



# Claims Made Combined General Liability Insurance

## Policy Wording



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# Welcome to Zurich

## About Zurich

The insurer of this product is Zurich Australian Insurance Limited, ABN 13 000 296 640 (ZAIL incorporated in Australia) trading as Zurich New Zealand. In this policy wording, Zurich New Zealand may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, and mid-sized and large companies, including multinational corporations.

## Duty of Disclosure

Before the *insured* enters into a contract of general insurance with us, the *insured* has a duty at common law to disclose to us every matter they know, or could reasonably be expected to know, that a prudent insure would want to take into account in deciding whether to insure the *insured* and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

The *insured* has the same duty to disclose those matters to us before they renew, extend, vary or reinstate a contract of general insurance. This duty however, does not require disclosure of a matter that:

- diminishes the risk to be insured;
- is of common knowledge;
- we know or in the ordinary course of our business we ought to know;
- we indicate to the *insured* that we do not want to know.

## Non-disclosure or Misrepresentation

If the *insured* makes material misrepresentation to us, or if you do not comply with the duty of disclosure we may treat your policy as if it never existed.

## Our contract with you

This policy is a contract of insurance between the *insured* and Zurich and contains all the details of the cover that we provide.

This policy is made up of:

- the policy wording. It states what is covered, sets out the claims procedure, Exclusions and other terms and conditions of cover;
- the *submission* which is the information you provide to us when applying for insurance cover;
- the most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to the *insured*, which shows the insurance details relevant to the *insured*. It includes any changes, Exclusions, terms and conditions made to suit the individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the policy *schedule* are insured. Please keep the policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

# Claims Made Combined General Liability Insurance

In consideration of the *insured* having paid or agreed to pay the premium, Zurich, on the basis of all information provided to us, agrees with the *insured* to provide insurance as follows, subject to the provisions of this policy and on the basis that this policy shall not be in force unless it has been signed by an authorised Zurich official.

## 1. Insuring Clause

Zurich, subject to the terms and conditions of this policy, will indemnify the *insured* for all amounts which the *insured* becomes legally liable to pay as *compensation* arising out of:

- 1.1 *personal injury*;
- 1.2 *property damage*; or
- 1.3 *advertising liability*,

in connection with *your business* or *products* as a result of a *claim* first made during the *period of insurance* within the *territorial limits*.

## 2. Limits of Liability

Zurich's liability, in respect of all *compensation* for:

- 2.1 Public Liability;
- 2.2 Products Liability; and
- 2.3 Advertising Liability;

under this policy as a result of any one *claim* and in the aggregate where applicable, shall not exceed the Limits of Liability specified in the *schedule*.

## 3. Extensions of Cover

### 3.1 Additional payments

Zurich will, in addition to the Limits of Liability specified in the *schedule*, pay additional payments for:

- 3.1.1 legal costs and expenses incurred by Zurich, or the *insured* with Zurich's written consent, in the settlement or defence of any claim for *compensation* in respect of which the *insured* is entitled to indemnity under this policy, or if sustained, would be so entitled;
- 3.1.2 fees incurred with Zurich's written consent for any solicitor, defence counsel or the equivalent of, for representation at any inquest, fatal inquiry or criminal proceedings relating to an occurrence which gives rise to a claim for *compensation* under this policy; and
- 3.1.3 the reasonable expenses incurred by the *insured* for first aid to others at the time of *personal injury* caused by an occurrence (other than medical expenses prohibited by law).

In respect of *claims* in *North America*, or *claims* in respect of which a *claim* for *compensation* is brought in a court of law in *North America*, the Limits of Liability specified in the *schedule* shall be inclusive of all such additional payments.

### 3.2 Automatic acquisition clause

This policy shall extend to apply on a contingency basis to any company or companies acquired or established or created by the *insured* during the *period of insurance*, provided that:

- 3.2.1 their business complies with that outlined in the *schedule*;
- 3.2.2 the turnover of the new company or companies does not exceed 10% of the turnover which was the basis of the premium calculation; and
- 3.2.3 the new company or companies are domiciled in New Zealand.

This cover applies only for 90 days following the takeover or formation of the company or companies. Unless Zurich expressly confirms coverage, this contingent coverage will expire on the 90th day following the takeover or formation of the companies.

Zurich reserves the right to charge an additional premium and/or apply additional terms.

### **3.3 Care, custody and control**

Zurich will indemnify the *insured* for property in their care, custody and control, to where Exclusion 5.6 'Care, custody and control' shall not apply with regard to:

- 3.3.1 the personal property, tools and effects of any of your directors, partners, proprietors, officers, executives or *employees*, or the clothing and personal effects of any of *your* visitors;
- 3.3.2 premises or part(s) of premises (including their contents) leased or rented, or temporarily occupied by, *you* for the purpose of the *business*, but no cover is provided by this policy if *you* have assumed the responsibility to insure such premises;
- 3.3.3 (i) premises (and/or) their contents temporarily occupied by *you* for the purpose of carrying out work in connection with *your business*; or
  - (ii) any other property temporarily in *your* possession for the purpose of being worked upon, but no indemnity is granted for damage to that part of any property upon which you are or have been working if the damage arises solely out of such work.
- 3.3.4 any *vehicle* (including its contents, spare parts and accessories while they are in or on such vehicle) not belonging to or used by *you*, whilst any such *vehicle* is in a car park owned or operated by *you* provided that *you* do not operate the car park for reward, as a principal part of *your business*;
- 3.3.5 notwithstanding Exclusion 5.7 'Contractual liability', any property (except property that *you* own) not mentioned in paragraphs 3.3.1 to 3.3.4 above whilst in your physical or legal care, custody or control whether or not you have accepted or assumed legal liability for such property, provided that our liability under this Extension of Cover shall not exceed \$500,000 or the amount specified in the *schedule*, if higher, in respect of any one *claim* or series of *claims* arising out of any *claim* for *compensation* or any other greater amount set out in the *schedule*.

### **3.4 Claims series clause**

- 3.4.1 A *claim* or series of *claims* which are attributable directly or indirectly or allegedly to the same event, condition, defect or hazard, or failure to warn shall be added together and treated as one *claim*, irrespective of the period of time after the commencement of the *period of insurance* or the number of persons or entities that sustain *property damage* and/or *personal injury*.
- 3.4.2 All such *claims* shall be deemed to have occurred on the day of the first of such *claims*.
- 3.4.3 The Limits of Liability specified in the *schedule* are non-cumulative.
- 3.4.4 We shall not indemnify the *insured* for any liability of whatsoever nature in connection with *personal injury* or *property damage* where such *personal injury* or *property damage* is in any way connected with or related to a *claim* or events or circumstances, whether of a continuous, intermittent or repeated exposure, which had occurred or commenced or existed prior to the date of inception of this policy.

### **3.5 Compensation for court attendance**

If an *insured* attends court as a witness, at Zurich's request, in connection with a *claim* in respect of which the *insured* is entitled to indemnity under this policy, Zurich will provide *compensation* to the *insured* at the following rates per day for each day on which attendance is required:

- 3.5.1 any director, officer or partner of the *Insured* \$500.00 per day;
- 3.5.2 any *employee* of the *insured* \$250.00 per day.

### **3.6 Joint venture**

Zurich will indemnify the *insured* in the event of any *claim* caused by or arising out of any joint venture in which the *insured* has an interest limited to the Limits of Liability stated in the *schedule*.

Where the percentage of interest of the *insured* in the joint venture is not set forth in writing, the percentage to be applied shall be that which is imposed by law at the inception of the joint venture and shall not be increased by the insolvency of the others interested in the joint venture.

The indemnity will not apply:

- 3.6.1 to *claims* of the partners in the joint venture against one another;
- 3.6.2 to *claims* by the joint venture against the *insured*; or
- 3.6.3 resulting from non-disclosure of a material fact.

### **3.7 Overseas personal liability**

Zurich will indemnify the *insured* for legal liability incurred in connection with the *business* which may be deemed to include any liability incurred in a personal capacity by an *employee* or director (including the spouse or any family member of any such person while accompanying such *employee* or director) whilst travelling outside his or her country of domicile in connection with the *business*, provided that the *employee* or director is not entitled to indemnity under any other policy of insurance, self insurance or deductible programme effected in the *insured's* name.

### **3.8 Punitive and Exemplary Damages**

This policy shall extend to indemnify the *insured* for all sums that the *insured* shall become legally liable to pay for punitive or exemplary damages arising from *personal injury* subject to:

- 3.8.1 the *claim* must first be made against the *insured* during the *period of insurance*, and notified by the *insured*, to us during the *period of insurance*. A *claim* is first made when a third party first indicates to an *insured* that the third party is holding the *insured* responsible, in part or in whole, for the *personal injury*;
- 3.8.2 the limit of cover shall not exceed the sub-limit stated in the *schedule*;
- 3.8.3 you shall bear the amount of the *deductible* shown in the *schedule*.

We will also indemnify the *insured* against such *claims* for punitive and exemplary damages made against the *insured* after the *period of insurance*. However, the *claims* must arise from facts or circumstances that the *insured* had notified to us during the *period of insurance*.

In this extension of cover, *personal injury* means bodily injury, sickness, disability or disease. It includes death resulting from bodily injury, sickness, disability or disease. It also includes mental disability, mental shock, mental anguish and mental injury.

This extension will not cover any of the following *claims*:

- (i) made, threatened, or in any way indicated against the *insured* and not notified to us, prior to the start of the *period of insurance*;
- (ii) arising from a fact or *claim* that at the time the *period of insurance* starts, the *insured* knew, or should have known, may give rise to a *claim* against the *insured*;
- (iii) notified or arising out of *claims* notified, or which should have been notified, under any previous policy of insurance held by the *insured*;
- (iv) arising out of any *claim* or circumstances noted on the proposal or any other information the *insured* provided to us for the *period of insurance* or for any previous *period of insurance*;
- (v) arising from *personal injury* to any *employee* in or arising from their employment with the *insured*;
- (vi) brought against the *insured* outside New Zealand or any settlement or compromise of a *claim* entered into outside New Zealand;

- (vii) arising out of any statement, action or omission by the *insured* made, done or omitted outside New Zealand;
- (viii) as a result of any judgement entered in any court, other than a New Zealand Court applying the law of New Zealand, or any debt incurred by the *insured* as the result of such a judgement.

For the purposes of this extension only, Exclusion 5.11.2 'Liquidated or punitive damages' is amended by deleting the words 'punitive and exemplary damages'.

## 4. Definitions

When used in this policy, its *schedule* and its Endorsements, the following definitions shall apply:

### 4.1 Act of terrorism

*act of terrorism* means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- 4.1.1 involves violence against one or more persons;
- 4.1.2 involves damage to property;
- 4.1.3 endangers life other than that of the person committing the action;
- 4.1.4 creates a risk to health or safety of the public or a section of the public; or
- 4.1.5 is designed to interfere with or to disrupt an electronic system.

### 4.2 Advertising liability

*advertising liability* means:

- 4.2.1 infringement of copyright of, or passing off of a title or slogan;
- 4.2.2 unfair competition, piracy or idea misappropriation contrary to an implied contract;
- 4.2.3 invasion of privacy; or
- 4.2.4 defamation, libel, slander,

committed or alleged to have been committed during the *period of insurance* in any advertisement, publicity article, broadcast or telecast arising out of the *insured's* advertising activities or any advertising activities conducted on the *insured's* behalf, in the course of advertising the *products*, goods or services related to those *products*.

### 4.3 Aircraft

*aircraft* shall mean any vessel, craft or thing made, or intended, to fly or move in or through the atmosphere or space.

### 4.4 Business

*business* means all activities and operations specified in the *schedule* and includes:

- 4.4.1 the provision and management of catering, social, sports, welfare, childcare, theatrical and related facilities including galas for the benefit of *employees*;
- 4.4.2 the provision of fire, first aid, ambulance and security services;
- 4.4.3 at the *insured's* discretion, private work carried out by an *employee* for a director or partner or *employee* of the *insured's*;
- 4.4.4 the ownership, maintenance, repair and occupation of premises or facilities belonging to the *insured*;
- 4.4.5 attendance at or participation in trade fairs, shows and exhibitions by any *employee* or director in connection with their employment;
- 4.4.6 provision of sponsorship.

#### **4.5 Claim**

*claim* means any writ, summons, application or other originating legal or arbitral process, cross claim, or counter claim or appeal served upon an *insured* alleging *personal injury*, *property damage* or *advertising liability*.

#### **4.6 Compensation**

*compensation* means monies paid or agreed to be paid by judgment or settlement for:

- 4.6.1 *personal injury*;
- 4.6.2 *property damage*; and
- 4.6.3 *advertising liability*.

#### **4.7 Computer virus**

*computer virus* means an executable program or computer code segment that is self-replicating, requires a host program or executable segment in which it can be contained, and which destroys or alters the host, program or other computer code or data, causing undesired program or computer system operation.

#### **4.8 Cyber event**

*cyber event* means any *occurrence* in any way connected with:

- 4.8.1 an *IT Network*; or
- 4.8.2 *computer virus*.

#### **4.9 Deductible**

*deductible* means the first amount of each *claim* which is payable by the *insured* as stated in the *schedule*. The *deductible* applies to all amounts payable under this policy including the indemnity provided under Additional Payments.

#### **4.10 Employee**

*employee* means:

- 4.10.1 any person under a contract of service or apprenticeship with the *insured*;
- 4.10.2 any labour master or person supplied, or any person supplied by a labour only sub-contractor;
- 4.10.3 any self-employed person working under contract with the *insured* and under its direction;
- 4.11.4 any person hired by the *insured* from another employer subject to a written agreement under which the person is deemed to be employed by the *insured*;
- 4.10.5 any student or person undertaking work for the *insured* under a work experience or similar scheme; or
- 4.10.6 any voluntary helper,  
whilst engaged in connection with the *business*.

#### **4.11 Employment practices**

*employment practices* mean any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by the *insured*.

#### **4.12 Hovercraft**

*hovercraft* means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward force.

#### **4.13 Insured**

*insured* means the Insured named in the *schedule*, and includes:

- 4.13.1 any of the *insured's* subsidiary companies (including subsidiaries thereof) and any other entity under the *insured's* control, and over which the *insured* exercises active management;
- 4.13.2 any of the *insured's* directors, officers, *employees* or partners but only whilst acting within the scope of their duties in such capacity;

- 4.13.3 any person, principal, organisation, trustee or estate to whom or to which the *insured* is obligated by virtue of a written contract to provide insurance as is afforded by this policy, but only to the extent that is required by such contract and in any event only for such coverage and Limits of Liability as provided in this policy;
- 4.13.4 any social and/or sporting clubs, first aid, fire and ambulance services formed with the *insured's* consent and includes any office bearer or member thereof in their respective capabilities as such; and
- 4.13.5 any of the *insured's* directors or senior executives in respect of private work undertaken by the *insured's* employees for such director or senior executive.

#### **4.14 Internet operations**

*internet operations* mean:

- 4.14.1 transfer of computer data or programmes by use of electronic mail systems by the *insured* or the *insured's* employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within the *insured's* organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to *computer virus*;
- 4.14.2 access through the *insured's* network to the world wide web or a public internet site by the *insured* or the *insured's* employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within the *insured's* organisation;
- 4.14.3 access to the *insured's* intranet (meaning internal company information and computing resources) which is made available through the world wide web for the *insured's* customers or others outside the *insured's* organisation; and
- 4.14.4 the operation and maintenance of the *insured's* web site.

#### **4.15 IT network**

*IT network* means any computer hardware (or components thereof), software (or components thereof), communication system networks, *internet operations*, websites whosesoever hosted, online or offline media libraries, data, or any other peripheral devices.

#### **4.16 Motor vehicle**

*motor vehicle* means any type of machine and attachments thereto including a trailer designed for use on land only, and which travels on wheels or on self laid tracks and is propelled by other than manual or animal power.

#### **4.17 North America**

*North America* means:

- 4.17.1 the United States of America and Canada; and
- 4.17.2 any state or territory incorporated in, or administered by, the United States of America or Canada.

#### **4.18 Period of insurance**

*period of insurance* means the Period of Insurance stated in the *schedule*.

#### **4.19 Personal injury**

*personal injury* means:

- 4.19.1 bodily injury, death, disease, illness, disability, nervous shock, mental anguish or mental injury or loss of consortium;
- 4.19.2 false arrest, false detention, wrongful imprisonment, malicious prosecution or humiliation;
- 4.19.3 wrongful entry or wrongful eviction or other invasion of privacy;
- 4.19.4 defamation, libel or slander; and
- 4.19.5 assault and/or battery committed by or at the direction of the *insured* whilst engaged in the *business* and for the purpose of preventing or eliminating danger to persons or property.

#### **4.20 Pollutants**

*pollutants* mean any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

#### **4.21 Products**

*products* mean any goods or products manufactured, grown, extracted, produced, processed, treated, altered, handled, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by the *insured* (including packaging and containers) in connection with the *business* in or from the *territorial limits*, and after it has ceased to be the *insured's* property, or in the *insured's* custody or legal control.

#### **4.22 Property damage**

*property damage* means:

- 4.22.1 physical damage to, or loss of or destruction of tangible property, including the subsequent loss of use of that property;
- 4.22.2 loss of use and/or loss of value of tangible property that has not been physically damaged, physically lost or physically destroyed provided such loss of use and/or loss of value is caused by physical damage to, physical loss of or physical destruction of other tangible property; and includes denial of access to property, premises, services or facilities, interference with or stoppage of vehicular or pedestrian traffic; and
- 4.22.3 trespass, nuisance or interference with right of way or right to light air or water, easement or quasi-easement.

#### **4.23 Schedule**

*schedule* means the Schedule attaching to and forming part of this policy, including any Schedule substituted for the original Schedule.

#### **4.24 Silica**

*silica* means silicon dioxide, (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

#### **4.25 Silica related dust**

*silica related dust* means a mixture or combination of silica and other dust or particles.

#### **4.26 Territorial limits**

*territorial limits* mean anywhere in the world, except *North America*, where the policy will only apply in respect of:

- 4.26.1 *products* exported to *North America*; and
- 4.26.2 *business* visits to *North America* by executives or sales persons normally resident in New Zealand or the Commonwealth of Australia.

#### **4.27 Watercraft**

*watercraft* means any vessel, craft or thing made, or intended to float on or in, or travel on or through or under water.

### **5. Exclusions**

Zurich will not be liable under this policy in respect of:

#### **5.1 Advertising liability**

*advertising liability* directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.1.1 failure of performance of contract, but this shall not relate to *claims* resulting from unauthorised appropriation of ideas based upon alleged breach of an implied contract;
- 5.1.2 incorrect description of any article or commodity; or
- 5.1.3 mistake in advertised price.

## **5.2 Aircraft products**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any of the *insured's products* which, with the *insured's* knowledge, are intended for incorporation into any critical part, the structure, machinery or controls of any *aircraft*.

## **5.3 Aircraft, watercraft, hovercraft**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the ownership, maintenance, possession, use or operation, loading or unloading, of any *aircraft, watercraft* or *hovercraft* (other than *watercraft* not exceeding 15 metres in length for use on inland or coastal waters).

## **5.4 Asbestos**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from asbestos or asbestos products or asbestos contained in any products.

However, this Exclusion does not apply to actual or alleged loss, cost, expenses or liability where such loss, cost, expense or liability is not related to asbestos content of goods, materials or products or completed operations.

## **5.5 Building defects**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any building or structure being affected by:

- 5.5.1 moisture or water or the penetration of external moisture or water;
- 5.5.2 the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms;
- 5.5.3 the failure of any building or structure to comply with or perform to the requirements of any building code or to meet the level of performance, quality, fitness or durability of its intended purpose. This expressly includes the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 in relation to:
  - (a) external water or moisture; or
  - (b) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.

In addition, we shall not be liable for any costs or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or similar or like forms.

## **5.6 Care, custody and control**

any liability arising out of or *property damage* to:

- 5.6.1 property leased or rented to the *insured*;
- 5.6.2 property not belonging to the *insured*, but which is in the care, custody and control of the *insured*, other than the property described in Extension of Cover – 'Care, custody and control'.

## **5.7 Contractual liability**

any liability or obligation assumed by the *insured* under any agreement or contract except to the extent that:

- 5.7.1 the liability or obligation would otherwise have been implied by law;
- 5.7.2 the liability or obligation arises from a provision in a contract for lease of real or personal property other than a provision which obliges the *insured* to effect insurance or provide indemnity in respect of the subject matter of contract;

- 5.7.3 the liability or obligation is assumed by the *insured* under any warranty under the requirement of Federal or State legislation in respect to product safety;
- 5.7.4 the liability or obligation arises from a provision in a written contract with any public supplier for the supply of water, gas, electricity, fuel, sewerage or waste removal services, telephone and communications services, except contracts with such suppliers for the performance of work by the *insured*;
- 5.7.5 the liability or obligation arises from a provision in a written contract with any railway authority, railway company or other independent carrier for the loading, unloading and/or transport of the *insured's products*, including any such contracts relating to the operation of railway sidings; or
- 5.7.6 the liability or obligation is assumed under those agreements specified in the *schedule*.

## 5.8 Cyber risks

any liability of whatsoever nature in connection with or contributed to, or from a *cyber event*.

## 5.9 Deliberate acts

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any deliberate act or omission of the *insured* or any *employee* and which could reasonably have been expected, having regard to the nature and circumstances of such an act or omission.

## 5.10 Injury to employees

any liability to indemnify or pay *compensation* arising out of:

- 5.10.1 *personal injury* where any *insured* or *employee* is indemnified or entitled to be indemnified under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not the *insured* is a party to such contract of insurance;
- 5.10.2 any scheme created by legislation to provide compensation to persons who sustain *personal injury* arising out of or in the course of their employment; or
- 5.10.3 any *claim for employment practices*.

This policy shall not be drawn into contribution with such insurance or scheme.

This Exclusion does not apply with respect to liability of others assumed by the *insured* under any written contracts.

However, if the *insured*:

- (i) is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or any common law liability (whether limited or not) for *personal injury*; or
- (ii) is 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 cover liability for *personal injury* to the extent that the *insured's* liability would have been covered under any such fund, scheme, policy of insurance or self insurance arrangement had the *insured* complied with its obligations pursuant to such law.

## 5.11 Liquidated or punitive damages

any liability for any amount in respect of:

- 5.11.1 fines or penalties; or
- 5.11.2 liquidated, punitive or exemplary damages or multiplication of awards.

## **5.12 Loss of use**

any liability for any amount in respect of loss of use of tangible property which has not been damaged, lost or destroyed as a result of:

- 5.12.1 a delay in or lack of performance by or on behalf of any *insured* in respect of any contract or agreement; or
- 5.12.2 the failure of the *products* to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by an *insured*.

However, Exclusion 5.12.2 above does not apply to loss of use of other tangible property resulting from the sudden and accidental damage to or destruction of the *products* after such *products* have been put to use by any person or organisation other than the *insured*.

## **5.13 Motor liability**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the use of a *motor vehicle* owned by, or in the physical or legal control of the *insured*:

- 5.13.1 which is required by law to be registered; or
- 5.13.2 in respect of which insurance is required by virtue of any legislation.

However, this Exclusion does not apply to:

- (i) a *motor vehicle* (other than a *motor vehicle* owned or used by or on behalf of the *insured*) whilst that *motor vehicle* is in a car park owned or operated by the *insured* other than for income or reward as a car park operator;
- (ii) *personal injury or property damage* occurring during the loading or unloading of a *motor vehicle* caused by or arising from the collection or delivery of any goods from or to the *motor vehicle* where such *personal injury or property damage* occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability;
- (iii) accidental or erroneous failure to maintain such statutory insurance; or
- (iv) *personal injury or property damage* where insurance is provided by an Underlying Policy specified in the Endorsements, but then only to the extent of the cover provided by such policy.

## **5.14 North America**

any liability in *North America* directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.14.1 the manufacture in or supply to *North America* of:
  - (a) any alcohol products;
  - (b) firearms;
  - (c) any product containing or made of latex;
  - (d) silica or any product containing silica;
  - (e) welding rod products.
- 5.14.2 the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to existence of, or presence of any:
  - (a) fungi or bacteria;
  - (b) substance, vapour or gas produced by or arising out of any fungi or bacteria.
- 5.14.3 the costs or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposing of, or in any way responding to, or assessing the effects of, fungi or bacteria, by the *insured* or by any other person or entity.

## **5.15 Pollution**

any liability arising out of:

- 5.15.1 *personal injury or property damage* directly or indirectly caused by, in connection with or contributed to by or arising from the 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);
- 5.15.2 *personal injury or property damage* directly or indirectly caused by, in connection with or contributed to by or arising from the discharge, seepage, migration, dispersal, release or escape of *pollutants* caused by any product that has been discarded, dumped, abandoned or thrown away by others;
- 5.15.3 the cost of removing, nullifying or cleaning up *pollutants*; or
- 5.15.4 the cost of preventing the escape of *pollutants*.

Exclusions 5.15.1 and 5.15.3 above shall not apply to a sudden identifiable, unintended and unexpected event from the *insured's* standpoint which takes place in its entirety at a specific time and place, resulting from a *claim* first made against the *insured* during the *period of insurance* and occurs outside of *North America*. However the total aggregate Limits of Liability during any one *period of insurance* shall not exceed the Limits of Liability.

## **5.16 Prior and pending**

5.16.1 any *claim* made, threatened or intimated against an *insured* prior to the *period of insurance*.

5.16.2 any *claim* or liability based upon, whether directly or indirectly, any fact or circumstance:

- (a) which the *insured* was aware of prior to the *period of insurance* and which the *insured* knew or ought reasonably to have known might give rise to a *claim* or liability;
- (b) of which written notice has been given or ought reasonably to have been given by the *insured* under any prior policy (whether or not such policy was issued by any member of the Zurich Insurance Group);
- (c) disclosed in the proposal or other information provided to us for the purposes of obtaining this policy.

## **5.17 Professional liability**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from the rendering or failure to render professional advice or service by the *insured*, or any error or omission in connection therewith.

However, this Exclusion shall not apply to:

- (i) the *insured's* liability in respect of *personal injury or property damage* resulting from the provision of professional advice or services, or any error or omission in connection with the *insured's products* which is not given for a fee; or
- (ii) the rendering or failure to render professional advice by any *employee* to provide first aid or other medical services at the *insured's* premises.

Medical services exclude advice or services provided by a qualified medical practitioner, nurse or first aid attendant.

## **5.18 Radioactive contamination**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.18.1 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 5.18.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

However, this Exclusion shall not apply to liability arising from radio-isotopes, 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, scientific or research pursuits.

#### **5.19 Repair and replacement**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.19.1 the cost of rectifying defective work carried out by or on behalf of the *insured*;
- 5.19.2 *property damage* to any of the *insured's products* causing *personal injury* or *property damage*; and
- 5.19.3 the costs or expenses of recalling, removing, repairing, recovering, altering or replacing the *insured's products* arising from a defect in or an error in connection with the sale or supply of such *products* or the guaranteed performance of the *insured's products* or the unsuitability thereof for the use for which they are supplied.

#### **5.20 Retroactive date**

any liability arising from or attributable to any *personal injury*, *property damage* or *advertising liability* first occurring prior to the Retroactive Date, if any, specified in the *schedule*.

#### **5.21 Silica**

any liability directly or indirectly caused by, or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, actual, alleged, threatened or suspected inhalation or absorption of *silica* or *silica related dust*.

#### **5.22 Specific products and substances**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from:

- 5.22.1 urea formaldehyde;
- 5.22.2 silicon based human implants;
- 5.22.3 AIDS, HIV or HIV related illness;
- 5.22.4 contraceptives and RU 486;
- 5.22.5 human biological materials including extracts thereof (e.g. blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- 5.22.6 genetically modified seeds or organisms;
- 5.22.7 vaccines;
- 5.22.8 application or use of polychlorinated biphenyls including polychlorinated biphenyl generated dibenofurans and dioxins;
- 5.22.9 tobacco and tobacco related products;
- 5.22.10 the manufacture or supply of all pharmaceutical active ingredients including medical implants; or
- 5.22.11 DES and orally taken oxychinoline.

#### **5.23 Terrorism**

any injury, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any *act of terrorism* regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion also excludes injury, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

If Zurich alleges that, by reason of this Exclusion, any injury, loss, damage, cost or expense is not covered by this policy the burden of proving the contrary shall be upon the *insured*.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

#### **5.24 War**

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

### **6. General Conditions**

#### **6.1 Action against Zurich**

Zurich shall not be liable unless the *insured* has complied fully with all provisions of this policy nor until the amount of compensation has been finally determined, either by judgment against the *insured* or by written agreement with the *insured*, the claimant and Zurich.

The *insured* shall make a definite *claim* for any *personal injury* or *property damage* for which Zurich may be liable within a reasonable time after such final determination.

#### **6.2 Assignment**

No assignment of interest under this policy shall bind Zurich until our consent is endorsed herein. However, should any *insured* die or be adjudged bankrupt or insolvent, Zurich will consent to the assignment of this policy to such *insured*'s legal representative provided that written notice is given to us within a reasonable time after the date of such death, bankruptcy or insolvency.

#### **6.3 Cancellation**

- 6.3.1 The *insured* may cancel this policy at any time by giving notice in writing to us.
- 6.3.2 Zurich may cancel this policy at any time by giving notice in writing to the *insured*, such cancellation to take effect within 30 days from the time of notification received by the *insured*.
- 6.3.3 Upon cancellation by the *insured* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired period of insurance.
- 6.3.4 Upon cancellation by Zurich, a refund of premium will be allowed pro rata for the unexpired period of insurance.

#### **6.4 Change in risk**

Every change materially affecting the facts or circumstances existing at the commencement of or during the course of this policy, or at any subsequent renewal date, shall be notified to Zurich as soon as such change comes to the *insured*'s notice.

We reserve the right to accept or deny coverage at the time of such notification and to establish a separate rate and premium for any such coverage.

#### **6.5 Claims assistance and cooperation**

The *insured* must assist and cooperate with Zurich fully and promptly in relation to a *claim*, including:

- 6.5.1 supplying us with all information and assistance we may reasonably require;
- 6.5.2 allowing us to negotiate, defend or settle the *claim*:
  - (a) in the *insured*'s name and on the *insured*'s behalf; or
  - (b) in the name of and on behalf of any other party covered by the *insured*'s policy;
- 6.5.3 sending to us any writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest the *insured* receives or becomes aware of; and
- 6.5.4 as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until Zurich has had an opportunity of inspection.

## **6.6 Control of claims**

- 6.6.1 The *insured* shall not, without Zurich's written consent, admit or repudiate liability, negotiate or make any offer, promise or payment in connection with any *claim*.
- 6.6.2 Zurich shall be entitled, but not obligated, to take over and conduct in the *insured*'s name, the defence or settlement of any *claim* or to prosecute in the name of the *insured* at its own expense and for its own benefit any *claim*, for indemnity or damages or otherwise against any persons, and shall have full discretion in the conduct of any proceedings and in the settlement of any *claim*.
- 6.6.3 The *insured* shall give all such information and assistance as Zurich may require.

## **6.7 Cross liability**

Subject to General Condition 612 'Joint insured' for the purpose of this policy, when an *insured* consists of more than one party, the *insured* shall be considered as a separate *insured* as though a separate policy had been issued to each of the said parties but nothing herein contained shall operate to increase our Limits of Liability.

## **6.8 Discharge of any liability**

Zurich may at any time pay the Limits of Liability (after deduction of sum or sums already paid), or any lesser sums for which any *claim* or *claims* can be settled, and shall then be under no further liability in respect thereof except for the payment under Extension of Cover 3.1 'Additional payments' incurred prior to such payment.

In the event of a *claim* or series of *claims* arising from a *claim* resulting in liability of the *insured* to pay a sum in excess of the Limits of Liability, Zurich's liability for Extension of Cover 3.1 'Additional payments' shall not exceed an amount being in the same proportion as Zurich's payment bears to the total payment made by or on behalf of or to be made by the *insured* in satisfaction of the *claim* or *claims*.

## **6.9 Fraud**

If any *claim* upon this policy be in any respect fraudulent, or if any fraudulent means or devices be used by the *insured*, or if any damage be occasioned by a wilful act of the *insured* or with their connivance, all benefit under this policy shall be forfeited and the policy void.

## **6.10 Headings**

Headings have been included for ease of reference, but do not form part of the policy.

## **6.11 Inspection and audit**

Zurich shall be permitted but not obligated to inspect the *insured*'s property and operations at any reasonable time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an *insured* or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation.

Zurich may examine and audit the *insured*'s books and records at any time during the *period of insurance* and within three years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

## **6.12 Joint insured**

Where the *insured* is comprised of more than one legal entity, information supplied to us shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to us or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such entities.

## **6.13 Joint responsibility and liability**

Any and all *insured*'s and any persons deriving benefit under this insurance are jointly liable and responsible for any breach of any terms of this policy and/or misrepresentation and/or non-disclosure and/or fraud. For the avoidance of doubt this clause survives avoidance of the policy.

#### **6.14 Liability not to be admitted**

The *insured* shall not admit liability for or offer to or agree to settle any *claim* without Zurich's written consent. Zurich shall be entitled to take over and defend any *claim* with full discretion in the conduct of that *claim*.

#### **6.15 No cover under this policy**

Where the *insured* is not entitled to be indemnified under this policy, Zurich owes no duty of any kind and has no liability of any kind to the *insured*.

#### **6.16 Notice and proof of claim**

Upon the discovery of any *personal injury*, or *property damage* loss or circumstance giving rise or which may give rise to a *claim* (whether or not the *insured* believes the *claim* amount might fall below the applicable *deductible*) under this policy, the *insured* shall:

- 6.16.1 give notice in writing to Zurich as soon as practicable after the *insured* becomes aware of such loss or circumstance and within 30 days thereafter provide, at the *insured*'s own expense, a written statement detailing all relevant information;
- 6.16.2 advise of the cause and the amount of loss and any other proof or information with respect to the *claim* that may be reasonably required;
- 6.16.3 furnish to us details of any other insurance covering or which may cover the same loss;
- 6.16.4 take reasonable steps to prevent further loss; and
- 6.16.5 at all reasonable times permit us or our agents to inquire into, investigate and examine the circumstances of any loss.

#### **6.17 Payments in respect to Goods and Services Tax**

All sums insured in this policy (except for the *deductible*) exclude GST where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to claim payments. However, this does not apply to the *deductible* which is GST inclusive.

#### **6.18 Premium**

Unless otherwise stated, the premium is adjustable. The *insured* shall, within 60 days after the expiry of each *period of insurance*, provide such information as Zurich may require to adjust the premium.

Any difference in premium shall be paid by or allowed to the *insured*, provided that the adjusted premium will not be less than any minimum premium specified in the *schedule*. The *insured* shall at all times allow Zurich to inspect such records.

#### **6.19 Proper law and jurisdiction**

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with New Zealand law.

In the event of any dispute arising under this policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, the *insured* will submit to the exclusive jurisdiction of any competent Court in New Zealand.

A reference to any statute, regulation or subordinate legislation includes any amendment, replacement, successor or equivalent to or of that statute, regulation or subordinate legislation.

#### **6.20 Reasonable precautions**

It is a condition precedent to Zurich's liability under this policy that the *insured* shall, at its own expense:

- 6.20.1 take, and cause to be taken, reasonable precautions to prevent *personal injury*, *property damage* and/or *advertising liability*;
- 6.20.2 comply with all statutory or local authority law, obligations and requirements or equivalent;
- 6.20.3 prevent the manufacture, sale or supply of defective *products*; and
- 6.20.4 withdraw, inspect, repair, replace, trace, recall or modify any of the *products* containing any defect or deficiency of which the *insured* has knowledge or has reason to suspect.

## **6.21 Sanctions regulation**

Notwithstanding any other terms or conditions under this policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any *insured* or any other party to the extent that such cover, payment, service, benefit and/or any *business* or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.

## **6.22 Subrogation**

Zurich waives all rights of subrogation under this policy against:

- 6.22.1 any corporation or organisation the majority of whose capital stock is owned or controlled by the *insured*.
- 6.22.2 any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this policy, except that if such corporation, organisation or person is protected from such loss by any other policy of indemnity or insurance, Zurich's right of subrogation is not waived to the extent and up to the amount of such other policy.

## **6.23 Valuation and foreign currency**

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in New Zealand currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of loss under this policy is stated in a currency other than New Zealand dollars, payment under this policy shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars as reported in the National Business Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

## **6.24 Waiver of privilege**

If we instruct any lawyer to investigate or defend any *claim* against any *insured person*, the *insured* authorises the lawyer to provide us with any documents, information or advice in respect of the *claim*, including in relation to indemnity, and the *insured* waives any privilege to the extent necessary to give full effect to our entitlement in this respect.

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