



 **PRORISK**

Public & Products Liability Insurance Policy

 Policy Wording

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Public & Products Liability Insurance Policy

In consideration of the payment of **premium** and in reliance on the contents of the **proposal** and any other information submitted by or on **your** behalf, **we** will indemnify **you** in accordance with the terms of this **policy**. The **policy** includes this document and the General Terms & Conditions Section attached to this **policy**, and the **policy** should be interpreted with the General Terms and Conditions. **Our** total aggregate liability under each insuring clause will not exceed the sub-limit specified in the **schedule**. Each Insuring Clause and Extension is subject to the **excess** specified in the **schedule**.

SECTION 1: INSURING CLAUSES

1.1 Public Liability Cover

We will pay on behalf of an **insured** their **loss** in respect of any **personal injury** or **property damage** for **public liability** arising from an **occurrence** in connection with the **business** during the **insurance period**.

1.2 Product Liability Cover

We will pay on behalf of an **insured** their **loss** in respect of any **personal injury** or **property damage** for **product liability** arising from an **occurrence** in connection with the **business** during the **insurance period**.

1.3 Advertising Liability

We will pay on behalf of an **insured** their **loss** for **advertising liability** arising from an **occurrence** in connection with the **business** during the **insurance period**.

1.4 Defence Costs In Addition

We will pay **defence costs** arising from a covered **loss** for **personal injury** or **property damage** in addition to the **limit of liability** for Insuring Clause 1.1 (Public Liability Cover), Insuring Clause 1.2 (Product Liability Cover) and Insuring Clause 1.3 (Advertising liability) of this **policy**.

Provided that we are not obligated to pay any **defence costs** after the **limit of liability** shown in the **schedule** under Insuring Clause 1.1 (Public Liability Cover), Insuring Clause 1.2 (Product Liability Cover) or Insuring Clause 1.3 (Advertising liability) has been exhausted.

SECTION 2: EXTENSIONS OF COVER

Our total aggregate liability under each Extension of Cover will not exceed the sub-limit specified in the **schedule**.

Each Extension of Cover is subject to the **excess** and sub-limit specified in the **schedule**.

Extensions Applicable to All Insuring Clauses

2.1 Advancement of Defence Costs and Investigation Costs

We will advance **costs** as incurred prior to a final determination or adjudication of a **claim** or up until the time that a claim is withdrawn. If such a **claim** is finally determined not to be covered under this **policy** or is excluded under this **policy** then all **costs** already advanced must be repaid to **us**.

2.2 Automatic acquisition or creation of subsidiaries

If during the **insurance period** the **insured** creates or acquires a new **subsidiary**, then such new **subsidiary** will be automatically covered under this **policy** unless that new **subsidiary** is incorporated or domiciled in the **USA**.

If any new **subsidiary** is not eligible for automatic coverage due to this condition, then the **policyholder** may provide **us** with sufficient details in respect of the new **subsidiary** for **us** to assess and evaluate any increase in risk. **We** may then agree, with reasonable consideration, to extend cover in return for the payment of additional **premium** and any amendments to the terms of this **policy**.

Cover for any new **subsidiary** will apply solely in respect of **loss** arising from conduct on or after the effective date of incorporation or acquisition of such new **subsidiary**.

2.3 Care, Custody & Control

We will pay for **property damage** to property in your care custody or control for:

- a) **premises** or the contents of **premises** occupied by **you**;
- b) vehicles (other than Vehicles Owned or used by **you** or your behalf), but only whilst such vehicles are in a car park owned or operated by you other than for income or reward as a car park operator; or
- b) clothing and personal effects belonging to **your employees** and visitors; or
- c) other property temporarily in **your** physical or legal control, but not for property in respect of physical damage to, destruction of or loss of that part of any property upon you are working and the loss arises from the performance of such work

This extension does not apply to liability assumed by the **Insured Person** under any contract or agreement which requires the **Insured Person** to effect material damage insurance on premises, property or goods not owned by the Insured.

2.4 Court Attendance Costs

We will pay the **policyholder** for **court attendance costs**.

2.5 Emergency Costs

If written consent from **us** cannot reasonably be obtained prior to **costs** being incurred by an **insured**, **we** automatically grant retrospective approval for such **costs** of up to 10% of the **limit of liability** (or relevant sub-limit, whichever is the lower amount) in the aggregate for all **claims** made during the **insurance period** provided consent is obtained from **us** within 30 days of **costs** being incurred. Any amounts paid under this Extension are part of and not in addition to the **limit of liability**.

2.6 Principal's Indemnity

We agree to indemnify every **principal** in respect to the **principal's** vicarious liability arising out of:

- (a) the negligent performance by or on behalf of the **insured** of any contract or agreement for the performance of work for such **principal**; or
- (b) any **products** sold or supplied by the **insured**, but only in respect of the **insured's** own acts or failure to act in connection with such products;

This does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or a breach of duty of such **principal**.

2.7 Public Relations Costs

We will pay the **public relations costs** of an **insured** following a **claim** covered by the **policy**.

2.8 Tenants Liability

We agree to indemnify any lessor with whom the **policyholder** has entered into an agreement for the rental or lease of **premises** in connection with the **business**. Cover available to the lessor is on terms no wider than would have been provided in this **policy** to the **policyholder** if the **policyholder** had been held legally liable for the same **loss**.

2.9 Vicarious Liability

We agree to indemnify **you** for **your** vicarious liability for any conduct of **your**:

- (a) agents;
- (b) contractors; or
- (c) **employees**.

Value Added Benefits

2.10 Contract Review

The **policyholder** is entitled to use the ProRisk Contract Review Service for four (4) contract reviews for the **insurance period**. The Contract Reviews relate only to the provisions of the Contract that might affect the Insured's insurance.

2.11 Panel Counsel

The **policyholder** is entitled to one (1) hour free advice from any one firm listed on our panel of solicitors relating to a matter which we have accepted as notification of circumstances which may give rise to a **claim**. We consent to that firm listed on our panel of solicitors being retained to act for an **insured** in respect of any claim covered by this **policy**.

SECTION 3: EXCLUSIONS

We will not be liable under this **policy** to make any payment for **loss**:

3.1 Abuse

on account of any **claim** based upon, arising from or in consequence of, or in any way connected with any actual or alleged verbal, physical or sexual abuse, molestation, assault, battery or any violence committed by an **insured person**. This Exclusion will not apply to the vicarious liability of the **policyholder** if they were not aware of such conduct at the time.

3.2 Advertising Liability

for **advertising liability**:

- (a) resulting from statements made at your direction with knowledge that such statements are false.
- (b) resulting from failure of performance of contract but this exclusion will not apply to **claims** for unauthorised appropriation of advertising ideas contrary to an implied contract.
- (c) resulting from any mistake in the advertised price of **products** or services.
- (d) failure of **your products** or services to conform with advertised performance, quality, fitness or durability.
- (e) incurred by any **insured** whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

3.3 Alcohol, illegal drugs, narcotics and intoxicants

directly or indirectly caused by, contributed to by, or arising out of or in connection with **you** being under the influence of alcohol, illegal drugs, intoxicants or narcotics.

3.4 Assumed Liability

directly or indirectly attributable to or in consequence of any actual or alleged breach of an obligation assumed by the **insured** under any agreement, except that this Exclusion does not apply to:

- (a) any liability which is, or would have been, implied by law in such agreement or would have arisen separately from it; or
- (b) any liability arising from a lease of **premises** used by the **business**, provided that our liability will not extend beyond that assumed under standard industry contracts or for any obligation by **you** to insure the premises.

3.5 Aviation Products

arising from the sale, manufacture or importation of any **product** which is intended to be incorporated into the structure, machinery, electronics or controls of any aircraft or spacecraft.

3.6 Care Custody and Control

for **property damage** to property in **your** care custody or control, other than provided for in Extension 2.3 (Care, Custody & Control)

3.7 Cyber Liability

directly or indirectly based upon, arising from or in consequence of a **cyber incident**.

3.8 Defamation, Libel or Slander

based upon, arising from or in consequence of the actual or alleged defamation, libel or slander of a third party by an **insured**, unless arising out of an **advertising liability**.

3.9 Dishonest or wilful acts

based upon, arising from or attributable to the:

- (a) dishonest, fraudulent or criminal acts, errors or failure to act;
- (b) wilful breach of any statute, contract, agreement or duty; or
- (c) any wilfully reckless act, error or failure to act;

of an **insured**.

3.10 Electronic Data

for the communication, display, distribution or publication of **electronic data**.

This exclusion does not apply to:

- (a) **personal injury** or the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of **electronic data**;
- (b) an error in creating, amending, entering, deleting or using **electronic data**; or
- (c) the total or partial inability or failure to receive, send, access or use **electronic data** for any time or at all.

3.11 Employment Liability

for any **claim** based upon, arising from, or attributable to:

- (a) an **employment practices wrongful act**; or
- (b) liability for any **personal injury** to any **employee** arising out of; the course of their employment; any other liability imposed by any workers compensation law; or any other liability imposed by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination, or any such contract of employment or workplace agreement.

3.12 Faulty Workmanship

for reperforming, correcting or improving any work undertaken by the **insured** in the course of the **business**.

3.13 Loss of Use

for the loss or loss of use of tangible property, which is due to the actual or alleged:

- (a) delay in or lack of performance by an **insured** or their agent under any contract or agreement; or
- (b) failure of any **products** or work performed by an **insured** or their agent, to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented.

This Exclusion does not apply to property loss resulting from the sudden, unexpected and unintended physical damage to or loss or destruction of **products** or work performed by an **insured** or on their behalf after such **products** or work have or has been used by a third party.

3.14 Product Damage, Product Recall or Product Guarantee

based upon, arising from or in consequence of the actual or alleged:

- (a) damage to a **product**; or
- (b) **product recall**; or
- (c) breach of warranty or guarantee in relation to a **product**.

3.15 Professional Services

based upon, arising from, or in consequence of the rendering of or failure to render professional advice or services by the **insured** or any error or failure to act connected with the provision of professional advice or services.

3.16 Property Owned by You

for **property damage** or property owned by **you**.

3.17 Territorial Limits

arising from any **occurrence** outside of the **territorial limits**.

3.18 Vehicles

- (a) arising from the ownership, possession or use by or on **your** behalf of any motor vehicle or trailer for which compulsory insurance is required by law, other than claims arising from damage to any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking; or
- (b) arising from the ownership, possession or use by or on **your** behalf of any aircraft, watercraft or hovercraft, spacecraft or other vehicle.

SECTION 4 - DEFINITIONS

Please refer to the General Terms and Conditions for any definitions not listed below.

4.1 Advertising liability means any liability of the **insured** arising out of actual or alleged:

- (a) unintentional breach of the misleading or deceptive conduct provisions of the *Competition and Consumer Act 2010 (Cth.)* or any Fair Trading or similar legislation of any State or Territory of Australia; or
- (b) infringement of copyright or passing off of title or slogan; or
- (c) unfair competition, piracy, misappropriation of advertising ideas or style of doing business;
- (d) invasion of privacy; or
- (e) defamation, libel or slander

committed or alleged to have been committed during the **insurance period** in any advertisement, publicity article, broadcast or telecast and caused by or arising out of the advertising activities of the **business**.

4.2 Benefits means any obligation to pay superannuation or pension entitlements, which constitutes money or property or other entitlement.

4.3 Business means the business conducted by **you** as stated in the **schedule**, and includes:

- (a) property ownership and office occupation by **you** for the purposes of the **business**; and
- (b) a canteen, social or sporting club or first aid, provided by **you** and incidental to the **business**.

4.4 Civil liability means the actual or alleged liability of the **insured** other than a criminal liability.

4.5 Claim means:

- (a) any written demand for compensation, monetary damages or other relief, including non-monetary relief, made against an **insured**;
- (b) any formal written notice of an alternative dispute resolution proceeding, including but not limited to a conciliation, mediation or arbitration.
- (c) A Writ, Statement of Claim, or other similar legal proceeding commenced in writing; or
- (d) an **investigation**;

brought by a third party.

4.6 Computer system means all electronic computers owned or operated by the **insured** including operating systems, software, electronic communication systems and software or websites owned or operated by the **insured** and data storage computers or software.

4.7 Costs means **investigation costs** and **defence costs**, provided that **we** have consented in writing prior to such **costs** being incurred. **We** will not unreasonably withhold that consent.

Costs does not mean any overheads of the **policyholder** or any salaries, commissions, expenses or other **benefits** associated with the remuneration of the **insured persons**.

4.8 Court attendance costs means:

- (a) the reasonable out of pocket expenses; and
- (b) the equivalent daily salary;

incurred by an **insured person** in attending Court when legally compelled to do so, or at the reasonable request of solicitors acting for an **insured** in relation to a covered **claim** under this **policy**.

4.9 Cyber incident means any actual or suspected:

- (a) **data breach**; or
- (b) unauthorised access to a **computer system** including:
 - (i) ransomware attack;
 - (ii) cyber extortion;
 - (iii) hacking attack;
 - (iv) malware infection;
 - (v) phishing attack;
 - (vi) telephone hacking;
 - (vii) denial of service attack;
 - (viii) computer virus;
 - (ix) cryptojacking; or
 - (x) a credential compromise of software used by the **insured**.

4.10 Defence Costs

means all reasonable fees, costs and expenses in the defence, investigation, adjustment, challenging, resisting or appeal of any **claim**.

4.11 Data breach means an actual or suspected unauthorised disclosure of information retained by the **insured**:

- (a) arising from unauthorised access to a **computer system**; or
- (b) unauthorised or accidental disclosure by an **employee**.

4.12 Director or officer means any natural person who was prior to, is or becomes during the **insurance period**:

- (a) a director, officer, partner, manager or trustee of the **policyholder** or subsidiary;
- (b) a shadow director of the **policyholder** but only where such shadow director is also a person described in sub-paragraph (a) above;
- (c) an **employee** of the **policyholder** who:
 - (i) carries out a managerial or supervisory function for the **policyholder**;
 - (ii) is joined as a party to any **claim** against any person defined above;
- (d) the lawful **spouse** of a person defined above, where recovery is sought solely because joint property is held or owned by or on behalf of the spouse or domestic partner and not in respect of any conduct by that person in his or her own right; or
- (e) the legal representatives, heirs, assigns or estates of a person defined above in the event of that person's death, incapacity, insolvency or bankruptcy.

This definition does not include external auditors of the **policyholder** and does not include any liquidator, trustee, receiver and manager, administrative receiver, supervisor, mortgagee in possession or other insolvency office-holder of the **policyholder** or the assets of the **policyholder**.

4.13 Electronic Data means facts, concepts and information converted to a form usable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.

4.14 Employee means:

- (a) any natural person full-time, part-time, casual, seasonal or temporary worker of the **policyholder** who is employed under a contract of service with the **policyholder** and is compensated by way of salary, wages and/or commissions;
- (b) any work experience staff member, intern or volunteer of the **policyholder** under the direction and control of the **policyholder**;
- (c) students, who are doing work for the **policyholder**, at the **policyholder's** direction, regardless of whether they are paid, or not; or
- (d) in relation to insurance clause 1.4 (Employee Fidelity Cover), the **employee** must also be under the direction and control of the **policyholder**.

For the avoidance of doubt, **employee** does not include independent contractors or labour hire personnel.

4.15 Employment practices wrongful act means any actual or alleged violation of employment laws or any other employment related obligation or matter including but not limited to any actual or alleged:

- (a) employment-related:
 - (i) sexual or other unlawful harassment (including bullying);
 - (ii) unlawful discrimination;
 - (iii) denial of natural justice;
 - (iv) defamation;
 - (v) invasion of privacy;
- (b) unlawful termination of employment;
- (c) false or misleading advertising or representation involving terms or conditions of employment;
- (d) failure to employ, promote or grant tenure;
- (e) unfair deprivation of career opportunity;
- (f) unfair discipline or evaluation of employment performance;
- (g) failure to provide or adhere to adequate employment policies or procedures;
- (h) violation of any Federal, State or Local statute or regulation governing employment practices; or
- (i) breach of employment contract;

with respect to any natural person who was, now is or becomes an **employee** of the **policyholder**, including prospective **employee**.

4.16 Employment related benefits means any:

- (a) salary, wages and/or commissions;
- (b) a special right, a privilege, or a fringe benefit;
- (c) payments due under any employee benefit plan, pension plan or superannuation scheme;
- (d) bonuses;
- (e) equitable interest/s; or
- (f) incentive or deferred compensation;

payable to an **employee**.

4.17 Insured, you and your means:

- (a) the **policyholder**;
- (b) any **subsidiaries** of the **policyholder**;
- (c) any **insured persons**;
- (d) a **principal**; or
- (e) a **landlord**.

4.18 Insured person means:

- (a) any **director**;
- (b) **officer**;
- (c) **partner**;
- (d) **proprietor**;
- (e) **employee**; or
- (f) **student**.

4.19 Investigation means any formal investigation, inquiry or examination by an **official body**, which the **insured** is legally compelled to comply with and is commenced by written notice. For the avoidance of doubt, an **investigation** does not include a risk management visit (or equivalent) by an **official body**.

4.20 Investigation costs means reasonable legal fees, costs and expenses incurred by the **insured persons** in their representation (or in preparation for their representation) at an **investigation** in which the **insured persons** first become involved during the **insurance period**.

Investigation costs does not include wages, salaries or other remuneration, internal costs or overheads of any **insured**.

4.21 Landlord means the landlord and property owner of **premises**.

4.22 Loss means the amount, including **costs**, damages, judgments, settlements or reasonable fees incurred on account of a **claim** made during the **insurance period**.

Loss does not include:

- (a) matters uninsurable under the law applicable to this **policy**;
- (b) punitive, exemplary or aggravated damages, or the multiple portion of any multiplied damages award;
- (c) taxes or the loss of tax benefits, rates, duties, levies, charges, fees or any other state or government revenue or impost;
- (d) criminal fines or criminal penalties;
- (e) civil fines or civil penalties;
- (f) **employment related benefits**;
- (g) any liability or costs incurred in connection with any educational, sensitivity or other corporate programme, policy or seminar relating to an **employment practices wrongful act** or the costs of reinstatement of any **employee**;
- (h) any refund of fees;
- (i) internal or overhead expenses of any **insured**;
- (j) the cost of complying with any non-monetary order or non-monetary relief;
- (k) **benefits**;
- (l) any actual or alleged violation of the responsibilities, obligations or duties imposed by any law, regulation or bylaw relating to vehicular, air or marine traffic and any amendments to that law, regulation or bylaw;
- (m) liquidated damages; or
- (n) any actual or alleged violation of the responsibilities, obligations or duties imposed by Sections 182, 183, 601FD, 601FE, 601JD of the *Corporations Act 2001 (Cth)*, or any similar law anywhere in the world, and any amendments to that Act, – including duties of directors, officers and employees to not misuse their position or information, duties of a member of a scheme's compliance committee and the duties of officers and employees of a responsible entity.

4.23 Maximum aggregate limit of liability means the total amount payable under this **policy** as stated in the **schedule**, including all reinstatements.

4.24 Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **personal injury** and/or **property damage** and/or **advertising liability** that is neither expected or intended by the **insured**.

With respect to **personal injury** and/or **property damage**, all events of a series consequent upon or attributable to one source or original cause will be deemed to be one **occurrence**.

All **advertising liability** arising out of the same injurious material or act (regardless of the frequency or repetition of such injurious material or act, the volume or kind of media used, or the number of claimants, will be deemed to be one **occurrence**.

4.25 Official body means any regulator, state or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **policyholder** or the conduct of an **insured person** in their insured capacity.

4.26 Partner means the natural persons as the **policyholder** and any natural person who in the past, present or future trades in partnership with the **policyholder** as specified in the **schedule**, in his or her capacity as such.

4.27 Personal injury means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (c) wrongful entry, wrongful eviction or other invasion of right of privacy; and/or
- (d) assault and battery committed by the **insured** for the purpose of preventing or eliminating danger to persons or property.

In the event of **personal injury** arising from latent injury, latent sickness, latent disease or latent disability, that **personal injury** will be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.

4.21 Premises means the place or places where the **policyholder** and/or its **subsidiaries** conduct their business.

4.22 Principal means the head contractor, who has sub-contracted the supply of goods and/or services to the **policyholder** or its **subsidiaries** for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and **limit of liability** as is provided by this **policy**.

4.23 Product liability means **your** actual or alleged **civil liability** in respect of **personal injury** and/or **property damage** caused by or arising out of any **products** sold or otherwise supplied by **you** to a third party.

4.24 Product recall means any form of **loss** arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any **products** where such **products** are withdrawn or recalled from the market because of any actual, alleged or suspected defect or deficiency.

4.28 Products means anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by **you** or on **your** behalf, including discontinued **products**.

Products does not include:

- (a) food and beverages supplied by **you** or on **your** behalf to **your** employees; or
- (b) any item sold via a vending machine, which **you** do not wholly own and operate.

4.29 Property means money, securities and other property owned by the **policyholder** or for which it is legally liable.

4.30 Property damage means physical loss, damage or destruction of tangible property owned by a third party, including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or destroyed. In the event of a **claim** arising from latent damage or from the exposure of tangible property to gradual deterioration and eventual damage, such **property damage** will be deemed to have occurred on the day such deterioration or damage was first discovered.

4.31 Proprietor means the natural person as the **policyholder** as specified in the **schedule**, in his or her capacity as such.

4.32 Public liability means **your** actual or alleged **civil liability** in respect of **personal injury** and/or **property damage** sustained by a third party while on **your premises** or as a result of the conduct of the **business**.

4.33 Public relations costs means any reasonable fees, costs and expenses of a public relations consultant retained with **our** prior written consent (which will not be unreasonably delayed or withheld).

4.34 Spouse means a past or present lawful spouse, domestic partner (including, without limitation, same sex partner) or any person deriving similar status by reason of the common law or statute in Australia.



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