



MACQUARIE UNDERWRITING



**Public and Products Liability Insurance Policy  
(Losses occurring)**

Secured by

**CATLIN**



MACQUARIE UNDERWRITING

# Public and Products Liability Insurance Policy (Losses Occurring)

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Macquarie Underwriting Pty Ltd  
AFS Licence No: 237267  
ABN 48 008 497 318

[www.macqund.com.au](http://www.macqund.com.au)

Level 5  
66 Hunter Street  
Sydney NSW 2000  
Phone: (02) 9235 1248

Macquarie Underwriting Pty Ltd (ABN 48 008 497 318 and AFSL 237 267) is an authorised Coverholder at Lloyds under a binding authority agreement with the Insurer. UMR for Macquarie Underwriting – SC3342012173

Insurer: Catlin Australia Pty Ltd (ABN 64 108 319 786) on behalf of Catlin Syndicate 2003 underwriters at Lloyds

**Public and Products Liability Insurance Policy (Losses Occurring)**

In consideration of the payment of the Premium and in reliance on the contents of the Proposal the Insured has provided, We agree to provide indemnity subject to the terms of this Policy.

**SECTION 1 – INSURING CLAUSES**

**1.1 Public & Products Liability**

We agree to indemnify the Insured against any Claim for legal liability to pay compensation for Personal Injury or Property Damage occurring within the Territory during the Period of Insurance as a result of an Occurrence happening in connection with the Business.

**1.2 Defence Costs**

Where the Limit of Liability is specified to be exclusive of Defence Costs, We agree, in addition to the Limit of Liability, to pay the Defence Costs of any Claim which is the subject of indemnity under insuring clause 1.1, PROVIDED THAT:

- (a) where the Insured's liability exceeds the available Limit of Liability, We shall only pay such proportion of the Defence Costs as the available Limit of Liability bears to the Insured's liability;
- (b) where the amount We have paid or incurred as Defence Costs exceeds the share that We are obliged to pay under (a), the Insured shall upon demand pay to Us the excess amount. Alternatively, We may deduct the excess amount from any entitlements the Insured may have at any time under this Policy.

Where the Limit of Liability is specified to be inclusive of Defence Costs, We agree to pay the Defence Costs of any Claim which is the subject of indemnity under clause 1.1, PROVIDED THAT the total of our liability together with the Defence Costs shall not exceed the Limit of Liability.

**SECTION 2 – LIMITS OF LIABILITY**

**2.1 Limit of Liability**

2.1.1 Other than as stated in 2.1.2 Our total liability under this Policy for any one Claim

shall not exceed the Limit of Liability specified in the Schedule.

2.1.2 Our total aggregate liability under this Policy during any one Period of Insurance for all Claims arising out of the Insureds Products shall not exceed the Limit of Liability specified in the Schedule.

We shall pay Defence Costs in accordance with clause 1.2

**2.2 Deductible**

2.2.1 The amount of the Deductible shall be borne by the Insured at its own risk in respect of each Claim.

2.2.2 Where the quantum of any Claim is less than the Deductible, the Insured shall be liable for the Claim and the Defence Costs.

2.2.3 Where the Deductible is specified to be inclusive of Defence Costs, the Insured shall pay the Defence Costs as they are incurred, up to the amount of the Deductible.

**SECTION 3 – EXCLUSIONS**

We shall not be liable under this Policy to provide indemnity in respect of any Claim against the Insured:

**3.1 Asbestos**

directly or indirectly arising from:

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

This exclusion, however, only applies to a Claim arising out of:

- (i) the inhalation or ingestion of asbestos fibre;
- (ii) the repair or renovation of property due to the presence of asbestos in any form; or
- (iii) damage to or loss of use of property due to the presence of asbestos in any form.

**3.2 Assumed Liability**

directly or indirectly arising from:

- (a) any contractual or assumed liability, unless the Insured would in any event be legally liable in the absence of such contractual or assumed liability; or
- (b) any liability assumed by the Insured under any guarantee or warranty.

**3.3 Clinical Trials**

directly or indirectly arising from or in any way connected with any Clinical Trial.

**3.4 Dishonest or Reckless Acts**

directly or indirectly arising from any actual or alleged:

- (a) dishonest, fraudulent, criminal or malicious act;
- (b) willful breach of any statute, contract or duty; or
- (c) conduct with a reckless disregard for the consequences thereof;

by the Insured.

**3.5 Employer's Liability**

for any loss or damage:

- (a) in respect of Personal Injury to any Contractor or Employee; or
- (b) any breach of any obligation owed by the Insured as an employer to any Employee;

**3.6 Known Defects**

directly or indirectly caused by or arising out of the Insureds Products which are known to the Insured or which in the ordinary course of business ought to have been known by the Insured to be defective or ineffective or incapable of fulfilling the purpose for which they were intended or warranted (whether expressly or impliedly) or guaranteed;

**3.7 Fines Penalties and Damages**

for fines, penalties, liquidated damages, punitive damages, exemplary damages, aggravated damages, additional damages resulting from the multiplication of compensatory damages, or any other non-compensating damages of any kind against the Insured.

**3.8 Jurisdiction and Territorial Limits**

3.8.1 directly or indirectly caused by or arising from any Occurrence within the territorial limits of the United States of America, or any of its territories or protectorates; or

3.8.2 which is brought in a court of law within the territorial limits of the United States of America, or directly or indirectly arising from any settlement or for the enforcement of any judgment or order obtained within the territorial limits of, or determined pursuant to the laws of the United States of America, its territories or protectorates;

Except where visiting on a work related assignment.

**3.9 Professional Liability**

arising directly or indirectly out of the rendering or failure to render professional advice or service by the Insured or any related error or omission.

**3.10 Medical Liability**

for which indemnity is provided under the Medical Liability insurance policy specified in the Schedule.

**3.11 Watercraft & Aircraft**

directly or indirectly arising out of or in connection with the ownership, possession or use of any animal, aircraft or watercraft;

**3.12 Ownership of Vehicle**

for Personal Injury or Property Damage arising out of the ownership, maintenance, possession or use by the Insured of any Vehicle which is registered; or in respect of which insurance is required by virtue of any legislation. Provided that this exclusion shall not apply to Personal Injury or Property Damage arising from:

- (a) the delivery or collection of goods to or from any vehicle where such Personal Injury or Property Damage occurs beyond the limit of any carriageway or thoroughfare, or
- (b) the loading or unloading of any vehicle;

**3.13 Pollution**

directly or indirectly arising out of Pollutants and consequent pollution, seepage or contamination of whatever nature caused by or allegedly caused by the Insured or a Contractor, or for which the Insured or a Contractor are liable, whether or not as an occupier of land;

**3.14 Own Property Damage**

for Property Damage occurring to:

- (a) property owned by or leased or rented to the Insured, or
- (b) property in the Insured or a Contractor's physical or legal control, except:
  - (i) premises which are leased or rented to the Insured,
  - (ii) Employees' property,
  - (iii) premises temporarily occupied by the Insured for use in the Business
- (c) vehicles (not belonging to the Insured or used by or on the Insureds behalf) in the Insureds physical or legal control where such Property Damage occurs while any such vehicle is in a car park owned or operated by the Insured, provided that the Insured as part of the Business do not own or operate a car park for reward;
- (d) property temporarily in the physical or legal control of the Insured provided no indemnity is granted in respect of physical damage or destruction of that part of any property upon which the Insured are or have been working on. It is further agreed the Limit available under this clause shall be \$100,000 any one Claim & in the aggregate.

**3.15 Product Recall**

for the withdrawal, inspection, repair, modification, replacement and loss of use of any of the Insureds Products or of any property of which such Insureds Products form a part if such Insureds Products or property are withdrawn from the market or from use because of any known defect or deficiency therein or any defect of which the Insured knew or in the ordinary course of business ought to have known;

**3.16 Radioactivity**

directly or indirectly caused by or contributed to by ionising radiation or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material whether occurring naturally or otherwise, or by the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**3.17 Related Entities**

directly or indirectly brought or maintained by, or on behalf of:

- (a) any Insured; or
- (b) any person who, at the time of the Occurrence giving rise to the Claim, is a Family Member of the Insured unless such person is acting without any prior solicitation or co-operation of any Insured; or
- (c) any entity operated or controlled by any Insured or Family Member of the Insured unless such person is acting without any prior solicitation or co-operation of any Insured.

**3.18 Rights of Recovery**

for any liability, loss or damage in respect of which the Insured has at any time foregone, excluded or limited a right of recovery.

**3.19 Sexual Misconduct**

directly or indirectly caused or occasioned by or happening through or in consequence of any actual or alleged sexual misconduct of any nature.

**3.20 Terrorism**

directly or indirectly caused or occasioned by or happening through or in consequence of terrorism or any action taken in controlling, preventing, suppressing any act or acts of terrorism or in any way relating thereto.

For the purposes of this Clause, "terrorism" means any act or acts (whether threatened or actual) of any person or persons involving the causing or occasioning of threatening of harm of whatever nature and by whatever means made or claimed to be made in whole or in part for political, religious, ideological or similar purposes.

For the purpose of this exclusion 3.20 the term "indirectly" does not include the rendering of or failure to render medical treatment to persons injured as a result of a terrorism event.

**3.21 War**

directly or indirectly caused by or arising from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, 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.



**SECTION 4 – GENERAL CONDITIONS**

**4.1 Alteration to the Insured’s Business**

The Insured must notify Us in writing within 30 days of any material alteration to the Business, including but not limited to:

- (a) any material alteration made or permitted by the Insured to the nature of the Business; or
- (b) any acquisition by the Insured of, or merger of the Insured with, any other business, whether or not of the same nature as the Business; or
- (c) (where the Insured is a natural person) the Insured becoming a bankrupt or entering into a debt agreement under Part IX of the Bankruptcy Act or entering into an arrangement with creditors under Part X of the Bankruptcy Act; or
- (d) (where the Insured is a company or body corporate) the appointment of an administrator, receiver, provisional liquidator or liquidator to the Insured; or
- (e) If an Insured’s statutory registration or registration with their professional or industry association is cancelled, suspended or has conditions imposed.

**4.2 Assignment of Interest**

No change in, modification of or assignment of any interest under this Policy shall have effect at law unless made with Our written approval.

**4.3 Policy Construction, Interpretation and Notices**

- 4.3.1 The construction, interpretation and meaning of the terms of this Policy shall be determined in accordance with the laws of the state or territory in which this Policy is issued. Any dispute relating to this Policy shall be submitted to the exclusive jurisdiction of the courts of that state or territory.
- 4.3.2 The headings in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- 4.3.3 In this Policy words used in the singular shall include the plural and vice versa.
- 4.3.4 Any notice the Insured is required or elects to give under this Policy, may be given to Macquarie Underwriting.

- 4.3.5 The amount of Premium specified herein is the amount due to Us and any commission allowed by Us is to be regarded as remuneration of the Coverholder placing this insurance.

**4.4 Severability and Non-Imputation**

Where the Insured is more than one person or entity and one or more of those persons or entities:

- (a) failed to comply with the duty of disclosure under section 21 or section 21A of the Insurance Contracts Act 1984;
- (b) made a misrepresentation to Us before this Policy was entered into; or
- (c) failed to comply with a term of this Policy;

the right of another person or entity to indemnity under this Policy shall not be prejudiced as a result PROVIDED THAT the other person or entity:

- (i) acted in good faith in the performance of their or its duties and obligations both under this policy and at law; and
- (ii) was entirely innocent of, had no prior knowledge of, or did not have reasonable cause to have knowledge of the relevant conduct; and
- (iii) notifies Us in writing of all facts known to them as soon as is reasonably practicable upon becoming aware of the relevant conduct.

This clause shall not operate to increase the Limit of Liability as stated in the schedule.

**SECTION 5 – CLAIMS CONDITIONS**

**5.1 Reporting Claims**

**Notice**

- 5.1.1 Loss Summaries Bordereau  
Notice of new Claims and an update on the current status of each existing Claim should be sent to Us in the first week of each month during the Period of Insurance using the agreed loss summaries bordereau.  
The Insured shall also submit to Us, each year thereafter within one week of the anniversary of the expiration of the Period of Insurance, until the Limit of Liability

under this Policy has been exhausted, a supplemental loss summaries bordereau updating Us in relation to the current status of each Claim.

**5.1.2 Individual Loss Advice Forms**

In addition to the written notice of any new Claim or status updates for existing Claims, as required in 5.1.1 above, the Insured shall immediately submit to Us during the Period of Insurance detailed written information regarding each new Claim or circumstance that meets one or more of the following criteria during the Period of Insurance:

- (a) those reserved by the Insured, or any insurer, for an amount equal to or greater than fifty percent of the Deductible or any underlying insurance applicable to such Claim;
- (b) those involving any of the following injuries or alleged acts or omissions of which the Insured becomes aware:-
  - (i) death,
  - (ii) brain damage or neurological deficit,
  - (iii) paralysis or nerve injury,
  - (iv) total or partial loss of limb(s), or loss of the use of limb(s),
  - (v) impairment or loss of sight, hearing, taste, touch or smell,
  - (vi) Human Immunodeficiency Virus (HIV), Acquired Immune Deficiency Related Complex (ARC), Acquired Immune Deficiency Syndrome (AIDS) or any related virus, complex or syndrome;

Once notified all Claims must be reported as required for Claims in 5.1.1 above unless otherwise notified by Us.

**5.1.3** All notices to be given to Us under clause 5.1 must be given by delivery to any one of the Persons Nominated to accept Service Notices as shown in the Schedule. All Notices under this clause 5.1 may be given by email to the email addresses shown in the Schedule.

**5.2 Defence and Settlement**

**5.2.1** We shall be entitled at any time to take over and conduct, in the Insured's name, the defence or settlement of any Claim. Lawyers retained by Us to act on the Insured's behalf shall at all times be at liberty to disclose to Us any information or document obtained (whether by the Insured or otherwise) in the course of so acting, and the Insured agrees to waive any claim for client legal privilege to the extent that such privilege may otherwise prevent that disclosure to Us.

**5.2.2** The Insured must not settle any Claim, incur any Defence Costs, make any admission, offer or payment, or assume any contractual obligation in relation to any Claim without Our prior written consent (which consent shall not be unreasonably withheld). We shall not be liable for any settlement, Defence Costs, admission, offer or payment, or assumed obligation to which We have not consented in writing.

**5.2.3** Where, in Our opinion, any Claim may not exceed the Deductible, We shall be entitled to require the Insured to conduct the defence of the Claim. In this situation:

- (a) the Insured shall keep Us advised in writing of all developments relating to the defence and settlement of the Claim as they occur;
- (b) the Insured may settle the Claim without Our consent PROVIDED THAT they do not claim indemnity under this Policy in respect of the Claim; and
- (c) where it becomes apparent that the Claim will exceed the deductible
  - (i) We shall be entitled to take over and conduct, in the Insured's name, the defence or settlement of the Claim; and,
  - (ii) We will reimburse the reasonable Defence Costs already incurred by the Insured.

**5.2.4** Where, in Our opinion, the liability of any Claim may exceed the available Limit of Liability, We shall be entitled to discharge Our liability by paying the available Limit of Liability at Our discretion to the Insured or on the Insured's behalf and paying the Defence Costs up to the date of that payment. In this situation:

- (a) if at the time of payment We are conducting the defence of the Claim,

We shall also relinquish that conduct; and,

- (b) insuring clause 1.2 (Defence Costs) shall still apply.

5.2.5 The Insured must, when instructed by Us to do so, pay promptly within the terms of any proposed settlement the amount of the Deductible. If the Insured fails or refuses to make that payment and We elect to make the payment on the Insured's behalf, We shall be entitled to deduct the amount from any entitlements the Insured may have at any time under this Policy.

**5.3 Insured's Right to Contest a Claim**

Where the party making the Claim against the Insured offers to settle the Claim and We recommend that the offer be accepted but the Insured does not agree with Our recommendation, the Insured may elect to contest the Claim PROVIDED THAT if the actual liability for the Claim exceeds the amount for which, but for the Insured's election, the Claim could have been settled, then:

- (a) our liability for the Claim shall be the amount for which, but for the Insured's election, the Claim could have been settled;
- (b) the Defence Costs of the Claim shall be the Defence Costs incurred up to the date of the Insured's election; and
- (c) insuring clause 1.2 (Defence Costs) shall still apply.

**5.4 Our right to Contest a Claim**

The Insured will not be required to contest any Claim unless a Senior Counsel (to be nominated by Us) advises that the Claim should be contested. In formulating that advice, Senior Counsel shall take into consideration the economics of the matter, the likely liability together with Defence Costs and the prospects for successfully defending the Claim. The cost of the Senior Counsel's advice shall be regarded as part of the Defence Costs.

**5.5 Claims Mitigation and Co-operation**

5.5.1 The Insured must use due diligence and do and concur in doing all reasonable and practicable things in order to avoid, minimise or mitigate any liability, loss or damage that is or may be the subject of a Claim.

5.5.2 The Insured must disclose to Us honestly and frankly all relevant information, and provide all information and assistance We request to investigate and defend any Claim, to determine whether the Insured is entitled to indemnity under this Policy, or to prosecute any recovery action.

5.5.3 Compliance with clauses 5.5.1 and 5.5.2 shall be at the Insured's own cost unless agreed to in writing by Us.

**SECTION 6 – DEFINITIONS**

**6.1 Business**

"Business" shall mean the business or profession specified in the Schedule conducted by the Insured.

**6.2 Claim**

"Claim" shall mean the receipt by the Insured of a demand for compensation made by a third party against the Insured. It must take the form of:

- (a) a writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third party or similar party notice; or
- (b) any other form of written or verbal notice.

**6.3 Contractors**

"Contractors shall mean a person or entity contracted to provide services for or on behalf of the Insured.

**6.4 Clinical Trial**

"Clinical Trial" shall mean any research project that prospectively assigns human participants or groups of human participants to one or more health related interventions to evaluate the effects on health outcome.

**6.5 Deductible**

"Deductible" shall mean the deductible specified in the Schedule.

**6.6 Defence Costs**

"Defence Costs" shall mean the costs incurred by Us, or the reasonable costs incurred by the Insured with Our written consent, in the investigation, defence, reporting or negotiation for settlement of



any Claim. It shall not include any costs of the party that is claiming against the Insured.

**6.7 Employee**

“Employee” shall mean any person employed under a contract of service or apprenticeship including medical practitioners, voluntary workers, social workers, any member of a Board or management committee and work experience students but shall not mean a consultant, Contractor, visiting medical practitioner, or agent.

**6.8 Family Member**

“Family Member” shall mean:

- (a) any spouse, domestic partner or companion;
- (b) any parent, or parent of the spouse, domestic partner or companion; or
- (c) any sibling or child.

**6.9 Insured**

“Insured” shall mean:

- (a) the person, persons, partnership, company, corporation, statutory authority or other entity specified in the Schedule as Insured;
- (b) any predecessor in business of any person or entity in (a);
- (c) any person who is, was, becomes or ceases to be a principal, partner, director or Employee of any person, persons, partnership, company, corporation, statutory authority or other entity specified in the Schedule as Insured, but in each case solely in respect of a liability arising from activity for and on behalf of that entity; and
- (d) any executor, heir or trustee of any person in (a), (b) or (c).

**6.10 Insureds Products**

“Insureds Products” shall mean anything (after it has ceased to be in the possession of or under the control of the Insured) manufactured, constructed, erected, assembled, installed, repaired, serviced, grown, treated, sold, supplied or distributed by the Insured.

**6.11 Limit of Liability**

“Limit of Liability” shall mean the maximum amount payable by Us.

**6.12 Macquarie Underwriting**

“Macquarie Underwriting” shall mean Macquarie Underwriting Pty Ltd

**6.13 Occurrence**

“Occurrence” shall mean an event, including continuous or repeated exposure to conditions which result in Personal Injury or Property Damage neither expected nor intended by the Insured. All such exposure to substantially the same general conditions will be deemed to be one Occurrence.

**6.14 Period of Insurance**

“Period of Insurance” shall mean the period specified in the Schedule.

**6.15 Personal Injury**

“Personal Injury” shall mean:

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

**6.16 Pollutants**

“Pollutants” shall mean any electronic, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, electromagnetic fields, noise, radio waves, smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

**6.17 Policy**

“Policy” shall mean:

- (a) the insuring clauses, exclusions, conditions, definitions, Schedule and other terms contained herein;
- (b) any endorsement to this Policy whether issued at the inception of the Policy or during the Period of Insurance; and
- (c) the information provided by the Insured in the Proposal.

**6.18 Premium**

“Premium” shall mean the premium specified in the Schedule.

**6.19 Property Damage**

“Property Damage” shall mean:

- (a) physical damage to or destruction of tangible property (which includes loss of property) including the loss of use of 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 physical damage to or destruction of other tangible property during the Period of Insurance.

**6.20 Proposal**

“Proposal” shall mean the written proposal by the Insured made to Us containing information and statements which, together with any other information or documents provided, are the basis of this Policy and are considered incorporated in it.

**6.21 Schedule**

“Schedule” shall mean the schedule to this Policy. For this Policy to be valid, the Schedule must be signed by an authorised agent of the Insurer.

**6.22 Territory**

“Territory” shall mean the territory specified in the Schedule.

**6.23 We, Our, Us**

“We”, “Our” or “Us” shall mean the Insurer stated in the Schedule.



**Macquarie Underwriting Pty Ltd**  
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Level 5  
66 Hunter Street  
Sydney NSW 2000  
Phone: (02) 9235 1248