



# Umbrella 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 insurer 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.

# Umbrella 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 will 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 pay the *ultimate net loss* in excess of the *insured's retained limit* 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*,

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

## 2. Limits of Liability

Our liability to pay *compensation* as a result of an *occurrence* will not exceed the Limits of Liability specified in the *schedule*, in excess of the *insured's retained limit*.

Our total aggregate liability to pay *compensation* in respect of or in any way related to *products* will not exceed the Limits of Liability specified in the *schedule*, in excess of the *insured's retained limit*.

In the event that the aggregate limits of liability in the policy(ies) of Underlying Insurance specified in the *schedule* are reduced because of payment of compensation claims, this policy will continue in excess of the reduced Underlying Insurance or, in the event of exhaustion, in force as Underlying Insurance for the remainder of the *period of insurance*.

## 3. Extensions of Cover

### 3.1 Defence – Settlement – Additional payments

In respect of a liability covered by this policy that is not covered by the policy(ies) of Underlying Insurance specified in the *schedule*, we:

- 3.1.1 may defend, at our option, any suit against the *insured* seeking *compensation*, even if such suit is groundless, false or fraudulent;
- 3.1.2 may make such investigation, negotiation and settlement of any claim or suit as we deem expedient; and
- 3.1.3 in addition to the Limits of Liability specified in the *schedule*, will pay as additional payments:
  - (i) reasonable legal costs and expenses incurred by the *insured* with our written consent in the defence of any claim;
  - (ii) expenses incurred by the *insured* for first aid to others;
  - (iii) reasonable expenses incurred by the *insured* for the temporary repair or shoring up or preservation of property which has been damaged; and
  - (iv) interest accruing after entry of judgment against the *insured* until we have paid, tendered or deposited in court such part of the judgment as does not exceed the Limits of Liability specified in the *schedule*,

on the basis that:

- 3.1.4 if a payment exceeding our Limits of Liability specified in the *schedule* has to be made to dispose of a claim, our liability to pay any additional payments will be limited to that proportion of those amounts as the Limits of Liability bear to the amount paid to dispose of the claim;

- 3.1.5 in the event of a claim covered by this policy being made against the *insured* in any Court or before any other legally instituted body in *North America*, the Limits of Liability specified in the *schedule* will apply to such claim inclusive of all additional payments; and
- 3.1.6 we will not be obligated to pay any *compensation* or additional payments, or judgment or to defend any suit after our Limits of Liability specified in the *schedule* have been exhausted by payment of claims, judgments and/or settlements.

## 4. Definitions

When used in this policy, its *schedule* and its Endorsements, the following definitions will 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* or the goods or services related to those *products*.

### 4.3 Aircraft

*aircraft* means 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*;
- 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; and
- 4.4.6 provision of sponsorship.

#### 4.5 Compensation

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

- 4.5.1 *personal injury*;
- 4.5.2 *property damage*; and
- 4.5.3 *advertising liability*.

#### 4.6 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.

#### 4.7 Cyber event

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

- 4.7.1 an *IT Network*; or
- 4.7.2 *computer virus*.

#### 4.8 Employee

*employee* means:

- 4.8.1 any person under a contract of service or apprenticeship with the *insured*;
- 4.8.2 any labour master or person supplied, or any person supplied by a labour only sub-contractor;
- 4.8.3 any self-employed person working under contract with the *insured* and under its direction;
- 4.8.4 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*;
- 4.8.5 any student or person undertaking work for the *insured* under a work experience or similar scheme; or
- 4.8.6 any voluntary helper,

whilst engaged in connection with the *business*.

#### 4.9 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*.

#### 4.10 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.

#### 4.11 Insured

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

- 4.11.1 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;
- 4.11.2 any of the *insured's* directors, officers, *employees* or partners but only whilst acting within the scope of their duties in such capacity;
- 4.11.3 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;

- 4.11.4 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;
- 4.11.5 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; and
- 4.11.6 any partnership or joint venture named in the schedule as the Insured and includes any partner or member thereof, but only with respect to their liability incurred in the operation of that partnership or joint venture.

#### 4.12 Insured's retained limit

*insured's retained limit* means the greater of:

- 4.12.1 Underlying Insurance – the amount equal to the Limit of Liability in the policy(ies) of Underlying Insurance specified in the *schedule*; or
- 4.12.2 Self Insured Retention – the amount stated in the *schedule* in respect of an *occurrence* not covered in the policy(ies) of Underlying Insurance specified in the *schedule*.

#### 4.13 Internet operations

*internet operations* mean:

- 4.13.1 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 programs contain any malicious or damaging code, including but not limited to *computer virus*;
- 4.13.2 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;
- 4.13.3 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
- 4.13.4 the operation and maintenance of the *insured's* web site.

#### 4.14 IT network

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

#### 4.15 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.

#### 4.16 North America

*North America* means:

- 4.16.1 the United States of America and/or Canada; and
- 4.16.2 any state or territory incorporated in, or administered by, the United States of America or Canada.

#### 4.17 Occurrence

*occurrence* means an event, including continuous or repeated exposure to conditions, which results in *personal injury, property damage* or *advertising liability* neither expected nor intended from the *insured's* standpoint, during the *period of insurance*.

With respect to *personal injury* or *property damage*, all such exposure to substantially the same general conditions will be deemed one *occurrence*.

With respect to *advertising liability* all damages involving the same injurious material or act, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants, will be deemed to arise out of one *occurrence*.

#### 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 *products* exported into those countries.

#### 4.27 Ultimate net loss

*ultimate net loss* means the sum actually paid or payable in the settlement or satisfaction of losses for which the *insured* is legally liable either by adjudication or compromise with Zurich's written consent, after making proper deductions for all recoveries and salvages collectible, but excluding all loss expenses and legal expenses (including legal fees, court costs and interest on any judgment or award) and all salaries of *employees* and office expenses of the *insured*, Zurich or any Underlying Insurers so incurred.

#### 4.28 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 will 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 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).

However this does not apply:

- 5.3.1 to the extent that such cover is otherwise provided under any policies specified in the *schedule* as Underlying Insurance; or
- 5.3.2 to non-owned *aircraft, watercraft* or *hovercraft* hired, leased or chartered by the *insured* with a pilot/master and crew, to the extent that such cover is otherwise provided under any policies specified in the *schedule* as Underlying Insurance.

#### 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.

## 5.5 Contractual liability

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

- 5.5.1 the liability or obligation would otherwise have been implied by law;
- 5.5.2 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 the contract;
- 5.5.3 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; or
- 5.5.4 the liability or obligation is assumed under those agreements specified in the *schedule*.

## 5.6 Cyber risks

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

## 5.7 Custody and control

*property damage* to property owned by, hired to or in the custody or control of the *insured* or any *employee* or any party acting on behalf of the *insured*, other than:

- 5.7.1 guests', visitors', directors', officers', *employees*' or partners' personal effects;
- 5.7.2 *motor vehicles* in a car park, unless the car park is owned or operated by the *insured* for reward;
- 5.7.3 premises at which the *insured* is undertaking work in connection with the *business*; or
- 5.7.4 any building (including its fixtures and fittings) leased, hired or rented to the *insured* provided Zurich will not be liable in respect of liability assumed by the *insured* under a tenancy or other agreement which would not have attached in the absence of such agreement.

## 5.8 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.

## 5.9 Injury to employees

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

- 5.9.1 *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;
- 5.9.2 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
- 5.9.3 any claim for *employment practices*.

This policy will 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*:

- 5.9.4 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
- 5.9.5 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 not 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.

#### 5.10 Liquidated or punitive damages

any liability for any amount in respect of:

5.10.1 fines or penalties; or

5.10.2 liquidated, punitive or exemplary damages or multiplication of awards.

#### 5.11 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:

5.11.1 a delay in or lack of performance by or on behalf of any *insured* in respect of any contract or agreement; or

5.11.2 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 5.11.2 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*.

#### 5.12 Motor vehicle 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*:

5.12.1 which is required by law to be registered; or

5.12.2 in respect of which insurance is required by virtue of any legislation.

However this Exclusion does not apply to:

5.12.3 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;

5.12.4 *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;

5.12.5 accidental or erroneous failure to maintain such statutory insurance; or

5.12.6 *personal injury* or *property damage* where insurance in respect of such liability is provided by an Underlying Policy specified in the *schedule*, but then only to the extent of the cover provided by such policy.

#### 5.13 Pollution

any liability arising out of:

5.13.1 *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);

5.13.2 *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;

5.13.3 the cost of removing, nullifying or cleaning up *pollutants*; or

5.13.4 the cost of preventing the escape of *pollutants*.

Exclusions 5.13.1 and 5.13.3 above will not apply where the occurrence arises from a sudden identifiable, unintended and unexpected event from the *insured's* 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 Limits of Liability during any one *period of insurance* will not exceed the Limits of Liability specified in the *schedule*.

#### 5.14 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 herewith. However, this Exclusion will not apply to:

5.14.1 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

5.14.2 the rendering or failure to render professional advice by any *employee* or 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.

#### 5.15 Radioactive contamination

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

5.15.1 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

5.15.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

However this will 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.

#### 5.16 Repair and replacement

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

5.16.1 the cost of rectifying defective work carried out by or on behalf of the *insured*;

5.16.2 *property damage* to any of the *insured's products* causing *personal injury* or *property damage*; or

5.16.3 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.

#### 5.17 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*.

### 5.18 Specific products and substances

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

5.18.1 urea formaldehyde;

5.18.2 silicon based human implants;

5.18.3 AIDS, HIV or HIV related illness;

5.18.4 contraceptives and RU 486;

5.18.5 human biological materials including extracts thereof (e.g. blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);

5.18.6 genetically modified seeds or organisms;

5.18.7 vaccines;

5.18.8 application or use of polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;

5.18.9 tobacco and tobacco related products; or

5.18.10 the manufacture or supply of all pharmaceutical active ingredients including medical implants.

### 5.19 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 will 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.

### 5.20 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 will 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* must 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 Appeals

If the *insured's* Underlying Insurer elects not to appeal a judgment in excess of the *insured's retained limit*, Zurich may do so at our own expense. Under no circumstances will Zurich's liability for the *ultimate net loss* exceed the applicable Limits of Liability specified in the *schedule*, plus the taxable costs, disbursements and interest incidental to such appeal.

### 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, must be notified to Zurich as soon as such change comes to the *insured's* notice. Zurich reserves 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:
  - (i) in the *insured's* name and on the *insured's* behalf; or
  - (ii) in the name of and on behalf of any other party covered by the *insured's* policy;
- 6.5.3 sending to us any claim, writ, summons or full details of other relevant legal or other proceedings such as an impending prosecution or inquest of which the *insured* is notified or becomes aware; 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* must 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 will 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 will have full discretion in the conduct of any proceedings and in the settlement of any claim.
- 6.6.3 The *insured* must give all such information and assistance as Zurich may require.

### 6.7 Cross liability

Subject to General Condition 6.13 'Joint insured' for the purpose of this policy, when an *insured* consists of more than one party, the *insured* will be considered as a separate *insured* as though a separate policy had been issued to each of the said parties but nothing herein contained will operate to increase our Limits of Liability.

### 6.8 Discharge of any liability

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

In the event of a claim or series of claims arising from an *occurrence* resulting in liability of the *insured* to pay a sum in excess of the Limits of Liability specified in the *schedule*, Zurich's liability for any payment under Extension of Cover 3.1 'Defence – Settlement – Additional payments' will 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 will 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 Insured's retained limit**

Zurich will be liable only for the *ultimate net loss* in excess of the *insured's retained limit*.

The Self Insured Retention specified in the *schedule* applies to each *occurrence* and is payable by the *insured* at such time as is required by Zurich. Zurich's liability to indemnify the *insured* under this policy is over and above the Self Insured Retention.

#### **6.12 Inspection and audit**

Zurich will 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 will 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.

#### **6.13 Joint insured**

Where the *insured* is comprised of more than one legal entity, information supplied to us will 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, will likewise be deemed to have been furnished, omitted or withheld on behalf of all such entities.

#### **6.14 Joint responsibility and liability**

Any and all *insureds* 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.

#### **6.15 Liability not to be admitted**

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

#### **6.16 Maintenance of Underlying Insurance**

The Underlying Insurance specified in the *schedule* must be maintained in force as valid collectible insurance during the currency of this policy, except for any reduction of the aggregate limits contained therein solely by reason of payment of claims. Failure to comply with the foregoing or bankruptcy or insolvency of any of the Underlying Insurers will not invalidate this policy but in the event of such circumstances, Zurich will be liable only to the extent that we would have been liable had such circumstances not existed during the *period of insurance*.

The *insured* must give Zurich written notice as soon as practicable of any change in the scope of coverage or in the amount of Limits of Liability in the Underlying Insurance and of the termination of any coverage or exhaustion or likely exhaustion of aggregate Limits of Liability of any Underlying Insurance.

### 6.17 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*.

### 6.18 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 within the Limits of Liability of the Underlying Insurance specified in the *schedule* or within the Self Insured Retention amount stated in the *schedule*) under this policy, the *insured* must:

- 6.18.1 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;
- 6.18.2 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;
- 6.18.3 furnish to us details of any other insurance covering or which may cover the same loss;
- 6.18.4 take reasonable steps to prevent further loss; and
- 6.18.5 at all reasonable times permit us or our agents to inquire into, investigate and examine the circumstances of any loss.

### 6.19 Payments in respect to Goods and Services Tax

All sums insured in this policy (except for the *insured's retained limit*) 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 *insured's retained limit*, which is GST inclusive.

### 6.20 Premium

Unless otherwise stated, the premium is adjustable. The *insured* must, within 30 days after the expiry of each *period of insurance*, provide such information as Zurich may require to adjust the premium.

Any difference in premium will 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* must at all times allow Zurich to inspect such records.

### 6.21 Proper law and jurisdiction

The construction, interpretation and meaning of the provisions of this policy will 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.

### 6.22 Reasonable precautions

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

- 6.22.1 take, and cause to be taken, reasonable precautions to prevent *personal injury, property damage* and/or *advertising liability*;
- 6.22.2 comply with all statutory or local authority law, obligations and requirements or equivalent;
- 6.22.3 prevent the manufacture, sale or supply of defective *products*; and
- 6.22.4 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.

### 6.23 Sanctions regulation

Notwithstanding any other terms or conditions under this policy, Zurich will 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.

### 6.24 Subrogation

Zurich waives all rights of subrogation under this policy against:

- 6.24.1 any corporation or organisation the majority of whose capital stock is owned or controlled by the *insured*; and
- 6.24.2 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.

### 6.25 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 will be made in New Zealand dollars at the cash rate of exchange for the purchase of Australian 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.

### 6.26 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.

**Zurich Australian Insurance Limited**

(incorporated in Australia)

Trading as Zurich New Zealand

ABN 13 000 296 640, AFS Licence No: 232507

Level 9, 29 Customs Street West, Auckland Central 1010

Client Enquiries

Telephone: 0508 987 424

[www.zurich.co.nz](http://www.zurich.co.nz)



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