

Commercial Insurance
Not-for-profit Organisations
Public and Products Liability Insurance Policy





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Not-for-profit Organisations Public and Products Liability Insurance Policy

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Attach your Certificate of Insurance here

Insuring Clause

In consideration of payment of the premium stated in the Certificate of Insurance and subject to the terms, Conditions, provisions, Endorsements, Exclusions and Limit of Liability incorporated in this Policy, We agree to indemnify You for all amounts which You become legally liable to pay as compensation for Personal Injury or Property Damage occurring within the Geographic Limitations during the period of insurance as a result of an Occurrence happening in connection with Your Business.

Supplementary Payments

With respect to the indemnity afforded by this Policy We will:

- (a) at Our discretion defend in Your name and on Your behalf any actions against You alleging Personal Injury or Property Damage and seeking compensation on account thereof even if such suit is groundless, false or fraudulent. We may make any investigation, negotiation or settlement of any claim or suit as We deem expedient but We are not obligated to pay any claim or judgement or to defend any suit after the applicable Limit of Liability has been exhausted by payment of judgements or settlements;
- (b) pay all charges, expenses and legal costs incurred by Us and/or by You with Our written consent in the settlement or defence of any claim for compensation and in respect of which You are or, if You were legally liable, would be entitled to indemnity under this Policy;
- (c) pay all charges, expenses and legal costs recoverable from You by claimants in connection with claims in respect of which

You are or, if You were legally liable, would be entitled to indemnity under this Policy; and

- (d) pay expenses incurred by You for first aid to others at the time of an Occurrence covered by this Policy.

The expenses incurred under paragraphs (b), (c) and (d) are payable by Us in addition to the applicable Limit of Liability specified in the Certificate of Insurance.

Limit of Liability

The maximum compensation payable under this Policy as a result of an Occurrence shall not exceed the Limit of Liability stated in the Certificate of Insurance. All Personal Injury and Property Damage arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.

Our total aggregate liability during any one period of insurance for all claims arising out of the Products Hazard shall not exceed the Limit – Products Hazard stated in the Certificate of Insurance.

Headings

Headings have been included for ease of reference only and the terms, Conditions, provisions, Endorsements and Exclusions of this Policy are not to be construed, interpreted, or limited by any reference to such headings.

Definitions

Aircraft means

any thing made or intended to fly or move in or through the air or space other than model aircraft.

Computer Equipment means data or part of data, computer hardware, operating system, computer network, web sites, servers, extranet, intranet, mail systems, software, applications software, computer chip including microprocessor chip and coded instruction as well as any new technology, product or service replacing Computer Equipment.

Employment Practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by You.

Geographic Limitations means:

- (a) anywhere in the Commonwealth of Australia or New Zealand;
- (b) elsewhere in the world but only in respect of:
 - (i) business visits by directors and employees of the Named Insured normally resident in the Commonwealth of Australia or New Zealand, other than directors or employees who are engaged in Manual Labour during such visits;
 - (ii) Your Products exported from the Commonwealth of Australia or New Zealand, other than Your Products exported to the United States of America or the Dominion of Canada or their respective territories, protectorates or dependencies.

Manual Labour means work primarily involving physical exertion, but does not include activities associated with marketing, promotion, demonstration or selling.

Occurrence means an event neither expected nor intended from Your standpoint including continuous or repeated exposure to substantially the same

general conditions except as specifically excluded in Exclusion 16.

Personal Injury means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental injury or loss of consortium;
- (b) false arrest, false imprisonment, wrongful eviction, wrongful detention or malicious prosecution; or
- (c) assault and battery not committed by You or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property.

Pollutants means

any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste materials.

Products Hazard means

Personal Injury or Property Damage:

- (a) caused by a defect in or the harmful nature of Your Products; or
- (b) resulting from any defect or deficiency in any directions, markings, instructions, warnings or advice given or omitted to be given by You concerning the use or storage of Your Products.

Property Damage means:

- (a) physical damage to or destruction of tangible property (which includes loss of property) including the loss of use of the property damaged or destroyed; or
- (b) loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by an Occurrence during the period of insurance.

Terrorism means

an act, including the use of force or violence (or threat of force or violence) by any person or group of people acting alone, or on behalf

of or in connection with any organisation or government that is done for political, religious, ideological or ethnic reasons with the intention to influence any government or put the public or any section of the public in fear.

Vehicle *means*

any type of machine on wheels or on caterpillar tracks (including any trailer, caravan or other apparatus attached to the machine) made or intended to be propelled other than by manual or animal power.

Volunteer, Voluntary Worker *means*

any person engaged by You to perform work on Your behalf without fee, reward or remuneration whilst they are performing such work; but this does not include a financial or paid-up member of Yours whilst engaged as a member in activities organised by You.

Watercraft *means*

any thing made or intended to float or travel on or through water other than model boats.

We, Us, Our *means*

Suncorp Metway Insurance Limited
ABN 83 075 695 966.

Worker *means*

any person:

- (a) employed by You; or
- (b) deemed to be employed by You pursuant to any Workers' Compensation Law.

Workers Compensation Law *means*

any law relating to compensation for injury to workers or employees.

You, Your, Yours, Yourself *means:*

- (a) the Named Insured specified in the Certificate of Insurance;
- (b) all subsidiary companies (now or hereafter constituted) of the Named Insured which are incorporated within the Commonwealth of Australia or New Zealand and which carry on Your Business;

- (c) any director, executive officer, employee, Volunteer, Voluntary Worker, partner or shareholder of the Named Insured or the companies designated in paragraph (b) but only whilst acting within the scope of their duties in such capacity;

- (d) any principal in respect of the liability of such principal arising out of the performance by the Named Insured or the companies as designated in paragraph (b) of any contract or agreement for the performance of work for such principal;

- (e) any office bearer or member of social, sports, fire fighting or welfare organisations formed with the consent of the Named Insured, the companies as designated in paragraph (b) or the persons as designated in paragraph (c); and

- (f) where the Named Insured is a club or association, any member of such club or association, but only whilst engaged as a member in activities organised by the club or association.

Your Business *means*

the business stated in the Certificate of Insurance including the ownership or tenancy of premises from which Your Business is conducted.

Your Products *means*

any thing (including any component, packaging or container of or for such thing) after it has ceased to be in Your possession or control which has been manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by You in the course of Your Business. The term includes any thing (including any component, packaging or container of or for such thing) which by operation of a law of the Commonwealth of Australia You are deemed to have manufactured.

Exclusions

We will not be liable for claims in respect of:

1. Aircraft Landing Areas

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with the use of any land, property or structure as an airport, Aircraft hangar or Aircraft landing area, where such airport, Aircraft hangar or Aircraft landing area:

- (a) is required by law to be issued with a license permitting regular public transport operations of Aircraft having a maximum passenger seating capacity of more than 30; or
- (b) has more than 1,000 flight movements per year.

2. Aircraft and Watercraft

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with:

- (a) the ownership, legal possession, legal control or use by You or the use on Your behalf of:
 - (i) any Aircraft or hovercraft; or
 - (ii) any Watercraft exceeding eight (8) metres in length;
- (b) the selling or manufacturing of Aircraft or the manufacture, assembly and/or supply of any products that are used with Your knowledge in Aircraft;
- (c) the leasing, hiring or chartering of Aircraft to or from You; or
- (d) the repair, service or maintenance of Aircraft or Aircraft products or the installation of any products into

Aircraft unless such repair, service, maintenance or installation does not affect the flying capabilities or safety of the Aircraft and this Policy has been endorsed accordingly.

3. Asbestos

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with:

- (a) the mining, processing, transportation, storage, manufacture, distribution or use of or exposure to asbestos or asbestos products or asbestos containing products; or
- (b) the installation, handling, sale, disposal, decontamination, removal, remediation, treatment or control of asbestos or asbestos products or asbestos containing products.

4. Contracts and Agreements

any liability assumed under any contract or agreement. PROVIDED that this Exclusion does not apply to:

- (a) liability which would have been implied or imposed by law in the absence of such contract or agreement;
- (b) liability assumed under those contracts specified in the Certificate of Insurance;
- (c) liability assumed under any written lease of, or agreement for the rental of real property, where such lease or agreement does not include an obligation by You to insure such property; or
- (d) liability assumed under a written contract with a public authority for the supply to You of water, gas, electricity or communication services

except where such contract is a contract by which You agree to perform work for or on behalf of that public authority.

Paragraphs (c) and (d) do not apply to liability assumed by You under the relevant lease, contract or agreement to indemnify a party in respect of an act or omission for which it is wholly responsible, unless such liability would otherwise have been implied or imposed on You by law.

5. Deductible

the deductible specified in the Certificate of Insurance or attached by Endorsement, being the first amount payable by You in respect of each claim, excluding charges, expenses and legal costs recoverable from You or incurred by Us and/or by You with Our written consent.

6. Defective Design

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with any defective or deficient design or error in formula or in specification provided by You for a fee.

7. Employer's Liability

(a) Personal Injury to any Worker.

PROVIDED that if You are:

- (i) required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such Personal Injury; or
- (ii) not required to so insure or otherwise fund such liability by

reason only that the Personal Injury is to a person who is not a "worker" or "employee" within the meaning of the relevant Workers' Compensation Law or the Personal Injury is not an injury which is subject to such Law;

then this Policy will respond to the extent that Your liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement had You complied with Your obligations pursuant to such Law.

(b) liability imposed by:

- (i) any Workers' Compensation Law;
- (ii) the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination;
- (iii) any law relating to Employment Practices.

(c) Personal Injury to any Volunteer or Voluntary Worker.

PROVIDED that this (a) & (b) of Exclusion 7 do not apply to claims for loss of consortium by the spouse of any of Your Workers.

8. Erection and Alterations to Buildings

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with the erection, demolition of and/or alteration or addition to buildings or structures by You or on Your behalf except where the value of such work

does not exceed \$5,000 at the commencement of the work.

9. Faulty Workmanship

the cost of performing, completing, correcting or improving any work undertaken by You or on Your behalf. PROVIDED that this Exclusion does not apply in respect of damage resulting from faulty or defective workmanship.

10. Fines or Penalties

- (a) fines or penalties however imposed; or
- (b) liquidated, punitive, aggravated or exemplary damages however imposed.

11. Hold Harmless Agreements

any amount which You become legally liable to pay and which amount You would have been legally entitled to recover from any party but for an agreement between You and that party.

12. Jurisdiction Limits

- (a) any action brought or instituted against You or any judgement obtained against You (whether or not such judgement is enforced by the courts of the Commonwealth of Australia or New Zealand) in any country other than the Commonwealth of Australia or New Zealand in which You are represented by a branch or by an employee domiciled in that country or by a company, firm or individual holding Your power of attorney; or
- (b) any actions brought or instituted or any judgement (whether or not such judgement is enforced by the courts of the Commonwealth of Australia or New Zealand) within the United States of America or the Dominion of

Canada or their respective territories, protectorates or dependencies.

13. Known Defects

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with 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.

14. Loss of Use

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

- (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 impliedly warranted or represented by You. PROVIDED that this paragraph (b) does not apply to loss of use of other tangible property resulting from sudden and accidental physical damage to or destruction of Your Products after Your Products have been put to use by any person or organisation other than Yourself.

15. Pollution

- (a) Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or water unless such discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended from

Your standpoint and takes place in its entirety at a specific time and place; or

- (b) the cost of preventing, removing, nullifying or cleaning up any contamination or pollution as a consequence of the discharge, dispersal, release or escape of any Pollutants. PROVIDED that this paragraph (b) does not apply to removal, nullifying or cleaning up costs which are consequent upon a sudden, identifiable, unexpected and unintended happening which takes place in its entirety at a specific time and place.

16. Product Defect

damage to Your Products if such damage is attributable to any defect in them or their harmful nature or unsuitability.

17. Product Recall

the withdrawal, inspection, repair, replacement or loss of use of Your Products or of any property of which Your Products form a part if Your Products are withdrawn from the market or from use because of any known or suspected defect or deficiency in them.

18. Professional Duty

a breach of any professional duty owed by You or anyone for whose breaches of such duty You may be legally liable. PROVIDED that this Exclusion does not apply to the rendering of or failure to render first aid.

19. Property in Physical or Legal Control

damage to or loss of:

- (a) property owned, leased or rented by You; or
(b) property in Your physical or legal control.

PROVIDED that this Exclusion does not apply to:

- (i) damage to premises which are leased or rented by You for the purpose of carrying on Your Business and the liability does not arise from Your failure to insure the premises as required in the lease or rental agreement;
(ii) damage to or loss of Vehicles (not belonging to You or used by You or on Your behalf) in Your physical or legal control where such loss or damage occurs whilst any such Vehicle is in a car park owned or operated by You provided that You as part of Your Business do not operate such car park for reward;
(iii) damage to or loss of employees' property;
(iv) damage to premises temporarily occupied by You for the purpose of carrying out work or damage to or loss of the contents of such premises; or
(v) damage to or loss of property not owned by You but in Your physical or legal control, subject to a maximum of \$20,000 any one Occurrence unless some other sub-limit is specified in the Certificate of Insurance or attached by Endorsement.

20. Vehicles

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with the ownership, use, legal possession, or legal control by You of any Vehicle or any attachment to such Vehicle:

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

(c) which is otherwise insured in respect of the same liability.

PROVIDED that this Exclusion does not apply to claims in respect of Personal Injury or Property Damage:

- (i) caused by or arising from the delivery or collection of goods to or from any Vehicle where such Personal Injury or Property Damage occurs beyond the limits of any road; or
- (ii) arising out of the loading, unloading, delivery or collection of goods to or from any Vehicle used in work undertaken by You or on Your behalf but not in Your physical or legal control.

21. War and Nuclear

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with:

- (a) war, invasion, act of foreign enemy, hostilities (whether war be declared or not), rebellion, revolution, civil war, insurrection or military or usurped power;
- (b) confiscation, nationalisation or requisition by or under the order of any Government or Public or Local Authority;
- (c) nuclear weapons material;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste; or
- (e) looting, sacking or pillaging following any event described in paragraph (a).

22. Electronic Date Recognition (including Year 2000)

(a) Personal Injury or Property Damage arising directly or indirectly out of, or

caused by, through, or in connection with any Software or Device not being Electronic Date (including Year 2000) Compliant; or

- (b) any cost or expenditure arising directly or indirectly out of, or caused by, through, or in connection with:
 - (i) the making of any Software or Device Electronic Date (including Year 2000) Compliant; or
 - (ii) the replacing of any Software or Device which is not Electronic Date (including Year 2000) Compliant.

For the purposes of this Exclusion 22:

Electronic Date (including Year 2000) Compliant means

that neither performance nor functionality is affected by dates prior to, during, and after the Year 2000 and in particular:

1. no date value (including the current date) will cause any interruption in operation;
2. date-based functionality must behave consistently for dates prior to, during, and after the Year 2000;
3. in all interfaces, output, display and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules;
4. all leap years and non-leap years must be correctly recognised (including that the Year 2000 must be recognised as a leap year);
5. no particular date value is treated otherwise than as a date or used for special meanings;
6. all information involving dates is correctly stored, retrieved, processed, recognised, calculated, sequenced,

compared, managed, manipulated and presented including where formulas involve dates in one century or in multiple centuries; and

7. the relevant Software or Device must correctly interface and interoperate with any related Software or Device and date or date related information from them in accordance with the other requirements of this definition of 'Electronic Date (including Year 2000) Compliant'.

Software or Device means

any software, computer, hardware, equipment, media, microchip, integrated circuit, embedded system or similar device, whether Your property or not.

date includes a period of time.

Notwithstanding any other provisions contained in this Policy, this Exclusion shall be paramount and shall override anything contained in this Policy that is inconsistent with this Exclusion.

23. Participants

- (a) Personal Injury to any person which arises directly or indirectly out of or caused by, through, or in connection with their participation in any capacity in:
 - (i) any sporting or recreational activity. This includes but is not limited to racing, gymnastics, martial arts, flying, gliding, ballooning, animal riding, motor cycle riding, carnival/ amusement rides, organised tours, camping, hiking, rafting, skiing or caving; or
 - (ii) attendance at any demonstration, rally, march, procession or parade.
- (b) damage to any property which is attributable to its use in any sporting

or recreational activity, demonstration, rally, march, procession or parade.

PROVIDED that this Exclusion does not apply to claims in respect of Personal Injury to a spectator at a sporting or recreational activity.

24. Explosives

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through or in connection with any explosives, fireworks, ammunition or weapons of any kind.

25. Child Molestation

Personal Injury or Property Damage arising, directly or indirectly out of or caused by, through, or in connection with the actual, attempted or alleged sexual assault, abuse or molestation of, or interference with, a minor.

26. Terrorism

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with:

- (a) Terrorism; or
- (b) any action in controlling, preventing, suppressing, retaliating against, or responding to Terrorism.

27. E-Commerce

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through, or in connection with:

- (a) the total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation, misappropriation or use of Computer Equipment;

(b) any error in creating, amending, entering, directing, deleting or using Computer Equipment; or

(c) the total or partial inability or failure to receive, send, access or use Computer Equipment.

28. Amusement Rides

Personal Injury or Property Damage arising directly or indirectly out of or caused by, through or in connection with the ownership, legal possession, legal control, use, operation, supervision, or maintenance of carnival/ amusement rides.

Conditions

1. Applicable Law

Should any dispute arise between You and Us over the application or interpretation of this Policy, such dispute shall be determined in accordance with the law of the State or Territory of Australia in which the Policy was entered into. We and You agree to submit to the jurisdiction of any competent court of that State or Territory in relation to that dispute.

2. Cancellation By Us

We may cancel this Policy in any of the circumstances set out in the Insurance Contracts Act, 1984. After cancellation by Us, You are entitled to a refund of premium for the unexpired period of insurance.

3. Cancellation By You

You may cancel this Policy at any time by notifying Us in writing. After receipt of such notification and after such cancellation You are entitled to a refund of premium for the unexpired period of insurance, after taking into account any

money payable by You to Us (including any administration fee charged by Us).

4. Claims Conduct

No admission of liability, or offer, promise or payment shall be made without Our written consent. We are entitled at Our discretion to take over and conduct in Your name the defence or settlement of any claim and to prosecute, at Our own expense and for Our own benefit, any claim against any other persons and You must give all information and assistance required.

5. Claims Notice

Any Occurrence which might give rise to a claim under this Policy must be reported in writing to Us as soon as possible. As far as is practicable no alteration or repair is to be carried out by You until We have had the opportunity to inspect, unless such alteration or repair is necessary to either prevent or minimise any Personal Injury or Property Damage. You must give immediate notice of any prosecution, inquest, inquiry or civil proceeding in connection with such Occurrence and immediately send to Us every relevant document.

6. Cross Liability

Where You comprise more than one party each of the parties is considered to be a separate legal entity and the words 'You', 'Your', 'Yours', 'Yourself' apply to each party as if a separate Policy had been issued to each. PROVIDED that, irrespective of the number of parties which comprise You, the total amount payable by Us in respect of any one Occurrence shall not exceed the Limit of Liability stated in the Certificate of Insurance.

7. Discharge of Liability

We may at any time pay to You in connection with any claim or series of claims the Limit of Liability (after deduction of any amount already paid) or any lesser amount for which such claim or claims can be settled. Upon such payment We shall relinquish the conduct and control of such claims and be under no further liability in connection with such claim or claims except for costs, charges and expenses recoverable by You which were incurred by You with our consent prior to the date of such payment.

8. Material Changes

Every change materially affecting the facts, circumstances, degree or amount of risk must be notified in writing to Us as soon as such change comes to Your notice or to the notice of any officer or representative of Yours. On receipt of such notice We may vary the terms of this Policy and charge such additional premium as We may determine appropriate in the circumstances.

9. Premium Adjustment

If the premium for this Policy has been calculated on estimates provided by You, You shall within 30 days after the expiry of the period of insurance provide Us with such particulars and information relevant to the Policy as We may reasonably require. The premium for the period shall be adjusted and any difference paid by or allowed to You as the case may be. PROVIDED that the adjusted premium shall not be lower than the minimum premium normally charged by Us for such a policy.

10. Property Inspection

We are permitted but not obligated to inspect Your property and operations at

any time. Our right to make inspections, the making thereof or any report made thereon does not constitute a determination or warranty that such property or operations are safe.

11. Reasonable Precautions

(a) You and Your agents must take all reasonable precautions to:

- (i) prevent Personal Injury and Property Damage;
- (ii) ensure Your Products are manu-factured, sold or supplied without defect;
- (iii) comply with all statutory obligations, by-laws or regulations relating to the safety of persons or property;
- (iv) ensure that the premises from which Your Business is carried on or conducted are regularly maintained and kept in a good state of repair; and
- (v) ensure that only competent employees and sub-contractors are engaged.

(b) You and Your agents must take immediate action to trace, recall, or modify any of Your Products containing any defect or deficiency of which You have knowledge or have reason to suspect.

12. Subrogation

In the event of a payment under this Policy to You or on Your behalf We are subrogated to all Your rights of recovery against any person or organisation. You must execute and deliver any instruments and papers We require and do all that is necessary to assist Us in the exercise of such rights.

13. Indemnity Prohibited by Law

Where this Policy provides any indemnity to You which is prohibited by law, this Policy shall be varied by operation of this Condition so that this Policy does not respond to the extent that the indemnity is prohibited by law.

How to contact us

- Phone us.
- For questions or to change your details 13 11 55.
- For claims 13 25 24.
- Come into one of our branches.
- Find us on the web at www.suncorp.com.au

Who we are

This insurance is issued by
Suncorp Metway Insurance Limited ABN 83 075 695 966.

Level 18
Suncorp Centre
36 Wickham Terrace
Brisbane Qld 4000