Storm** means:

Wind and/or rain whether wind driven or not including tropical depressions and named cyclones.

**Suitable alternatives** means:

Materials, machinery or **equipment** of similar standard and capacity. In the case of a **building** with architectural features or structural materials of an ornamental or historical character, suitable alternatives include materials of equivalent appearance using the original design.

**Terrorism** means:

Any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- + involves violence against one or more persons;
- + involves damage to **property**;
- + endangers life other than that of the person committing the action;
- + creates a risk to health or safety of the public or a section of the public; or
- + is designed to interfere with or to disrupt an electronic system.

**Theft** means:

Dishonest appropriation of tangible assets belonging to another party with the intention of permanently depriving that other party of such assets.

**Time element loss** means:

Business interruption, contingent business interruption or any other consequential losses insured under this **policy**.

**Trended gross profit** means:

**Gross profit** during that period corresponding with the period of interruption following **covered** loss or damage and **gross profit** for a corresponding period immediately before the date of the loss or damage adjusted to reflect the trends in the business in order to arrive at the same result that would have been attained had **covered** loss or damage not occurred.

**Unsealed roads, driveways or carpark** means:

A road, driveway or carpark that has been formed or constructed but is not sealed with a hard material such as concrete, tar or bitumen.

**Vehicle** means:

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

**War** means:

War or warlike activities including invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, looting, sacking or pillage following any of these, or the expropriation of **property**.

**Watercraft** means:

Anything made or intended to float on or in or travel on or through water, except floating jetties and/or floating pontoons and/or pontoons and/or buoys.

**We/our/us** means:

Insurance Australia Limited **ABN 11 000 016 722 AFSL 227681** trading as CGU Insurance (CGU).

**You/your** means:

The person(s) named in the **policy** schedule, as the **Insured**.

## What's Covered

This Asset Protection insurance **covers property** used in connection with the **Insured's business** against physical loss or damage occurring during the **policy period**. **Coverage** is provided at **insured locations** and **in transit** up to the relevant **limits**.

### Flood

**Cover** includes within the location **limits** physical loss or damage to **property** as a result of **flood** at **insured locations** designated as **covered for flood**.

**Cover** is provided up to the **flood limit** which applies:

- + on a combined basis for both Asset Protection and Business Income Protection (if **covered**); and
- + per **event** and in the aggregate for the **policy period**.

The **flood excess** shown on the **policy** schedule applies.

### Theft

**Cover** includes within the location **limits** physical loss or damage to **property** as a result of **theft** following visible forcible and violent entry into or exit from the **insured location**, up to the **theft limit**, but not more than the location **limit** listed in the **policy** schedule.

The **theft excess** shown on the **policy** schedule applies.

### Special Assets

**Cover** includes within the location **limits** physical loss or damage to **special assets** up to the **special assets limits**.

The **special assets excess** shown on the **policy** schedule applies.

### Acquired Property

**Cover** (other than for **flood**) includes physical loss or damage to newly acquired **property** located in Australia up to the acquired **property limit**. Provided acquisitions are notified to **us** within the notification period listed in the **policy** schedule.

### Capital Additions

**Cover** includes in addition to the location **limits** physical loss or damage to capital alterations and additions to **property** (other than **stock**) up to the capital additions **limit**.

### Property Protection

**Cover** includes in addition to the location **limits** expenses incurred to prevent imminent damage to **property** from **covered** loss or damage up to the **property** protection **limit**.

### Post Loss Expenses

When **covered** loss or damage occurs **cover** includes, in addition to the location **limit**, expenses incurred by the **Insured** for:

- + fire brigade and emergency services charges;

- + **debris** removal;
- + fees payable in respect of the discharge of financial encumbrances on **property**;
- + fees payable for approvals by statutory authorities; and
- + **claims preparation expenses** under Asset Protection.

**Cover** is provided up to the Asset Protection post loss expenses **limit**.

The Asset Protection post loss expenses **limit** is increased by the amount specified in the **policy** schedule if the clean-up of **pollutants** is required.

## What's not Covered

**360 Commercial** will not be liable for the costs to rectify:

- + wear and tear, gradual deterioration or for maintenance of **property**;
- + inherent or latent defects, defective materials or faulty workmanship;
- + **breakdown of equipment** including the consequential deterioration of refrigerated **stock** (this exclusion will not apply where **breakdown of equipment coverage** is shown as included on the **policy** schedule);
- + explosion or implosion of any pressure vessels (including any boilers):
  - where the load on the safety valve upon the particular pressure equipment was in excess of the manufacturer's specification at the time of damage, or
  - where any safety valve limiting pressure was removed or rendered inoperative.
- + **destruction or distortion of electronic data**;
- + error or omission in design, plan or specification or failure of design;
- + erosion, landslide, mudslide, rockslide, gradual subsidence, settling, seepage, shrinkage, vibration or other earth movement, or expansion in **buildings** or foundations, pavements and other civil engineering improvements;
- + damage to property caused by vermin, infestation, normal atmospheric oxidation or corrosion, mildew, mould or fungi, disease, fading, tree roots, evaporation, change in flavour, colour, temperature, texture or any other progressively operating cause.

**We** will not be liable for loss or damage arising out of or in connection with:

- + wind, rain or hail affecting **property** in the open unless such **property** is designed to operate in the open;
- + unexplained or mysterious disappearance or shortage of **contents** discovered at the time of delivery or when taking inventory;
- + non-compliance with any statutory or regulatory requirements;
- + fraudulent acts of the **Insured** or their **employees**;

- + contamination of **property** by any **pollutants** but this exclusion does not apply to **pollution** resulting from an otherwise **covered event**;
- + **terrorism** (including any action taken in controlling, preventing, suppressing or responding to **terrorism**), **war** or **government action** regardless of any other cause or **event** contributing concurrently or in sequence to the loss, (excluding loss or damage arising out of, or in connection with **theft** and/or **breakdown of equipment**);
- + **radioactivity** regardless of any other cause or **event** contributing concurrently or in sequence to the loss;
- + **flood** or action by the sea, tidal wave or high water, other than caused by a seismic disturbance – unless such loss or damage by **flood** occurs at an **insured location** designated as **covered for flood**;
- + damage to **property** at the **insured location** undergoing construction, erection, alteration or addition when the contract value of work exceeds 20% of the **building** value declared, or \$500,000 whichever is the lesser;
- + consequential loss of any kind including, but not limited to, loss of reputation, loss of use or enjoyment, loss of profits or depreciation except if specifically **covered** by this **policy**.

## What to do When a Loss Occurs

The **Insured's** obligations under *How to Make a Claim* apply to Asset Protection. In addition, when loss or damage that may be **covered** under this Asset Protection insurance occurs, the **Insured** must:

- + take reasonable steps to reduce the loss or damage and to protect the **property** from further damage, including temporary repairs when necessary. **We** will pay reasonable expenses so incurred;
- + as soon as reasonably possible make a report to the police if the **Insured** knows or suspects that someone has broken into their **premises** or if **property** has been stolen or maliciously damaged;
- + not authorise the repair or replacement of **property** without **our** agreement, other than essential emergency repairs;
- + provide **us** or **our** representatives with access to **premises** or make them available for inspection at a reasonable time and place; and
- + if requested allow **us** to take possession of any damaged **property** and deal with it in a reasonable manner. If **we** do not take possession of damaged **property** the **Insured** cannot abandon their responsibilities for the **property**.

## How Claims are Settled

**We** will make payments to the **Insured** or to others with the authority of the **Insured** to settle **covered** claims. For **covered** claims **we** will also make periodic progress payments for amounts agreed with the **Insured**. The maximum amount payable for any claim arising from any one **event** under Asset Protection is the location **limit** stated in the **policy** schedule.

If a value declared by the **Insured** and shown on the **policy** schedule for '**building**' and/or '**contents**' for each **insured location** where the loss or damage occurred is less than 80% of that **property** value determined in accordance with *How Claims are Settled* (other than for the Building and Safety Laws section) at the time this insurance was taken out, renewed, extended, or varied **we** will only pay that portion of the claim which the relevant value declared bears to 80% of the **property** value determined in accordance with *How Claims are Settled*. This clause only applies in the **event** of loss or damage **covered** under this **policy** that exceeds 10% of the combined declared values of '**building**' and '**contents**' shown on the **policy** schedule for the relevant **insured location**.

### Claim Settlements

Claims for **property** (other than **contents** more specifically valued) will be settled at the cost to reinstate the lost or damaged **property**, without deduction for depreciation, if reinstated within a reasonable period of time following a **covered** loss.

- + **our** payment to reinstate **property** will not exceed the amount payable by the **Insured** to reinstate the **property** with **property** of like kind and quality;
- + the reinstatement of **property** may be carried out at another site subject to **our** liability not being increased;
- + if original materials, machinery or **equipment** are no longer available, the settlement will be based on the cost of **suitable alternatives**;
- + claims to reinstate **equipment** (more than 10 years old at the time loss) damaged as a result of **breakdown** may be settled at their **indemnity value**;
- + the damaged **property** will be reinstated to a condition equal to, but not better than when new.

Claims for lost or damaged **property** that are not reinstated will be settled at their **indemnity value**. Claims for lost or damaged **property** that are vacant and awaiting demolition or obsolete will be settled at the **net realisable value**.

### Building and Safety Laws

If there is a law in effect at the time of loss that regulates the land use, construction or occupancy (including zoning, floor space ratios or workplace safety) of **property**, and that law affects the reinstatement of the damaged **property**, settlement will include:

- + the additional costs incurred in reinstating the **property** in compliance with the requirements of any Statutory Authority imposed after the damage in respect of both damaged and undamaged **property**;
- + the difference between the estimated costs of reinstatement for a **building** of the same size and the actual costs of reinstatement on a reduced floor space; and
- + the difference in land value for no more than the land value **limit** where the requirements of any Statutory Authority imposed after the damage has reduced the land value.

## Contents

**Contents** following a **covered** loss will be settled on the following basis:

- + **raw stock** and **merchandise** will be settled based on the replacement cost;
- + **stock in process** and **finished stock** will be settled based on the replacement cost of **raw stock** plus the proper proportion of expenses (including labour costs and overhead charges) incurred in reinstatement;
- + **finished stock** for which the **Insured** is responsible and for which a Contract of Sale for such **stock** is cancelled by reason of a **covered** loss will be settled based on the price for such **stock** specified in the Contract of Sale;
- + **contents** settlements will also include the cost of taking inventory and/or identifying damaged **stock** including the cost of replacing labels, capsules, wrappers or containers on damaged **stock** and restocking shelves.

## Sale of Damaged Stock

The **Insured** has two options when the **Insured** or the owner of any **stock** in the **Insured's** care, custody or control does not want to sell damaged **stock** under the **Insured's** or owner's brand or label.

The **Insured** may remove the brand or label and either:

- + re-label the **stock** to comply with the law; or
- + label the damaged **stock** as "salvage" but in doing so must cause no further damage to the **stock**.

In either case, **we** will pay the difference between the salvage value of the damaged **stock** with the brand or label attached and the salvage value of the damaged **stock** with the brand or label removed.

- + **contents of others** will be settled based on the cost of reinstatement;
- + **business records** if replaced will be settled based on the cost of blank materials and the cost of copying information onto blank materials from a duplicate source on the same type of materials and, if not, replaced

- based on the cost of blank materials as stationery;
- + **electronic data**, other than prepackaged **software** programs, if replaced will be settled based on the cost of blank materials and the cost of copying **electronic data** onto the blank materials from the most recent duplicate source on the same type of materials;
- + **fine arts** will be settled based on the cost of restoring the item to a condition substantially the same as before the damage plus any resulting reduction in market value;
- + if restoration is not possible settlement will be based on the market value at the time of loss;
- + when a damaged article is part of a pair or set, **we** will pay the full amount for the pair or set. The **Insured** will deliver the remaining item of the pair or pieces of the set to **us**;
- + **patterns** will be settled based on the cost of reinstatement and if not reinstated the **indemnity value**;
- + **special assets** will be settled based on the **special assets** valuation.

# Business Income Protection



## What's Covered

This Business Income Protection insurance **covers** loss and expense up to the relevant **limits** following a reduction in **income** occurring during the **period of recovery** resulting from an interruption of the **Insured's business**:

- + due to **covered** loss or damage to **property** under *Asset Protection*;
- + due to loss or damage at an **Insured location** that would be **covered** under *Asset Protection*:
  - to other **property** not owned but used by the **Insured**;
  - to registered **vehicles** owned or used by the **Insured** except whilst in use; or
- + due to loss or damage that would be **covered** under *Asset Protection* to **property** at or in the vicinity of:
  - **essential services**; or
  - **dependent business premises**,

provided the period of interruption of the **Insured's business** exceeds the waiting period.

### Access Protection

**Cover** is extended to include loss and expense following a reduction in **income** resulting from an interruption of the **insured's business** directly arising from denial or restriction of access of the whole or part of the **insured location** due to:

- + an **event covered** under *Asset Protection* occurring within the radius specified of an **insured location**; or
- + an order of a competent public authority, consequent upon:
- + a **human infectious** or **contagious disease** at the **insured location**, not otherwise excluded under the **policy**;
- + the discovery of vermin, pests or defects in the drains or other sanitary arrangements at the **insured location**;
- + poisoning directly caused by the consumption of food or drink provided at the **insured location**; or
- + murder or suicide occurring in or at the **insured location**, occurring during the **policy period** and provided the period of restriction exceeds the waiting period set out in the **policy** schedule,

but not due to:

- + the breach of any law or regulation by the **Insured**.

Provided that:

- + for the avoidance of doubt, the *Communicable Diseases* exclusion applies to the **cover** as described above; and
- + the maximum amount **we** will pay under this clause in the aggregate for the **policy period** is \$250,000 unless otherwise specified in the **policy** schedule; and

- + **we** will not **cover** the first 48 hours of any interruption or interference with the **Insured's business** unless otherwise specified in the **policy** schedule; and
- + **we** will not pay for any cost to clean up, decontaminate, disinfect, remove, replace, monitor and/or test for any diseases, conditions or circumstances described above.

For the purpose of this clause only the following definition applies:

**Insured location** means only the **premises** at the situation shown in the **policy** schedule that are directly owned, leased or controlled by **you** and does not include any extension to the definition of situation elsewhere in the **policy** or schedule.

### Accounts Receivable

**Cover** includes loss of **accounts receivable** resulting from **covered** loss or damage to **business records** and or **electronic data** up to the **gross profit limit**.

## What's not Covered

**We** are not liable under Business Income Protection for any costs, loss or damage referred to in *What's not Covered* under *Asset Protection*.

## What to do When a Loss Occurs

The **Insured's** obligations under *How to Make a Claim* in the *Important Information* and *What to do When a Loss Occurs* in *Asset Protection* apply to Business Income Protection.

In addition, after any loss or damage which may result in a claim under Business Income Protection the **Insured** must, as soon as reasonably possible, provide **us** with:

- + details of the extent of the impact of loss or damage on the **Insured's** trading position;
- + the **Insured's** assessment of the possible amount of loss and the Settlement Option to be applied to the settlement of the claim;
- + relevant information including making available all records necessary for verification of the claim; and
- + the name and contact details of the **accountant** who will certify the **Insured's** claims.

The **Insured** must exercise due diligence to minimise the interruption to the business by implementing a business rehabilitation plan as required by **360 Commercial**.

Should the **Insured** fail to promptly take action to rehabilitate the business, the amount of any claim settlement will be reduced taking into account additional loss of **income** and or expense directly attributable to the delay.



## How Claims are Settled

The **Insured** may select from the following Settlement Options where the **period of recovery** is estimated and agreed by **us** to be within the simplified settlement period.

Once a Settlement Option has been selected, that Settlement Option cannot be changed without **our** consent.

### Option 1 – Simplified Settlement

#### Gross Profit

We will settle a claim for loss of **gross profit** up to the **gross profit limit** based on:

- + the **ratio of gross profit to income** applied to the **reduction in trended income** during the simplified settlement period;

plus

- + expenses incurred for the purpose of diminishing a reduction in **gross profit** but for not more than the reduction thereby avoided.

Claims for loss of **gross profit** under Option 1 – Simplified Settlement will not be adjusted for **expense savings**.

#### Expenses

We will also pay for:

- + **business recovery expenses**; and
- + **claims preparation expenses**,

up to the Income Protection expense **limit**.

#### Progress Payments

Payment for **covered** loss and expense will be made weekly, subject to the supply of relevant information.

Claims will be settled under the *Option 2 – Comprehensive Settlement* if they extend beyond the simplified settlement period.

Any claim payments made under the Option 1 – Simplified Settlement will be offset against the final settlement of the claim under *Option 2 – Comprehensive Settlement*.

### Option 2 – Comprehensive Settlement

This option is for claims where the **Insured** has not selected *Option 1 – Simplified Settlement* Option or where the **period of recovery** is estimated to or has extended beyond the simplified settlement period.

#### Gross Profit

We will settle a claim for loss of **gross profit** up to the **gross profit limit** based on:

- + the amount by which the actual **gross profit** achieved by the **Insured** falls short of the **trended gross profit** during the **period of recovery**;
- plus
- + expenses necessarily incurred for the purpose of diminishing a reduction in **gross profit** but for not more than the reduction thereby avoided.

Claims for loss of **gross profit** under Option 2 – Comprehensive Settlement will be adjusted for **expense savings** and **make-up of gross profit** during the **period of recovery**.

#### Expenses

We will also pay for:

- + **business recovery expenses**; and
- + **claims preparation expenses**,

up to the Income Protection expense **limit**.

#### Progress Payments

We will make periodic progress payments for amounts agreed with the **Insured** based on either:

- + amounts recommended by the loss adjuster (if appointed) or as otherwise agreed by **us**; or
- + loss of **gross profit** based on the **ratio of gross profit to income**;

provided such progress payments are deducted from the final claim settlement.

## Settlement Terms

#### Contractual Obligations

In settling any claim, allowance will be made for the discharge of contractual obligations under the written provisions of a contract due to:

- + non-completion, late or incomplete delivery of orders by the **Insured**; and
- + breach of any contracts for the purchase of goods or services the **Insured** cannot use during the **period of recovery** less the value of such goods to the **Insured**,

resulting from **covered** loss or damage but not for any liability the **Insured** may incur for exemplary, punitive or aggravated damages but subject to the relevant **limits** not being exceeded.

#### Departmental trading

If the business is conducted in departments the independent trading results of which are ascertainable, the **cover** provided by Income Protection will apply proportionally to each department affected by the interruption to the **Insured's business**.

#### Reduced margin

If **income** is maintained at a reduced rate of **gross profit**, allowance is to be made in the claim settlement so that the amount payable for loss of **gross profit** is commensurate with the results that would have been achieved in normal trading had the interruption to the **Insured's business** not occurred.

#### Accounts Receivable

**We** will pay for loss of **accounts receivable** based on the average monthly amount of receivables for the 12 months immediately preceding the month in which the loss occurred (adjusted for any demonstrated variances in the amount of receivables for the month in which the loss occurred) less:

- + any amount the **Insured** is able to re-establish or collect; and
- + an amount to allow for bad debts applied at the rate reflected in the 12 months immediately preceding the month in which the loss occurred.

**We** will also pay:

- + additional costs incurred by the **Insured** with **our** Consent (which will not be unreasonably withheld) in establishing the loss of receivables; and
- + additional collection costs necessarily incurred that would not have been required if the **Insured's** receivables records had not been lost or damaged.

## What's Covered

This Crime Protection insurance **covers money, securities and other property** held by the **Insured**. **Cover** is provided up to the relevant **limits**.

### Employee Theft

**Cover** includes direct loss of **money, securities and other property** caused by fraudulent acts of any **employee**, acting alone or in collusion with others, except for any loss arising out of or in connection with:

- + the actions of any **employee** if the **Insured** or any responsible officer of the **Insured** has knowledge of any fraudulent acts previously committed by the **employee**; or
- + a shortage disclosed on taking inventory or unexplained or mysterious disappearance. This exclusion will not apply to loss the **Insured** can establish, through evidence wholly apart from such inventory, was caused by any fraudulent act of any **employee**.

### Money and Securities

**Cover** is provided for direct loss of **money or securities** caused by actual **destruction, disappearance or theft** but only while inside the **premises or banking premises** or while being conveyed by a security company or by an authorised **employee** or director of the **Insured**, except for any loss:

- + due to the giving or surrendering of **money or securities** in any exchange or purchase;
- + due to forgery by persons other than **employees**;
- + due to accounting, mathematical or record-keeping errors; or
- + to **money or securities** while in the custody of any bank, or similar institution of safe deposit.

## What's not Covered

**We** are not liable for any loss under Crime Protection directly or indirectly arising out of:

- + reproducing information contained in lost or damaged **business records or electronic data**;
- + **income** not realised by the **Insured** as the result of any **covered** loss;
- + trade secrets or other confidential or proprietary information of any kind;
- + dealing in **money or securities** whether or not in the name of the **Insured** and whether or not in a genuine or fictitious account;
- + salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other **employee** benefits earned in the normal course of employment;
- + **radioactivity** regardless of any other cause or **event** contributing concurrently or in sequence to the loss.

## What to do When a Loss Occurs

The **Insured's** obligations under *How to Make a Claim* in the *Important Information* section that applies to this Crime Protection insurance.

In addition, the **Insured** must as soon as reasonably possible report any loss caused by illegal acts to the Police.

### Investigation

The **Insured** must take all reasonable steps to establish the existence and amount of any loss, to discover the guilty persons and to recover the loss.

**We** may at **our** own expense make any investigation it deems necessary. The **Insured** must permit **us** to make such investigation and furnish any explanation and evidence and other assistance that may be reasonably required to investigate, examine and substantiate the claim. **We** will only request information and assistance relevant to handling the claim and will explain why it is needed.

## How Claims are Settled

**Money** will be valued at the amount recorded by the **Insured** or the amount corroborated by reasonable estimates if lost prior to being counted and recorded by the **Insured**.

**Securities** will be valued at the lesser of:

- + actual market value of lost, damaged or destroyed **securities** at the close of business on the business day immediately preceding the date on which the loss was discovered; or
- + actual cost of replacing the **securities**.

Other **property** will be valued at what it would cost the **Insured** to repair or replace the **property** with **property** of like kind and quality at the date of loss.

**We** will pay, as part of the **limits**, reasonable costs incurred by the **Insured**, with **our** consent (which will not be unreasonably withheld), in establishing any direct loss except for the **Insured's** internal staff cost, being wages, salaries and related costs.

### Termination

**Coverage** for **employee theft** will terminate in respect of any **employee** immediately on discovery by the **Insured** or a director or responsible officer of the **Insured**, not in collusion with such **employee**, of any fraudulent or dishonest acts by the **employee** without prejudice to loss prior to the date of discovery.

### Recoveries

If the **Insured** sustains a **covered** loss which exceeds the **limits**, the **Insured** is entitled to all recoveries of such loss until fully reimbursed less the actual costs of recovery and any sum paid by **us** in respect of such loss. Any sum recovered after such reimbursement must be paid to **us**.

## Discovery of Loss

Crime Protection **covers** losses discovered during the **discovery period**.

**Our** liability for loss sustained prior to the **policy period** is limited to the amount which would have been recoverable under any insurance in force at the time the loss was sustained, provided that:

- + the **Insured** had in effect other insurance which at the time the loss was sustained provided insurance for some or all of loss; and
- + such prior insurance continued without interruption from the time the loss was sustained until the effective date of this Crime Protection; and
- + the loss is discovered after the expiration of the time for discovery of such loss under the last such insurance; and
- + the loss was sustained in the 6 months prior to the **policy period** commencing.

## Limits of Liability

For **employee theft**, the payment of any loss resulting from one **occurrence** will not reduce the per **occurrence limit** for other losses provided that the aggregate liability for any one **policy period** does not exceed the annual (or pro rata portion thereof if the **policy** is issued for more or less than one year) aggregate for the **policy period**.

- + for fraudulent or dishonest acts, all loss caused by an **employee** or more than one **employee** acting in collusion, either resulting from a single act or any number of such acts, regardless of when such acts occurred, are to be deemed as one **occurrence**;
- + regardless of the number of years that **employee theft cover** continues in force, **our** liability is not cumulative from year to year;
- + for **money** and **securities** inside the **premises** or **banking premises**, or while being conveyed, all loss resulting from any one act or series of related acts whether committed by one or more persons is one **occurrence**.

## Security Company

For **money** or **securities** in the custody of any security company, this Crime Protection insurance only **covers** the amount in **excess** of the amount recoverable by the **Insured** under:

- + the **Insured's** contract, if any, with the security company; or
- + any other indemnity carried by the security company for the benefit of users of its services.

# Liability Protection



## What's Covered

Under this Liability Protection insurance **we** will indemnify the **Insured** for all sums up to the liability **limit** which the **Insured** becomes legally liable to pay as compensation for:

- + **personal injury** and/or **property damage** first happening; and/or
- + **advertising injury** caused by an **advertisement** first published,

during the **policy period** caused by an **occurrence** in connection with the **Insured's business**.

### Cross Liability

If there is more than one **Insured**, each will be considered as a separate entity and this Liability Protection insurance will apply to the legal liability of one **Insured** to another **Insured** as if a separate **policy** had been issued to each **Insured**.

However, nothing in this extension will result in an increase in the liability **limit** or liability **excess**.

### Additional Payments

With respect to any claims, in respect of which indemnity applies under this Liability Protection insurance, **we**:

- + will defend such claim, even if such claim is groundless, false or fraudulent; and
- + may investigate, negotiate and settle such claim.

**360 Commercial** agrees to indemnify the **Insured** for **additional payments** in addition to the liability **limit**, provided that if a payment to finalise a claim exceeds the liability **limit**, then **our** liability to pay **additional payments** will be in the same proportion as the liability **limit** bears to the total compensation paid to finalise such claim.

### Maximum Liability

**Our** maximum liability in respect of all claims arising from any one **occurrence** will not exceed the liability **limit**, except for **additional payments**.

**Our** maximum liability will not exceed the aggregate liability **limit** for any one **policy period** in respect of all claims arising out of or in connection with:

- + the **Insured's products**; and/or
- + **pollution**.

**We** will not pay any compensation or **additional payments**, or defend any claim, after the liability **limit** has been exhausted by payments under the Liability Protection insurance.

The liability **limit** applies inclusive of **additional payments** for any claims or actions instituted or maintained against any **Insured** or judgment, award or settlement made in the United States of America or Canada (or any order made anywhere to enforce such judgment, award or settlement).

## What's not Covered

**We** will not be liable under this Liability Protection Insurance for any:

### Aircraft, Aircraft Products, Watercraft, Hovercraft

- + liability arising out of or in connection with the **Insured's** ownership, possession, maintenance, cleaning, repair, refuelling, operation or use of:
  - **aircraft**;
  - **hovercraft**; or
  - **watercraft** that exceed 8 meters in length, except where such **watercraft** is not owned or operated by the **Insured** but used under charter by the **Insured** for business entertainment; or
- + liability arising out of or in connection with the **Insured's products** that are either **aircraft** or used with the **Insured's** knowledge as **aircraft** component parts.

### Airport

Liability arising out of or in connection with the operation of any **airport**.

### Asbestos

Liability arising out of or in connection with asbestos fibres or asbestos in any form.

### Contractual Liability

- + liability assumed by the **Insured** under any agreement, except to the extent such liability:
  - would have attached to the **Insured** in the absence of such agreement;
  - is assumed by the **Insured** under a warranty of fitness or quality, or is implied by law, in respect of the **Insured's products**; or
- + liability in respect of which the **Insured** is or would have been entitled to recover damages or seek contribution from another party but for the **Insured's** agreement to **release** or waive recovery rights against such party for the whole or part of such liability.

However, **cover** applies in respect of such liability, which:

- + arises from a provision in a contract for lease of real or personal **property**, other than a provision which obliges the **Insured** to effect insurance over such **property**; or
- + is assumed under those agreements specified in the **policy** schedule as a **covered** agreement.

### Defamation

Liability arising out of or in connection with the publication or utterance of defamatory or disparaging material and/or statements made:

- + prior to the commencement of the **policy period**; or
- + with the **Insured's** knowledge that such material and/or statements are false.

### Electronic Data

Liability arising out of or in connection with:

- + communication, display, distribution or publication of **electronic data** provided that this exclusion does not apply to resultant **personal injury** or **advertising injury**;
- + total or partial **destruction, distortion**, erasure, corruption, alteration, misinterpretation or misappropriation of **electronic data**;
- + any error in creating, amending, entering, deleting or using **electronic data**; or
- + total or partial inability or failure to receive, send, access or use **electronic data**.

### Employer's Liability

Liability:

- + imposed by Workers' Compensation Legislation, Industrial Agreements or Employment Contracts; or
- + arising out of or in connection with **personal injury** to an **employee** provided that if the **Insured** is required by law to insure or otherwise fund any common law liability for such **personal injury** then this Liability Protection insurance will respond but only to the extent that the **Insured's** liability would not be **covered** under any such insurance or fund, whether or not the **Insured** has complied with those legal obligations.

### Exports to the USA or Canada

Liability arising out of or in connection with the **Insured's products** knowingly exported by the **Insured** to the United States of America or Canada.

### Fines, Penalties, Punitive Damages

Liability in respect of:

- + fines, penalties and/or liquidated damages; or
- + aggravated, punitive or exemplary damages or any additional damages resulting from the multiplication of compensatory damages.

### Loss of Use

Liability arising out of or in connection with loss of use of tangible **property** which has not been physically damaged or destroyed resulting from:

- + a delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement; or

- + the failure of **Insured's products** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured**.

This exclusion does not apply to the loss of use of other tangible **property** resulting from the sudden, unexpected and unintended physical damage to or **destruction** of the **Insured's products** after such products have been put to use by any person or organisation other than the **Insured**.

### USA or Canadian Jurisdiction

Liability in respect of claims or actions instituted or maintained 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, or to which the laws of the United States of America or Canada apply.

This exclusion does not apply to claims or actions arising out of or in connection with the temporary presence outside Australia of any **employee** who is normally resident in Australia and who is not performing any manual or supervisory work whilst in 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.

### Pandemic, Epidemic

Liability directly or indirectly arising out of any:

- + disease determined to be a 'listed human disease' or in respect of which a 'human biosecurity emergency' is declared under the *Biosecurity Act 2015 (Cth)* including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation; or
- + outbreak of infectious disease declared as a pandemic or epidemic by the World Health Organisation or any Australian government or Australian government agency; or
- + disease determined by the World Health Organisation to be a Public Health Emergency of International Concern (PHEIC).

### Pollution

Liability arising out of or in connection with **pollution**. This clause does not apply if the **release** of **pollution** arises from a sudden, identifiable, unexpected and unintended happening that takes place in its entirety at a specific time and place and is indemnified in not more than one **policy period**.

### Property in Care Custody or Control

Liability in respect of **property damage** to **property** in the **Insured's** care, custody or control other than **property damage** to:

- + that part of **premises** (including landlord's fixtures and fittings), leased to or temporarily occupied by the **Insured** for the purpose of the **Insured's**

**business** and for which the **Insured** has not assumed responsibility to effect insurance;

- + **employees' property;**
- + **vehicles** (including any **property** in or on such **vehicles**) not belonging to or used by the **Insured**, whilst such **vehicles** are in a car park owned or operated by the **Insured**, unless the **Insured** operates the car park for reward; or
- + other **property** which is temporarily in the care, custody, control or possession of the **Insured**, except:
  - that part of any **property** upon which the **Insured** is or has been working or applying any process or treatment where **property damage** arises solely out of such work, process or treatment;
  - any **property** in respect of which the **Insured** is obligated to effect insurance **cover** such **property**; or
  - any **property** whilst being transported or carted.

Provided that **360 Commercial's** total liability for any one **policy period** does not exceed the care, custody and control **limit**.

### Product Defect

Liability in respect of **property damage** to the **insured's products** if the damage is attributable to any defect in them or their harmful nature or unsuitability; but this exclusion shall apply only to the defective, harmful or unsuitable part of a damaged product and does not apply to any resultant damage caused to the remainder of the product.

### Product Recall

- + liability arising out of or in connection with any withdrawal, recall, inspection, repair, replacement, removal or disposal of any **property** containing or incorporating the **Insured's products**; or
- + loss, cost or expense incurred by the **Insured** in relation to any withdrawal, recall, inspection, repair, replacement, removal or disposal of the **Insured's products**.

### Professional Liability

Liability arising out of or in connection with 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:

- + the rendering of or failure to render professional **medical advice** by **medical persons** 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
- + **personal injury** or **property damage** arising therefrom but only if such professional advice or service is not given for a fee.

### Terrorism, War or Government Action

Liability arising out of or in connection with **terrorism** (including or any action taken in controlling, preventing, suppressing or responding to **terrorism**), **war** or **government action** regardless of any other cause or **event** contributing concurrently or in sequence to the loss.

### Radioactivity

Liability arising out of or in connection with **radioactivity** regardless of any other cause or **event** contributing concurrently or in sequence to the loss.

### Vehicles

Liability arising out of or in connection with the ownership, possession, operation, use or legal control by the **Insured** of any **vehicle**:

- + which is required under any legislation to be registered; or
- + for which compulsory liability insurance or **cover** under an insurance or accident compensation scheme is required in respect of its use by virtue of any legislation. This exclusion does not apply to:
  - + liability in respect of **personal injury**, for which indemnity is not available under such compulsory liability insurance or insurance or accident compensation scheme and the reason indemnity is not available does not involve a breach of any legislation relating to **vehicles**; or
  - + liability in respect of **property damage** caused by or arising from:
    - the loading or unloading of goods to or from any stationary **vehicle** or the delivery or collection of goods to or from any stationary **vehicle**;
    - the use for its intended purpose of any tool or item of plant attached to or forming part of the **vehicle**;
    - the operation or use of any **vehicle** which is designed primarily for lifting, lowering, loading and/or unloading, while being operated or used by or on behalf of the **Insured** unless required under any legislation to be registered; or
    - the movement by or on behalf of the **Insured** of any **vehicle** or trailer not belonging to the **Insured** which is interfering with access to or from any site where the **Insured** is carrying out work.

### Workmanship

Liability in respect of the cost of performing, completing, re-performing, reworking, correcting or improving any service or work done or promised to be done by or on behalf of the **Insured**.

## What to do When a Loss Occurs

The **Insured's** obligations under *How to Make a Claim* in the *Important Information* section that applies to this Liability Protection insurance.

In addition, in the **event** of an **occurrence** that is or may be **covered** under this Liability Protection insurance, the **Insured** must:

- + as soon as reasonably possible and at the **Insured's** own expense take reasonable steps to prevent other **personal injury, property damage** and/ or **advertising injury** arising out of the same or similar conditions;
- + not incur any **additional payments** without **our** prior consent (which will not be unreasonably withheld);
- + use their best endeavours to preserve any items which might assist by way of evidence in connection with any claim, provided it is reasonable and safe to do so; and
- + as far as reasonable possible allow no alteration or repair to be effected without **our** consent, other than essential emergency repairs, and until **we** have had the opportunity to inspect at any reasonable time and place.

## How Claims are Settled

**We** have full discretion in the conduct of any claim and the **Insured** must give all relevant information and assistance as **we** may require in the prosecution, defence or settlement of any claim.

**We** will only request information and assistance that is relevant to handling the claim and will explain why it is needed.

**We** reserve **our** rights under this **policy** and at law, including the right to agree or deny indemnity while **we** assess a claim or conduct the defence.

**Our** rights under this **policy** are not affected or diminished if **we** do not conduct the defence.

**We** are entitled to prosecute in the **Insured's** name (at **our** own expense and for **our** benefit) any claim for indemnity or contribution in respect of any compensation or other **Insured** loss which it may be required to pay under the provisions of this **policy**.

**We are** entitled to attend any inquest in respect of which liability may arise under this **policy**.

**We** may pay any part of the **excess** to effect payment or settlement of any claim, and on notification of such action taken, the **Insured** is to reimburse **us** within fourteen days thereafter for such amount paid by **us**.

**We** may at any time pay to the **Insured** in respect of all claims against the **Insured** arising from any one **occurrence**:

- + the **limit** after deduction of any amount already paid by **us**; or
- + any lesser amount for which the claim can be settled.

On making such payment **we** will relinquish the conduct and control of and be under no further liability in connection with such claim; except for expenses approved by **us** prior to such payment.







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