

## Excluded Activities

Updated 27 March 2019

### This Policy does not cover:

#### 2.1 Advertising injury

Any Advertising Injury arising out of or in any way connected with any:

- a) statement made by, or at the direction of an Insured where the Insured knew or suspected the statement or any part of the statement was false;
- b) failure to perform any obligation pursuant to any contract. This exclusion 2.1 b) does not apply to any claim for unauthorised appropriation of advertising ideas, concepts or designs contrary to an implied contract;
- c) incorrect description of Products, goods or services;
- d) any mistake in the advertised price of Products, goods or services;
- e) failure of Products, goods or services to conform with advertised performance, quality, fitness or durability; or
- f) Insured whose business is advertising, broadcasting, publishing or telecasting.

#### 2.2 Aircraft

Any liability arising out of or in any way connected with:

- a) the ownership, use, maintenance, operation of any Aircraft by the Insured;
- b) repair or servicing of critical components of Aircraft;

c) any Products that are incorporated into the hull or critical components of any Aircraft; or d) any Products which the Insured knew, or reasonably should have known, would be incorporated into the structure, machinery, controls or construction of any Aircraft.

#### 2.3 Asbestos

Any liability arising out of or in any way connected with any claim or claims in respect of Personal Injury, Property Damage, Advertising Injury, loss or losses arising directly or indirectly out of, or in any way connected with asbestos in whatever form or quantity

#### 2.4 Contractual

Any liability arising out of or in any way connected with any liability or obligation:

- a) assumed under the terms of a contract, agreement or warranty; or
- b) which requires the Insured effect or maintain insurance with respect to premises, property or goods not owned by the Insured.

This exclusion 2.4 a) does not apply to:

- i. the extent that such liability or obligation would have been implied by law in the absence of such contract, agreement or warranty;
- ii. liability assumed under an Incidental Contract; or
- iii. any contract specifically excepted by CGU's written agreement.

## **2.5 Defamation**

Any liability for defamation:

- a) resulting from any statement made prior to the Period of Insurance;
- b) resulting from any statement made by the Insured, or at the direction of an Insured, with knowledge of its falsity; or
- c) incurred by any Insured whose business is advertising, broadcasting, publishing or telecasting.

## **2.6 E-commerce**

Any liability arising out of or in any way connected with:

- a) total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation or misappropriation or other use of Electronic Data;
- b) error in creating, amending, entering, deleting or using Electronic Data; or
- c) total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all; from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

## **2.7 Employers liability**

a) Any liability in respect of which the Insured is or should be entitled to indemnity under any fund, scheme, policy of insurance or self insurance pursuant to or required by any legislation relating to workers compensation, whether or not such fund, scheme or insurance has been effected. However, this Policy will respond to the extent that the Insured's liability

would not be covered under any such policy, fund, scheme or self insurance arrangement had it complied with its obligations pursuant to such law.

For the purpose of exclusion 2.7 a) the term 'worker' means any person deemed to be employed by the Insured pursuant to any Workers Compensation law or legislation. Voluntary workers and unpaid work experience students are not deemed to be the Insured's workers.

b) Any liability imposed by the provisions of any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination.

c) Any liability relating to Employment Practices.

## **2.8 Faulty work**

Any liability arising out of or in any way connected with the cost of reinstating, repairing, replacing, performing, completing, correcting or improving any work done or undertaken by or on behalf of an Insured.

## **2.9 Fines or penalties and punitive damages**

Any liability arising out of or in any way connected with fines, penalties, exemplary, punitive, liquidated or aggravated damages, and any additional damages resulting from the multiplication of compensatory damages.

### **2.10 Loss of use**

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

- a) a delay in or lack of performance by or on behalf of the Insured in respect of any contract or agreement; or
- b) the failure of Products or work performed by or on behalf of the Insured to meet the level of performance, quality, fitness, or durability expressly or impliedly warranted or represented by the Insured.

This exclusion 2.10 b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to, or destruction of the Products or work performed by or on behalf of the Insured after the Products or work have been put to their intended use by any person or organisation other than the Insured.

### **2.11 Nuclear**

Any liability arising out of or in any way connected with operations employing the process of nuclear fission or fusion or handling of radioactive material, which operations include but are not limited to:

- a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;
- b) the use, handling or transportation of radioactive materials; or
- c) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

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

### **2.12 Pollution**

Any liability arising out of or in any way connected with:

- a) the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of Pollutants into or upon any property, land, the atmosphere or any watercourse or body of water, including ground water; or
- b) the cost of testing, monitoring for, containing, removing, nullifying, or cleaning up of Pollutants or the cost of preventing the release or escape of Pollutants;

provided that with respect to liability incurred outside North America, Exclusion 2.12 shall not apply where such discharge, seepage, migration, dispersal, release or escape is caused by a sudden, identifiable, unintended

### **2.13 Products defect**

Any liability arising out of or in any way connected with Property Damage to any Products if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

This exclusion 2.13 is restricted to the defective or harmful or unsuitable part of any damaged Products and does not apply to any resultant damage caused to the remainder of the Products.

## **2.14 Property in the physical or legal control**

Any liability arising out of or in any way connected with Property Damage to property owned by, leased, hired, on loan or rented to, or otherwise in the physical or legal control of the Insured other than:

a) premises or part of any premises (including the contents of such premises) leased or rented to the Insured, or temporarily occupied by the Insured for the purpose of the Business. This clause 2.14 a) does not extend to any liability where the Insured has assumed the responsibility to effect or maintain insurance with respect to any premises referred to in this clause 2.14 a);

b) premises temporarily occupied by the Insured (including the contents of such premises) for the purpose of carrying out work in connection with the Business. This clause 2.14 b) does not extend to liability for physical damage to or destruction of any premises or contents on which the Insured was or is working on if such physical damage or destruction arises from such work;

c) any other property temporarily in the Insured's possession for the purpose of being worked upon. This clause 2.14 c) does not extend to liability for physical damage to or destruction of that part of any property on which the Insured was or is working on if such physical damage or destruction arises from such work;

d) any Vehicle (including its contents, spare parts and accessories while they are in or on a Vehicle) not belonging to or used by the Insured while such Vehicle is in a car park owned or operated by the Insured provided the Insured does not

operate the car park for reward as a principal part of the Business;

e) Property Damage to any Vehicle temporarily in the Insured's possession for the purpose of parking and unparking such vehicle; or

f) any other property (except property owned by the Insured) temporarily in the Insured's physical or legal care, custody or control subject to a maximum of \$500,000 or other amount stated in the Schedule, for any one Claim and in the aggregate during any one Period of Insurance.

## **2.15 Products guarantee**

Any liability arising out of or in any way connected with any guarantee or warranty given by or on behalf of the Insured in respect of any Products.

This 2.15 exclusion does not apply to a guarantee or warranty imposed by legislation.

## **2.16 Professional indemnity**

Any liability arising out of any breach of duty owed in a professional capacity or any error or omission connected therewith by the Insured or any person for whose breach of duty the Insured may be legally liable.

This 2.16 exclusion does not apply to Claims arising out of:

a) advice or service where no fee was charged;

b) the rendering of or failure to render professional medical advice by any person employed by the Insured (not being a

qualified medical practitioner) to provide first aid on the Insured's premises; or

c) advice given in respect of the use or storage of Products.

### **2.17 Recall of products**

Any liability or expense arising out of or in any way connected with the withdrawal, recall, inspection, repair, adjustment, replacement, removal, cost of investigation, disposal or loss of use of any Products or any property of which the Insured's Products form a part where such Products or property are withdrawn from the market or from use by any person or organisation because of any known, alleged or suspected defect or deficiency in such Products.

### **2.18 Terrorism**

Any liability arising out of or in any way connected with:

a) death, injury, illness, loss or damage directly or indirectly caused by, contributed by, resulting from or arising out of or in connection with any Act of Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the death, injury, illness, loss or damage; or

b) any action in controlling, preventing, suppressing, retaliating against or responding to any Act of Terrorism.

### **2.19 Vehicles**

Any liability for Personal Injury or Property Damage caused by or arising out of the ownership, operation, use or possession of any Vehicle:

a) which is registered for use on a public road or which is legally required to be registered; and

b) in respect of which compulsory liability insurance or statutory indemnity is required by any legislation, whether or not such insurance has been effected.

However, this exclusion 2.19 does not apply to:

i. claims in respect of Personal Injury where compulsory liability insurance or statutory indemnity does not provide indemnity and where the reason or reasons why compulsory liability insurance or statutory indemnity does not provide indemnity does not involve a breach of any legislation by the Insured;

ii. Personal Injury or Property Damage arising out of or in connection with the loading and unloading of goods to or from any Vehicle or from the delivery or collection of goods by any Vehicle;

iii. Personal Injury or Property Damage arising out of the use of any Vehicle (including any tool or plant forming part of or attached to or used in connection with such Vehicle) while being operated or used as a Tool of Trade; or

iv. Property Damage to any Vehicle indemnified under clause 2.14 d) and e).

### **2.20 War**

Any liability arising out of or in any way connected with loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution,

insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

### **2.21 Watercraft and hovercraft**

Any liability arising out of or in any way connected with the ownership, maintenance, operation or use by an Insured of any Watercraft exceeding 23 metres in length or any Hovercraft. This exclusion 2.21 does not apply to liability arising out of: a) the use of Watercraft by an independent contractor carrying out works and/or operations on behalf of the Insured in the course of the Insured's Business; b) Watercraft or Hovercraft owned and operated by others and used by an Insured for the purpose of business entertainment; or c) floating jetties, floating pontoons or buoys.

### **2.22 Known claims and circumstances**

Any Claim which:

a) is made against or intimated to the Insured prior to the commencement of the Period of Insurance; or

b) is notified under any previous insurance; or

c) arises out of or is connected with any facts or circumstances which the Insured or a director or officer of the Insured became aware of prior to the Period of Insurance and a reasonable person in the position of the Insured or a director or officer of the Insured would have considered that those facts or circumstances might give rise to a Claim.

### **2.23 Retroactive date**

Any Claim arising out or connected with any facts or circumstances prior to the retroactive date, if any, specified in the Schedule. This exclusion does not waive the Insured's duty of disclosure prior to the commencement of the Policy