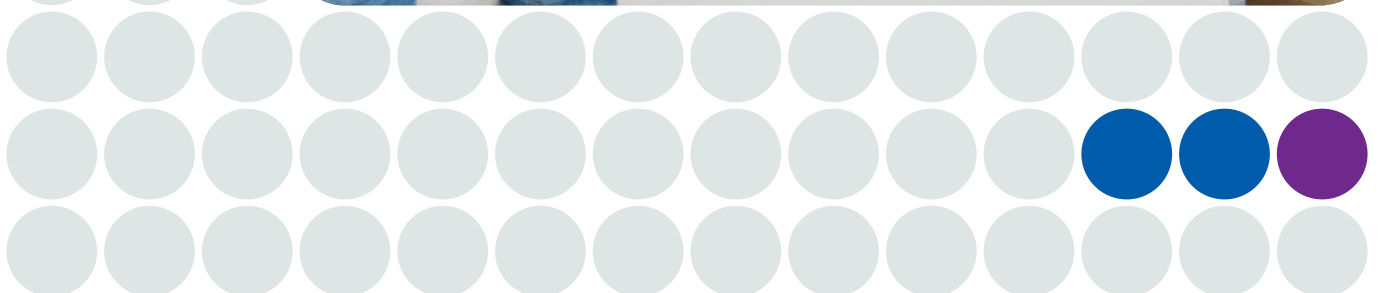
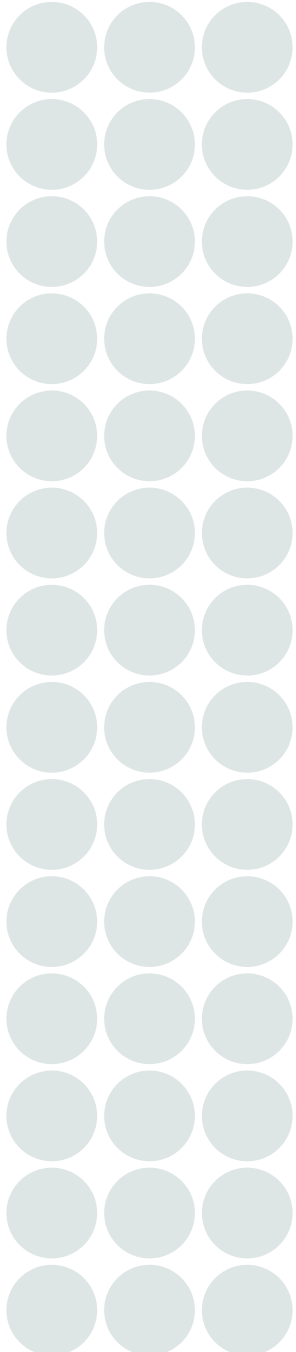


Liability Package Insurance

Policy Wording



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Welcome to Zurich

About Zurich

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

Zurich provides wealth protection and wealth creation solutions, offering general insurance for commercial customers, and life risk, investments and superannuation solutions for corporates and personal customers. Zurich's solutions and services are primarily accessible through insurance brokers, financial advisers and other intermediaries.

Zurich is part of the worldwide Zurich Insurance Group Ltd. It is one of the world's largest insurance companies, with a global network of subsidiaries and offices in Asia Pacific as well as North America, Europe, Latin America and other markets. Founded in 1872, the Group is headquartered in Zurich, Switzerland. It employs approximately 60,000 people serving customers in more than 170 countries.

Duty of Disclosure

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

You have the same duty to disclose those matters to us before *you* renew, extend, vary or reinstate a contract of general insurance. *Your* duty however, does not require disclosure of a matter:

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

Non-disclosure or Misrepresentation

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

Our contract with you

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

Your policy is made up of:

- the policy wording. It tells *you* what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the proposal, or declaration, which is the information *you* provide to us when applying for insurance cover;
- *your* most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to *you*, which shows the insurance details relevant to *you*. It includes any changes, exclusions, terms and conditions made to suit *your* 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 *your* policy *schedule* are insured. This policy wording is used for any offer of renewal we may make. Please keep *your* policy in a safe place.

We reserve the right to change the terms of this policy wording where permitted to do so by law.

Liability Package Insurance

Subject to the prior payment of or *your* agreement to pay the premium set out in the *schedule*, we agree with *you* to provide insurance as set out in this policy.

1. General Definitions

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

1.1 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:

- 1.1.1 involves violence against one or more persons;
- 1.1.2 involves damage to property;
- 1.1.3 endangers life other than that of the person committing the action;
- 1.1.4 creates a risk to health or safety of the public or a section of the public; or
- 1.1.5 is designed to interfere with or to disrupt an electronic system.

1.2 Aircraft

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

1.3 Business

business means all *your* activities and operations stated in the *schedule* and includes the ownership and tenancy of premises, private work carried out with *your* consent by *your* employees for any director or senior executive officer of *yours*, and the provision or management of canteen, social or sports organisations for *your* employees and internal first aid, fire and ambulance services.

1.4 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.

1.5 Excess

excess means the amount *you* first bear in relation to each *occurrence* or a claim made under this policy. The excess applies to all amounts payable under this policy including the indemnity provided under additional payments under the General and Products Liability cover section.

1.6 Extended reporting period

extending reporting period means the Extended Reporting Period stated in the *schedule*.

1.7 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 blast.

1.8 Internet operations

internet operations means:

- 1.8.1 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*, worm, logic bomb, or trojan horse;
- 1.8.2 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;
- 1.8.3 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
- 1.8.4 the operation and maintenance of the *insured's* web site.

1.9 Limit of liability

limit of liability means the Limits of Liability stated in the *schedule*.

1.10 North America

North America means:

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

1.11 Period of insurance

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

1.12 Pollutants

pollutants means 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.

1.13 Retroactive date

retroactive date means the Retroactive Date stated in the *schedule*.

1.14 Schedule

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

1.15 Subsidiary

subsidiary means a company or legal entity in respect of which *you* directly or indirectly:

- 1.15.1 control or controlled the composition of the board of directors; and/or
- 1.15.2 control or controlled more than half of the voting power; and/or
- 1.15.3 hold or held more than half of the issued share capital or other ownership of the entity,

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated within *your* accounts pursuant to the New Zealand Company Law or the applicable New Zealand Accounting Standard.

1.16 Vehicle

vehicle means any machine and attachments thereto including a trailer designed to travel on wheels or on self-laid tracks and to be propelled by other than manual or animal power.

1.17 Watercraft

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

1.18 You, Your, Insured

you, your, insured means:

- 1.18.1 the Insured named in the *schedule*;
- 1.18.2 *subsidiary* of the Insured named in the *schedule* now or hereafter formed or constituted and incorporated in New Zealand.

2. General Exclusions

We will not pay anything in respect of:

2.1 Asbestos

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

2.2 Aggravated, Punitive or Exemplary damages, Fines or Penalties

any fines, penalties, exemplary, punitive, liquidated or aggravated damages, unless express cover is provided within each cover section.

2.3 Building defects

any liability of whatsoever nature in connection with, any building or structure being affected by:

- 2.3.1 moisture or water or the penetration of external moisture or water;
- 2.3.2 the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms;
- 2.3.3 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.

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.

2.4 Electromagnetic fields

any liability of whatsoever nature in connection with, directly or indirectly caused by or contributed to by or arising from electromagnetic fields (EMF) or electromagnetic interference (EMI).

2.5 Information technology hazards

any liability arising out of:

- 2.5.1 *your internet operations*; or
- 2.5.2 *property damage* to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
 - 2.5.2.1 the use of any computer hardware or software;
 - 2.5.2.2 the provision of computer or telecommunication services by *you* or on *your* behalf; or
 - 2.5.2.3 the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any *computer virus*.

However, this Exclusion does not apply to:

- (i) *personal injury or property damage* arising out of any material which is already in print by the manufacturer in support of any of its products, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site; or
- (ii) liability which arises irrespective of the involvement of *your internet operations*.

2.6 Material change in the nature of your business

any change in the nature of *your business* which:

- 2.6.1 occurred during the currency of this policy; and
- 2.6.2 was known to an *insured*, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of *personal injury or property damage* for which indemnity is provided under this policy.

2.7 Radioactive contamination

any liability arising out of:

- 2.7.1 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 2.7.2 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.

2.8 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.

2.9 Tobacco and tobacco smoke

the inhalation or ingestion of, or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

2.10 War

any liability caused by or arising out of 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.

3. General Conditions

3.1 Assignment

This policy and any rights thereunder shall not be assigned without our prior written consent.

3.2 Authorisation

With the issuance of this policy, *you* agree to act on behalf of any *subsidiary* with respect to giving or receiving any notice of claim or termination, payment of premiums and receiving any return premiums that may become due under this policy, acceptance of endorsements, and giving or receiving of any other notice provided for in this policy, and each *subsidiary* agrees that *you* shall act on their behalf.

3.3 Cancellation

3.3.1 *You* may cancel this policy at any time by giving notice in writing to us;

3.3.2 We may cancel this policy at any time by giving notice in writing to *you*, such cancellation to take effect after 30 days from the time of notification received by *you*;

3.3.3 Upon cancellation by *you*, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*;

3.3.4 Upon cancellation by us, a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

3.4 Change of risk

Every change materially affecting the facts or circumstances degree or amount of risk existing at the commencement of this insurance or at any subsequent renewal date shall be notified in writing to us as soon as such change comes to the notice of *you* or any of *your* officers or representatives. On receipt of such notice we may vary the terms of this policy and/or charge such additional premium as we may determine appropriate in the circumstances.

3.5 Consolidation or Merger

If *you* acquire by merger, consolidate with, or are merged into or acquired by, any other entity after the inception date of the *period of insurance*, *you* must give written notice of such merger, consolidation or acquisition to us as soon as practicable together with such additional information as we may require. We shall be entitled to charge and receive payment of any reasonable additional premium that may be required.

3.6 Fraudulent claim

If *you* or an *insured person* or anyone acting upon the *insured person's* behalf is in any way fraudulent in obtaining any benefit under this policy, we may deny liability in respect of such claim or event and cancel the policy pursuant to General Conditions 3.3 'Cancellation'.

3.7 Notice

Every notice or communication to us shall be in writing and sent to our office where the policy was issued.

3.8 Payments in respect to Goods and Services Tax

All sums insured in this policy (except for the excess) 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 excess which is GST inclusive.

3.9 Plurals and titles

The proposal, this policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- 3.9.1 headings are descriptive only, not an aid to interpretation;
- 3.9.2 singular includes the plural and vice versa;
- 3.9.3 the male includes the female and neuter; and
- 3.9.4 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a claim is made.

3.10 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.

3.11 Sanctions regulation

Notwithstanding any other terms or conditions under this policy, Zurich shall not be deemed to provide coverage or will not make any payments or 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.

3.12 Severability and non-imputation

Where this policy insures more than one party, the application for insurance is construed as a separate application by each *insured*. When determining whether coverage is available under this policy:

- 3.12.1 any failure by an *insured* to comply with the duty of disclosure shall not be imputed to any other *insured*, where that *insured* is innocent of and had no prior knowledge of the failure; and
- 3.12.2 for the purposes of the exclusions, no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

3.13 Waiver of privilege

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

Section 1 – General and Products Liability

1. Definitions

When used in this section, its *schedule* and its endorsements the following additional definitions shall apply:

1.1 Insured person

insured person means *you* and/or the parties described under the heading Cover for Others.

1.2 Occurrence

occurrence means an event or series of events including continuous or repeated exposure to substantially the same general conditions which results, unexpectedly and unintentionally from *your* standpoint, in *personal injury* or *property damage* during the *period of insurance*. All *personal injury* or *property damage* happening during the *period of insurance* attributable to one source or to a common cause or to the same general conditions shall be deemed to be one *occurrence*.

1.3 Personal injury

personal injury means for this section:

- 1.3.1 bodily injury, death, sickness, disease, shock, fright, mental anguish or mental injury or humiliation;
- 1.3.2 false arrest, false detention, wrongful imprisonment, malicious prosecution;
- 1.3.3 wrongful entry or wrongful eviction or other invasion of privacy;
- 1.3.4 defamation, libel and slander;
- 1.3.5 assault and/or battery committed by an *insured person* whilst engaged in *your business* activities and for the purpose of preventing or eliminating danger to persons or property.

1.4 Products

products means anything which is or is deemed to have been manufactured, grown, extracted, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by *you* (including packaging or containers) in the course of the *business* and after it has ceased to be in *your* physical or legal control.

1.5 Property damage

property damage means:

- 1.5.1 physical injury to or loss of or destruction of tangible property including loss of use of that property at any time resulting therefrom;
- 1.5.2 loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by physical injury to or destruction of other tangible property.

1.6 Territorial limits

territorial limits means anywhere in the world (subject to the limitations set out in Exclusions 5.13 and 5.18).

1.7 Tool of trade

tool of trade means the use or operation of a *vehicle* and/or equipment, tool or apparatus which forms part of the *vehicle*, but only whilst engaged in and undertaking its designed purpose of digging, scraping, shovelling, grading, boring, drilling, compacting, harvesting, ploughing, shredding, lifting, clearing, levelling, hosing, pumping, spraying, vacuuming or suction activities.

2. Insuring Clause

Subject to the *limit of liability* and the terms and conditions of this policy, we will pay all sums which the *insured person* shall become legally liable to pay as compensation in respect of:

2.1 *personal injury*; and/or

2.2 *property damage*,

happening during the *period of insurance* within the *territorial limits* as a result of an *occurrence* in connection with *your business or products*.

3. Extensions of Cover

3.1 Additional Payments

In addition to the *limit of liability* under this section, we will pay as additional payments all:

- 3.1.1 reasonable legal costs and expenses incurred by the *insured person* with our written consent in the defence of any claim;
- 3.1.2 expenses incurred by any *insured person* for first aid to others;
- 3.1.3 reasonable expenses incurred by *you* for the temporary repair or shoring up or preservation of property which has been damaged;
- 3.1.4 interest accruing after entry of judgment against the *insured person* until we have paid, tendered or deposited in court such part of the judgment as does not exceed the *limit of liability*,

resulting from an *occurrence* which is otherwise covered by this section, provided that:

- (i) if a payment exceeding the *limit of liability* has to be made to dispose of a claim, our liability to pay any additional payments shall be limited to that proportion of those amounts as the *limit of liability* bears to the amount paid to dispose of the claim;
- (ii) in the event of a claim covered by this policy, being made against an *insured person* in any Court or before any other legally instituted body in *North America*, the *limit of liability* shall apply to such claim inclusive of all additional payments;
- (iii) we shall not be obligated to pay any compensation or additional payments, or judgment or to defend any suit after our *limit of liability* has been exhausted by payment of claims, judgments and/or settlements.

3.2 Cover for Others

The cover under this section is extended to the following:

- 3.2.1 any of *your* directors, partners, executive officers or employees but only whilst acting within the scope of their duties in such capacity;
- 3.2.2 any office bearer or member of the canteen, social, or sports organisations for *your* employees and internal first aid, fire or ambulance services formed with *your* consent, but only whilst acting within the scope of their activities in such capacity;
- 3.2.3 any of *your* directors, partners or senior executives in respect of private work undertaken by *your* employees for such directors, partners or senior executives;
- 3.2.4 any principal but only for its liability for *personal injury* or *property damage* that is directly caused by *your* performance of the work for that principal and only to the extent that we would cover *you* under this policy for *your* liability to that principal had the principal made a claim against *you* in respect of the circumstances giving rise to the principal's liability.

Provided that:

The work was carried out by *you* in an attempt to comply with a contract to perform work, that was made between *you* and the principal; and

Our liability shall not exceed the lesser of the minimum amount of liability insurance cover required by the contract to perform the work and the *limit of liability*; and

For avoidance of doubt it is further provided that where a principal makes a claim under this clause, the 'Employer's liability' exclusion shall apply so that we will not pay for that principal's liability for *personal injury* to any person in the service of either:

- (i) *you*; or
- (ii) that principal.

3.3 Forest and Rural Fire Act

The cover under this section is extended to indemnify *you* for all sums that any *insured person* shall become legally liable to pay for:

- 3.3.1 costs agreed by, or levies imposed, and apportioned to that *insured person* by any Fire Authority under sections 46 and 46A of the Forest and Rural Fires Act 1977; and
- 3.3.2 costs and losses recoverable from that *insured person* under section 43(1) of the Forest and Rural Fires Act 1977,

arising from fire or threat of fire happening during the *period of insurance* in New Zealand as a result of an *occurrence* in connection with *your business*.

Provided that:

- (i) our liability under this extension shall not exceed the sub-limit stated in the *schedule*; and
- (ii) *you* shall bear the amount of the *excess* shown in the *schedule* in the aggregate for all sums payable arising out of any *occurrence* or a series of *occurrences* consequent on or attributed to one source or original cause.

This extension shall apply:

- (a) whether *property damage* has happened or not;
- (b) to any *vehicle* (in so far as liability covered by this extension is not otherwise insured).

3.4 Punitive and Exemplary Damages

The cover under this section is extended to indemnify *you* for all sums that any *insured person* shall become legally liable to pay for punitive or exemplary damages arising from *personal injury* subject to:

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

We will also indemnify *you* against such claims for punitive and exemplary damages made against an *insured person* after the *period of insurance*. However, the claims must arise from facts or circumstance that *you* 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:

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

For the purposes of this extension only, General Exclusions 2.2 'Aggravated, Punitive or Exemplary damages' in this section is amended by deleting the words 'punitive and exemplary damages'.

4. Limit of Liability

Our liability to pay compensation as a result of an *occurrence* shall not exceed the *limit of liability*.

Our total aggregate liability to pay compensation in respect of or in any way related to *products* shall not exceed the *limit of liability*.

5. Exclusions

We will not pay anything in respect of:

5.1 Advertising liability

any liability of whatsoever nature in connection with, directly or indirectly caused by or contributed from any publishing, advertising, broadcasting or television activities of or on *your* behalf.

5.2 Assault and battery

personal injury or *property damage* arising directly or indirectly out of assault and battery committed by an *insured person*.

Exclusion 5.2 will not apply when such assault and battery is committed for the purpose of preventing or eliminating danger to persons or property.

5.3 Contractual liability

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

- 5.3.1 the liability or obligation would otherwise have been imposed by law;
- 5.3.2 the liability or obligation arises from a provision in a contract for lease of real or personal property other than a provision which obliges *you* to effect insurance or provide indemnity in respect of the subject matter of contract;
- 5.3.3 the liability or obligation is assumed by an *insured person* under any warranty under the requirement of legislation in respect to product safety;
- 5.3.4 the liability or obligation is assumed under those agreements specified in the *schedule*.

5.4 Damage to products

property damage to products if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

5.5 Defamation, Libel, Slander

the publication or utterance of a defamation, libel or slander made, prior to the inception date of this policy or at the direction of an *insured person* with knowledge of the falsity thereof.

5.6 Design, Specification, Formula

any design, plan, specification, formula or pattern provided by an *insured person* or any error or omission connected therewith.

Exclusion 5.6 shall not apply in respect of any design, plan, specification, formula or pattern about any *products*, which is not given for a fee.

5.7 Employer's liability

5.7.1 *personal injury* to any person arising out of, or sustained in the course of, the employment of such person in the service of any *insured person*, or through the breach of any duty owed to that person, where any *insured person*:

5.7.1.1 is indemnified or entitled to be indemnified (either in whole or in part and/or whether such insurance is limited in amount or not) under the Injury Prevention, Rehabilitation and Compensation Act 2001, or any similar amending or replacement legislation; or

5.7.1.2 would have been indemnified or entitled to be indemnified (either in whole or in part and/or whether such insurance is limited in amount or not) had any *insured person* arranged a policy of insurance as required by such legislation.

5.7.2 mental anguish, mental injury, shock or fright suffered by any person arising out of, or in the course of, that person's employment by, or service to, any *insured person*.

5.7.3 *personal injury* arising out of the wrongful or unfair dismissal, denial of natural justice, harassment, libel, slander, defamation, misleading representation, misleading advertising or humiliation of, or discrimination against, any person while in any *insured person's* service, prospective employment or while employed by any *insured person*.

5.7.4 which indemnity previously would have been provided in whole or in part under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current *period of insurance* of this policy.

5.7.5 the imposition of any liability by the provisions of any workers' compensation legislation or accident compensation legislation or any industrial award, agreement or determination.

5.8 Faulty workmanship

the cost of performing, completing, correcting or improving any work done or undertaken by an *insured person*.

5.9 Intentional conduct

any alleged or actual fraudulent, dishonest, malicious, intentional or criminal act or omission of an *insured person*.

5.10 Loss of use

loss of use of tangible property which has not been physically injured, or lost or destroyed resulting from:

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

Exclusion 5.10.2 does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the *products* after such *products* have been put to use by any person or organisation other than *you*.

5.11 Products guarantee

any *products* warranty or guarantee given by *you* or on *your* behalf.

Exclusion 5.11 shall not apply to the requirements of any legislation as to product safety.

5.12 Professional liability

the rendering of or failure to render professional advice or service provided by an *insured person* or any error or omission connected therewith.

5.13 Pollution

- 5.13.1 *personal injury or property damage* directly or indirectly arising out of 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);
- 5.13.2 *personal injury or property damage* directly or indirectly arising out of 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;
- 5.13.3 the cost of removing, nullifying or cleaning up *pollutants*;
- 5.13.4 the cost of preventing the escape of *pollutants*.

Exclusion 5.13.1 and 5.13.3 shall not apply where the claim arises from a sudden identifiable, unintended and unexpected event from *your* standpoint which takes place in its entirety at a specific time and place during the *period of insurance* and occurs outside of *North America*. However the total aggregate *limit of liability* during any one *period of insurance* shall not exceed the *limit of liability*.

5.14 Property in the physical or legal control

property damage to property owned by or in the physical or legal control of an *insured person*.

Exclusion 5.14 does not apply to *property damage* to:

- (i) personal effects of *your* employees;
- (ii) premises leased or rented to *you*;
- (iii) property, other than a *vehicle*, an *aircraft*, *watercraft* or *hovercraft*, not owned by but in *your* physical or legal control subject to a maximum of \$100,000 for any one *occurrence* and in the aggregate during any one *period of insurance*;
- (iv) *vehicles* in a car park unless:
 - (a) the *vehicles* are owned or used by or on behalf of the *insured person*, or
 - (b) the car park is occupied or operated by the *insured* for reward.

5.15 Property worked upon

property damage to that part of any property upon which an *insured person* is or has been working where *property damage* arises from the work of that *insured person*.

5.16 Recall of products

the withdrawal, recall, inspection, repair, adjustment, replacement, removal, disposal or loss of use of the *products* and/or the withdrawal or recall of any property of which such *products* form a part.

5.17 Specific products and substances

any liability arising out of:

- 5.17.1 urea formaldehyde;
- 5.17.2 silicon based human implants;
- 5.17.3 AIDS, HIV or HIV related illness;
- 5.17.4 contraceptives and RU 486;
- 5.17.5 human biological materials including extracts thereof (e.g. blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- 5.17.6 genetically modified seeds or organisms;
- 5.17.7 vaccines;
- 5.17.8 application or use of polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
- 5.17.9 tobacco and tobacco related products;
- 5.17.10 the manufacture or supply of all pharmaceutical active ingredients including medical implants; or
- 5.17.11 DES and orally taken oxycholine.

5.18 Territorial limits

any liability:

- 5.18.1 occurring in *North America*;
- 5.18.2 caused by or arising out of the *products* exported by an *insured person* or its agents to *North America*;
- 5.18.3 where claims are made upon an *insured person* outside New Zealand where the *insured person* is represented by a branch or company or firm or individual holding *your* power of attorney; or
- 5.18.4 where claims arise out of any contract entered into by an *insured person* under the terms of which work is to be performed outside New Zealand.

Exclusion 5.18 will not apply to *business* visits by executives and salespersons normally resident in New Zealand.

5.19 Vehicles

personal injury or *property damage* caused by or arising out of the ownership, use, possession, or control by any *insured person* of any *vehicle*:

- 5.19.1 which is registered; or
- 5.19.2 in respect of which registration is required by virtue of any legislation relating to vehicles.

Exclusion 5.19 does not apply to claims for:

- (i) *property damage* arising out of and during loading and unloading of goods to or from any *vehicle*;
- (ii) *property damage* caused by any *tool of trade* other than whilst in transit or whilst being used for transport or haulage.

5.20 Watercraft, Aircraft, Hovercraft

personal injury or property damage caused by or arising directly or indirectly out of or in connection with:

- 5.20.1 the ownership, use, maintenance, possession, operation, legal control, loading or unloading by an *insured person* or on behalf of an *insured person* of:
 - 5.20.1.1 any *watercraft* or *hovercraft*, except where such *watercraft* or *hovercraft* are owned and operated by others and used by an *insured person* for *business* entertainment;
 - 5.20.1.2 any *aircraft*;
 - 5.20.1.3 any property used for the purpose of an airport or any *aircraft* landing strip;
- 5.20.2 *your products* which an *insured person* knew or had reasonable cause to believe would be, or are installed in any *aircraft* or other aerial device.

6. Standard Conditions

6.1 Cross liability

Subject to Standard Condition 6.3 'Joint insured' for the purpose of this section, when an *insured person* consists of more than one party, the *insured person* shall be considered as a separate *insured person* 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*.

6.2 Inspection and Audit

We shall be permitted but not obligated to inspect the *insured person'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 person* 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. We may examine and audit *your* books and records at any time during the policy period and within 3 years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

6.3 Joint insured

Where *you* are 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.

6.4 Liability not to be admitted

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

6.5 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 person* believes the claim amount might fall below the applicable excess) under this section, the *insured persons* shall:

- 6.5.1 give notice in writing to us as soon as practicable after the *insured person* becomes aware of such loss or circumstance and within 30 days thereafter provide, at the *insured person's* own expense, a written statement detailing or relevant information;
- 6.5.2 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;
- 6.5.3 furnish to us details of any other insurance covering or which may cover the same loss;
- 6.5.4 take reasonable steps to prevent further loss;
- 6.5.5 at all reasonable times permit us or our agents to inquire into, investigate and examine the circumstances of any loss.

6.6 Other insurance

If any *insured person* is entitled to indemnity under any other insurance policy, *you* must advise us of the particulars of that other insurance policy when making a claim.

6.7 Premium

Unless otherwise stated, the premium is adjustable. *You* shall, within 30 days after the expiry of each *period of insurance*, provide such information as we may require to adjust the premium. Any difference in premium shall be paid by or allowed to *you*, provided that the adjusted premium will not be less than any minimum premium specified in the *schedule*. *You* shall at all times allow us to inspect such records.

6.8 Reasonable care and precautions

6.8.1 *You* must exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition.

6.8.2 The *insured persons* shall take all reasonable care and precautions:

6.8.2.1 to prevent *personal injury* or *property damage* losses;

6.8.2.2 to prevent the manufacture, sale or supply of defective *products*;

6.8.2.3 to comply with all statutory obligations, by-laws or regulations imposed by any public authority.

6.8.3 *You* shall at *your* own expense withdraw, inspect, repair, replace, trace, recall or modify any of the *products* containing any defect or deficiency of which *you* have knowledge or have reason to suspect.

6.9 Subrogation

Any *insured person* shall at any time, at the request and expense of us, permit all reasonable steps required to enforce any rights to which we would be entitled.

Section 2 – Employers Liability

1. Definitions

When used in this section, its *schedule* and its endorsements the following additional definitions shall apply:

1.1 Damages

damages means the total amount which *you* become legally obligated to pay on account of all claims, investigations, inquiries, administrative or regulatory proceedings, suits, legal actions, summons, writs, examinations made or commenced against *you* (including any written demands communicated to *you* alleging a *personal injury* by whatever means) for any *personal injury* to an *employee* of the *insured* to which cover under this policy applies, including but not limited to damages, judgments, settlements, interest, claimant costs and claimant expenses, but not including *defence costs*.

1.2 Defence costs

defence costs for the purpose of this cover section means:

- 1.2.1 the legal costs and expenses (including defence witness costs and expenses and defence expert costs and expenses) of being represented at any hearing, prosecution, inquiry, investigation, proceeding, settlement negotiation or review, relating to any *personal injury*;
- 1.2.2 the costs of applying to set aside a Court order or conducting an appeal of any action or proceeding, relating to any *personal injury*;
- 1.2.3 the costs of applying to a Court to determine whether an *employee's personal injury* is properly covered by the Injury Prevention, Rehabilitation and Compensation Act 2001 or any amendment to or re-enactment of that Act.

1.3 Employee

employee means any person who is employed by *you* in connection with *your business* and in respect of whose remuneration *you* deduct PAYE tax at source.

1.4 Penalties

penalties means any court costs, reparation order, prosecution witness costs and expenses and prosecution solicitors' costs imposed by the Court on *you*, upon conviction for an offence under the Health and Safety in Employment Act 1992. Provided that this does not include any fine or infringement fee, unless the *employee* sustained the relevant *personal injury* before 5 May 2003.

1.5 Personal injury

personal injury for the purpose of this cover section means bodily injury, sickness, disease or infection, including resulting death and disability, shock, fright or mental anguish or injury. For the purposes of this section, disease shall be sustained when the *employee* is first exposed to conditions in New Zealand out of which the disease is subject of the claim.

2. Insuring Clause

Subject to the terms and conditions of this policy, we will indemnify *you* against claims for *damages*, and all *defence costs*, which *you* shall become legally liable to pay as a result of any direct *employee* (including any temporary or part-time *employee*) of *yours* sustaining *personal injury* arising out of or in the course of their employment and which is notified to us during the *period of insurance* stated in the *schedule* or within 30 days after its expiry, or if exercised, the *extended reporting period*.

Provided that:

- (i) the *personal injury* has taken place on or after the *retroactive date*;
- (ii) the maximum amount payable by us for *damages* and *defence costs* for all claims under this policy shall not exceed the *limit of liability*.

3. Limit of Liability

All claims for *damages* and *defence costs* arising out of any one *personal injury* or inter-related *personal injuries* are deemed to be one claim. Any claim arising from inter-related *personal injuries* is deemed to have originated in the earliest *period of insurance* in which any of the *personal injuries* is first notified to us. Our liability under this section applies only to that part of such claims exceeding the *excess* stated in the *schedule*.

Our aggregate liability under this section in respect of claims arising out of *personal injuries* will not exceed the *limit of liability* stated in the *schedule* for any one *period of insurance*.

4. Extensions of Cover

4.1 Extended reporting period

If we terminate or refuse to renew this policy, *you* are entitled to an extension of the cover granted under this section for a further period of 12 months immediately following termination or non-renewal of the policy, but only in respect of any *personal injury* taking place both before the effective date of termination or non-renewal and after the *retroactive date*. If this right is exercised, then this further period shall be part of the last *period of insurance* and not an additional period.

The entitlement to this extension must be exercised by written notice from *you* prior to the effective date of termination or within 30 days following the effective date of non-renewal.

4.2 Newly created or Acquired subsidiary company

If any *subsidiary* is created or acquired by *you* after the inception of this policy, *your* new *subsidiary* shall be included provided that:

- 4.2.1 written notice of such creation or acquisition is given to us together with appropriate underwriting information and the payment of any additional premium required by us;
- 4.2.2 in respect of acquisitions, cover granted under this section shall only apply to *personal injuries* both discovered by *you* after the date of such acquisition and suffered after the *retroactive date*, and that *you* have agreed to cover any such *subsidiary*.

4.3 Subsidiary change of ownership

- 4.3.1 In the event that an entity ceases to be a *subsidiary* prior to or during the *period of insurance*, cover under this section with respect to such *subsidiary* shall continue until the expiry date of the *period of insurance*.

Provided that such cover shall only apply in respect of a *personal injury* suffered after the *retroactive date* or the date of creation or acquisition by *you* (whichever is the later), and until the date such entity ceased to be a *subsidiary*.

- 4.3.2 Where the entity has ceased to be a *subsidiary* because it is acquired by a third party, then this extension shall only apply where *you* have agreed to retain a continuing obligation to indemnify the third party for claims for *damages* and *defence costs* against *you* arising out of any *personal injury* that has been suffered whilst it was a *subsidiary*.

5. Exclusions

We will not pay anything in respect of:

5.1 Employer's liability

- 5.1.1 any *personal injury* for which cover to any extent is provided by the Injury Prevention, Rehabilitation and Compensation Act 2001 or would have been, had a claim been made;
- 5.1.2 any *personal injury* which has resulted from any breach or contravention of any provisions of the Health and Safety in Employment Act 1992 or any failure to comply with any improvement or prohibition notice issued thereunder;
- 5.1.3 any judgment entered in any Court other than a New Zealand Court, or any debt incurred by *you* as the result of such a judgment;
- 5.1.4 any claim which is or should properly be brought in the Employment Tribunal or Employment Court, or for any personal grievance.

5.2 Fines or Penalties

any fines or *penalties* levied against *you*.

5.3 Prior and Pending

- 5.3.1 any claim made, threatened or in any way intimated against *you* and not notified to us prior to the commencement of the *period of insurance* or, if this section is renewed, prior to the effective date of renewal;
- 5.3.2 any claim for *personal injury* which has taken place or allegedly taken place prior to the *retroactive date* stated in the *schedule*;
- 5.3.3 any circumstance or *personal injury* of which, at the commencement of *the period of insurance* or, if this section is renewed, the effective date of renewal, *you* were aware or ought reasonably to have been aware and may give rise to a claim against *you*;
- 5.3.4 any liability arising out of any litigation in existence at the commencement of the *period of insurance*.

5.4 Territorial limits

any liability for any claim arising out of *personal injury* for *damages* and *defence costs* suffered outside of New Zealand and from any proceeding brought in any Court outside of New Zealand.

6. Standard Conditions

6.1 Notice and proof of claim

- 6.1.1 As a condition precedent to *your* right to be indemnified under this section, *you* must give us notice in writing as soon as practicable of:
 - 6.1.1.1 any claim made against *you*;
 - 6.1.1.2 the receipt of notice from any person or party of any intention to hold *you* responsible for any *personal injury* for which cover is provided by this policy;
 - 6.1.1.3 any circumstance which *you* become aware of which may give rise to a claim or claims under this policy;irrespective of whether the claim is considered justified and/or the quantum is likely to be within the excess stated in the *schedule*.
- 6.1.2 any circumstance notified to us during the *period of insurance*, any subsequent claim that arises from that claim is covered under this section as though the claim itself was notified during the *period of insurance*;

- 6.1.3 The insurance provided by this section ceases absolutely at the expiry of the *period of insurance*. Provided that if the notice referred to in General Conditions – ‘Cancellation 3.3.1’ has been given to us prior to the expiration of the *period of insurance*, or within 30 days after its expiry, or if exercised, during the *extended reporting period*, any claim arising from the notified circumstances, which is subsequently made after the expiration of the *period of insurance*, shall be deemed to have been made during the subsistence of this section.
- 6.1.4 You shall give to us or our authorised representatives all such information and assistance as they may reasonably require. We may assume control and conduct of any claim, and any counterclaim (which shall be a condition precedent to your right to be covered under this policy).
- 6.1.5 You shall not in relation to any claim under this section:
- 6.1.5.1 make any admission of liability;
 - 6.1.5.2 incur any expense;
 - 6.1.5.3 make any payment or settlement of liability;
- without our prior written consent. Such consent shall not be unreasonably withheld. We are not liable for any admissions, expenses, payments or settlements made without our prior written consent.
- 6.1.6 If you refuse to consent to any settlement recommended by us, and shall elect to contest or continue any legal proceedings, our liability for the claim shall not exceed the amount for which the claim could have been so settled (over and above the *excess* stated in the *schedule*), including *defence costs* incurred up to the date of such refusal.
- 6.1.7 You shall not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon) shall advise such proceedings should be contested by you.

6.2 Other insurance

If, at the time of any claim arising under this section, there is any other valid and collectable insurance covering all or part of the same *personal injury*, this section will apply to the amount in excess of that recoverable or in fact recovered under the other insurance, whether such insurance is stated to be primary or excess, unless such other insurance is written only as specific excess insurance over the *limit of liability* under this section.

6.3 Prejudice

Where you breach or fail to comply with Standard Conditions 6.1 ‘Notice and proof of claim’ or 6.4 ‘Reasonable precautions’ of this section, and this results in prejudice to us in relation to the handling of any claim, the indemnity afforded by this policy in respect of such claim, shall be reduced to such sum as would have been payable by us in the absence of such prejudice.

6.4 Reasonable precautions

As a condition precedent to our liability, you shall take all reasonable precautions to:

- 6.4.1 avoid, prevent or minimise any circumstances that may give rise to a claim;
- 6.4.2 comply with all relevant statutory obligations.

6.5 Subrogation

We shall be entitled to use your name in any proceedings to enforce, for the benefit of us, any order made for costs or otherwise, and shall have the right of subrogation in respect of all rights which you may have against any person or entity who may be responsible to you in respect of any claim for any *personal injury* covered by this policy, and you shall do everything necessary to secure and preserve such rights including executing any necessary documents for the purpose of vesting such rights to us. Any monies recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of us to the extent of the amount paid by us in respect of that claim (including related costs and expenses), and the remaining monies shall become your property.

If no recovery is made as a result of proceedings conducted solely by us, then we shall bear the expenses.

Section 3 – Statutory Liability

1. Definitions

When used in this section, its *schedule* and its endorsements the following additional definitions shall apply:

1.1 Acquitted

acquitted means the dismissal of charges before or after a defended hearing or trial, or entry of a not guilty verdict (but shall not include the disposition of a charge pursuant to a plea bargain where multiple informations have been laid).

1.2 Act of Parliament

Act of Parliament means any Act of the New Zealand Parliament, and any Code or Regulations or other subordinate legislation made under those Acts, but does not include an *excluded Act*.

1.3 Civil defence legal costs

civil defence legal costs means the legal costs and expenses, including witness costs and expenses, necessarily and reasonably incurred in relation to:

- 1.3.1 a formal inquiry by a regulatory body, which could lead to a prosecution for an *offence*;
- 1.3.2 proceedings before a Human Rights or Privacy Complaints Review Tribunal.

1.4 Defence costs

defence costs for the purpose of this cover section means the legal costs and expenses, including witness costs and expenses, necessarily and reasonably incurred with our prior consent, in investigating and/or defending any prosecution or threatened prosecution alleging the commission of an *offence*.

1.5 Event

event means any act or omission in the course of the *business* that gives rise, or may give rise, to a prosecution for an *offence*, a formal inquiry by a regulatory body, which could lead to a prosecution for an *offence*, or proceedings before a Human Rights or Privacy Complaints Review Tribunal.

1.6 Excluded Act

excluded Act means the following:

- 1.6.1 Arms Act 1983;
 - 1.6.2 Aviation Crimes Act 1972;
 - 1.6.3 Crimes Act 1961;
 - 1.6.4 Criminal Investigations (Blood Samples) Act 1995;
 - 1.6.5 Criminal Proceeds (Recovery) Act 2009;
 - 1.6.6 Land Transport (Road Safety and Other Matter) Amendment Act 2001;
 - 1.6.7 Misuse of Drugs Act 1975;
 - 1.6.8 Summary Offences Act 1981;
 - 1.6.9 Transport (Vehicle and Driver Registration and Licensing) Act 1986,
- and any other *Act of Parliament* specified in the *schedule* as an *excluded Act*.

1.7 Fine

fine means any fine, infringement fee, court costs, witness expenses or solicitor's costs, ordered by a court to be paid by *you* upon *your* conviction for an *offence*, for which we may legally indemnify *you*. This does not include a fine imposed pursuant to the Health and Safety in Employment Act 1992, but this definition is extended to include a sentence of reparation imposed following a conviction under that Act.

1.8 Inception date

inception date means the commencement date of the *period of insurance* stated in the *schedule*.

1.9 Offence

offence means any information alleging the commission by *you* of an *offence* under an *Act of Parliament*, for which *you* are liable to a *fine* if convicted.

2. Insuring Clause

Subject to the terms and conditions of this policy, we will pay:

- 2.1 any *fine* payable by *you* upon *your* conviction of an *offence* under any *Act of Parliament*, except an *excluded Act*; and
- 2.2 *defence costs* incurred by *you* in relation to *your* defence.

Provided that:

- (i) the *event* giving rise to the *offence* happened on or after the *retroactive date*;
- (ii) *you* notified us of the *event*, in writing during the *period of insurance* or with 30 days after its expiry.

3. Limit of Liability

- 3.1 Our liability to indemnify *you* for all *events* under this section is limited in the aggregate to the amount specified in the *schedule* applicable for the *period of insurance* within which *you* have, or should have, first notified us of the *event*.
- 3.2 Where an *event* is alleged to have taken place on, over or between a number of specified dates, which fall within more than one *period of insurance*, for the purposes of the applicable *limit of liability* and *excess*, the *event* will be treated as if it occurred in the *period of insurance* in which *you* have, or should have, first notified us of the *event*.
- 3.3 The *excess* specified in the *schedule* shall be borne by *you* in respect of each and every *event*.

4. Extensions of Cover

4.1 Additional defence costs

Subject to the terms and conditions of this section, if it is alleged that *you* have knowingly, wilfully or intentionally breached an *Act of Parliament*, except an *excluded Act*, we will pay *defence costs* incurred by *you* in relation to *your* defence but only if *you* are *acquitted*. For the purposes of the cover under this extension, Exclusion 5.2.1 does not apply.

4.2 Extended reporting period

If we refuse to renew this section, *you* may, upon payment of an additional premium of 100% of the full annual premium payable for the expiring *period of insurance*, extend the cover under this section for a further 12 months from the date of expiry.

Provided that:

- 4.2.1 this option to extend this section must be notified in writing to us within 30 days of the date of expiry;
- 4.2.2 the extension shall only apply in respect of an *event* before the expiry date;
- 4.2.3 an offer by us of any renewal terms or premiums different from expiring terms or premiums shall not constitute a refusal to renew;
- 4.2.4 the *limit of liability* under this extension is part of and not in addition to the *limit of liability* specified in the *schedule*.

4.3 Newly created or Acquired subsidiary company

If any *subsidiary* is created or acquired by *you* after the inception of this section, *your* new *subsidiary* shall be included provided that:

- 4.3.1 written notice of such creation or acquisition is given to us together with appropriate underwriting information and the payment of any additional premium required by us;
- 4.3.2 in respect of acquisitions, cover granted under this section shall only apply any to any *event* both discovered by *you* after the date of such acquisition and suffered after the *retroactive date*, and for which *you* have agreed to cover any such *subsidiary*.

4.4 Official investigations

Subject to the terms and conditions of this section, we will pay *your civil defence legal costs* in relation to any inquiry involving *you*.

4.5 Subsidiary change of ownership

4.5.1 In the event that an entity ceases to be a *subsidiary* during the *period of insurance*, cover under this section with respect to such *subsidiary* shall continue until the expiry date of the *period of insurance*.

Provided that such cover shall only apply in respect of an *event* that occurred after the *retroactive date* or the date of creation or acquisition by *you* (whichever is the later), and until the date such entity ceased to be a *subsidiary*.

4.5.2 Where the entity has ceased to be a *subsidiary* because it is acquired by a third party, then this extension shall only apply where *you* have agreed to retain a continuing obligation to indemnify the third party arising out of an *event* that has taken place whilst it was a *subsidiary*.

5. Exclusions

We will not pay anything in respect of:

5.1 Daily continuing offences

- 5.1.1 the cost or payment of any enforcement order, remedial order or compliance order;
- 5.1.2 any *fine* imposed in relation to a daily continuing *offence* where the *fine* is imposed in relation to a period of time after *you* first received notice from the informant or his employing body of the intention to commence a prosecution in relation to that *offence*.

5.2 Deliberate disregard

the prosecution for an *offence* which has allegedly resulted from the:

- 5.2.1 deliberate or reckless disregard by *you* of any of the provisions of any *Act of Parliament* which *you* are alleged to have contravened;
- 5.2.2 *you* instructing another person to discharge one or more of *your* obligations under any of the provisions of the Acts and failing to take all reasonable steps to ensure that *your* obligations were discharged as instructed;
- 5.2.3 failure by *you* to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building consent, Notice to Rectify, Compliance Schedule, Gazetted Notice, or order made by a Human Rights or Privacy Review Tribunal.

5.3 Orders and Costs

- 5.3.1 any pecuniary penalty, restitution, compensation or order for payment pursuant to Part 6 of the Commerce Act 1986;
- 5.3.2 any order for payment of costs made under the Commissions of Inquiry Act 1908;
- 5.3.3 any court order in the nature of damages or compensation, except a sentence of reparation following a Health and Safety in Employment Act 1992 prosecution;
- 5.3.4 any action, proceeding, inquiry, investigation or prosecution taken against *you* by the Inland Revenue Department or any other revenue collecting authority.

5.4 Personal grievances

any contract of service with any current, former or prospective employee, including any personal grievance or similar action by an employee, but this exclusion shall not apply to any investigation or inquiry by the Department of Labour pursuant to the Health and Safety in Employment Act 1992.

5.5 Prior and Pending

any *event* after the *retroactive date* but before the *inception date*, if *you* knew, or ought reasonably to have known, of the *event* and failed to notify the *event* to us before the *inception date*.

5.6 Private prosecutions

any investigation of or defence of any action, proceeding, inquiry, investigation or prosecution taken against *you* by a person other than the statutory authority or enforcement agency given that responsibility under the relevant *Act of Parliament*.

5.7 Territorial limits

any liability suffered outside of New Zealand and from any judgement brought in any Court outside of New Zealand.

6. Standard Conditions

6.1 Apportionment of costs

If there are claims against *you* which contain uninsured allegations or allegations against other parties then we shall use our best efforts to agree upon a fair and proper allocation of *defence costs*.

If *you* and Zurich disagree over the allocation of *defence costs*, then we shall advance such *defence costs* we believe to be covered under this section, until a different allocation is negotiated, arbitrated or judicially determined. In this case we will, if requested by *you*, refer the dispute for determination of allocation to an expert mutually agreeable to all parties and such determination shall apply retrospectively to all *defence costs* incurred in the defence of that particular claim or *event*.

6.2 Claims notification and Duties

As a condition precedent to our liability, *you* shall give us immediate notice in writing of any *event*. At the same time, or as soon as possible thereafter, *you* shall:

- 6.2.1 provide full details of any notice or circumstance of an *event* together with any documentation, information and details that are relevant;
- 6.2.2 give any notice or circumstance notified to us during the *period of insurance*, any subsequent claim that arises from that *event* is covered under this policy as though the *event* itself was notified during the *period of insurance*;
- 6.2.3 use *your* best endeavours to preserve all property, products, appliances, plant and other things which may assist us in the investigation or conduct of *your* defence. So far as may be reasonably practical, no alteration or repair shall be effected until we have first had the opportunity of inspection;

- 6.2.4 co-operate with us or our authorised representatives in all aspects of the claim;
- 6.2.5 not make any admission of fact or liability, offer, promise or payment or settlement without our prior written consent;
- 6.2.6 if the *offence* alleged is a continuing one, immediately take, at *your* expense, all reasonable steps to prevent its continuation.

6.3 Conduct of defence

- 6.3.1 Upon acceptance by us of *your* claim, we shall have the right to nominate a solicitor to act on *your* behalf and we shall have the total discretion as to the conduct and control of *your* defence, including strategy, in respect of any prosecution, inquiry, settlement, negotiation or proceedings against *you*.
- 6.3.2 Where *you* disagree with us over *your* defence, including strategy, we shall provide *you* in writing with our reasons and shall refer them to an independent barrister for a final determination as to their reasonableness. This independent determination shall be binding on all parties.

6.4 Other insurance

If, at the time of any claim arising under this section, there is any other valid and collectable insurance covering all or part of the same *event*, this section will apply to the amount in excess of that recoverable or in fact recovered under the other insurance, whether such insurance is stated to be primary or excess, unless such other insurance is written only as specific excess insurance over the *limit of liability* under this section.

6.5 Prejudice

Where *you* breach or fail to comply with Standard Conditions 6.2 'Claims notification and duties' or 6.7 'Reasonable precautions' of this section, and this results in prejudice to us in relation to the handling of any claim, the indemnity afforded by this section in respect of such claim, shall be reduced to such sum as would have been payable by us in the absence of such prejudice.

6.6 Progress payment of legal expenses

In the event of a claim for which we have agreed to indemnify *you*, on production of acceptable evidence of expenditure prior to the final settlement of the claim, we shall pay *defence costs* or *civil defence legal costs* necessarily and reasonably incurred by *you*.

6.7 Reasonable precautions

As a condition precedent to our liability, *you* shall take all reasonable precautions to:

- 6.7.1 avoid, prevent or minimise any circumstances that may give rise to an *event*;
- 6.7.2 comply with all relevant statutory obligations.

6.8 Subrogation

In the event of a payment under this section to *you* or on *your* behalf, we shall be subrogated to all *your* rights of recovery against all persons and organisations. *You* shall do all that is necessary to assist us in the exercise of such rights, including prosecuting proceedings in *your* name at our expense.

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