

# Business Insurance Policy Wording - Part 3 of the Product Disclosure Statement

## Section 7 - Legal Liability

This section of the policy covers you for your legal liability for personal injury to another person (other than employees) or damage to property owned or controlled by someone else, which happens during the period of insurance and which is caused by an occurrence in connection with the business.

You have a choice in this section. You must take public liability, and you can then choose products liability which will cover you for your legal liability for personal injury or damage to property caused by your products.

If you take products liability cover it will be shown in the schedule.

Along with any other sections of cover you have chosen, this document makes up Part 3 of your Product Disclosure Statement. Your Product Disclosure Statement is made up of parts 1, 2 and 3.

What is legal liability?

**Legal liability** means that a court finds, or we accept, that you are legally responsible to pay damages and **additional costs** for:

- **damage to property** owned or controlled by someone else; or
- **personal injury** to another person.

which

- happens during the **period of insurance**;
- results from an **occurrence** in connection with the **business**;
- occurs within the **territorial limits**; and
- was not intended or expected by you.

You can claim for your **legal liability**, if:

- ✓ “Public Liability” is shown under “What’s Covered” in the **schedule**;
- ✓ it is not excluded under the “What we exclude” column of this section; and
- ✓ it is not excluded by any of the General Exclusions listed in the Customer Information Booklet (known as Part 2 of the PDS).

### What we cover

We will pay a claim for **legal liability**

### What we exclude

We will not pay if the **legal liability**:

*Defective work*

is for the cost of performing, completing, correcting or improving any work done by you;

*Products*

is directly or indirectly due to **products** if Products Liability is shown in the **schedule** under “What’s Not Covered”;

*Professional Duty*

is directly or indirectly due to a breach of a duty owed in a professional capacity (for example the provision of professional advice or services) including any treatment prescribed or administered by you;

*Weakening of support to property*

is for **damage to property** (including land) which arises because of vibration to, or the removal or weakening of support to, any land or buildings;

*Asbestos*

is for

- (a) injury including **personal injury** arising, directly or indirectly, out of the inhalation of, or fears of the consequences of exposure to, or inhalation of, asbestos, asbestos fibres or derivatives of asbestos; or
- (b) that part of any loss, cost or expense for the cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any asbestos, asbestos fibres or any derivatives or asbestos.

For the purpose of paragraph (b):

damage means physical loss, damage or destruction and resultant loss of use, and property means any tangible or intangible property and includes **property**.

For the avoidance of doubt this exclusion prevails over Extra Benefit 3- Pollution.

*Loss of use*

is in respect of the loss of use of tangible property which has not been physically damaged or destroyed, and which results from:

- (a) a delay in or lack of performance by you or on your behalf of any contract or agreement, or

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### Section 7 - Legal Liability cont.

What we cover	What we exclude
	<p>(b) the failure of <b>products</b> or work performed by you or on your behalf to meet the level of performance, quality, fitness or durability warranted or represented by you;</p> <hr/> <p><i>Libel and Slander</i> is directly or indirectly due to the publication or statement of a libel or slander or defamation of character which is:</p> <p>(a) made prior to the commencement of the <b>period of insurance</b>, or</p> <p>(b) made at your direction in the knowledge that it was false, or</p> <p>(c) related to advertising, broadcasting or telecasting activities, or publication of newspapers, journals, books or periodicals, conducted by or on your behalf;</p> <p><i>Personal injury to Employee</i></p> <p>(a) is for <b>personal injury</b> to any <b>employee</b> arising out of or in the course of his or her employment;</p> <p>(b) is imposed by the provisions of any:</p> <ul style="list-style-type: none"> <li>• workers' compensation legislation;</li> <li>• accident compensation legislation;</li> <li>• industrial award, agreement or determination;</li> </ul> <p><i>Work outside Australia</i> arises directly or indirectly out of work carried out outside Australia and its external territories;</p> <p><i>Punitive damages and fines</i> is for any amount by way of aggravated exemplary punitive or multiple damages, or is for fines, penalties, liquidated damages or is incurred under a penalty clause;</p> <p><i>Infringement of copyright or patent</i> is for infringement of copyright or patent;</p> <p><i>Guarantees and contracts</i> arises because of an undertaking, guarantee or contract entered into by you, except where</p> <p>(a) you would have had the same legal liability without the contract, or</p> <p>(b) we have specifically allowed for it in this policy or by written endorsement;</p> <p>(c) the <b>legal liability</b> is assumed by you under a lease or tenancy agreement for <b>premises</b> which you occupy in connection with the <b>business</b> but not for <b>damage to property</b> where such property consists of the <b>buildings</b> which are the subject matter of that lease or tenancy agreement;</p> <p><i>Watercraft, aircraft and vehicles</i> is caused by or is in connection with the operation, ownership, possession or use by you or on your behalf of any watercraft or vessel exceeding 8 metres in length;</p> <p>is caused by or is in connection with the operation, ownership, possession or use by you or on your behalf of any <b>vehicle</b> which is registered or required to be insured under any Commonwealth, State, or Territory legislation (except as covered in the "Extra Benefits" below);</p> <p><b>Vehicle</b> means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual power and any trailer made or intended to be drawn by any such machine while attached to it;</p> <p><i>Care, custody and control</i> is directly or indirectly due to <b>damage to property</b> belonging to you or in your care, custody or control (except as covered in the "Extra Benefits" in this section);</p> <p><i>Child Molestation</i> or <b>additional costs</b> are caused by or arises from the molestation of, the interference with, the mental abuse of or the physical abuse</p>

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### Section 7 - Legal Liability cont.

What we cover	What we exclude
	<p>of minors or any mentally disabled person by:</p> <ul style="list-style-type: none"> <li>(a) you; or</li> <li>(b) any <b>employee</b>; or</li> <li>(c) any person performing any voluntary work or service for you or on your behalf.</li> </ul> <p>Also, we shall have no duty to defend any action, suit or proceedings brought against you either directly or indirectly seeking damages in respect of such molestation, interference, mental abuse or physical abuse;</p> <p><i>Pollution</i> is caused by or arises directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of <b>contaminants or pollutants</b> into or upon any property, land, the atmosphere or any watercourse, or body of water (including groundwater); or</p> <p>is in respect of costs or expenses incurred in preventing removing or cleaning up such <b>contaminants or pollutants</b> (except as covered in the "Extra Benefits" in this section).</p>
	<p><i>Products liability exclusions</i> In addition to all of the previous legal liability exclusions, if Products Liability is shown under "What's Covered" in the <b>schedule</b>, we will also not pay for:</p> <p><i>Aircraft products</i> <b>legal liability for personal injury or damage to property</b> caused by or arising out of <b>products</b> intended specifically for and installed in or on any aircraft or other aerial device, or which you knew would be so installed, where such <b>products</b> are essential to the operation or navigation of an aircraft or other aerial device;</p> <p><i>Product recall or repair</i> the cost of recalling, withdrawing, replacing or repairing <b>products</b> or of making any refund on the price paid for <b>products</b>;</p> <p><i>Design, formula or specification</i> <b>legal liability for personal injury or damage to property</b> caused by the defective design, formula or specification by you of any <b>products</b>; or</p> <p><i>Liability by contract</i> <b>legal liability</b> that arises because of an undertaking, guarantee or contract entered into by you except where such legal liability is assumed by you under a warranty of fitness or quality, or is implied by law, in respect of <b>products</b>.</p> <p><i>Public Liability</i> any claim covered under Public Liability;</p> <p><i>Exports not originating from Australia</i> any claim in respect of <b>products</b> not supplied from or originating in Australia or its external territories.</p>
<p><b>Extra Benefits</b> We will also pay for a claim for your <b>legal liability</b>:</p>	<p>In addition to all of the previous <b>legal liability</b> exclusions, we will not pay any claims for <b>legal liability</b> for:</p>
<p>1. <i>Care custody or control</i> for <b>damage to property</b> in your care, custody or control where that property consists of:</p> <ul style="list-style-type: none"> <li>(a) <i>Personal belongings</i> the personal possessions of directors, business partners, employees and visitors;</li> <li>(b) <i>Premises temporarily occupied</i> premises and their contents that are not owned by you but</li> </ul>	<p><b>damage</b> to any other property belonging to you or under your care custody or control;</p>

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### Section 7 - Legal Liability cont.

What we cover	What we exclude
<p>which are temporarily occupied by you for the purpose of carrying out work in connection with the <b>business</b>;</p> <p>(c) <i>Leased premises</i> premises (including their fixtures and fittings) which you occupy under a lease or tenancy agreement;</p> <p>(d) <i>Vehicles in a car park</i> vehicles not owned by you nor used in connection with the <b>business</b> while in a free car park provided by you for the use of customers, visitors or employees; or</p> <p>(e) <i>Customers' property</i> Customers' property, being all forms of tangible property other than land or buildings, that has been left in your care, custody or control for repair, maintenance, storage or exhibition at your premises;</p>	<p>maintenance to those premises required under your lease or tenancy agreement;</p>
<p>2. <i>Non-Manual Work Worldwide Cover</i> which results from non-manual work carried out by you anywhere in the world provided that at the time of the work being carried out, the person carrying out that work was normally resident in Australia or its external territories;</p>	
<p>3. <i>Pollution</i> arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of <b>contaminants or pollutants</b> into or upon any property, land, the atmosphere, water course or body of water (including ground water), and where such discharge, dispersal, release or escape:</p> <ul style="list-style-type: none"> <li>• is caused by a sudden identifiable unintended and unexpected incident; and</li> <li>• takes place in its entirety at a specific point in time during the <b>period of insurance</b>; and</li> <li>• does not occur in North America or states or territories incorporated in or administered by any court in North America; and</li> <li>• does not relate to any property, land, air, water course or body of water which you own, occupy or have in your custody or control.</li> </ul> <p>We will also only pay for clean up or removal costs if they are caused by such an incident;</p>	
<p>4. <i>Vehicles</i> arising directly or indirectly out of:</p> <p>(a) the delivery or collection of goods to or from any vehicle where the <b>personal injury or damage to property</b> occurs beyond the limits of any carriageway or thoroughfare;</p> <p>(b) the loading or unloading of, or the delivery or collection of goods to or from any <b>vehicle</b> used in work undertaken by or on behalf of you, or anyone covered under this section, but which is not in your, or their physical or legal control;</p> <p>(c) the use of any <b>vehicle</b> as a tool of trade.</p>	<p>which you are required by law to arrange insurance in relation to a <b>vehicle</b>;</p> <p>which is covered by a motor insurance policy;</p>
<p>5. <i>Representation costs</i> We will pay the costs of representing you at an inquest or in any court of summary jurisdiction relating to an <b>occurrence</b> which may give rise to your being liable, if you have notified us in advance and we have given our prior written consent to your incurring these costs.</p>	
<p>6. <i>Cover for other people</i> The term "you" shall be extended to include:</p> <ul style="list-style-type: none"> <li>• your personal representatives in the event of your death, or</li> <li>• any director, business partner, executive officer, shareholder or employee of yours, or</li> </ul>	

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### Section 7 - Legal Liability cont.

#### What we cover

- any official, committee or member of your own canteen, sports, social, free child care facilities or welfare organisations, and any member of your own fire, first aid, medical or ambulance services, or
- any director, business partner, or senior executive of yours in respect of private work undertaken by any **employee** for such director, business partner or senior executive, and any such **employee** whilst actually undertaking such private work, or
- any principal of yours, in respect of the vicarious liability of such principal for your acts or omissions, arising out of the performance by you of any contract or agreement for the carrying out of work or services in connection with the **business**, but only to the extent required by such contract.

#### 7. Cover for other activities

The term **business** shall be extended to include:

- private work undertaken by an **employee** for any of your directors, business partners or senior executives;
- the provision of your own sports, social, free child care facilities, and welfare organisations;
- the provision of your own fire, first aid, medical and ambulance services;
- the carrying out of repairs, maintenance, alterations or additions or demolition up to a cost of \$50,000 to or of **buildings** owned or occupied by you and shown in the **schedule**;
- the provision of food or beverages to **employees** or visitors for consumption on the **premises**, and
- the deeming of you to be a manufacturer of **products** by operation of a law of Australia or its external territories.

#### 8. Joint insureds – claims

Where you comprises more than one party we will deal with any claim as though a separate policy had been issued to each of those parties, provided that nothing in this clause shall operate to require us to pay more than the **insured amount** in the **schedule**.

#### What we exclude

**personal injury** or **damage to property** caused by any qualified medical practitioner;

**personal injury** or **damage to property** caused by any qualified medical practitioner.

#### What we pay

If we agree to pay for a claim for **legal liability**, we will pay the relevant damages and **additional costs**.

#### Limits to what we pay

The limits set out below (for each **occurrence** or series of **occurrences**, and the total limits for the **period of insurance**) are subject to the following proviso.

Subject always to the limit set out below in Pollution (Extra Benefit 3) if any one **occurrence** or series of **occurrences** results wholly or partially in pollution of any kind or magnitude, we will only pay up to the **insured amount** shown in the **schedule** by Public Liability for all claims for **legal liability** under this section in respect of that **occurrence** or series of **occurrences**.

#### Public liability

We will pay up to the **insured amount** in the **schedule** for damages for any one **occurrence** or series of **occurrences** due to, or arising out of, any one source or original cause. We will also pay **additional costs**.

#### Products liability

For claims arising out of **products**, we will pay up to the **insured amount** in the **schedule** for damages in respect of any one **occurrence** or series of **occurrences** due to, or arising out of, one source or original cause, and limited in total in any one **period of insurance** to that **insured amount**. We will also pay **additional costs**.

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### Section 7 - Legal Liability cont.

#### *Pollution (Extra Benefit 3)*

For all claims arising wholly or partially out of pollution we will pay up to the **insured amount** shown in the **schedule** for damages and clean up costs or removal costs during any one **period of insurance**. We will also pay **additional costs**.

#### *Property in care, custody or control*

For claims in respect of **damage to property** described in Extra Benefit 1 (a) to (d), we will pay up to the **insured amount** shown by "Public Liability" in the **schedule** for any one **occurrence** or series of **occurrences** due to, or arising out of, any one source or original cause.

For claims in respect of **damage to property** described in Extra Benefit 1 (e), we will pay up to the **insured amount** shown by "Care custody or control" in the **schedule** for any one **occurrence** or series of **occurrences** due to, or arising out of, any one source or original cause.

#### *North America (Extra Benefit 2)*

We will pay up to the **insured amount** shown in the **schedule** in total for all damages and **additional costs** for any one **occurrence** which results in a **legal liability** in North America or states or territories incorporated in or administered by any court in North America.

#### *Our right to pay the full limit at any time*

In respect of any claim we may pay to you the **insured amount** shown in the **schedule** (less any sums already paid or incurred) or any lesser amount for which the claim can be settled. We will then relinquish control of any such claim and be under no further liability for the claim except for costs and expenses for which we are liable prior to the date of such payment.

#### *Contribution to costs*

If we have not exercised our right under "Our right to pay the full limit at any time", our liability to pay **additional costs** where any sum or sums exceeding the relevant **insured amount** have to be paid shall be limited to such proportion of the said **additional costs** as such **insured amount** bears to the amount paid to resolve the claim.

#### *Excess*

You must pay the amount of any **excess** shown in the **schedule** for each claim you make for **legal liability** for **damage to property**.

## Policy Endorsement

### Definitions

Your Business Insurance Policy Wording is amended to include the following definitions:

**Exhibit** means an organised gathering such as a trade fair, seminar or similar gathering for exhibition purposes.

**Market** means an organised market where a group of market stall holders gather to sell their wares.

**Market Stall** means the actual physical benches, cabinetry, flooring, partitioning and panels used to display the insured's wares, and includes the area specifically hired or leased to erect the market stall.

**Qualified person** means a person who is formally qualified to perform a service. Where formal qualifications are not required by a person to perform a task but, are required by a manufacturer of a device or supplier of a product to have undergone training and pass a test of competency in the use of such, then if a claim arises where a person wasn't qualified by such manufacturer of provider then that person shall not be regarded as a qualified person under the policy.

### Non-cancellable Policy

The paragraph "Cooling Off and Cancelling This Policy" on page 2 of Part 1 of the Product Disclosure Statement and the paragraphs "How you may cancel" and "How we may cancel" on pages 6 and 7 of Part 2 of the Product Disclosure Statement are deleted and replaced with the following "This policy is non-cancellable and no premium refunds are given".

## Legal Liability

*The following endorsements are active for this cover:*

### Product and known defects

We will not be liable for any claims for **legal liability** directly or indirectly arising out of or in connection with

- (a) damage to your **products** if that damage is attributable to any defect in them or their harmful nature or unsuitability.
- (b) any defect or deficiency in your **products** of which you or your agents have knowledge or have reason to suspect at the time when your **products** pass from your actual physical custody or from the actual physical custody of any person under your control.

### Limit for Public Liability to Occupiers Liability Only

Cover for legal liability is limited to **occupiers liability**. We will not be liable for any claims for **legal liability** other than **occupiers liability**.

Occupiers liability **means** legal liability arising out of your **market stall** or display's occupancy of leased space, at a **market** or fair provided that such liability

- 1) arises from circumstances in direct connection with your usual **business**; and
- 2) is not assumed in agreement by you, where in the absence of such agreement you would not be legally liable.

The period of cover will extend to the 24 hours before and after the official **market** and or **exhibit** period for the purposes of setting up, removal, rehearsal and night before shows. However, the **period of insurance** is the period within which an **occurrence** must occur for a claim to be indemnified by this policy;

- a) For **market stall** holders this policy will only respond to claims for personal injury and property damage which arises from an occurrence connected to your occupation of a market stall during the **period of insurance** at a **market** for which you are insured.
- b) For exhibitors at trade fairs and similar exhibitions, this policy will only respond to claims for **personal injury** and **damage to property** which arise from an occurrence connected to or your occupation or participation of an exhibition during the **period of insurance** at or during the exhibition for which you are insured.

### Exclusion of Products Liability for Market Stalls

We will not be liable for any claims for **legal liability** directly or indirectly arising out of or in connection with the sale, distribution, repair and manufacture of toys, electronics, medicines or beauty products.

## Legal Liability (continued)

*The following endorsements are active for this cover:*

### **Exclusion of Amusement Rides**

We will not be liable if the **legal liability** arises in connection with **the business** either directly or indirectly out of, or is caused by, through, or in connection with jumping castles or similar flexible inflatable structures, carnival/amusement rides or animal rides.

Subject otherwise to the terms, conditions, definitions and exceptions of your policy.

### **Exclusion for Leased Space**

We will not be liable if the **legal liability** arises in connection with **the business** either directly or indirectly out of, or is caused by, through, or in connection with the occupation by lease or tenancy agreement by you of any space within the legal boundaries of a shopping centre.

For the purposes of this exclusion, the item under the 'what we exclude' column "Guarantees and contracts" (see Part 3 of the Product Disclosure Statement, Section 7) does not include any lease or tenancy agreement for **premises** that are at a shopping centre.

Subject otherwise to the terms, conditions, definitions and exceptions of your policy.