

# Intellectual Property Insurance

## IMPORTANT NOTICES

For your protection under legislation, we are required to inform you of your duty of disclosure and draw your attention to the following important information.

## INTRODUCTION

The Insurance Contracts Act 1984 requires insurance companies to provide certain information to people intending to insure with them. The information concerns the duty of disclosure of an intending Insured and the effect of particular types of clauses in a proposed insurance policy. Where an Insurance Broker is involved in the transaction, the information is to be provided by the broker. The Insurance (Agents and Brokers) Act 1984 also requires us to inform you about some other matters where they are relevant to particular policies.

## WHAT INFORMATION DOES AN INSURANCE COMPANY/BROKER HAVE TO GIVE YOU?

In general terms, the kind of information, which an insurance company/broker must give you, is as follows:

### YOUR DUTY OF DISCLOSURE

Before you enter into a contract of general insurance with an Insurer, you have a duty, under the Insurance Contracts Act 1984, to disclose to the Insurer every matter that you know, or could reasonably be expected to know, that is relevant to the Insurer's decision whether to accept the risk of the insurance, and if so on what terms.

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

Your duty, however, does not require disclosure of matter:

- that diminishes the risk to be undertaken by the Insurer,
- that is of common knowledge,
- that your Insurer knows or, in the ordinary course of his business, ought to know,
- as to which compliance with your duty is waived by the Insurer.

### NON-DISCLOSURE

If you fail to comply with your duty of disclosure, the Insurer may be entitled to reduce his liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the Insurer may also have the option of voiding the contract from its beginning.

### CLAIMS MADE INSURANCE

Your attention is drawn to the fact that if the Professional Indemnity section of this policy is selected, the cover will be placed on a "claims made" basis which means that claims first advised to you (or made against you) and reported to your insurer during the Period of Insurance are recoverable irrespective of when the incident causing the claim occurred, subject to the provisions of any clause relating to a "retroactive date".

You should also note that, in terms of the provisions of Section 40(3) of the Insurance Contracts Act 1984, where you give notice in writing to the Insurer of facts that might give rise to a claim against you as soon as is reasonably practicable after you become aware of those facts (but before the insurance cover provided by the contract expires) then the Insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the Period of Insurance cover provided by the contract.

### RETROACTIVE LIABILITY

The policy may be limited by a retroactive date stated in the schedule. The policy does not provide cover in relation to any claim arising from any actual or alleged act, error, omission or conduct that occurs before the commencement of the policy, unless retroactive liability cover is extended by Underwriters.

### LIABILITY ASSUMED UNDER AGREEMENT

Cover provided by this form of liability insurance does not cover liability which you have agreed to accept unless you would have been so liable in the absence of such agreement.

### UTMOST GOOD FAITH

In accordance with Section 13 of the Insurance Contracts Act 1984 (Cth), the policy of insurance is based on utmost good faith requiring Underwriter(s) and the proposer / insured(s) to act towards each other with the utmost good faith in respect of any matter relating to the insurance contract.

### PRIVACY NOTICE

Please refer to our privacy policy for further details, it is available on our website, [www.delphicinsurance.com.au](http://www.delphicinsurance.com.au).

Please note that your duty applies also when you seek to renew, extend, alter or reinstate a policy.

Alternatively, if you have any query about whether information needs to be disclosed, please contact our office.

## INTELLECTUAL PROPERTY INSURANCE

### APPLICATION FORM

#### INTRODUCTION

The purpose of this application form is for us to find out who you are and to obtain information relevant to the cover provided by the IP policy. Completion of this application form does not oblige either party to enter into a contract of insurance. Insurance is a contract of utmost good faith. This means that the information you provide in this application form must be complete, accurate and not misleading. It also means that you must tell us about all facts and matters which may be relevant to our consideration of your application for insurance. Any failure by you in this regard may entitle us to treat this insurance as if it never existed. If a contract of insurance is agreed between you and us this application form will form the basis of the contract.

Important: Some Insuring Clauses of this Policy provide cover on a claims made and reported basis. Under these Insuring Clauses a claim must be first made against the Insured and notified to us during the period of the policy to be covered.

#### HOW TO COMPLETE THIS FORM

Whoever fills out the form must be a principal, partner or director of the applicant firm and should make all the necessary enquiries of their fellow partners, directors and employees to enable all the questions to be answered. If you require any extra room to complete the answers to questions contained within this application form please continue your response in the Additional Information section at the back of the form.

### SECTION 1: COMPANY DETAILS

- 1.1 Please state the name and address of the principal Company for whom this insurance is required. Cover is also provided for the subsidiaries of the principal Company, but only if you include the data from all of these subsidiaries in your answers to all of the questions in this form:

Insured company:	
_____	
Address:	
_____	
_____	
Website:	
_____	
Contact name:	E-mail:
_____	_____

- 1.2 Please state when your company was established:

DD / MM / YY

- 1.3 Please describe the nature of your business activities:

*If you have a brochure, or company literature, please attach to this form.*

_____
_____
_____

1.4 a) Please state your turnover for the following years:

Turnover generated from	Last complete financial year	Estimate for the current financial year
Australia and New Zealand:	_____	_____
Asia:	_____	_____
The USA	_____	_____
Canada:	_____	_____
The UK:	_____	_____
Germany:	_____	_____
Other European countries:	_____	_____
Africa and South America:	_____	_____
TOTAL:	_____	_____

Date of financial year end:

DD / MM / YY

Currency:

b) What percentage of your total revenue relates to the sale of products?

 %

c) If known, please state the royalty rate as a unit price or as a percentage of sales applicable to your products?

1.5 For Stamp Duty purposes please provide a percentage breakdown of your estimated revenue by State or Territory:

NSW	%	VIC	%	QLD	%	SA	%	WA	%
TAS	%	NT	%	ACT	%	O'Seas	%	Total	%

1.6 Please state the following:

a) Who owns the company to be insured:

  
  


b) Whether there has been, or is it anticipated there will be, any merger, acquisition or joint venture?

Yes  No

If yes, please provide details:

  
  


1.7 Please state the following:

a) The number of employees

b) Whether your employment and consultancy contracts contain a confidentiality clause?

Yes  No

c) Whether your employment or consultancy contracts contain a clause stating that you retain absolute ownership of all intellectual property created on your behalf?

Yes  No

d) Whether you obtain written confirmation from prospective employees that they will not be in breach of any contractual terms and conditions relating to any previous employment?

Yes  No

If you have answered no to any of b), c) or d), please explain why:

## SECTION 2: PRODUCTS

2.1 Please provide details of your top 5 income generating products:

Product/product line	Description of product/product line	Revenue for this product/product line

2.2 Please state why your products and services are unique:


2.3 Please provide details of your top 3 competitors:

Name	Country of Domicile	Revenue

2.4 Do you intend to introduce any new product, or market an existing product in a new business sector or territory, during the next 12 months?

Yes  No

*If yes, please provide details including the income that you anticipate generating:*


2.5 Do you have a product recall or crisis management plan in place?

Yes  No

If yes, how often is it tested or reviewed?

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*If no, please explain why:*




Registered trade or service marks:

Mark	Territory	Application/ Registration No	Application/ Registration date	Class(es)	Status

Unregistered trade or service marks:

Mark	Territory

Copyright (including unregistered design rights):


Domain names:


3.2 Do you own or are you the exclusive licensee of the intellectual property?  Yes  No

*If no, please explain why:*


3.3 Are any external research organisations or joint ventures used for product development?  Yes  No

*If yes, please supply details of ownership details and copies of all contractual agreements:*


## SECTION 4: CONTRACTS

Please complete this section if you have any contracts that govern intellectual property

- 4.1 Do any of the contracts impose an obligation on you to enforce any intellectual property rights?  
*If yes, please provide a copy of the contract*  Yes  No
- 4.2 Do any of the contracts impose an obligation on you to indemnify or hold harmless a third party for costs or damages in the defence of any infringement proceedings arising out of the use of intellectual property?  
*If yes, please provide a copy of the contract*  Yes  No
- 4.3 Do any of the contracts impose an obligation upon a third party to indemnify you or hold you harmless for costs or damages in the defence of any infringement proceedings arising out of the use of intellectual property?  Yes  No
- 4.4 Do you retain the right to control any claim where you have an obligation to indemnify or hold harmless a third party under contract?  
*If no, please explain why:*  Yes  No

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## SECTION 5: RISK MANAGEMENT

- 5.1 Please summarise your current risk management procedures for intellectual property, including search practices (freedom to operate), competitor monitoring and analysis, internal and external professional services, allocation of responsibility and legal sign off:

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- 5.2 Please summarise the procedures you have in place in the event that you discover a third party may have infringed your, or you may have infringed a third party's, intellectual property:

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**SECTION 9: LEGAL ACTIONS AND LOSS HISTORY**

9.1 In respect of any intellectual property have you ever:

- a) Commenced proceedings against, or issued a warning letter to, a third party in respect of their actual or alleged infringement of your intellectual property?  Yes  No
- b) Commenced proceedings against, or issued a warning letter to, a third party in respect of an actual or alleged breach of a confidentiality undertaking or licence agreement?  Yes  No
- c) Defended an action brought by, or received a warning letter from, a third party in respect of your actual or alleged infringement of their intellectual property?  Yes  No
- d) Defended an action brought by, or received a warning letter from, a third party in respect of your actual or alleged breach of a licence agreement?  Yes  No
- e) Defended an action brought by, or received a warning letter from, a third party threatening your ownership rights in, or validity of, any of your intellectual property?  Yes  No
- f) Defended an application for a declaration of non-infringement of your intellectual property?  Yes  No
- g) Amended your products or intellectual property rights to avoid infringing a third party's intellectual property?  Yes  No

*If you have answered yes to any of questions a) – g), please explain in the box below and continue on the ADDITIONAL INFORMATION page if necessary:*

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**SECTION 10: INSURANCE HISTORY**

10.1 In respect of any intellectual property have you ever:

- a) Had an application or renewal for intellectual property infringement insurance declined by an insurer or been subject to any special terms or conditions?  Yes  No  
*If yes, please provide full details:*

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- b) Had any insurance cancelled or voided by an insurer?  Yes  No  
*If yes, please provide full details:*

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## SECTION 11: INSURANCE REQUIREMENTS

11.1 a) Please indicate the required coverage by ticking the appropriate boxes below:

Patent defence:	<input type="checkbox"/>	All other intellectual property defence:	<input type="checkbox"/>
Patent pursuit:	<input type="checkbox"/>	All other intellectual property pursuit:	<input type="checkbox"/>
Loss of intellectual property rights:	<input type="checkbox"/>	Loss of future profits:	<input type="checkbox"/>

b) Please indicate the required limit of liability by ticking the appropriate box below:

1,000,000	<input type="checkbox"/>	5,000,000	<input type="checkbox"/>
2,000,000	<input type="checkbox"/>	10,000,000	<input type="checkbox"/>
3,000,000	<input type="checkbox"/>	Other	<input type="text"/>

c) Please indicate the required deductible by ticking the appropriate box below:

2,500	<input type="checkbox"/>	50,000	<input type="checkbox"/>
5,000	<input type="checkbox"/>	100,000	<input type="checkbox"/>
10,000	<input type="checkbox"/>	Other	<input type="text"/>
20,000	<input type="checkbox"/>		

11.2 Please indicate the territorial limits where cover is to be provided by ticking the appropriate box below:

Country of Domicile	<input type="checkbox"/>	European Patent Convention Member States	<input type="checkbox"/>
Worldwide	<input type="checkbox"/>	Worldwide excluding USA/Canada	<input type="checkbox"/>

11.3 AFTER ENQUIRY, are you aware of any cause, event or circumstance, including the existence of any prior art, which may give rise to a claim being made under this policy:

- a) against you by a third party?  Yes  No
- b) against a third party by you?  Yes  No

If the answer to a) or b) above is 'yes', then please provide full details of the cause, event or circumstance and, for any defence claim, the maximum amount likely to be claimed by a third party from you or, for any pursuit claim, the maximum amount you are likely to claim from a third party.

## SECTION 12: DECLARATIONS

- I declare that after proper enquiry the statements and particulars given above are true and that I have not mis-stated or suppressed any material fact.
- I agree that this application form, together with any other material information supplied by me, shall form the basis of any contract of insurance effected thereon.
- I undertake to inform Underwriters of any material alteration to these facts occurring before the completion of the contract.

Signed: _____	Full name: _____
Position held: _____	Date: <u>    </u> / <u>    </u> / <u>    </u>

ADDITIONAL INFORMATION:

A large empty rectangular box with a thin black border, intended for providing additional information.

