

S U R A LIABILITY

Public and Products Liability Insurance

Policy



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Important Information

About this document

This is an important document that must be read carefully before making a decision in relation to this insurance (which is not compulsory). The Insurer is responsible for the content of this document.

This document can help You to:

- decide whether this insurance will meet Your needs; and
- compare it with other products You may be considering.

See the “Definitions” section page for details regarding of terms that have special meaning. In some cases, a word with special meaning may be defined in a specific part of the Policy.

About SURA Liability

SURA Liability Pty Ltd ABN 34 125 318 247 (SURA Liability) has developed this Public and Products Liability Insurance Policy which is underwritten by the insurer referred to below.

SURA Liability has an authority from the insurer to arrange, enter into/bind and administer this insurance for the insurer. SURA Liability acts as an agent for the insurer and not for You.

In providing any financial services SURA Liability acts as a Corporate Authorised Representative (AR No: 1255891) of SURA Pty Ltd ABN 36 115 672 350 AFSL 294 313.

Our contact details are:

Level 14/141 Walker Street
North Sydney NSW 2060
PO Box 1813
North Sydney NSW 2059
Telephone: (02) 9930 9500

About the Insurer

This insurance is underwritten by Sompo Japan Insurance Inc. Australian Registered Business Number 000 837 801 which is a limited liability company incorporated in Japan (Sompo).

Sompo’s contact details are:

Suite 602, 50 Berry Street
North Sydney NSW 2060
Telephone: (02) 9030 3702

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

Any reference in this Important Information section to “We”, “Our” and “Us” in this provision (whether capitalised or not) is to the insurer and a reference to “You” and “Your” any person insured by the Policy.

Assumed Liability and Waived Rights

If You have entered into an agreement with another party:

- where You are assuming a greater liability than would apply had You not entered into that agreement; or
 - which prevents You from taking a recovery action for indemnity or contribution from that party,
- it may adversely affect Your rights to cover under the Policy.

If You do, it may adversely affect Your rights to cover under the Policy and/or allow Us to cancel the Policy. Applicable law may restrict Our rights in certain circumstances. See “When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim” and “Cancellation” for further information.

Complaints and Dispute Resolution

Our complaints process

We view seriously any complaint made about Our products or services and will deal with it promptly and fairly.

If you are dissatisfied with any aspect of your relationship with Us including Our products or services, and wish to make a complaint, We ask you first try to resolve it by contacting the relevant member of Our team who are trained to handle complaints fairly and efficiently. Please provide Us with Your claim or Policy number (if applicable) and as much information as you can about the reason for your complaint.

If the matter is still not resolved after 5 business days, your complaint will be referred to Our Complaints Team to review. The Complaints Team members are independent and are committed to reviewing complaints objectively, fairly and efficiently.

You can contact Our Internal Disputes Resolution Officers on (02) 9930 9500, or by email at IDR@SURA.com.au or by writing to Us at the address for SURA given above. The issues raised in your complaint will be investigated and We will advise you if further information is required to complete the review. They will seek to resolve the matter with thirty (30) days, in accordance with the General Insurance Code of Practice and Our Dispute Resolution procedures.

If We are unable to reach a decision within this time frame, We will provide you with the reasons for the delay prior to the expiry of this time frame. In this case or in cases where further information or investigation is required, We will work with you to agree reasonable alternative time frames.

If We cannot agree, or your complaint remains unresolved after thirty (30) calendar days, your complaint is now considered a dispute and you may refer your dispute to the Australian Financial Complaints Authority (AFCA) as detailed below, subject to its Rules. If your complaint or dispute falls outside the AFCA Rules, you can seek independent legal advice or access any other external dispute resolution options that may be available to you.

Should you wish to request copies of any information that We have relied upon to come to Our decision, We will provide it (to the extent allowable by law) within ten (10) business days of your request.

You can contact Us if you want more information on Our procedures.

AFCA

If you are dissatisfied with your complaint or dispute determination, or your complaint or dispute has not been resolved to your satisfaction within thirty (30) calendar days, you may refer your complaint or dispute to 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, subject to its Rules. For further details you can visit their website at www.afca.org.au or contact them:

Australian Financial Complaints Authority

GPO Box 3

Melbourne VIC 3001

Telephone: 1800 931 678

Email: info@afca.org.au

A complaint can be referred to AFCA at any time subject to its Rules.

AFCA only considers complaints (otherwise covered by its Rules) referred to it within 2 years of Our final decision, unless AFCA considers special circumstances apply. If AFCA tells you that under its Rules it cannot assist you or consider your dispute, then you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Disclaimer

When the Insured enters into the Policy they confirm and warrant that they have read the Policy documents provided to them.

Your Duty of Disclosure

Before the contracting insured enters into an insurance contract (referred to as “You” and “Your” in this notice), You have a duty to tell Us of 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;
- is of common knowledge;
- 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 fail to comply with Your Duty of Disclosure, and We would not have entered into the contract, for the same premium and on the same terms and conditions, had the failure not occurred, We may, subject to applicable law:

- be entitled to cancel Your contract or reduce the amount We will pay You if You make a claim, or both; or
- if Your failure to tell Us is fraudulent, refuse to pay a claim and treat the contract as if it never existed.

Subject to applicable law or unless We state otherwise, a breach of the duty by one contracting insured affects all contracting insureds in these ways.

Avoiding misrepresentations

Under the Insurance Contracts Act 1984 (Cth) if the contracting insured (referred to as “You” and “Your” in this notice) makes a misrepresentation to Us before the insurance contract is entered into (this includes before each renewal, extension, variation, replacement or reinstatement of an insurance contract) and We would not have entered into the contract, for the same premium and on the same terms and conditions, had the misrepresentation not occurred, We may, subject to applicable law:

- be entitled to cancel Your contract or reduce the amount We will pay You if You make a claim, or both; or
- if Your misrepresentation was fraudulent, refuse to pay a claim and treat the contract as if it never existed.

Subject to applicable law or unless we state otherwise, a breach of the duty by one insured affects all insureds in these ways.

A misrepresentation includes a statement that is in any way false, misleading, dishonest or which does not fairly reflect the truth. For example, a statement of fact that is not true, a statement of opinion that is not the subject of an honestly held belief or a statement of intent that never existed at the time provided. We will not treat something as a misrepresentation merely because You failed to answer a question or gave an obviously incomplete or irrelevant answer to a question.

Refer to the Insurance Contracts Act 1984 (Cth) for full details as this is only a summary.

Answering Our questions

Answers to Our questions help Us decide whether to provide this insurance and if so, on what terms. When answering Our questions:

- take reasonable care to make sure Your answers are true, honest, up to date and complete in all respects. You may breach the duty if You answer without any care as to its truth or if You only guess or suspect the truth. If in doubt, pause the application and obtain the true facts before answering; and
- if another person is answering for You, We will treat their answers as Yours. In such a case, You should check the questions have been answered correctly on Your behalf by them.

Please note that You have obligations beyond these pre contractual duty of disclosure and avoiding misrepresentation obligations once the contract is entered into, which are set out in the contract terms and applicable law.

When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim

We may only ever refuse to pay or reduce the amount We pay under a claim to the extent permitted by applicable law.

Some situations in which We may refuse to pay or reduce the amount We pay under a claim under the Policy (to the extent permitted by applicable law) include (but are not limited to):

- a) when You apply for cover (this includes new business, variations, extensions, reinstatements and renewals) and do not comply with Your Duty of Disclosure; or
- b) if You do not comply with or meet a Policy term or condition or We can rely on an exclusion or other limitation (All referred to as “terms” when used in the Policy) – See “Our rights regarding the operation of or breach of a term of the Policy”;
- c) if You make a fraudulent claim – See “Fraudulent claims” for more detail;
- d) where You have not or are not acting in accordance with Your duty of utmost good faith under the Insurance Contracts Act 1984 (Cth) – See “Duty of Utmost Good Faith” for more detail.

We may also have cancellation rights in the above circumstances to the extent permitted by applicable law.

Subject to applicable law, the amount of any claim entitlement can also be affected and/or reduced by other things, including any limits (e.g. monetary or time limits) or Deductibles, any outstanding Premium and recoveries You or We might make relevant to a loss as set out in the Policy terms.

See “Our rights regarding the operation of or breach of a term of the Policy” for more detail.

Our rights regarding the operation of or breach of a term of the Policy

We will only rely on any rights We have regarding the operation of or breach of a term of the Policy to the extent permitted by applicable law (including Our right to refuse or reduce a claim if You do not comply with or meet a Policy term or condition or where an exclusion or other limitation applies). The law can be complex and We provide a high-level summary below of some key examples on how the Insurance Contracts Act 1984 (Cth) (the IC Act) may affect matters depending on the circumstances. To the extent of any inconsistency the IC Act will prevail.

Other laws can apply beyond the IC Act such as the Corporations Act 2001 (Cth) and the Australian Securities and Investment Commissions Act 2001 (Cth) and You need to seek Your own advice regarding all relevant legal rights You may have.

Terms allowing Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into

Subject to Our rights in relation to fraudulent claims explained below, by reason of section 54 of the Insurance Contracts Act (1984) (Cth), where the effect of the Policy (this includes all terms or conditions, including any exclusion or other limitation) is to allow Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the policy was entered into, We will exercise Our rights under the Policy as explained below (Refer to the Insurance Contracts Act for full details).

Under section 54, an “act” by You or some other person includes an omission and inaction and an act or omission that has the effect of altering the state or condition of the subject-matter of the Policy or of allowing the state or condition of that subject-matter to alter.

How We exercise Our rights where section 54 applies (unless there is a fraudulent claim)

- Where:
 - the act was necessary to protect the safety of a person or to preserve property;
 - it was not reasonably possible for You or the other person not to do the act; or
 - You prove no part of the loss that gave rise to the claim was caused by the act,We will not refuse to pay or reduce the claim by reason only of that act.
- Where the act:
 - could not reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy; or
 - could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy but You prove that some part of the loss that gave rise to the claim was not caused by the act, so far as it concerns that part of the loss,We may not refuse to pay or reduce the claim by reason only of that act, but We can reduce our liability in respect of the claim by an amount that fairly represents the extent to which Our interests were prejudiced as a result of that act.
- Otherwise, where the act could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy, We may refuse to pay the claim.

Refer to the Insurance Contracts Act (1984) (Cth) for full details.

Terms allowing us to refuse or reduce a claim because of pre-existing defects or imperfections existing before the policy was entered into

Only where section 46 of the Insurance Contracts Act 1984 (Cth) is applicable to the Policy:

- where a claim is made in respect of a loss that occurred as a result, in whole or in part, of a defect or imperfection in a thing and at the time when the contract was entered into; and
- You were not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the defect or imperfection,

We may not rely on any provision included in the Policy that has the effect of limiting or excluding Our liability under the contract by reference to the condition, at a time before the Policy was entered into, of the thing. This does not apply if the Policy is in an excluded class to which section 46 does not apply.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

Fraudulent claims

In all cases, where a claim is made fraudulently under:

- the Policy; or
- the Insurance Contracts Act against Us by a person who is not You,

We may refuse payment of the claim to the extent permitted by applicable law. Under section 56(2) of the Insurance Contracts Act 1984 (Cth) a court may, if only a minimal or insignificant part of the claim is made fraudulently and non-payment of the remainder of the claim would be harsh and unfair, order Us to pay, in relation to the claim, such amount (if any) as is just and equitable in the circumstances. (Refer to the Insurance Contracts Act 1984 (Cth) for full details).

Duty of Utmost Good Faith

The following can also (where applicable) affect Our and Your rights and obligations regarding the operation of, reliance on, or breach of a term of the Policy:

- section 13 of the Insurance Contracts Act 1984 (Cth) requires each party to the Policy to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith. The obligation also extends to third party beneficiaries as defined in the Act but only applies to them after the contract is entered into.
- section 14 of the Insurance Contracts Act 1984 (Cth) provides that if reliance by a party to the Policy on a provision of the Policy would be to fail to act with the utmost good faith, the party may not rely on the provision.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

Terms Apply to the Extent Enforceable

A term (or part of a term) of the Policy will be applied to the extent is not unenforceable under applicable law.

General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (“the Code”), which is a self-regulatory code for use by all insurers. The Code aims to raise the standards of practice and service in the insurance industry.

Sompo Japan Insurance Inc. has adopted and endorses the Code.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers’ compliance with the Code.

For further information on the Code, please visit www.codeofpractice.com.au.

For more information on the Code Governance Committee (CGC) go to <https://insurancecode.org.au>.

Goods and Services Tax (GST)

The amount payable by the Insured for the Policy includes an amount for GST.

When We pay a claim, Your GST status will determine the amount We pay. The amount that We are liable to pay under the Policy will be reduced by the amount of any Input Tax Credit (ITC) that You are or may be entitled to claim for the supply of goods or services covered by that payment.

The Insured must advise Us of their correct Australian Business Number (ABN) and Taxable Percentage. Taxable Percentage is Your entitlement to an ITC on Your premium as a percentage of the total GST on that premium. Any GST liability arising from Your incorrect advice is payable by You.

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

GST and ITC have the same meaning as given to those words or expressions in A New Tax System (Goods and Services Tax) Act 1999 and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

Privacy Statement

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

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

We are committed to protecting the privacy of the personal information You provide to Us.

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

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

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

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

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

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

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

We 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.

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

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

Sanctions

We shall not provide cover and We shall not be liable to pay any claim or provide any benefit under the Policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us, Our parent company or Our ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the Commonwealth of Australia, United Kingdom, Japan or the United States of America.

Third Party Interests

The contracting insureds (the Insured) are the only parties to the Policy.

No insurance is provided in relation to the interest of any persons not specified as being entitled to access a benefit under the Policy.

The benefit of the cover under the Policy is extended automatically to Third Party Beneficiaries. They are not contracting parties and only access the benefit of cover by reason of the operation of section 48 of the Insurance Contracts Act 1984 (Cth). The following sets out how the Policy operates in relation to such persons (subject always to the operation of applicable law).

Access to cover only applies from the time they become a Third Party Beneficiary and ends when they are no longer a Third Party Beneficiary.

Nothing in the Policy is intended to give any such Third Party Beneficiaries any right to enforce any term of the Policy which that person would not have had but for the Insurance Contracts Act 1984 (Cth). Their rights and obligations are subject to the operation of the Insurance Contracts Act as it applies to such persons and other applicable law.

They:

- have, in relation to a claim, the same obligations to Us as they would have if they were the Insured; and
- may discharge the Insured's obligations in relation to the loss, damage or liability.

We also have the same defences to an action by such persons as We would have in an action by the Insured including, but not limited to, defences relating to the Insured's conduct (whether the conduct occurred before or after the Policy was entered into). Any exclusions applying to the Insured also apply to a Third Party Beneficiary claiming under the Policy.

Such persons have no right to cancel or vary the Policy or its cover – only the Insured (as the contracting party) and We can do this. If We cancel or vary the Policy or its cover, We do not need to obtain such persons' consent to do so.

We also do not provide any notices in relation to this insurance to such persons as they are not a contracting party to the Policy. We only send notices to the Insured who we have contractual obligations to under the Policy.

Neither We nor the Insured hold anything on trust for, or for the benefit or on behalf of any such persons under this insurance arrangement.

The Insured:

- does not act on Our behalf in relation to the insurance;
- is not authorised by Us to provide any financial product advice, recommendations or opinions about the insurance.

Any Third Party Beneficiary needs to read this document and other documents forming the Policy carefully to properly understand the benefits they have access to as non-contracting parties. The insurance cover is subject to the terms, conditions, limitations and exclusions of the Policy.

Any person who may be entitled to a benefit under the Policy should consider obtaining advice as to whether the benefits are appropriate or useful for their personal needs from a person who is licensed to give such advice. No advice is provided by Us or Our representatives that the benefits are appropriate or useful for any person's needs. Nothing prevents such persons from entering into other arrangements regarding insurance.

In some cases the Insured may specify loss payees We will make payments to (e.g. a financier).

Governing Law and Jurisdiction

The Policy is governed by the laws of Australia. Any dispute relating to this Policy shall be submitted to the exclusive jurisdiction of an Australian Court within the State or Territory in which the Policy was issued.

Notices

We will send Policy documents and Policy related communications and notices to Your nominated Intermediary representing You electronically, including by email. You must tell Us if Your Intermediary or contact details change. Subject to applicable law, You will be deemed to have received each electronic communication 24 hours from the time We send it.

Policy Interpretation

Headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:

- a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, successors, re-enactments and replacements thereof;
- a word importing the singular includes the plural (and vice versa);
- a word indicating a gender includes every other gender;
- the words "include", "including", "for example", "particularly" or "such as" or equivalent are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- any examples provided are subject always to the Policy terms and applicable law; and
- a reference to "\$" or "dollar" is to Australian currency.

1 General Definitions

When used and capitalised in the Policy, including its Schedule and its endorsements, the following definitions shall apply. Where any word is defined every derivative of that word has a corresponding meaning. References to the singular also include the plural and vice versa.

1.1 Act of Terrorism means:

- i. an act which is deemed by the government of the country where such act occurred to be an Act of Terrorism; or
- ii. an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

1.2 Advertising Liability means:

advertising liability arising out of one or more of the following:

- i. defamation;
- ii. infringement of copyright, trademark, title or slogan;
- iii. unfair competition, misappropriation of advertising ideas or style of doing business;
- iv. invasion of privacy,

committed or alleged to have been committed in any Advertisement of Your Products or services and arising out of any advertising activities conducted by You or on Your behalf, in the course of carrying out Your Business.

For the purposes of the definition of "Advertising Liability", **Advertisement** means:

any manner of communication given to the public including by way of any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet, world wide web or exhibit.

1.3 Aircraft means:

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

1.4 Business means:

- 1.4.1 the business specified in the Schedule;
- 1.4.2 the ownership of premises by You and/or the tenancy of premises by You in order to conduct Your business specified in the Schedule;
- 1.4.3 the provision and management of canteens, social, sports and welfare organisations for the benefit of Your employees;
- 1.4.4 the provision by You of first aid, fire and ambulance services which are incidental to Your business specified in the Schedule;
- 1.4.5 participation at any exhibitions or trade shows; or

1.4.6 construction, demolition (excluding any use of explosives), alteration, addition, fit out, maintenance or repair of or to any buildings owned or leased by You and provided that the total cost of all work performed does not exceed \$2,000,000 during the Period of Insurance unless We agree in writing to amend this sum for any specific contract or project prior to such work commencing.

1.5 Claim means:

1.5.1 the receipt by You of any written or verbal notice of a demand for compensation made by a third party against You; or

1.5.2 any writ, statement of claim, summons, application or other originating legal or arbitral process, crossclaim or third or similar party notice served upon You.

1.6 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.

1.7 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.

1.8 Cyber Incident means:

1.8.1 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

1.8.2 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.

1.9 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.

1.10 Deductible means:

the deductible specified in the Schedule, which is the amount that You must first bear in respect of any compensation and Defence Costs payable under this Policy in respect of each Occurrence. The Deductible will be advised before You enter into a Policy with Us and will be shown on the Schedule.

1.11 Defence Costs means:

the costs incurred by Us in the investigation, defence, reporting or negotiation for settlement of any Claim or in anticipation of any potential Claim, and/or the reimbursement of the reasonable and necessary costs incurred by You (but excluding loss of earnings) in the defence of any Claim with Our written consent (such consent will not be unreasonably withheld). Defence Costs do not include any costs of the party that is claiming against You.

1.12 Insured means:

the person(s), companies, organisations or other entities shown as the insured on the Schedule. They are the contracting insured(s).

1.13 Limit of Liability means:

the applicable "Limit of Liability" specified in the Schedule.

1.14 Occurrence means:

1.14.1 an event, including continuous or repeated exposure to substantially the same general conditions; or

1.14.2 any event, or any series of events, consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence;

which in either case results in Personal Injury and/or Property Damage and/or Advertising Liability, neither expected nor intended from Your standpoint.

For the purposes of this clause 1.14 Advertising Liability arising out of or in connection with the same injurious material and/or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

1.15 Period of Insurance means:

the time during which the Policy is in existence. It:

1.15.1 starts from the beginning of the "period of insurance" specified in the Policy Schedule; and

1.15.2 finishes 4.00 pm on the last day of the end of that period of insurance, unless ending earlier in accordance with the Policy terms or applicable law. Each renewal results in a new contract and new Period of Insurance.

1.16 Personal Injury means:

1.16.1 bodily injury (which includes death, disease or illness), disability, shock, fright, mental anguish or mental injury;

1.16.2 false arrest, wrongful detention, false imprisonment or malicious prosecution;

1.16.3 wrongful entry or eviction or other invasion of the right of privacy;

1.16.4 the publication of defamatory or disparaging material and/or the utterance of defamatory or disparaging material; or

1.16.5 assault and battery not committed by You or at Your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

1.17 Policy means:

this document and the Schedule or any endorsement issued by Us in connection with the policy.

1.18 Pollutants means:

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

1.19 Property Damage means:

- 1.19.1 physical damage to or loss or destruction of tangible property including any resulting loss of use of that tangible property; or
- 1.19.2 loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage to or destruction of other tangible property.

1.20 Schedule means:

the schedule, renewal schedule or endorsement schedule issued by Us in connection with the Policy for the applicable Period of Insurance.

1.21 Third Party Beneficiary/ies means:

persons who are not contracting parties to the Policy but to whom the benefit of cover is extended by reason of Section 48 of the Insurance Contracts Act (1984) that:

- 1.21.1 are expressly specified in the Policy as a person or type of person to which the benefit of cover is extended; or
- 1.21.2 are listed in the Schedule as “third party beneficiaries”, unless otherwise excluded, but only to the extent of their interest specified. See “Third Party Beneficiaries” clause for details on the rights and obligations of Third Party Beneficiaries.

1.22 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.

1.23 Watercraft means:

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

1.24 We, Our, Us, Underwriter, Insurer means:

Sompo Japan Insurance Inc. acting through their binder agent SURA Liability.

1.25 You, Your, Yours means:

- 1.25.1 the Insured;
- 1.25.2 all the subsidiary companies of the Insured existing at the commencement date of, or incorporated during, the Period of Insurance, provided that their places of incorporation are within Australia;
- 1.25.3 every director, executive officer, employee, partner, shareholder or voluntary worker of the Insured or of a company specified in paragraph 1.25.2 above, but only whilst acting within the scope of their duties in such capacity;
- 1.25.4 every principal, in respect of the liability of such principal arising out of the performance by the Insured or by a company specified in paragraph 1.25.2 above of any contract or agreement for the performance of work for such principal, to the extent required by such contract or agreement;

- 1.25.5 every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with the consent of a person or by a company specified in paragraphs 1.25.1, 1.25.2 or 1.25.3 (but not a person or company specified in paragraphs 1.25.4 or 1.25.6), but only in respect of Claims arising from their duties connected with the activities of any such club, organisation or service;
- 1.25.6 each partner, joint venture, co-venture or joint lessee of the Insured but only:
- i. with respect to liability incurred in connection with activities undertaken by or for the purpose of the partnership, joint venture, co-venture, joint lease; and
 - ii. provided the partnership, joint venture, co-venture, joint lease has been notified to Us within as soon as reasonably practicable after formation and has been endorsed on the Schedule;
- 1.25.7 any director or senior executive of the Insured or a company specified in paragraph 1.25.2 above, in respect of private work undertaken by Your employees for such director or senior executive.

You, Your, Yours does not include the interest of any other person, company, organisation and/or any entity other than as described in 1.25.1 to 1.25.7 above.

1.26 Your Products means:

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

2 Coverage

2.1 What We Cover

Subject to the terms, exclusions, conditions, limitations, definitions and the Limit of Liability that apply to the Policy, We will pay to or on behalf of You all sums which You shall become legally liable to pay by way of compensation and all costs awarded against You in respect of:

- i. Personal Injury;
- ii. Property Damage; or
- iii. Advertising Liability,

happening during the Period of Insurance, in connection with Your Business or Your Products and which is caused by an Occurrence.

2.2 Defence Costs

With respect to the cover provided by the Policy, and where We have agreed to cover You in respect of any Occurrence, We will:

- 2.2.1 pay all Defence Costs;
- 2.2.2 pay expenses incurred by You for first aid to others at the time of Personal Injury caused by an Occurrence (other than medical expenses that We are prohibited to pay under Section 126 of the Health Insurance Act 1973 (Cth)); and
- 2.2.3 pay all legal expenses incurred by You with Our prior written consent for Your representation:
 - i. at any coroner's inquest or other fatal accident inquiry; or
 - ii. in a court of summary jurisdiction or an indictment in a higher court, arising out of any alleged breach of a statutory duty resulting in Personal Injury and/or Property Damage which may be the subject of cover under the Policy.

Provided that:

- 2.2.4 if a payment exceeding the Limit of Liability has to be made to dispose of a Claim, Our liability to pay Defence Costs and the expenses arising under this clause 2.2 will be limited to such proportion as the Limit of Liability bears to the amount paid to dispose of the Claim;
- 2.2.5 if the amount paid or incurred by Us for Defence Costs and the expenses arising under this clause 2.2 exceeds the share We are obliged to pay under (2.2.4), You will pay Us the Deductible amount within a reasonably practicable timeframe;
- 2.2.6 We will not be obliged to pay any further Defence Costs and the expenses arising under this clause 2.2 after the Limit of Liability has been exhausted by payments of Claims, judgements and/or settlements.

3 Limit of Liability

Our maximum liability to pay compensation and all costs awarded against You in respect of all Personal Injury and/or Property Damage and/or Advertising Liability caused by or arising out of any one Occurrence shall not exceed the Limit of Liability.

However, Our aggregate liability to pay compensation and all costs awarded against You in respect of all Personal Injury and/or Property Damage happening during the Period of Insurance caused by or arising out of Your Products shall not exceed the Limit of Liability.

Claims within the United States of America or Canada

Our liability to pay Defence Costs and all costs awarded against You in connection with Claims made and/or actions instituted within the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, will be included within the Limit of Liability and will not be payable by Us in addition to the Limit of Liability.

Claims outside of the United States of America or Canada

Defence Costs are payable in addition to the Limit of Liability.

4 Deductible

- 4.1 Where We have agreed to cover You in respect of any Occurrence the amount of the Deductible is payable to Us by You within 30 days of the date of notification by You of each Occurrence, unless We agree in writing to extend this period or We otherwise agree to reduce the amount We pay in respect of the Occurrence by the amount of the Deductible.
- 4.2 Should coverage not apply in respect of any Occurrence, then We will return any Deductible paid by You in relation to such Occurrence.
- 4.3 The relevant Limit of Liability We pay up to is less any applicable Deductible, unless We expressly state otherwise.

5 Exclusions

The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see “When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim”.

The Policy does not, and We will not, cover You for any actual or alleged liability in respect of:

5.1 Advertising Liability

Advertising Liability caused by or resulting from:

- i. statements made at Your direction with the knowledge that such statements are false;
- ii. failure of performance of contract, but this exclusion shall not apply to Claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
- iii. any incorrect description of Your Products or services;
- iv. any mistake in the advertised price of Your Products or services;
- v. failure of Your Products or services to conform with advertised performance, quality, fitness or durability;
- vi. advertising, broadcasting, publishing or telecasting when this is Your Business.

5.2 Aircraft

Personal Injury and/or Property Damage arising directly or indirectly out of or in connection with the ownership, possession, maintenance, repair, operation or use of any Aircraft or hovercraft by You or on Your behalf.

This exclusion does not apply to Personal Injury and/or Property Damage caused by or arising out of the internal cleaning of any stationary Aircraft by You or on Your behalf, but only where such Aircraft are not owned, operated or used by You.

5.3 Aircraft Products

Personal Injury and/or Property Damage arising directly or indirectly out of or in connection with Your Products that are used with Your knowledge:

- i. as Aircraft component parts used for maintaining an Aircraft in flight or moving upon the ground;
- ii. for incorporation into the hull, controls or machinery of an Aircraft.

5.4 Aircraft Refueling

Personal Injury and/or Property Damage caused by or arising out of the refueling of Aircraft by You or on Your behalf.

5.5 Asbestos

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

5.6 Contractual Liability

Any liability assumed by You under any contract or agreement except to the extent that such liability would have been implied by law in the absence of such contract or agreement. Provided that this exclusion 5.6 does not apply to:

- 5.6.1 liability assumed by You under any lease of real or personal property, other than any liability arising from Your failure to effect property insurance if required under such lease;
- 5.6.2 liability assumed by You under a warranty of fitness or quality in respect of any of Your Products;
- 5.6.3 liability assumed by You under any contract (other than a lease of real or personal property) entered into by You with a contract value of up to \$200,000;
- 5.6.4 those written contracts or agreements specified in the Schedule.

5.7 Cyber Act, Cyber Incident or Data

Personal Injury and/or Property Damage and/or Advertising Liability of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:

- 5.7.1 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; or
- 5.7.2 loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any Data, including any amount pertaining to the value of such Data;
- regardless of any other cause or event contributing concurrently or in any other sequence thereto.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

This exclusion supersedes any other wording in the Policy or any endorsement thereto having a bearing on a Cyber Act, Cyber Incident or Data, and, if in conflict with such wording, replaces it. If We allege that by reason of this exclusion that loss sustained by the Insured is not covered by the Policy, the burden of proving the contrary shall be upon the Insured.

5.8 Defamation

Any liability caused by or arising out of the publication of defamatory or disparaging material and/or the utterance of defamatory or disparaging statements:

- 5.8.1 made prior to the inception date of the Policy;
- 5.8.2 made by You or at Your direction with knowledge of the falsity or in deliberate disregard thereof;
- 5.8.3 made by You if Your Business is advertising, broadcasting, publishing or telecasting.

5.9 Employers Liability

- 5.9.1 Personal Injury to any of Your workers or employees.

Provided that if You:

- i. are required by law to insure or otherwise fund, whether through self insurance, a statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such Personal Injury; or
- ii. are not required to insure or otherwise fund all or part of any common law liability because the Personal Injury is to a person who is not Your worker or employee within the meaning of the relevant workers' compensation law or is not a Personal Injury which is subject to such law;

then this exclusion 5.9.1 does not apply to the extent that Your liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement and You have complied with Your obligations pursuant to such law where applicable.

- 5.9.2 Any liability imposed:

- i. by any workers' compensation law to pay compensation to any person employed or deemed to be employed by You; or
- ii. by the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement in respect to any person employed or deemed to be employed by You.

5.10 Employment Practice

Any liability in connection with any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to the employment or prospective employment of any person by You or on Your behalf.

5.11 Exports to USA and/or Canada

Personal Injury and/or Property Damage caused by or arising out of Your Products knowingly exported by You to the United States of America and/or Canada.

5.12 Fines, Penalties, Liquidated Damages, Aggravated, Punitive or Exemplary Damages

5.12.1 Fines, penalties and/or liquidated damages;

5.12.2 Aggravated damages, punitive damages, exemplary damages and/or any additional damages resulting from the multiplication of compensatory damages. Except in respect of aggravated damages, punitive damages or exemplary damages awarded within the Commonwealth of Australia for defamation, where such defamation is not excluded by the Policy.

5.13 High Hazard Products

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

5.13.1 any of Your Products that are Aircraft, hovercraft or fireworks;

5.13.2 any of Your Products that are:

- i. veterinary products which are required to be prescribed and administered by a qualified veterinarian;
- ii. ammunition, blasting explosives (other than fertiliser, fuel or ammonium nitrate) or detonators for explosives;
- iii. medicines which are required to be prescribed by a registered medical practitioner;
- iv. herbicides, insecticides, defoliant or stockfeed;
- v. tobacco; or
- vi. blood and/or blood components which are required to be regulated under the Therapeutic Goods Act 1989 (Cth).

This exclusion 5.13.2 only applies to the above high hazard goods or products that have been manufactured, imported or exported by You;

5.13.3 the manufacture, storage or use of fireworks by You;

5.13.4 the manufacture of ammunition, blasting explosives (other than fertiliser, fuel or ammonium nitrate), herbicides, insecticides or defoliant by You;

5.13.5 any of Your Products that are Vehicles (other than trailers) that have been manufactured, imported or exported by You.

5.14 Loss of Use

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

5.14.1 a delay in or lack of performance by You or on Your behalf of any contract or agreement;

5.14.2 the failure of Your Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You.

This exclusion 5.14.2 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 Your Products after such Products have been put to use by any person or organisation other than You.

5.15 Pollution

5.15.1 Personal Injury and/or Property Damage caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water.

This exclusion 5.15.1 does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.

5.15.2 Any costs and expenses incurred in the removing, nullifying or clean-up of Pollutants.

This exclusion 5.15.2 does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury and/or Property Damage.

5.15.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any of Your Products that have been discarded, dumped, abandoned or thrown away by others.

5.16 Product Defect

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

5.17 Product Recall, Withdrawal, Removal, Reinstallation, Modification, Inspection, Repair, Replacement, Disposal or Loss of Use

Liability for damages, costs or expenses for the recall, withdrawal, removal, reinstallation, modification, inspection, repair, replacement, disposal or loss of use of Your Products or of any property of which Your Products form a part, if such products or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

5.18 Professional Liability

Personal Injury and/or Property Damage caused by or arising out of the rendering of or failure to render professional advice or service by You or any error or omission connected therewith.

This exclusion 5.18 only applies where such professional advice or service is given for a fee and constitutes advice or service within the professional capacity of an accountant, auditor, architect, engineer and/or a building or land surveyor, legal practitioner, medical practitioner or other health service provider, real estate agent, veterinary practitioner, or holder of an Australian financial services license including an authorised representative of an Australian financial services license holder.

5.19 Property in Physical or Legal Control

Property Damage to:

- 5.19.1 property owned by You;
- 5.19.2 property leased or rented to You; or
- 5.19.3 property in Your physical or legal control.

Exclusions 5.19.2 and 5.19.3 do not apply to Property Damage to:

- i. premises or part of premises (including landlord's fixtures and fittings) which are leased or rented to You;
- ii. premises (including the contents of such premises) not owned by You or leased or rented to You but temporarily occupied by You for the purpose of carrying out work in connection with the Business;
- iii. any Vehicle (not belonging to or used by You) whilst such Vehicle is in a car park owned or operated by You, provided that You do not operate the car park for reward;
- iv. property of Your employees;
- v. any customer's Vehicle (not belonging to or leased or rented by You) whilst being driven by You in connection with the repair, maintenance or servicing of such Vehicle by You. Our maximum liability under this clause v. to pay compensation and all costs awarded against You in respect of Property Damage caused by or arising out of any one Occurrence shall not exceed \$200,000.

Exclusions to clause v

This clause v. does not provide cover in respect of Property Damage to any customer's Vehicle where the driver of any customer's Vehicle:

- does not hold a current driving licence appropriate for the customer's Vehicle; and/or
 - is under the age of 25 years; or
 - has had their driving licence suspended or cancelled within the past three years;
- vi. any other property not specified within clauses i. to v. inclusive, which is in Your physical or legal control.

Our maximum liability under this clause vi. to pay compensation and all costs awarded against You in respect of Property Damage caused by or arising out of any one Occurrence shall not exceed \$200,000.

5.20 Radioactivity

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

- 5.20.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the Combustion of nuclear fuel. For the purpose of this exclusion 5.20.1 only, "Combustion" shall include any self-sustaining process of nuclear fission;
- 5.20.2 the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component that is a part of a nuclear assembly.

Exclusions 5.20.1 and 5.20.2 do not apply to low level radioactive radiation, such as measurement and control technology used in the medical sector, and used away from the place where such are made or produced.

5.21 Territorial Limits

5.21.1 Claims made and/or actions instituted within the United States of America or Canada or any other territory coming within jurisdiction of the courts of the United States of America or Canada;

5.21.2 Claims and actions to which the laws of the United States of America or Canada apply.

Exclusions 5.21.1 and 5.21.2 do not apply to such Claims and actions arising from the temporary presence outside Australia of any person who is normally resident in Australia and who is not performing any manual or supervisory work while 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.

5.22 Terrorism

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

5.22.1 any Act of Terrorism; or

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

5.23 Vehicles

Personal Injury and/or Property Damage caused by or arising out of any Vehicle that You own, use or operate:

5.23.1 which is registered or which is required under any legislation to be registered; or

5.23.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance or indemnity is effected).

Exclusions 5.23.1 and 5.23.2 do not apply to:

- i. Personal Injury where that compulsory liability insurance or statutory indemnity does not provide cover, and the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide cover do not involve a breach by You of legislation relating to Vehicles;
- ii. Property Damage caused by or arising out of the loading or unloading of goods or property to or from any stationary Vehicle;
- iii. Property Damage caused by or arising out of the delivery or collection of goods or property to or from any stationary Vehicle;
- iv. Property Damage caused by or arising out of the use of any tool or plant forming part of or attached to or used in connection with any Vehicle (excluding whilst the Vehicle is being used to transport or cart goods or property, but not whilst the Vehicle is being used to lift and/or lower any goods or property); or
- v. Property Damage (except for Property Damage to any customer's Vehicle) caused by or arising out of Your use of any customer's Vehicle (not belonging to or leased or rented by You) for the sole purpose of being test driven by You in connection with the repair, maintenance or servicing of such Vehicle by You.

Our maximum liability under this clause v. to pay compensation and all costs awarded against You in respect of Property Damage caused by or arising out of any one Occurrence shall not exceed \$250,000.

Exclusions to clause v

This clause v. does not provide cover in respect of Property Damage where the driver of any customer's Vehicle:

- does not hold a current driving licence appropriate for the customer's Vehicle; and/or
- is under the age of 25 years; and/or
- has had their driving licence suspended or cancelled within the past three years;

vi. the cover provided under clause v. of exclusion 5.19 of the Policy.

5.24 War

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

5.25 Watercraft

Personal Injury and/or Property Damage caused by or arising out of:

5.25.1 any Watercraft that exceeds 10 metres in length that You own, use or operate.

This exclusion 5.25.1 does not apply to:

- i. Watercraft while being used by You for Business entertainment where such Watercraft are not owned or operated by You; or
- ii. floating jetties, floating pontoons, pontoons or buoys.

5.25.2 any work performed by You or on Your behalf on or within any Watercraft that exceed 10 metres in length, but only in respect of any contract entered into by You for such work which exceeds a contract value of \$50,000.

5.26 Welding

Personal Injury and/or Property Damage caused by or arising out of arc or flame cutting, flame heating, arc or gas welding, thermal or oxygen cutting or heating, grinding, the use of welding equipment or other related heat producing or spark producing operations, unless such activity is conducted in strict compliance with Australian Standard AS 1674.1-1997 (Safety in welding and allied processes, Part 1: Fire precautions) issued by Standards Australia, or with any similar standards or legislation, including any amendments to, delegated legislation thereof, or successor standards or legislation (as applicable).

5.27 Workmanship

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

6 Conditions

The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see “When We Can Refuse To Pay Or Reduce The Amount We Pay Under A Claim”.

6.1 Adjustment of Premium

- 6.1.1 If the premium for the Policy or any part of it has been calculated on estimates provided by You, You shall within 30 days after the expiry of each Period of Insurance provide to Us any information relevant to the Policy as We may reasonably require to calculate any applicable premium adjustment. The premium for the Period of Insurance shall then be adjusted and any difference will be payable by or returned to the Insured as the case may be.

The adjusted premium shall not be less than the minimum premium charged by Us which will be advised to the Insured before they agree to enter into a Policy with Us and will be shown on the Schedule.

- 6.1.2 You shall keep a record of all information related to the adjustment of the Premium as requested by Us and shall on reasonable notice, allow Us or Our nominee to inspect and make copies of such records.

6.2 Cancellation

6.2.1 Cancellation by the Insured

The Insured may cancel the Policy by giving Us notice in writing at the address shown in About SURA Specialty. Cancellation will take effect from 4:00pm on the day We receive the Insured’s notice of cancellation or such other time otherwise agreed between Us and the Insured.

6.2.2 Cancellation by Us

Subject to applicable law, We may cancel the policy as set out in the Insurance Contracts Act 1984 (Cth) by giving You written notice to that effect. This can include where:

- i. the Insured failed to comply with the duty of utmost good faith;
- ii. the Insured failed to comply with the Duty of Disclosure where that duty applied to You, or made a misrepresentation to Us before entering into, varying, extending or renewing the Policy;
- iii. the Insured failed to comply with a provision of the Policy, including a provision with respect to payment of the Premium;
- iv. the Insured made a fraudulent claim under the Policy or any other contract of insurance (whether with Us or some other insurer) that provided insurance cover during any part of the period during which the Policy provides insurance cover;
- v. the Insured failed to notify Us of any specific act or omission or failure that has occurred after the Policy is entered into where notification is required under the terms of the Policy; or
- vi. the effect of the Policy is to authorise Us to refuse to pay a claim, either in whole or in part, by reason of an act or omission or failure of You or of some other person and, after the Policy was entered into, such an act or omission or failure has occurred.

When We cancel the policy, it will have effect from whichever of the following times is the earliest (unless We tell the Insured otherwise in Our cancellation notice and subject to applicable law):

- i. the time when another policy of insurance replacing the Policy is entered into by You with Us or another insurer; or
- ii. 4:00pm of the third (3rd) business day after the day on which notice was given to You unless specified otherwise or the Policy is in force because of section 58 of the Insurance Contracts Act 1984 (Cth), in which case the cancellation will have effect from 4:00pm on the fourteenth (14th) business day after the day on which notice was given to You.

6.2.3 Effect of cancellation

Subject to applicable law, the Policy with Us ends from the time of cancellation. However, cancellation by Us or the Insured does not affect any rights that the Insured had under the Policy when it was in force. For the Insured's rights to any premium refund in relation to a cancellation see "Premium refund" section.

6.2.4 Premium refund

If the Policy is cancelled by either the Insured or Us, We will refund the premium for the Policy less a pro-rata proportion of the premium to cover the period for which insurance applied less any government fees, taxes and duties We cannot recover. We will not refund the administration fee or policy fee shown on the Policy Schedule.

6.3 Claims

- 6.3.1 You shall not, without Our consent in writing (such consent not to be unreasonably withheld), make any admission, offer, promise, or payment in connection with any Occurrence or Claim and if We choose, We shall be entitled to take over and conduct in Your name the defence or settlement of any Claim;
- 6.3.2 You shall use all reasonably practicable endeavours to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a Claim or in the exercise of rights of subrogation. So far as may be reasonably practicable, no alteration or repair shall be effected without Our consent until We shall have had an opportunity of inspection;
- 6.3.3 We shall be entitled to prosecute in Your name at Our expense and for Our benefit any claim for coverage or damages or otherwise;
- 6.3.4 We shall have full discretion in the conduct of any proceedings in connection with any Claim and You shall give all relevant information and assistance as We may reasonably require in the prosecution, defence or settlement of any Claim.

6.4 Discharge of Liabilities

We may at any time pay to You or on Your behalf for all Claims made against You for any one Occurrence:

- 6.4.1 the Limit of Liability, after deducting any amounts already paid as compensation; or
- 6.4.2 any lower amount for which the Claim or Claims may be settled.

Upon such payment We shall relinquish conduct or control of, and be under no further liability under the Policy in connection with, such Claims or Defence Costs and the expenses arising under clause 2.2 of this Policy except for costs, charges and expenses that We agreed to pay prior to such payment.

6.5 Headings

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

6.6 Inspection of Property

- 6.6.1 We may inspect Your property and operations at a time that is mutually agreed by You and Us for the purpose of a risk inspection, or in the event of a claim;
- 6.6.2 Neither Our right to make, nor any failure to make, nor the making of any inspection or inspection report shall be used by You or others in any action or proceeding involving Us other than to the extent this relates to a dispute under the Policy or a claim;
- 6.6.3 We may examine and audit Your books and records at any time mutually agreed by You and Us during the Period of Insurance and within three years after the Policy has expired. Any examination and audit shall be restricted to matters related to any claim, alleged fraud or actual fraud in relation to the Policy.

6.7 Insurance Contracts Act 1984 (Cth)

Nothing contained in the Policy shall be construed to reduce or waive either Your or Our privileges, rights or remedies available under the Insurance Contracts Act 1984 (Cth). You need to seek Your own advice regarding all relevant legal rights You may have.

6.8 Joint Insureds

Where You comprise of more than one party each of the parties shall be considered as a separate and distinct unit and the word “You” shall be considered as applying to each party in the same manner as if a separate Policy had been issued to each of You. Nothing in this clause operates to increase the Limit of Liability applicable to the Policy.

6.9 Jurisdiction

The Policy will be governed in accordance with the laws of the Commonwealth of Australia. Any disputes arising out of the Policy will be subject to determination by any Court of jurisdiction within the State or Territory in which the Policy was issued and according to the laws applicable to that jurisdiction.

6.10 Notices

Notice in writing shall be given by You as soon as reasonably practicable to Us of:

- 6.10.1 every Occurrence, Claim, impending prosecution, inquest and all relevant information which may result in a claim under the Policy, whether or not You believe any liability may be incurred and regardless of any Deductible.

We will send all notices in relation to the Policy to:

- i. the Insured's nominated insurance intermediary until We receive written notice to the contrary from the Insured; or
- ii. if there is no nominated intermediary, the Insured, acting on the behalf of You.

Any notice We give the Insured will be in writing, and it will be effective:

- i. if it is delivered to the Insured or their agent personally; or
- ii. if it is delivered or sent to the Insured's address or the Insured's Agent's address last known to Us, three business days after having been posted by Us.

6.11 Other Insurance

Within 30 days or as soon as reasonably practicable after making a claim under the Policy that may also be recoverable under any other contract of insurance, You shall notify Us of, and shall give Us full details of, any such other insurance which provides insurance, in full or in part as provided for in the Policy so that We may seek contribution from the other insurer.

6.12 Payment of Premium

The Insured will pay Us the premium by the due date shown on the Schedule or tax invoice. Any adjustments of premium and other amounts charged for the Policy and any renewal, extension or endorsement to this Policy must be paid by the due date shown on the relevant invoice for such renewal, extension, or endorsement.

6.13 Reasonable Care

You shall:

6.13.1 exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;

6.13.2 take all reasonable precautions to:

- i. prevent Personal Injury and/or Property Damage and/or Advertising Liability;
- ii. prevent the manufacture, sale or supply of defective goods, products or property;
- iii. comply and ensure that Your employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant Public Authorities for the:
 - a) safety of persons or property;
 - b) disposal of waste products;
 - c) handling, storage or use of inflammable liquids or substances, gases or toxic chemicals;

6.13.3 at Your own expense take reasonable action to trace, recall or modify any of Your Products containing any defect or deficiency of which You have knowledge or have reason to suspect, including (but not limited to) any of Your Products subject to a governmental or statutory ban.

6.14 Subrogation

In the event of a payment under the Policy to You or on Your behalf We shall, subject to the Insurance Contracts Act 1984 (Cth), be subrogated to all Your rights of recovery against all persons and organisations and You shall provide Us with all relevant information We may reasonably require and do all that is reasonably necessary to assist Us in the exercise of such rights.

6.15 Territorial Limitations

The Policy applies World-Wide subject to exclusions 5.11 and 5.21.

6.16 Material Changes

During the Period of Insurance You must tell Us as soon as reasonably possible after You become aware (or a reasonable person in Your circumstances would become aware of) of any changes to:

- any information contained in the Schedule;
- the most recent information provided by You to Us in relation to the Policy which You know, or could reasonably be expected to know, may affect the risks insured by Us.

Except to the extent the Policy expressly provides otherwise and subject to applicable law, where the change:

- reduces the risk We insure You for We may (if applicable) provide You with a refund of a portion of the premium paid by You where the change affects the Premium payable; or
- increases the risk We insure You for We may:
 - refuse to accept the change;
 - agree to the change in writing subject to terms acceptable to Us, provided that You pay or agree to pay Us any additional Premium We may require; or
 - cancel the Policy; or
 - choose not to renew the Policy.

NSW

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SURA Liability Pty Ltd ABN 34 125 318 247
AR 1255891 acts as an agent for Sompo Japan
Insurance Inc and is authorised to arrange, enter
into/bind and administer this insurance on their behalf.

SURA Liability Pty Ltd is a corporate authorised
representative of SURA Pty Ltd ABN 36 115 672 350
AFSL 294313.

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our environment.