EXCLUSIONS

The Insurer will not be liable in respect of:

Advertising Liability

Advertising Liability arising out of:

(a) breach of contract, other than misappropriation of advertising ideas under an implied contract;

(b) the wrong description of the price of Insured's Products, goods or services;

(c) the failure of the Insured's Products, goods or services to conform with advertised performance or quality; or

(d) an offence committed by any Insured whose business is advertising, broadcasting, publishing or telecasting.

Aircraft Products

liability arising out of the Insured's Product which, with the Insured's knowledge, is incorporated into the structure, machinery or controls of any Aircraft and would affect its flying capabilities.

Asbestos

any actual or alleged liability whatsoever for any claim or loss arising out of, resulting from or in consequence of, or in any way involving asbestos, or asbestos contained in any materials in whatever form or quality.

Care, Custody or Control / Owned Property

Property Damage to:

(a) property owned by the Insured or any property leased or rented to the Insured to the extent that the Insured has agreed under contract to provide insurance for such owned, leased or rented property. This Exclusion (a) will not apply if the Insured has effected a property insurance policy for such owned, leased or rented property, but that property insurance policy does not provide cover;

(b) property in the physical or legal control of the Insured, other than;

  (i) premises or part of premises including contents, fixtures and fittings , which are leased, rented, tenanted, hired or temporarily occupied by the Insured;

  (ii) Vehicles including spare parts, accessories and the Vehicles contents (not belonging to or used by or on behalf of the Insured), in the possession or control of the Insured where such Property Damage occurs in a car park owned, leased or operated by the Insured, or on, in, outside or in the immediate vicinity of any premises occupied by the Insured for the purpose of the Business. Provided that the Insured as the principal part of their Business does not operate the car park for reward;

  (iii) employees' and visitors' property;

(iv) all property other than property described in (i) to (iii) above, up to a Sub-Limit of Liability of $500,000 for any one Occurrence or as otherwise stated in the Placing Schedule.

Deductible

the amount of the deductible as specified in the Placing Schedule.

Defamation

liability arising out of a defamation:

(a) made prior to the Period of Insurance;

(b) made at the direction of the Insured with the knowledge that it is false.

Employers Liability

(a) Personal Injury to the extent that the Insured is entitled to indemnity (or where insurance has not been effected would have been entitled to indemnity) under any statutory fund, statutory scheme, policy of insurance or self-insurance, required by any law relating to workers' or workmen's compensation whether or not such insurance has been effected;

(b) Personal Injury to any employee or worker of the Insured to the extent imposed by industrial award or agreement or determination where such liability would not have been imposed in the absence of such law or industrial award or agreement or determination;

(c) Liability imposed by any law relating to Employment Practices.

This Exclusion (a) and (b) does not apply to liability of others assumed by the Insured under any contract or agreement.

Fines, Penalties, Aggravated, Punitive, Multiple Exemplary and Liquidated Damages

fines, penalties, aggravated, punitive, exemplary, liquidated and Multiple Damages.

Intentional Injury or Damage

Personal Injury, Property Damage or Advertising Liability expected or intended from the standpoint of the Insured.

This Exclusion does not apply to Personal Injury or Property Damage resulting from the use of reasonable force to prevent or eliminate danger or protect persons or property.

Loss of Use of Tangible Property

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

(a) a delay in or lack of performance by or on behalf of the Insured in respect of any contract or agreement; or

(b) the failure of the Insured's Products to meet the level of performance, quality, fitness or durability warranted or represented by the Insured. Provided that this Exclusion (b) does not apply to loss of use of other tangible property resulting from physical damage to or destruction of the Insured's Product after such Insured's Product has been put to their intended use by any person, organisation or entity other than the Insured.

Pollution

Personal Injury or Property Damage caused by the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water, including the clean-up, removal or nullifying expenses consequent upon such discharge, dispersal, release or escape of Pollutants.

This Exclusion does not apply

(a) if such discharge, dispersal, release or escape:

(i) occurs outside of the United States of America, Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries; and

(ii) is caused by a sudden, unexpected and accidental happening which takes place in its entirety at a specific time and place;

(b) to any liability arising out of the discharge, dispersal, release or escape of legionella bacteria.

Product Defect, Product Replacement or Product Recall

(a) Property Damage to the Insured's Products if such damage is attributable to any defect in them or to their harmful nature or unsuitability.

This Exclusion (a) applies only to the defective or harmful or unsuitable part of the Insured's Product that has suffered the Property Damage and does not apply to resultant Property Damage to the remainder of the Insured's Products;

(b) damages claimed for any loss, cost or expense incurred by the Insured for the inspection, repair, replacement, loss of use or recall of the Insured's Products;

(c) any performance or quality guarantee or warranty given by the Insured in respect of the Insured's Product except to the extent that such liability would have been implied or imposed by law.

Professional Liability

the rendering of or failure to render professional advice or service by the Insured or any related error or omission connected thereto, but this Exclusion does not apply to:

(a) 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 on the Insured's premises;

(b) Personal Injury, Property Damage or Advertising Liability arising from the provision of such professional advice or service that is not given for a fee.

Radioactive Contamination

any claim arising directly or indirectly, caused by, contributed to by, or arising from, any ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from nuclear weapons material.

This Exclusion does not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when stored or used incidental to ordinary industrial, educational, medical, or research pursuits.

Territorial Limit

a claim made, or actions instituted in the United States of America, Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries. Provided that this Exclusion does not apply to:

(a) the Insured's Product exported into those countries;

(b) the presence in those countries of any travelling director, partner, executive, officer, salesperson or other employee.

Terrorism

liability directly or indirectly caused by, resulting from or in connection with any:

(a) Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence;

(b) action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

Vehicle

Personal Injury or Property Damage arising from the ownership, possession or use by the Insured of any Vehicle which is registered or is required at law to be registered, or in respect of which compulsory liability insurance or statutory scheme relating to a motor vehicle for bodily injury is required by virtue of legislation (whether or not that insurance is effected).

Provided that this Exclusion does not apply to:

(a) Personal Injury where compulsory liability insurance or statutory scheme does not provide indemnity (to the extent that cover is provided by such compulsory liability insurance or statutory scheme) and does not involve a breach by the Insured of legislation relating to Vehicles.

(b) where the Personal Injury or Property Damage:

   (i) arises out of or in connection with the loading and unloading of any Vehicle and/or any delivery or collection to or from any Vehicle for which the Insured is legally liable;

   (ii) arises out of the use of any Vehicle as a Tool of Trade;

   (iii) is covered by Care, Custody and Control / Owned Property Exclusion 3.4 (b) (ii).

War

any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority.

Watercraft, Hovercraft or Aircraft

liability arising out of the ownership, maintenance, use or operation by the Insured of:

(a) any Watercraft or Hovercraft exceeding twenty (20) metres in length whilst afloat. This Exclusion (a) does not apply to:

- (i) Watercraft or Hovercraft operated by independent contractors;
- (ii) Watercraft or Hovercraft owned by others and used by the Insured for business entertainment;
- (iii) manually propelled or sailing craft in Australian territorial waters;
- (iv) floating jetties, floating pontoons or buoys.

(b) any Aircraft. This Exclusion (b) does not apply to unmanned inflatable balloons used for advertising purposes.

The following **Additional Exclusions** are added to the **EXCLUSIONS** section of the Policy:

Bushfire

The Insurer shall not be liable in respect of liability arising directly or indirectly from or caused by, contributed to or arising from bushfire, grassfire or any variance thereto.

Cyber Liability and Data Risk

Liability arising out of Cyber Liability or Data Risk.

For the purpose of determining the indemnity granted by this Policy and when used in this endorsement only, the following Definitions will apply to the Policy:

Computer System means

any computer hardware, software, firmware, electronic device, electronic data storage device, electronic data backup facility, networking device or any components thereof or any associated input and output devices, including those that have the capability to be linked together through the internet or internal network or that are connected through data storage or other devices.

Cyber Liability means

- unauthorised access or access by Malware to;
- the presence of Malware on;
- the spread of Malware by;
- the unauthorised use of;
- the malicious use of; or
- malicious interference with or any distributed denial of service attack against,

any Computer System:

- owned, operated, controlled, leased or used; or
- sold, supplied, altered, constructed, repaired, serviced, designed, tested, installed or processed,

by, or on behalf of, or for the benefit of, the Insured.

Data means

any corporate or personal information in any format, including records, reports, designs, plans, formulas, processes, trade secrets, patents, financial information, medical or healthcare information, contact information, account numbers, account histories, passwords or credit or debit card details, whether or not in electronic form, and whether or not belonging to the Insured.

Data Risk means
the modification, corruption, loss, destruction, theft, collection, misuse, extortion of, illegitimate or unauthorised access, restricted or inability to access, or unlawful or unauthorised processing or disclosure of Data including where arising from the loss, damage, destruction or theft of any computer, electronic device, hardware or component thereof contains Data.

Malware means

software, programs, files, content or instructions of a malicious nature including malicious code, ransomware, cryptoware, viruses, trojans, worms, zero day attacks, logic or time bombs which may disrupt, harm, destroy, impede access to or in any way corrupt the functioning or operation of or Data within any software or Computer System.

Medical Malpractice

liability arising out of the provision of health care services by a medical practitioner or any other health practitioner, including any act, error, or omission committed in the rendering of professional services or advice by any medical doctor, resident, intern, or health care professional, or other person or organisation under contract or agreement with the Insured.

Abuse

liability arising out of Abuse.

For the purpose of determining the indemnity granted by this Policy and when used in this endorsement only, the following Definitions will apply to the Policy:

Abuse means

- acts of hurting or injuring mentally or physically by maltreatment or ill-use;
- acts of forcing sexual activity, rape or molestation; or
- repeated or continuing contemptuous coarse or insulting words or

behaviours.

Silica

liability arising out of:

- any inhalation of, ingestion

of, exposure to; or

- loss of use of property due to

the presence of, silica in any

form.

Specified Activities

a) liability arising out of any subcontracting within the platform of non-registered Tasker(s);

b) any construction work which involves the structural integrity of a building or structure;

c) any sexual/escort services;

d) any medical treatment risk; or

e) any water activities.

Communicable Disease

liability arising out of Communicable Disease. This Exclusion applies even if the claim against any Insured alleges negligence or other wrongdoing in the:

• supervising, hiring, employing, training or monitoring of others that may be infected with and spread a Communicable Disease;

• testing for a Communicable Disease;

• failure to prevent the spread of a Communicable Disease; or

• failure to report a Communicable Disease to authorities.

For the purpose of determining the indemnity granted by this Policy and when used in this endorsement only, the following Definitions will apply to the Policy:

Communicable Disease means

any infectious disease, including any virus, bacteria, microorganism, or pathogen that actually or allegedly induces or are capable of inducing physical distress, illness or disease.

Underground Services

liability arising out of damage to underground services (including but not limited to water, gas, sewerage, fuel pipes, electric, or telecommunication cables) or any underground property or structure for the purpose of storing, conveying, transporting, transmitting or delivering electricity, water, gas, fuel, telecommunications, signals, radio and other waves.

This Exclusion does not apply where:

• prior to the commencement of work, the Insured has inquired with the relevant authorities or owners of such services, property, or structures as to the exact location of such services, property, or structures; and

• any cover provided by (a) stated above, will be limited to the cost of repair, replacement or reinstatement of such damaged services, property or structures and will not extend to any consequential loss resulting therefrom.

Welding and Hot Works

liability arising out of any electric, oxy-acetylene, laser or similar welding or cutting and spark producing equipment and allied processes conducted by or on behalf of the Insured.

Provided that this Exclusion does not apply where the Insured conducted the work in compliance with the relevant Standards which apply to such activities.

For the purpose of determining the indemnity granted by this Policy and when used in this endorsement only, the following Definitions will apply to the Policy:

Standards means

Australian or international standards.

In all other respects this Policy remains unaltered.

Known Circumstances

Liability arising out of any:

(a) Claim made against the Insured prior to the commencement of the Period of Insurance;

(b) Claim or Circumstance notified, in whole or in part, to the Insurer or any other insurer prior to the commencement of the Period of Insurance; or

(c) Claim or Circumstance of which the Insured was aware or ought reasonably to have been aware prior to the commencement of the Period of Insurance.

Errors and Omissions Exclusions

The Insurer will not be liable in respect of Financial Loss arising out of:

- any alleged or actual breach of a duty owed in the capacity of a director, secretary or officer of a body corporate;
- the issuance by an Insured of any prospectus or any other form of public offering;
- the insolvency, bankruptcy or liquidation of an Insured;
- any failure or omission to effect or maintain insurance;
- Personal Injury, Property Damage or Advertising Liability which is covered by the Policy;
- liability assumed under any contract, agreement or warranty unless such assumed liability would have been implied by law in the absence of such contract, agreement or warranty;
- any Claim brought or maintained by or on behalf of:
    - any Insured or parent company of any Insured; or
    - any entity belonging to the same group of companies as the Insured; or
- the rendering of or failure to render professional advice or service given for a fee.

Exclusion 3.7. (a) Amendment (Employers Liability) Exclusion 3.7. (a) is deleted in its entirety and replaced with:

(a) Personal Injury:

(i) to the extent that the Insured is entitled to indemnity (or where insurance has not been effected would have been entitled to indemnity) under any statutory fund, statutory scheme, policy of insurance or self-insurance, required by any law relating to workers' or workmen's compensation whether or not such insurance has been effected. This Exclusion (i) does not apply:

(1) to the United States of America, Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries; or

(2) where a Local Policy provides cover for such Personal Injury; or

Exclusion 3.13. Professional Liability is deleted in its entirety and replaced with the following:

1. **Professional Liability** the rendering of or failure to render professional advice or service by the Insured or any related error or omission connected thereto.

Exclusion 3.15. Territorial Limit is deleted in its entirety. In all other respects this Policy remains unaltered.

Exclusion 3.17. (a) Amendment (Vehicle) Exclusion 3.17. (a) is deleted in its entirety and replaced with:

(a) Personal Injury, but only in excess of:

(i) a compulsory liability insurance or statutory scheme. This Exclusion (i) does not apply:

(1) to the United States of America, Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries; or

(2) where a Local Policy provides cover for such Vehicle.

(ii) a Local Policy but it will be subject to clause 1. (b) Difference in Limits of this endorsement.