

Zurich Employers Liability Insurance

Policy Wording



Contents

Welcome to Zurich

About Zurich	3
Duty of Disclosure	3
Non-disclosure or Misrepresentation	3
Our contract with you	3

Zurich Employers Liability Insurance – Policy Wording

1. Insuring Clauses	4
1.1 Damages	4
1.2 Defence costs	4
2. Extensions of Cover	4
2.1 Extended reporting period	4
2.2 Newly created or Acquired subsidiary	4
2.3 Subsidiary change of ownership	4
3. Definitions	5
3.1 Act of terrorism	5
3.2 Computer virus	5
3.3 Damages	5
3.4 Deductible	5
3.5 Defence costs	5
3.6 Extended reporting period	5
3.7 Internet operations	6
3.8 Limit of liability	6
3.9 Penalties	6
3.10 Period of insurance	6
3.11 Personal injury	6
3.12 Retroactive date	6
3.13 Schedule	6
3.14 Subsidiary	6
3.15 You, Your, Insured	7
4. Limit of liability	7
5. Exclusions	7
5.1 Asbestos	7
5.2 Building defects	7
5.3 Employer's liability	8
5.4 Fines or Penalties	8
5.6 Information technology hazards	8
5.6 Prior and Pending	8
5.7 Radioactive contamination	8
5.8 Territorial limits	8
5.9 War, Act of terrorism	9

6. Standard Conditions	9
6.1 Assignment	9
6.2 Authorisation	9
6.3 Cancellation	9
6.4 Consolidation or Merger	9
6.5 Fraudulent claim	9
6.6 Headings	9
6.7 Material change of risk	9
6.8 Notice and proof of claim	10
6.9 Other insurance	10
6.10 Payments in respect of Goods & Services Tax	10
6.11 Prejudice	10
6.12 Proper law and Jurisdiction	11
6.13 Reasonable precautions	11
6.14 Sanctions regulations	11
6.15 Severability and Non-imputation	11
6.16 Singular and Plural	11
6.17 Subrogation	11
6.18 Waiver of privilege	11

Welcome to Zurich

About Zurich

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

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, 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, 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, unless we tell *you* otherwise. 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.

Zurich Employers Liability 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. Insuring Clauses

1.1 Damages

Subject to the terms and conditions of this policy, we will indemnify *you* against claims for *damages* 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 the *personal injury* has taken place on or after the *retroactive date*.

1.2 Defence costs

Subject to the terms and conditions of this policy, we will indemnify *you* against *defence costs* incurred in respect of claims for *damages* covered under Insuring Clause 1.1.

2. Extensions of Cover

2.1 Extended reporting period

If we terminate or refuse to renew this policy, *you* are entitled to an extension of the cover granted under this policy 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.

2.2 Newly created or Acquired subsidiary

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

Provided that:

- 2.2.1 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;
- 2.2.2 in respect of acquisitions, cover granted under this policy shall only apply to *personal injury* 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*.

2.3 Subsidiary change of ownership

- 2.3.1 In the event that an entity ceases to be a *subsidiary* during the *period of insurance*, cover under this policy 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 *personal injury* 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*.

- 2.3.2 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*.

3. Definitions

3.1 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:

- 3.1.1 involves violence against one or more persons;
- 3.1.2 involves damage to property;
- 3.1.3 endangers life other than that of the person committing the action;
- 3.1.4 creates a risk to health or safety of the public or a section of the public; or
- 3.1.5 is designed to interfere with or to disrupt an electronic system.

3.2 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.

3.3 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*.

3.4 Deductible

deductible means the amount *you* first bear in relation to each *occurrence*. The *deductible* applies to all amounts payable under this policy.

3.5 Defence costs

defence costs means:

- 3.5.1 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*;
- 3.5.2 costs of applying to set aside a Court order or conducting an appeal of any action or proceeding, relating to any *personal injury*;
- 3.5.3 the costs of applying to a Court to determine whether an employee's *personal injury* is properly covered by the Accident Compensation Act 2001 No 49 or any amendment to or re-enactment of that Act.

3.6 Extended reporting period

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

3.7 Internet operations

internet operations means:

- 3.7.1 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;
- 3.7.2 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;
- 3.7.3 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
- 3.7.4 the operation and maintenance of the *insured's* web site.

3.8 Limit of liability

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

3.9 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 at Work Act 2015.

3.10 Period of insurance

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

3.11 Personal injury

personal injury means bodily injury, sickness, disease or infection, including resulting death and disability, shock, fright or mental anguish or injury. For the purposes of this policy, 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.

3.12 Retroactive date

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

3.13 Schedule

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

3.14 Subsidiary

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

- 3.14.1 control or controlled the composition of the board of directors; and/or
- 3.14.2 control or controlled more than half of the voting power; and/or
- 3.14.3 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 with those of the named *insured* pursuant to the New Zealand Company Law or the applicable New Zealand Accounting Standards.

3.15 You, Your, Insured

you, your, insured means:

3.15.1 the Insured named in the *schedule*; or

3.15.2 any *subsidiary* of the Insured described in 3.15.1;

and includes any person who is, or was at the time of the event, a trustee, director, officer, sole trader, partner or employee of *yours*.

4. Limit of liability

Our liability to indemnify *you* for all claims under:

4.1 for *damages* under Insuring Clause 1.1 of this policy in respect of all claims is limited in the aggregate to the *limit of liability* specified for Insuring Clause 1.1 in the *schedule* for any one *period of insurance*; and

4.2 for *defence costs* under Insuring Clause 1.2 of this policy in respect of all claims is limited in the aggregate to the *limit of liability* specified for Insuring Clause 1.2 in the *schedule* for any one *period of insurance*; and

4.3 under Insuring Clauses 1.1 and 1.2 of this policy in respect of all claims is limited in the aggregate to the *limit of liability* specified for Insuring Clauses 1.1 and 1.2 in the *schedule* for any one *period of insurance*.

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 policy applies only to that part of such claims exceeding the *deductible* stated in the *schedule*.

5. Exclusions

We will not pay anything in respect of:

5.1 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 in whatever form or quantity.

5.2 Building defect

any liability for, or fulfil any obligation in respect of any claim or *defence costs*, which are directly or indirectly caused by or contributed to, or arise directly or indirectly out of:

5.2.1 the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or

5.2.2 any cost or expense 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, gradual deterioration, micro-organisms, bacteria, protozoa or similar or like forms, in any building or structure; or

5.2.3 the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:

(a) external water or moisture; or

(b) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.

5.3 Employer's liability

- 5.3.1 any *personal injury* for which cover to any extent is provided by the Accident Compensation Act 2001 No 49 or would have been, had a claim been made;
- 5.3.2 any *personal injury* which has resulted from any breach or contravention of any provisions of the Health and Safety at Work Act 2015 or any failure to comply with any improvement or prohibition notice issued thereunder;
- 5.3.3 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;
- 5.3.4 any claim which is or should properly be brought in the Employment Tribunal or Employment Court, or for any personal grievance.

5.4 Fines or Penalties

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

5.5 Information technology hazards

any liability arising out of:

- 5.5.1 the *insured's internet operations*; or
- 5.5.2 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:
 - (a) the use of any computer hardware or software;
 - (b) the provision of computer or telecommunication services by the *insured* or on the *insured's* behalf; or
 - (c) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any *computer virus*.

5.6 Prior and pending

- 5.6.1 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 policy is renewed, prior to the effective date of renewal;
- 5.6.2 any claim for *personal injury* which has taken place or allegedly taken place prior to the *retroactive date* stated in the *schedule*;
- 5.6.3 any circumstance or *personal injury* of which, at the commencement of the *period of insurance* or, if this policy 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*;
- 5.6.4 any liability arising out of any litigation in existence at the commencement of the *period of insurance*.

5.7 Radioactive contamination

- 5.7.1 any ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion combustion shall include any self-sustaining process of nuclear fission;
- 5.7.2 any nuclear weapons material.

5.8 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.

5.9 War, Act of terrorism

any death, injury, illness, loss, damage, costs or expenses of whatsoever nature caused by or arising out of the following regardless of any other cause or event contributing concurrently or in any other sequence by:

- 5.9.1 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 or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- 5.9.2 any *act of terrorism* or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

6. Standard Conditions

6.1 Assignment

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

6.2 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.

6.3 Cancellation

- 6.3.1 *You* may cancel this policy at any time by giving notice in writing to us;
- 6.3.2 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*;
- 6.3.3 Upon cancellation by *you* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*;
- 6.3.4 Upon cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

6.4 Consolidation or Merger

If *you* acquire by merger, consolidate with, or are merged into or acquired by any other entity after the commencement of the *period of insurance*, *you* shall give written notice to us as soon as practicable, together with such information as we may require, and *you* shall pay us any required additional premium.

6.5 Fraudulent claim

If any claim is in any respect fraudulent, if any false declaration is made or used in support of any claim, or if any fraudulent means or devices are used by *you* or by anyone acting on *your* behalf, to obtain any benefit under this policy, all benefits will be forfeited.

6.6 Headings

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

6.7 Material change of risk

You shall give immediate notice to us of any material change to any of the facts or circumstances existing at the commencement of the *period of insurance*. We shall be entitled to charge an additional premium as appropriate.

6.8 Notice and proof of claim

6.8.1 As a condition precedent to our liability, *you* shall give us immediate notice in writing as soon as possible, of:

- (a) any claim made against *you*;
- (b) 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;
- (c) 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 *deductible* stated in the *schedule*.

6.8.2 The insurance provided by this policy ceases absolutely at the expiry of the *period of insurance*. Provided that if the notice referred to in 6.8.1 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 policy;

6.8.3 *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);

6.8.4 *You* shall not in relation to any claim under this policy:

- (a) make any admission of liability;
- (b) incur any expense;
- (c) 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.

6.8.5 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 *deductible* stated in the *schedule*), including *defence costs* incurred up to the date of such refusal;

6.8.6 *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*.

6.9 Other insurance

If, at the time of any claim arising under this policy, there is any other valid and collectable insurance covering all or part of the same *personal injury*, this policy 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 policy.

6.10 Payments in respect to Goods & Services Tax

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

6.11 Prejudice

Where *you* breach or fail to comply with Standard Conditions 6.8 'Notice and proof of claim' or 6.13 'Reasonable precautions' of this policy, 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.

6.12 Proper law and Jurisdiction

- 6.12.1 The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with New Zealand law.
- 6.12.2 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, *you* will submit to the exclusive jurisdiction of any competent Court in New Zealand.

6.13 Reasonable precautions

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

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

6.14 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.

6.15 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:

- 6.15.1 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
- 6.15.2 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*.

6.16 Singular and Plural

Except where the context otherwise requires, a reference to the singular includes the plural and vice versa.

6.17 Subrogation

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

6.18 Waiver of privilege

If we instruct any lawyer to investigate or defend any claim made against *you*, *you* shall 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.

Zurich Australian Insurance Limited
(incorporated in Australia)
Trading as Zurich New Zealand
ABN 13 000 296 640, AFS Licence No: 232507
Zurich House: Level 16, 21 Queen Street Auckland Central 1010

Client Enquiries
Telephone: 0508 ZURICH
0508 987 424
www.zurich.co.nz



The trademarks depicted are registered in the name of
Zurich Insurance Company Ltd in many jurisdictions worldwide.

