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PUBLIC AND PRODUCTS LIABILITY POLICY
for Transport Operators

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IMPORTANT INFORMATION

Austruck Insurance Pty Ltd, ABN 77 123 519 862, (Austruck Insurance) is an Authorised Representative (Authorised Representative No: 334885) of Austruck Holdings Pty Ltd, ABN 33 133 273 631, (Austruck Holdings). Austruck Holdings is an AFS Licensed underwriting agency (AFS Licence No: 333234). Austruck Insurance acts under Austruck Holdings AFS Licence conditions and is authorised by certain Underwriters at Lloyd's to issue contracts of insurance, handle and settle claims on their behalf. Austruck Insurance acts as the agent of the insurer to market, offer, arrange and administer contracts of insurance and to deal with or settle claims on behalf of the insurer.

Austruck Insurance does not act as Your agent. If You need information about this insurance, contact Austruck Insurance Pty Ltd at the following address:

Address Level 5, Garden City Commercial Tower
14 Mt Gravatt - Capalaba Road,
Upper Mt Gravatt QLD 4122

Phone 07 3420 8888

Fax 07 3420 8899

Web www.austruckin.com.au

THIS IS TO CERTIFY that in accordance with the authorisation granted to the undersigned by certain Underwriters at Lloyd's, whose definitive numbers and the proportions underwritten by them, which will be supplied on application, can be ascertained by reference to the said Contract which bears the Seal of Lloyd's Policy Signing Office, and in consideration of the premium specified herein, the said Underwriters are hereby bound, severally and not jointly, each for his own part and not one for another, their Executors and Administrators to insure in accordance with the terms and conditions herein or endorsed hereon.

ABOUT THIS DOCUMENT

This document contains important information to help You decide whether this product meets Your requirements.

Before You decide whether to purchase this product, You should read this document carefully to understand the Products features, benefits, terms and conditions.

You should read:

- **Important Information** – it contains information on important matters You need to be aware of before applying for this product;
- **Definition Section** – it tells You what We mean by certain terms in this document;
- **Operative Clause, Defence Costs, Limits of Liability and Acquired Companies Clauses** – these tell You what Your contract covers and what We will actually pay for;
- **Exclusions** – these tell You what We do not cover;
- **Conditions** – these set out certain obligations and rights We both have e.g. how to make a Claim, Notification of Changes, the Jurisdiction, Your Duty of Care and other Conditions of the Policy;
- any other documents We provide to You about this product which may change the standard cover.

This policy incorporates the Policy Schedule, Cover, Definitions, Conditions, Exclusions, Endorsements and any other terms attached which are to be read together. Any word or expression to which a specific meaning has been given in any part of this policy shall bear this meaning whenever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

APPLYING FOR COVER

When You apply for this insurance You will need to complete a Proposal. We will Use the information supplied on the Proposal along with other information supplied in the quote request to decide the terms of cover We will offer to provide.

YOUR DUTY OF DISCLOSURE

Before You enter into a contract of insurance with any insurer, You have a duty under the Insurance Contracts Act 1984 to disclose to the insurer every matter that is known to You being a matter which:

- You know to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or
- A reasonable person in the circumstances could be expected to know to be a matter so relevant.

You have the same duty to disclose those matters to the insurer before You renew, extend, vary or reinstate a contract of insurance.

Your duty however does not require disclosure of a matter:

- That diminishes the risk to be undertaken by the insurers; or
- That is of common knowledge; or
- That the insurers know or in the ordinary course of business as insurers, ought to know; or
- Which We indicate that We do not want to know about.

NON-DISCLOSURE NOTICE

If You fail to comply with Your duty of disclosure, We may be entitled to reduce Our liability under the contract in respect of a Claim. If Your non-disclosure is fraudulent, We may also have the option of avoiding the contract from its beginning. The requirement of full and frank disclosure of anything which may be material to the risk for which You seek cover (for example, Claims, whether founded or unfounded) or to the magnitude of the risk, is of the utmost importance with this type of insurance. It is better to err on the side of caution by disclosing anything that might conceivably influence the insurer's consideration of Your proposal.

PRIVACY

We are bound by the *Privacy Act 1988* (Cth) when We collect and handle Your personal information.

We collect personal information for the purpose of providing insurance, including arranging insurance, policy administration and Claims handling.

We disclose personal information to insurers, reinsurers, insurance intermediaries, insurance reference bureaux, credit reference agencies, Our and Your advisers and those involved in the Claims handling process, for the purposes of assisting Us and them in

providing relevant services and Products, and for the purposes of litigation. We limit the use and disclosure of any personal information provided by Us to them to the specific purposes We supplied it. By providing personal information to Us or Our agent, You consent to Us making these disclosures.

Without this information, We may not be able to provide You with the services You require.

When You give Us personal information about other individuals, We rely on You to have made or make them aware that You will or may provide their information to Us and the types of third parties We may provide it to, the relevant purposes We and the third parties will use it for, and how they can access it. If it is sensitive information We rely on You to obtain their consent on these matters. If You have not done or will not do either of these things, You must tell Us before You provide the relevant information.

If You would like a copy of Our Privacy Policy, wish to opt-out of receiving marketing material We send or wish to seek access to or correct the personal information We have collected or disclosed about You then contact Us (see contact details on this document).

CODE OF PRACTICE

A self-regulatory General Insurance Code of Practice exists for the Australian general insurance industry, designed to raise overall standards of practice and service. Underwriters at Lloyd's have adopted the Code, with which We also comply. This Policy is compliant with the Code, apart from any Claims adjusted outside Australia. Details of the Code of Practice can be obtained from Your agent or any of Our offices.

COMPLAINTS PROCEDURE

If You have a complaint please write to Us stating what You disagree with and why.

We will then either resolve or attempt to resolve Your complaint immediately.

If the complaint is unresolved, You may refer the matter to Our system of Internal Dispute Resolution through Lloyd's Underwriters' General Representative in Australia at the address shown below. Your dispute will be handled by the Policyholder & Market Assistance Department at Lloyd's.

If Your complaint remains unresolved, You may have the matter referred to an independent body called the Financial Ombudsman Service (UK). Referral to the Financial Ombudsman Service must be requested within 6 months of the final decision of the Complaint's Department at Lloyd's.

POLICY DISPUTES CLAUSE/SERVICE OF SUIT

The Underwriters hereon agree that notwithstanding anything contained herein to the contrary:

- (i) In the event of a dispute arising under this Policy, Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court;
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon:

Austruck Insurance Pty Ltd
PO Box 6824
Upper Mt Gravatt QLD 4122
Phone 07 3420 8888
Fax 07 3420 8899

Lloyd's General Representative in Australia
C/o Lloyd's Australia Ltd
Suite 2, Level 21
Angel Place, 123 Pitt Street
Sydney NSW 2000
Phone 00612 9223 1433
Fax 00612 9223 1466
E-mail adrian.humphreys@lloyds.com

who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the Assured to give a written undertaking to the Assured that he will enter an appearance on Underwriters behalf;

- (iii) If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

PREMIUM CALCULATION

Premium calculation for this Policy will be on the Number of Motor Vehicles owned or operated by You and Your sub-contractors at the commencement of the Period of Insurance, plus other various factors including number and type of premises owned or leased, storage of fuel, hired labour, etc. We may also include an additional premium calculation depending on any non standard cover You have requested in addition to our Standard Wording. Your Premium also includes amounts payable in respect to compulsory statutory charges ie Stamp Duty, Fire Services Levy and GST.

You shall then, within 14 days of the end of each Period of Insurance, declare to Us the Number of Motor Vehicles owned or operated by You and Your sub-contractors at the expiry of such Period of Insurance. The declaration can be in the form of a copy of the current Schedule of Vehicles from Your motor vehicle insurance policy, or other hard copy form.

When the declaration shows the Number of Vehicles, as shown on the Schedule for Number of Vehicles, has increased or decreased, a pro rata adjustment of the Premium shall be made. Any extra premium or refund due, shall be payable by You or Us as appropriate within 30 days of the end of the Period of Insurance.

1. DEFINITIONS

This policy incorporates the Policy Schedule, Cover, Definitions, Conditions, Exclusions, Endorsements and any other terms attached which are to be read together. Any word or expression to which a specific meaning has been given in any part of this policy shall bear this meaning whenever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

The following definitions apply to Your Policy, except where inconsistent with a section or We specify otherwise.

1.1 "Advertising Liability" means:

- infringement of copyright of or passing of title or slogan;
- unfair competition, piracy or idea misappropriation contrary to an implied contract; or
- invasion of privacy,

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities conducted by or on behalf of You in the course of advertising Your Products.

1.2 "Aircraft" means:

a vehicle designed to be used primarily in the air and to be supported by the dynamic reaction of the air upon the vehicle's wings or rotor-blades, and/or by the vehicle's buoyancy in the air. The term Aircraft, however, excludes missiles, spacecraft and the ground support or control equipment used therewith.

1.3 "Aircraft Products" means:

- aircraft and any ground support or control equipment used therewith;
- any Insured Product furnished by You and installed in Aircraft or used in connection with Aircraft;
- any tooling used for the manufacture of (a) or (b) above;
- any ground handling tools and equipment used in connection with (a) or (b) above including training aids, navigational aids, instruction or manuals;
- blueprints, engineering or other data furnished by You in connection with (a), (b), (c) or (d) above;
- any advice, service and/or labour furnished by You in connection with (a), (b), (c), (d) or (e) above.

1.4 "Business" means:

all usual activities and operations of the Named Insured as described in the Policy Schedule and includes:

- the ownership, tenancy or occupation of premises of the Named Insured;
- private work carried out with the consent of the Named Insured for any director, partner, senior official of the Named Insured by an Employee;
- the provision or management of canteen, social or sports organisations for the Named Insured's Employees; and
- The provision of the Named Insured's own internal fire, first aid, medical, security and ambulance services.

1.5 "Claim" means:

a demand for compensation made by a third party against You, but does not include Your costs and expenses.

1.6 "Computer Virus" means:

an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host program or other computer code or data, causing undesired program or computer system operation.

1.7 "Damage" means:

loss of possession of, or, physical Damage to tangible property.

1.8 "Excess" means:

the uninsured first portion of each and every Claim that You must pay. The amount of the Excess is shown in the Policy Schedule.

1.9 **"Employee"** means:

- a) any person under a contract of service or apprenticeship with the Named Insured;
- b) any person hired or borrowed by the Named Insured from another employer under an agreement by which the person is deemed to be employed by the Named Insured;
- c) any person under a work experience or similar scheme while engaged and working under the direction and control of the Named Insured in connection with and in the course of the Business.

1.10 **"Financial Loss"** means:

a pecuniary or economic loss or expense.

1.11 **"Grounding"** means:

the withdrawal of one or more Aircraft from flight operations or the imposition of speed, passenger or load restrictions on such Aircraft, by reason of the existence of or alleged or suspected existence of any defect, fault or condition in such Aircraft or any part thereof sold, handled or distributed by You or manufactured, assembled or processed by any other person or organisation according to Your specifications, plans, suggestions, orders or drawings or with tools, machinery or other equipment furnished to such persons or organisations by You, whether such Aircraft so withdrawn are owned or operated by the same or different persons, organisations or corporations. A Grounding will be deemed to commence on the date of an Occurrence which discloses such condition or on the date an Aircraft is first withdrawn from service on account of such condition, whichever occurs first.

1.12 **"Hovercraft"** means:

any vessel, craft or device made to float on or in, or travel on or through the atmosphere or water on a cushion of air provided by a downward thrust.

1.13 **"Incidental Contracts"** means:

- a) any written agreement or lease of real or personal property which does not impose upon the Named Insured:
 - i) An obligation to insure such property; or
 - ii) Any liability regardless of fault;
- b) any written contract with any entity for the supply of water, gas or electricity but only to the extent of indemnifying any such entity in respect of liability arising out of the Business other than contracts for the performance of work or provision of services by the Named Insured.

1.14 **"Injury"** means:

- a) bodily injury, death, sickness, disease, shock, fright, mental anguish, mental injury or loss of consortium;
- b) false arrest, false detention, wrongful imprisonment, malicious prosecution or malicious humiliation;
- c) wrongful entry or wrongful eviction or other invasion of privacy;
- d) defamation, libel and slander; and
- e) assault and/or battery.

1.15 **"Insured Contract"** means:

that part of any contract or agreement pertaining to the Named Insured's Business under which the Named Insured assumes the Tort Liability or Statutory Liability of another party to pay for Injury or Damage to a third person or organisation. However, the Injury or Damage must arise out of an Occurrence that takes place subsequent to the execution of Your Contract. Tort liability means a liability that would be imposed by law upon the other party in the absence of any contract or agreement.

1.16 **"Insured"** means:

- a) the Named Insured as listed in the Policy Schedule;
- b) any organisation in which the Named Insured maintains an interest of more than fifty percent (50%) as of the effective date;
- c) if the Named Insured is an individual, the Named Insured's spouse, but only with respect to the conduct of a Business of which the Named Insured is the sole owner;
- d) if the Named Insured is an individual and dies, the Named Insured's legal representative but only with respect to the legal representative's duties in administering or undertaking the Named Insured's Business;
- e) the Named Insured's partners, executive officers, Employees, directors, shareholders or volunteers while acting within the scope of their duties on behalf of the Named Insured's Business;
- f) any person or organisation to whom the Named Insured is obligated by a written Insured Contract to provide insurance, but only with respect to their liability arising out of operations conducted by the Named Insured or on their behalf and not to any greater extent than required by the contract or agreement; and
- g) any office bearer or member of social and/or sporting clubs formed with the written consent of the Named Insured in respect of Claims arising from duties connected with activities of any such club. Cover shall not apply to Injury to or Damage of any participants of any game, match, race, practice or trial.

1.17 **"Insured's Products"** means:

any goods or Products (after they have ceased to be in Your possession or under Your control) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, treated, imported, exported, produced, processed, assembled, erected, installed, repaired, serviced, treated, sold, supplied or distributed by You. Insured Products includes any packaging or containers, designs, formulae or specifications thereof, directions, instructions or advice given or omitted to be given in connection with such things other than a Vehicle or vending machine.

1.18 **"Internet Operations"** means:

- a) transfer of computer data or programmes by use of electronic mail systems by You or Your Employees, including for the purpose of this definition only, part-time and temporary staff, contractors and other staff within Your organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to Computer Virus, worm, logic bomb or Trojan horse;

- b) access through Your network to the world wide Web or a public internet site by You or Your Employees including for the purpose of this definition only, part-time and temporary staff, contractors and other staff within Your organisation;
- c) access to Your intranet (meaning internal company information and computing resources) which is made available through the world wide Web for Your customers or others outside Your organisation; and
- d) the operation and maintenance of Your Website.

1.19 **“Legal Proceedings”** means:

litigation, arbitration, mediation, adjudication or any other process of dispute resolution.

1.20 **“Medical Persons”** means:

medical doctor, medical nurses, dentists and first aid attendants.

1.21 **“Named Insured”** means:

the entity set forth in the Policy Schedule.

1.22 **“North America”** means:

- a) the United States of America and Canada;
- b) any state, territory or protectorate incorporated in, or administered by, the United States of America or Canada; and
- c) any country or territory subject to the laws of the United States of America or Canada.

1.23 **“Occurrence”** means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury or Damage neither expected nor intended from Your standpoint.

All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.

1.24 **“Period Of Insurance”** means:

the period set forth in the Policy Schedule, or any shorter period arising as a result of Cancellation of this Policy.

1.25 **“Pollutants”** means:

but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids or alkalis of any sort, chemicals and waste. Waste includes but is not limited to, material to be recycled, reconditioned or reclaimed.

1.26 **“Products”** means:

anything which is or is deemed to have been manufactured, grown, extracted, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by You (including packing containers) in the course of Your business and after it has ceased to be in Your physical custody or under Your legal control.

1.27 **“Products Hazard”** means:

Injury or Damage arising out of Your Products or reliance upon a representation or warranty made at any time with respect thereto, but only if the Injury or Damage occurs away

from premises owned by, leased to, rented to or occupied by You and after physical possession of such Products has been relinquished to others.

1.28 **“Property Damage”** means:

- a) physical injury to or loss of or destruction of tangible property including loss of use of that property at any time resulting there from; and
- b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused directly by physical Damage to or destruction of other tangible property.

1.29 **“Territorial Limits”** means:

anywhere in Australia.

1.30 **“Tool Of Trade”** means:

the use or operation of a Vehicle and or equipment, tool or apparatus which forms part of the Vehicle but only whilst engaged in and undertaking its designed purpose of mechanical digging, scraping, grading, compacting, shovelling, slashing, mowing, harvesting, ploughing, shredding, drilling, boring, lifting or levelling, hosing, pumping, spraying, vacuuming.

1.31 **“Vehicle”** means:

any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power, or any trailers made to or intended to be drawn by any such machine while attached to it.

1.32 **“Watercraft”** means:

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

1.33 **“We”, “Us” And “Our”** means:

certain Underwriters at Lloyd's.

1.34 **“You” And “Your”** means:

the Named Insured.

2. OPERATIVE CLAUSE

Subject to all provisions, terms, exclusions, and conditions of this Policy, We agree to indemnify You for all amounts which You shall become legally liable to pay as a result of Claims for Injury or Damage happening during the Period of Insurance and arising out of an Occurrence from your business as a Transport Operator and within the Territorial Limits.

3. DEFENCE COSTS

- 3.1 We shall defend at Our cost any Claim or Legal Proceeding against You that seeks compensation covered by this Policy, even if the Claim or Legal Proceeding is groundless, false or fraudulent.
- 3.2 In the defence of any Claim or Legal Proceeding against You that seeks compensation covered by this Policy, We will:
 - a) Investigate, negotiate and settle the Claim or Legal Proceeding as We deem expedient; and
 - b) Pay the following supplementary payments:
 - i) All costs taxed against You in the Claim or Legal Proceeding;

- ii) Pre-judgement interest awarded against You on that part of the judgement We pay;
- iii) Post judgement interest that accrues after entry of judgement and before We have paid, offered to pay or deposited in court that part of the judgement that is within the applicable Limits of Liability; and
- iv) Your expenses incurred at Our request or with Our written consent (including actual loss of wages or salary, but not loss of other income).

Notwithstanding, We will only be liable for the amount of Damages and claimants' costs and expenses arising from an Occurrence that is in excess of the Excess amount. The Excess amount shall be borne by You and shall remain uninsured, with regard to all payments for which You shall be liable.

- 3.3 We may undertake investigations, conduct negotiations and with the written consent of You settle any Claim or Legal Proceedings where settlement has been agreed to by the parties being indemnified or has been recommended by a Senior Counsel. If consent to such settlement is still withheld by You then Our liability on account of that Claim or Legal Proceeding shall not exceed the amount for which We could have settled the Claim or Legal Proceeding plus the costs and expenses incurred to the date such settlement was recommended in writing to You.
- 3.4 We will not defend any Claim or Legal Proceeding or investigate any Claim or Legal Proceeding after the exhaustion of the applicable Limits of Liability of this section by the payment of loss.

4. LIMITS OF LIABILITY

- 4.1 Our liability in respect of any one Occurrence shall not exceed the Limit of Liability as set forth in the Policy Schedule. All Injury and Damage arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one Occurrence.
- 4.2 Our total aggregate liability during any one Period of Insurance for all Occurrences involving the Products Hazard shall not exceed the Limit of Liability as set forth in the Policy Schedule.
- 4.3 Expenses incurred to defend or investigate any Claim or Legal Proceeding will be in addition to the applicable Limits of Liability. Provided however that, in the event of any Claim or Legal Proceeding being made against You in any court or before any other legally constituted body in North America, the Limits of Liability shall apply to such Claim or Legal Proceeding inclusive of expenses to defend or investigate any Claim or Legal Proceeding.
- 4.4 The Limits of Liability apply separately to each Period of Insurance as shown in the Policy Schedule.
- 4.5 If You comprises more than one party, We will provide indemnity to each in the same manner and to the same extent as if a separate policy had been issued to each, provided that Our total liability for liability sustained by any or all of You shall not exceed the Limit of Liability stated in the Policy Schedule.

In addition to the Limits of Liability stated in the Policy Schedule, we will pay as additional payments all;

- a) Reasonable costs of representation at any coronial hearing or other official investigation into the circumstances incurred by the insured person with our written consent in the defence of any claim;

- b) Expenses incurred by the insured person for first aid to others (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973);
- c) Reasonable expenses incurred by you for the temporary repair or shoring up or preservation of property which has been damaged.

5. ACQUIRED COMPANIES

Your Policy extends to include any company or subsidiary acquired or formed by You during the Period of Insurance provided that:

- a) You hold the legal right to control the decisions of such company or subsidiary;
- b) You advise Us of Your interest in the company or subsidiary within 90 days of attachment of the interest;
- c) The company or subsidiary is a type of business conducts the same type of business as Your business;
- d) The newly incorporated company is incorporated in Australia.

6. EXCLUSIONS

This policy excludes all liability for:

6.1 Aircraft, Hovercraft and Watercraft

Injury or Damage caused by or arising out of the ownership, possession, maintenance, operation or use by or on behalf of You:

- a) Of any Aircraft or Hovercraft; or
- b) Any Watercraft or vessel exceeding eight (8) metres in length and personal watercraft or jet skis.

Provided that this Exclusion 6.1 (b) shall not apply with respect to:

- i) Operations by independent contractors;
- ii) Watercraft owned by others and used by You for entertainment purposes related to the Business, or the ferrying of Your Vehicles; or
- iii) Hand propelled or sailing craft.

This proviso 6.1 (b) i), ii) and iii) shall only apply where such Watercraft are sailing or operating in Australian territorial or inland waters.

6.2 Aircraft Products

The supply, distribution, sale or manufacture of Aircraft Products which You know will be incorporated in Aircraft, or reliance upon any representations or warranties made by You with respect to such Aircraft Products or arising out of the Grounding of any Aircraft caused by such Aircraft Products.

6.3 Asbestos

Mesothelioma, asbestosis or for any death, disease, loss of use of property, or Damage to property (including consequential loss) arising directly or indirectly out of or in connection with or in consequence of:

- a) Inhaling, ingesting or physical exposure to asbestos or goods or Products containing asbestos; or
- b) The use of asbestos in constructing or manufacturing any good, product or structure; or

- c) The removal of asbestos from any good, product or structure; or
- d) The manufacture, sale, transportation, storage or disposal of asbestos or goods or Products containing asbestos; or
- e) The presence of asbestos in any building.

6.4 Assault and Battery

Injury or Damage arising directly or indirectly out of assault and battery committed by an Insured person.

However, this Exclusion will not apply where such assault and battery is committed for the sole purpose of preventing or eliminating danger to persons or property.

6.5 Contractual Liability

Injury or Damage:

- a) Where You assume liability under any contract or agreement.

But this Exclusion 6.5 shall not apply to those written contracts:

- i) Where such liability would have been implied by law;
 - ii) Where You assume liability under a warranty of fitness or quality as regards Your Products;
 - iii) To Incidental Contracts entered into by the Named Insured;
 - iv) To contracts where the liability or obligation is assumed by an Insured person under any warranty under the requirement of State or Federal laws in respect to product safety.
- b) Where You have waived any rights, which but for the existence of such waiver would accrue to You.

6.6 Construction

Injury or Damage caused by demolition, underpinning, removal of supports, dewatering, alteration, renovation, construction, erection of and/or addition to any building, structure, plant or equipment by or on behalf of an Insured person. **However, this Exclusion shall not apply to each individual contract You undertake that does not exceed the sum of \$250,000.**

6.7 Damage to Own Products

Damage to Your Products attributable to any defect in them or to their harmful nature or unsuitability.

6.8 Dangerous Goods

Injury or Damage arising directly or indirectly out of or caused by the carrying or storage of any Dangerous Goods other than when all requirements and procedures of the Australian Code for the Transport of Dangerous Goods by Road or Rail and/or any statute or law relating to or in respect of the transportation or storage of Dangerous Goods have been complied with.

For the purposes of this exclusion the term "Dangerous Goods" shall mean any goods codified under the "Australian Code for the Transport of Dangerous Goods by Road or Rail" or any liquid fuel, liquid gas, toxic chemicals, acids,

inflammable substances below 12.70 flash point, compressed gases, organic peroxides, explosives and any other oxidising, infectious or radioactive substance.

6.9 Design, Specification, Formula

Any design, plan, specification, formula or pattern provided by an Insured person or any error or omission connected therewith.

This Exclusion shall not apply in respect of any design, plan, specification, formula or pattern about any Products which are not given for a fee.

6.10 Employer's Liability

- a) Injury to any person arising out of, or sustained in the course of the employment of such person in the service of any Insured person or through the breach of any duty owed to that person;
 - i) Is indemnified or entitled to be indemnified (either in whole or part) in respect of claims for Damages under a policy of insurance (which expression includes arrangements made by any Insured person to provide accident insurance for any Insured person's workers under a license to self-insure) arranged (whether by law or not) in accordance with any workers compensation legislation or accident compensation legislation; or
 - ii) Would have been indemnified or entitled to be indemnified (either in whole or part) had any Insured person arranged a policy of insurance as required by such legislation.
- b) Injury to any person arising out of, or sustained in the course of employment of such person in any Insured person's service in Western Australia, other than a person of whom any Insured person is deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Injury Management Act 1981 (WA).
- c) Mental anguish, shock or fright arising suffered by any person arising out of, or in the course of employment by, or service to, any Insured person.
- d) Injury arising out of the wrongful or unfair dismissal, denial of natural justice, harassment, libel, slander, defamation, misleading representation, misleading advertising or advertising or humiliation of, or discrimination against any person while in any Insured person's service, prospective employment or while employed by an Insured person.
- e) Which indemnity previously would have been provided in whole or in part under a policy of insurance arranged in accordance with any workers compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change in the scope, terms, provisions, or a requirement of such legislation made after the commencement of the current Period of Insurance.
- f) The imposition of any liability by the provisions of any workers compensation legislation or accident compensation legislation or any industrial award, agreement or determination.

6.11 Expected or Intended

Injury or Damage expected or intended from the standpoint of You. However, this Exclusion 6.11 does not apply to:

- a) Injury or Damage resulting from the use of reasonable force to protect persons or property; or
- b) Liability of You for compensation as the result of an act committed by Your Employee(s) which results in Injury or Damage expected or intended from the standpoint of Your Employee(s), provided such act was not committed at the direction of You.

6.12 Faulty Workmanship

The cost of performing, correcting or improving any work undertaken by an Insured person.

6.13 Financial Loss

Financial Loss, unless such loss is a direct result of Injury or Damage for which indemnity is provided by this Policy.

6.14 Fines, Penalties, Punitive, Aggravated, Exemplary Damages & Taxes

- a) Fines, penalties (civil or criminal), liquidated, punitive, aggravated or exemplary Damages;
- b) Matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

6.15 Injury to Contractors

Injury sustained to or by any contractor or their Employees, subcontractor or their Employees or person engaged in a form of Labour Hire by You where the fees paid for such services or provision of labour exceed \$50,000 any one Period of Insurance.

For the purposes of this exclusion Labour Hire means any person engaged in any aspect of the Business by You while employed by an employment agency, placement agency, labour hire company or any other company or person whose business is or includes the supply and/or provision of labour.

6.16 Internet Operations

- a) Any liability arising out of Your Internet Operations; or
- b) Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by or through or in connection with:
 - i) The use of any computer hardware or software;
 - ii) The provision of computer or telecommunication services by You or on Your behalf;
 - iii) The use of computer hardware or software belonging to any third party whether authorised or not including Damage caused by any Computer Virus.

However, this Exclusion shall not apply to Personal Injury or Property Damage or Advertising Liability arising out of any material which is already in print by the manufacturer in support of its Products, including but not limited to product use and safety instructions or warnings and which is also reproduced on its site, or, any liability which arises irrespective of the involvement of Your Internet Operations.

6.17 Libel and Slander

Injury or Damage arising out of a libel or slander:

- a) Made prior to the effective date of this insurance; or
- b) Made by or at Your direction with knowledge of the falsity or defamatory character thereof; or
- c) Related to advertising, broadcasting, publishing or telecasting activities including Internet activity, conducted by You or on Your behalf.

6.18 Loss of Use

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

- a) A delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- b) The failure of Your Products to meet the level of performance, quality, fitness or durability expressly or implied, warranted or represented by You.

Provided that this Exclusion 6.18 b) does not apply to loss of use of other tangible property resulting from the sudden, unexpected and unintended physical injury to or destruction of Your Products after such Products have been put to use by any person or organisation other than You.

6.19 Nuclear Liability

Claims or Legal Proceedings of whatsoever nature, directly or indirectly, caused by or contributed by or arising from:

- a) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- b) The radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

6.20 Pollution

In respect of Injury or Damage directly or indirectly arising out of the:

- a) Pollutants directly or indirectly caused by or contributed to by or arising from the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants contaminants or Pollutants into or upon land the atmosphere or any watercourse or body of water including ground water;
- b) Pollutants directly or indirectly caused by or contributed to by or arising from the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants contaminants or Pollutants into or upon land the atmosphere or any watercourse or body of water including ground water caused by any product that has been dumped, abandoned, discarded or thrown away by others;
- c) Cost of removing, monitoring, testing, containing, treating, detoxifying, neutralizing, nullifying or cleaning up smoke, vapours, soot, mould, fungus, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or Pollutants discharged, dispersed, released or escaped into or upon land, the atmosphere or any watercourse or body of water;

- d) Fines, penalties, punitive, exemplary or multiple Damages relating to the circumstances detailed in 6.20 a) above;
- e) Cost of preventing the escape of Pollutants.

Exclusions 6.20 a), b) and c) above shall not apply where the Claim or Legal Proceeding arises from a sudden identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place and occurs outside of North America, however, the total aggregate Limit of Liability during any one Period of Insurance shall not exceed the Limit of Liability stated in the Schedule.

6.21 Product Guarantee

Any product guarantee or warranty given by You or on Your behalf.

This Exclusion shall not apply to the requirements of any State or Federal Legislation as to product safety.

6.22 Product Recall

Any cost or expense incurred or claimed for the withdrawal, inspection, repair, reconditioning, modification, re-installation, replacement, or loss of use of Your Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known, alleged or suspected defect or deficiency therein.

6.23 Professional Liability

Injury or Damage arising out of the rendering of or failure to render professional advice or service by You, or any error or omission arising from the rendering of professional advice, design specification or service for a fee.

Provided that this Exclusion 6.23 does not apply to the rendering of or failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises.

6.24 Property Owned or in Your Physical or Legal Control

Damage to property owned by, or, in the physical legal control of an Insured person. However, this exclusion does not apply to Property Damage to;

- a) Personal effects of Your directors, Employees or visitors;
- b) Premises leased or rented to You;
- c) Premises (and their contents) where the premises are temporarily occupied by You to carry out work;
- d) Any Vehicle in a car park unless:
 - i) The Vehicle is used by or on behalf of an Insured person; or
 - ii) The car park is occupied or operated by You for reward;
- e) Property other than Aircraft, Hovercraft or Watercraft that is not on dry land, or goods being loaded, unloaded or in storage, not owned by You but in Your physical or legal control subject to a maximum of \$50,000 for any one Occurrence and in the aggregate during any one Period of Insurance.

6.25 Silica

Claims or Legal Proceedings directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in

part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica Products, silica fibres, silica dust or silica in any form, or to any obligation of You to indemnify any party because of Injury or Damage arising out of the presence, ingestion, inhalation or absorption of or exposure to silica Products, silica fibres, silica dust or silica in any form.

6.26 Territorial Limits

Any liability:

- a) Occurring in North America or caused by or arising out of Products supplied by an Insured person other than from Australia, or exported by an Insured person or its agents to North America; or
- b) Where Claims are made upon an Insured person outside Australia where the Insured person is represented by a branch or company or firm or individual holding the Insured's power of attorney; or
- c) Where Claims arise out of any contract entered into by an Insured person under the terms of which work is to be performed outside of Australia.

However, these Exclusions shall not apply to;

- i) Products exported to North America without the knowledge of You, Your agents or Employees; or
- ii) Business visits by directors, executives and Employees normally resident in Australia that do not involve the performance of manual work or supervision of work by any such person.

6.27 Terrorism

Injury or Damage arising directly or indirectly as a result of or in connection with Terrorism including, but not limited to, any contemporaneous or ensuing Injury or Damage caused by fire, looting or theft.

Terrorism means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority or military force, when the effect is to intimidate or coerce a government, the civilian population or any segment thereof, or to disrupt any segment of the economy.

Terrorism shall also include any act which is verified or recognised by the government of any country in which You operates or exports Products into, as an act of terrorism.

6.28 Tobacco and Tobacco Smoke

The inhalation or ingestion of, or exposure to tobacco or tobacco smoke or any ingredient or additive present in any article, items or goods which contain tobacco.

6.29 Vehicles

Injury or Damage caused by or arising out of the ownership, use, possession, or control by any Insured person of any Vehicle:

- a) Which is registered; or
- b) In respect of which registration is required by virtue of any legislation relating to Vehicles; or

- c) In respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not insurance is effected).

This exclusion does not apply to Claims;

- i) Arising out of and during the loading or unloading of goods to or from any Vehicle; or
- ii) Arising from or caused by or arising from the operation or use of any Vehicle which is designed primarily for lifting, lowering, loading or unloading whilst being operated or used by You or on Your behalf within the confines of Your premises; or
- iii) Arising from the use of any Tool of Trade whilst being used for transport or haulage.

6.30 War

Injury or Damage directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (with or without the declaration of war), civil war, civil commotion, rebellion, revolution, insurrection, military or usurped power.

7. CONDITIONS

7.1 Claims

- a) You shall give immediate notice in writing to Us of any Occurrence that may give rise to a Claim under this Policy and shall give all such additional information as We may require. Every Claim, writ, summons, notice of adjudication, referral notice or process and all documents relating thereto shall be forwarded to Us immediately they are received.
- b) No admission, offer, promise or payment shall be made or given by or on behalf of You without the written consent of Us, We shall be entitled to take over and conduct in the name of You the defence or settlement of any Claim or to prosecute in the name of You for their own benefit any Claim for indemnity or Damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any Claim and You shall give all such information and assistance as We may reasonably require.
- c) We may at any time pay to You in connection with any Claim or series of Claims under this Policy to which a Limit of Indemnity applies the amount of such Limit (after deduction of any sums already paid) or any lesser amount for which such Claims can be settled and upon such payment being made We shall relinquish the conduct and control of and be under no further liability in connection with such Claims except for the payment of Defence Costs incurred prior to the date of such payment.
- d) Provided that if We exercise the above option and the amount required to dispose of any Claim or series of Claims exceeds the Limit of Indemnity and such Excess amount is Insured either in whole or in part, with Defence Costs payable in addition to the Limit of Indemnity under this Policy then We will also contribute their proportion of subsequent Defence Costs incurred with their prior written consent as the Limit of Indemnity bears to the amount paid to dispose of a Claim.

7.2 Notification of Change

You shall give notice to Us of any alteration or circumstance which materially affects the risks Insured under this Policy and until We are advised of such alteration or circumstance and shall have expressly agreed in writing to accept liability for such altered risk and You have paid or agreed to pay the additional premium, if any, We shall not be liable in respect of any Claim or Claims due wholly or partially to any such alteration or circumstance.

7.3 Basis of Contract

Any written proposal and/or declaration made by You shall form the basis of this contract of insurance and is deemed to be incorporated herein.

7.4 Policy Legal Interpretation

This Policy and the Schedule will be interpreted in accordance with the Law of Australia. The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

7.5 Policy Alterations

The terms and conditions of Your Policy shall apply unless We agree in writing to any changes and We will not forego any of Our rights nor disregard any failure by You to comply unless We agree in writing to do so.

7.6 Jurisdiction

All disputes concerning the interpretation of this Policy are understood and agreed by both You and Us to be subject to Australian Law. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within Australia and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

7.7 Other Insurance

You shall advise Us at the time of any Claim under this Policy of the details of all other liability insurance from which You may benefit, regardless of whether such Claim is in Your opinion recoverable from such other insurance, in order for Us to establish rights of contribution which they may have.

7.8 Inspection of Premises

We have the right, but are not obligated, to inspect Your premises and operations at any time without prior notice to You subject to which We will use reasonable endeavours to give You reasonable notice of any intended inspection. Our inspections are not safety inspections. They relate only to the insurability of Your premises and operations and the premiums to be charged. You will allow Us, Our agents, representatives, Employees or consultants (hereinafter referred as the "Surveyor"):

- a) Access to its premises and other places of Business; and
- b) To conduct such enquiries as the Surveyor deems necessary, including (without limitation) by way of interviews with Employees; and generally
- c) Provide all reasonable cooperation and assistance as We or the Surveyor may require in a conduct of the Survey.

We may give You reports on the conditions that We find. We may also recommend changes. We do not, however, undertake to perform the duty of any person or organisation to provide for the health or safety of Your Employees or the public. We do not warrant the health and safety conditions of You or Insured's premises or operations or represent that You or Insured's premises or operations comply with laws, regulations, codes or standards.

7.9 **Renewal**

Before the Policy expires We will send You a renewal offer which states whether We will renew the Policy and, if so, on what terms.

After We issue a Renewal Schedule, We may:

- a) Prior to acceptance by You, withdraw, or amend the terms of, the Renewal offer; and
- b) Regardless of when You indicate acceptance of the Renewal offer, if We become aware of any circumstance that, had We known of it, would have affected Our renewal decision, We may:
 - i) If renewal has not yet occurred, amend Our renewal terms to what We would have offered had We known of the circumstances, or withdraw the renewal offer if that would have been Our decision.
 - ii) If renewal has occurred, We may reduce Our liability under a Claim, or refuse to pay a Claim, or cancel the renewed contract, or if the non-disclosure is fraudulent - avoid the contract.

7.10 **Outstanding Debts**

We may reduce any payment We make under this Policy by way of settlement of any Claim, return of premium or otherwise by the amount of any premium, Excess or other amount that You owe Us.

7.11 **Your Duty of Care**

You must at all times take all reasonable precautions to prevent any Occurrences that may give rise to a Claim under this Policy.

7.12 **Cancellation**

Your Policy may be cancelled by:

- a) You at any time by notifying Us in writing. We will then refund to You any Premium for the unused Period of Insurance, less Our normal charges for short period insurance, or We will recover from You any Premium owing for the Period of Cover used.
 - i) After cancellation by You, We will be entitled to retain the pro rata Premium for the period during which the Policy has been in force; and
 - ii) Ten per cent (10%) of the pro rata Premium as a cancellation fee;
- b) Us in accordance with the provisions of the Insurance Contracts Act 1984 (as amended).
- c) A Premium Funding Company in accordance with the provisions of any power of attorney or other authority granted to them by You. Any Premium refund due will be sent to Your broker for this Policy or, if no broker, to the Premium Funding Company.

8. PHONE ASSISTANCE AND CONTACT DETAILS

If You need to clarify any of the information contained in this Policy Document or You have any queries regarding Your Insurance Policy, please contact Us directly or contact Your appointed Insurance Intermediary.

For all enquiries, please call:

Austruck Insurance Pty Limited ABN 77 123 519 862

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