



LIABILITY POLICY

Certificate of Insurance Wording

SECTION 1 – GENERAL AND PRODUCTS LIABILITY

THIS SECTION OF THE **POLICY** IS WRITTEN ON A LOSSES-OCCURRING BASIS. COVERAGE APPLIES ONLY TO THOSE LOSSES WHICH ARISE FROM **OCCURRENCES** THAT FIRST HAPPEN DURING THE **PERIOD OF INSURANCE**.

SECTION 1: INSURING AGREEMENT

In consideration of the payment of the premium and subject to all the terms and conditions of this **Policy**:

1.1 General & Products Liability

We shall indemnify You in respect of legal liability for Personal Injury or Property Damage that:

- i. results from or arises out of an Occurrence that takes place in the Territorial Limits in connection with Your Business; and
- ii. happens during the Period of Insurance.

1.2 Defence Costs

In addition, **We** agree to pay **Defence Costs** necessarily and reasonably incurred to defend any civil legal action for **Personal Injury** or **Property Damage**. Payments under this clause are payable in addition to payments under Clause 1.3 (Limit of Indemnity). Provided that:

- i. **We** may investigate, negotiate and settle any claim or suit against **You**; and
- ii. if **We** have paid the **Limit of Indemnity** in respect of any claim, judgement or settlement, or series of claims, judgements or settlements arising from an **Occurrence**, **Our** liability in respect of any further **Defence Costs** shall cease; and
- iii. if a payment exceeding the **Limit of Indemnity** has to be made to dispose of a claim, **Our** liability to pay **Defence Costs** shall be limited to such proportion of the **Defence Costs** as the **Limit of Indemnity** bears to the amount paid to dispose of the claim.

1.3 Limit of Indemnity

- i. The most that **We** will pay for any claim or any series of claims arising out of an **Occurrence** shall be:
 - a. the **Limit of Indemnity**; or
 - b. where one or more Extensions apply, the sub-limit for those Extensions;whichever is lesser.
- ii. The most that **We** will pay during any one **Period of Insurance** for all claims arising out of **Your Products** shall not exceed the Goods/Products **Limit of Indemnity** stated in the **Schedule**.
- iii. In respect of all claims and **Occurrences** during the **Period of Insurance** that result in **Personal Injury** or **Property Damage** in the United States of America or Canada, (including those territories to which the legal jurisdiction of the United States of America or Canada applies), the most that **We** will pay in total for all liability under Clause 1.1 and **Defence Costs** under Clause 1.2 is the **Limit of Indemnity**.

1.4 Excess

The **Excess** as stated in the **Schedule** applies for each **Occurrence**, unless a different amount is specified in the **Schedule** as applying to an Automatic Extension.

SECTION 1: AUTOMATIC EXTENSIONS

The following Extensions are included automatically and are subject to the **Policy** terms and conditions unless otherwise stated. Some Extensions have sub-limits and excesses; these are stated in the **Schedule**. All sub-limits are included in, and are not in addition to, the **Limit of Indemnity**.

2.1 Business Advice or Service

Notwithstanding Exclusion 3.3 (Business Advice or Service) **We** shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** arising out of:

- i. advice, service, errors or omissions by **You** in connection with **Your Business**, provided that no payment is charged for such advice or service;
- ii. the rendering of, or failure to render, professional medical advice by a person engaged or employed by **You** to provide first aid and other medical services at **Your** premises.

2.2 Business Travel to a Non-Territorial Country

Notwithstanding Policy Exclusion 10.6 (Legal Jurisdiction) and Section Exclusion 3.18 (Territorial Limits)

We shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** occurring in any **Non-Territorial Country** during the **Period of Insurance** arising out of or from **Your** directors, executives or salespersons travelling to or in the **Non-Territorial Country** in the course of **Your Business**, provided that they are temporarily visiting and not normally resident in the **Non-Territorial Country**.
Provided that:

- i. **You** do not have a place of business in that **Non-Territorial Country** and are not represented by any parent or subsidiary company or joint venture in that **Non-Territorial Country**; and
- ii. any work performed in connection with the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement of any product or property is excluded; and
- iii. the ownership, possession, control, maintenance or use of any **Vehicle** or **Watercraft** is excluded.

2.3 Care, Custody or Control

Notwithstanding Exclusion 3.16, ii. (Property in your Care, Custody or Control) **We** shall indemnify **You** in respect of **Your** liability for **Property Damage** occurring during the **Period of Insurance** to property, including **Employees'** property, while the property is in **Your** care, custody or control in connection with **Your Business**.

The most that **We** will pay in the **Period of Insurance** for all claims under this Automatic Extension shall not exceed the sub-limit specified in Item 6.3 of the **Schedule** and the **Excess** specified in Item 6.3 for this Automatic Extension shall apply.

2.4 Forest and Rural Fires Act

Notwithstanding Exclusions 3.9 (Forest and Rural Fires Act) and 3.20, i. (Vehicles) **We** shall indemnify **You** for **Your** liability arising from a fire (or threat of fire) during the **Period of Insurance**, in New Zealand for:

- i. costs and expenses recoverable from **You** under section 43 of the Forest and Rural Fires Act 1977; and
- ii. levies imposed by a Fire Authority and apportioned to **You** under sections 46 and 46A of the Forest and Rural Fires Act 1977 .

Cover under this Automatic Extension is available regardless of whether or not **Property Damage** has occurred.

The most that **We** will pay under this Automatic Extension for all **Occurrences** during the **Period of Insurance** shall not exceed the sub-limit specified in Item 6.4 of the **Schedule** and the **Excess** specified in Item 6.4 for this Automatic Extension shall apply.

2.5 Hot Work Away From Own Premises

Notwithstanding Exclusion 3.11 (Hot Works Away From Own Premises) **We** shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** arising from **Hot Work** carried out by **You** in connection with **Your Business**, away from **Your** own premises during the **Period of Insurance**.
Provided that:

- i. The area of the **Hot Work** will be cleared of combustible material for a safe distance from or beneath the area of **Hot Work**. A safe distance will be not less than ten metres from where the **Hot Work** is being carried out. Where such distance is impracticable, combustible material will be covered with fireproof blankets or similar protective equipment. Combustible parts of the premises will be similarly protected; and
- ii. hose reels or fire extinguishers of a type and capacity suitable for the combustible material and the premises will be kept adjacent to the area of **Hot Work** and available for immediate use; and
- iii. equipment will be lit or switched on for as short a time as possible before use and extinguished immediately after use; and
- iv. lighted or heated **Hot Work** equipment will not be left unattended; and
- v. a thorough examination for any signs of combustion will be made around the area of **Hot Work** immediately after completing the **Hot Work** and then an hour after the termination of each period of **Hot Work**; and
- vi. before applying heat to metal built into or projecting through walls, floors or ceilings an examination will be made to ensure that the other end of the metal is cleared of combustible material or such material is covered; and
- vii. any specific site **Hot Work** permit is complied with.

The most that **We** will pay under this Automatic Extension for all **Occurrences** during the **Period of Insurance** shall not exceed the sub-limit specified in Item 6.5 of the **Schedule** and the **Excess** specified in Item 6.5 for this Automatic Extension shall apply.

2.6 Innkeeper's Liability

Notwithstanding Exclusion 3.16, ii. (Property in your Care, Custody or Control) **We** shall indemnify **You** in respect of **Your** liability arising under the Innkeeper's Act 1962 for **Property Damage** that occurs in connection with **Your Business**, during the **Period of Insurance**.

2.7 Landlord's Liability

We shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** arising from **Your** legal ownership, but not physical occupation of, any premises during the **Period of Insurance**.

2.8 Lost or Stolen Keys

Notwithstanding Exclusion 3.16, ii. (Property in your Care, Custody or Control) **We** shall indemnify **You** in respect of the costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations if the keys or combinations are stolen or believed on reasonable grounds to have been duplicated without proper authority. Provided that:

- i. the keys or combinations are in **Your** possession in connection with **Your Business**; and
- ii. **You** do not own, hire, lease or rent such property.

The most that **We** will pay under this Automatic Extension for all **Occurrences** during the **Period of Insurance** shall not exceed the sub-limit specified in Item 6.8 of the **Schedule** and the **Excess** specified in Item 6.8 for this Automatic Extension shall apply.

2.9 Product Withdrawal Costs

Notwithstanding Exclusion 3.15 (Product Recall) **We** shall indemnify **You** in respect of 80% of the costs reasonably and necessarily incurred for the withdrawal or recall, during the **Period of Insurance**, of **Your Products** in New Zealand where **Your Products** have the same defect as a product that has already given rise to a claim in respect of which **You** are entitled to indemnity under this **Policy**.

The most that **We** will pay under this Automatic Extension for all **Occurrences** during the **Period of Insurance** shall not exceed the sub-limit specified in Item 6.9 of the **Schedule** and the **Excess** specified in Item 6.9 for this Automatic Extension shall apply.

Notwithstanding clause 1.2 (Defence Costs), cover for **Defence Costs** for such claims and **Occurrences** is included within the **Limit of Indemnity** and not in addition to it.

2.10 Punitive or Exemplary Damages

Notwithstanding Exclusion 3.8 (Fines and Exemplary Damages) and General Policy Condition 12.19 (Reasonable Care) **We** shall indemnify **You** in respect of **Your** liability to pay punitive or exemplary damages awarded by a New Zealand Court arising out of an **Occurrence** in connection with **Your Business** during the **Period of Insurance**. Provided that:

- i. any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- ii. there is no cover for any punitive or exemplary damages connected with any dishonest or fraudulent act or omission by **You**.

The most that **We** will pay under this Automatic Extension for all **Occurrences** during the **Period of Insurance** shall not exceed the sub-limit specified in Item 6.10 of the **Schedule** and the **Excess** specified in Item 6.10 the **Schedule** for this Automatic Extension shall apply.

2.11 Service/Repair – Vehicle and Watercraft

Notwithstanding Exclusions 3.7 (Faulty Workmanship), 3.16, ii. (Property in your Care, Custody or Control), 3.17 (Reinstatement, Repair or Replacement of Your Products) and 3.20, i. (Vehicles) **We** shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** that arises out of an **Occurrence** in New Zealand in connection with **Your Business** during the **Period of Insurance** and arising from:

- i. the service, repair, modification or installation by **You** of or to a **Vehicle** or **Watercraft** not exceeding ten metres in length; or

- ii. **Property Damage** to a **Vehicle** or **Watercraft** not exceeding ten metres in length, which is in **Your** care, custody or control for the purposes of service, repair, modification or installation, including while it is being driven or operated by **You**.

Provided that:

- a. the **Vehicle** or **Watercraft** is not, and has not been, owned, hired, leased, or rented by **You**.
- b. The most that **We** will pay under this Automatic Extension for an **Occurrence** resulting in **Property Damage** to a **Vehicle** or **Watercraft** shall not exceed the sub-limit specified in the **Schedule**. This sub-limit does not apply to any resultant **Property Damage** to other property.
- c. The **Excess** for this Automatic Extension shall apply.

The most that **We** will pay under this Automatic Extension for all **Occurrences** during the **Period of Insurance** shall not exceed the sub-limit specified in Item 6.11 of the **Schedule** and the **Excess** specified in Item 6.11 for this Automatic Extension shall apply.

2.12 Tenant's Liability

Notwithstanding Exclusion 3.16, ii. (Property in your Care, Custody or Control) **We** shall indemnify **You** in respect of **Your** liability for **Property Damage** to premises (including landlord's fixtures and fittings) occupied, but not owned by **You** and arising out of an **Occurrence** during the **Period of Insurance**.

2.13 Underground Services

Notwithstanding Exclusion 3.19 (Underground Services) **We** shall indemnify **You** in respect of **Your** liability for **Property Damage** arising out of an **Occurrence** in New Zealand in connection with **Your Business** during the **Period of Insurance**, to existing underground services, cables, pipes or equipment. Provided that **You**:

- i. made enquiries with the appropriate authorities or owners to verify the existence of the underground services prior to the commencement of any work; and
- ii. sighted a plan of their location; and
- iii. took all reasonable precautions to prevent **Property Damage**.

The most that **We** will pay under this Automatic Extension for all **Occurrences** during the **Period of Insurance** shall not exceed the sub-limit specified in Item 6.13 of the **Schedule** and the **Excess** specified in Item 6.13 for this Automatic Extension shall apply.

2.14 Vehicles/Mobile Mechanical Plant Liability

Notwithstanding Exclusion 3.20, i. (Vehicles) **We** shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** arising out of an **Occurrence** in New Zealand in connection with **Your Business**, during the **Period of Insurance** and arising from:

- i. loading or unloading or bringing to or removal of a load from a **Vehicle**;
- ii. the use of any **Vehicle** while it is being operated or used by **You** as mobile mechanical plant or machinery and not being driven as a **Vehicle**;
- iii. **Property Damage** to a **Vehicle** (not belonging to **You** or used by or on **Your** behalf) in **Your** physical or legal control where such **Property Damage** occurs whilst the **Vehicle** is in a car park owned or operated by **You**. Exclusion 3.16, ii. (Property in your Care, Custody or Control) does not apply to claims under this paragraph iii;
- iv. **Property Damage** to a bridge, viaduct, culvert, weigh bridge or road beneath a **Vehicle**, where the **Property Damage** is caused by vibration or by the weight of the **Vehicle** and/or its load, provided that any designated weight restrictions were not exceeded.

The most that **We** will pay under this Automatic Extension for all **Occurrences** during the **Period of Insurance** shall not exceed the sub-limit specified in Item 6.14 of the **Schedule** and the **Excess** specified in Item 6.14 for this Automatic Extension shall apply.

2.15 Vibration and Removal of Support

Notwithstanding Exclusion 3.21 (Vibration and Removal of Support) **We** shall indemnify **You** in respect of **Your** liability for **Personal Injury** or **Property Damage** arising out of an **Occurrence** in New Zealand in

connection with **Your Business**, during the **Period of Insurance**, and arising from vibration, or removing, weakening or interfering with, the support of land or buildings. Provided that:

- i. the land or buildings are not owned or occupied by **You**; and
- ii. the **Personal Injury** or **Property Damage** arises from **Your** actions.
- iii. The most that **We** will pay under this Automatic Extension for all **Occurrences** that happen during the **Period of Insurance** shall not exceed the sub-limit specified in the **Schedule** and the **Excess** for this Automatic Extension shall apply.

The most that **We** will pay under this Automatic Extension for all **Occurrences** during the **Period of Insurance** shall not exceed the sub-limit specified in Item 6.15 of the **Schedule** and the **Excess** specified in Item 6.15 for this Automatic Extension shall apply.

SECTION 1 – EXCLUSIONS

There is no cover under this Section of the **Policy** for:

3.1 Aircraft

Liability arising out of or in connection with:

- i. any ownership, possession, control, service, repair, maintenance, operation, loading, unloading or use of an **Aircraft**;
- ii. **Your Products** that are knowingly incorporated in any **Aircraft** or aerial device.

3.2 Building Defects

- i. 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 relation to leaks, water penetration, weatherproofing, moisture or any effective water exit or control system;
- ii. the action of fungi, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms in any building or structure;
- iii. the costs and expenses of abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating, disposal of or in any way responding to or assessing the effects of micro-organisms, mould, fungi, mildew, rot or decay, gradual deterioration, bacteria, protozoa or similar or like forms, in any building or structure.

This Exclusion does not exclude indemnity for liability for **Personal Injury** or **Property Damage** that is caused by leakage of internal water pipes or cisterns.

3.3 Business Advice or Service

Liability arising out of or in connection with the rendering of, or failure to render, advice or service or any error or omission in the rendering of advice or a service.

3.4 Contractual Liability

Liability assumed under any contract or agreement except to the extent that such liability would have been imposed by law in the absence of the contract. This includes a contractual obligation that excludes or limits **Your** rights of recovery from a third party.

This Exclusion shall not apply to:

- i. written contracts that have been notified to and agreed by **Us** and are referred to in the **Schedule**.
- ii. liability assumed by **You** under a warranty of fitness or quality in respect of **Your Products** but subject always to terms and conditions of the **Policy**.
- iii. liability assumed by **You** under any lease or hire of real or personal property.

3.5 Defamation

Liability arising out of or in connection with libel or slander, being the publication or utterance of any defamatory or disparaging material.

3.6 Employer's Liability

- i. Liability arising out of in connection with:

- a. **Personal Injury** to any **Employee** arising out of or in the course of employment of such **Employee**;
- b. any obligation for which **You** may be held liable under the Accident Compensation Act 2001;
- ii. Liability in respect of which **You** are entitled to seek compensation under any policy of insurance required to be taken out pursuant to any legislation relating to workers' compensation, irrespective of whether or not **You** have effected such a policy.

3.7 Faulty Workmanship

Liability for the cost of performing, completing, repairing, correcting or improving any work undertaken by **You** or on **Your** behalf.

This Exclusion does not apply to liability for resultant damage to other property.

3.8 Fines and Exemplary Damages

Liability arising out of or in connection with any aggravated, punitive or exemplary damages, fines, penalties, performance warranties or liquidated damages, whether imposed under contract or statute.

3.9 Forest and Rural Fires Act

Liability arising out of or in connection with the Forest and Rural Fires Act 1977, unless **You** are (or would be) otherwise legally liable for such sums.

3.10 GMO (Genetically Modified Organisms)

Liability arising out of or in connection with any genetically modified or engineered organisms or material, transgenic seeds or any other products of a similar nature.

3.11 Hot Work Away From Own Premises

Liability arising out of or in connection with **Hot Work** carried out away from Your own premises.

3.12 Loss of Use

Liability arising out of or in connection with loss of use of tangible property which has not been physically damaged or destroyed, where that loss of use is caused by:

- i. a delay in, or lack of performance by **You** or on **Your** behalf of, any contract or agreement;
- ii. the failure of **Your Products** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by **You**.

This Exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of **Your Products** after they have been put to use by any person or entity other than **You**.

3.13 Offshore Oil or Gas Platforms

Liability arising out of or in connection with any offshore oil or gas platform.

3.14 Pollution

Liability arising out of or in connection with **Personal Injury** or **Property Damage** caused by or arising out of **Pollution**, including for the prevention, removal or clean-up of any **Pollutants**.

However, this Exclusion shall not apply if the **Pollution** is caused by a sudden, identifiable, unexpected and unintended event and takes place in its entirety at a specific time and place.

Notwithstanding the above the Exclusion stands and there is no cover whatsoever under this Policy for liability in connection with **Pollution** that occurs in the United States of America or Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.

3.15 Product Recall

Liability arising out of or in connection with the recall, withdrawal, removal, inspection, repair, modification, replacement or loss of use of **Your Products**, or of any property which **Your Products** form a part of, if such products or property are withdrawn from the market or from use because of any known, or suspected defect or deficiency therein, or because of any Government or statutory ban, order or notice.

3.16 Property in your Care, Custody or Control

Liability for **Property Damage** to:

- i. property owned by **You**;
- ii. property in **Your** physical or legal control.

3.17 Reinstatement, Repair or Replacement of Your Products

Liability for **Property Damage** to any of **Your Products** arising out of such **Product** or any part of such **Product**.

3.18 Territorial Limits

Liability arising out of or in connection with:

- i. an **Occurrence** in a **Non-Territorial Country**;
- ii. claims made upon **You** outside the **Territorial Limits**;
- iii. claims that arise out of any contract entered into by **You** under the terms of which the work is to be performed outside the **Territorial Limits**.

However, this Exclusion does not apply to liability arising from **Your Products** where they have been exported to a **Non-Territorial Country** without **Your** knowledge.

3.19 Underground Services

Liability arising out of or in connection with **Property Damage** to any existing underground services, cables, pipes or equipment.

3.20 Vehicles

Liability arising out of or in connection with:

- i. the ownership, maintenance, service, repair, possession, operation, use or legal control by **You** of any **Vehicle**;
- ii. any **Vehicle** being used or driven by **You** when **You**:
 - a. do not hold an appropriate driver's licence or do not comply with the conditions of **Your** driver's licence;
 - b. have a proportion of alcohol in **Your** breath or blood that exceeds the legal limit;
 - c. are under the influence of any other intoxicating substance or drug;
 - d. fail or refuse to supply a breath or blood sample as required by law;
 - e. fail or refuse to stop, or remain at the scene, following an accident (as required by law);
 - f. are using the **Vehicle** outside the manufacturer's recommended specifications;
- iii. driving a **Vehicle** in an unsafe condition if:
 - a. the condition of the **Vehicle** causes or contributes to, the **Personal Injury** and/or **Property Damage**; and
 - b. **You** were aware, or ought to have been aware, of the unsafe condition of the **Vehicle**.

3.21 Vibration and Removal of Support

Liability arising out of or in connection with vibration, weakening of or removal of support of any buildings, structures or land.

3.22 Watercraft

Liability arising out of or in connection with the:

- i. ownership, possession, repair or use of any **Watercraft** that exceeds ten metres in length;
- ii. operation of any **Watercraft**:
 - a. while under the influence of alcohol or any other intoxicating substance or drug;
 - b. outside the manufacturer's recommended specifications.

SECTION 2 - STATUTORY LIABILITY

THIS SECTION OF THE **POLICY** IS WRITTEN ON A **CLAIMS** MADE AND REPORTED BASIS. COVERAGE APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST **YOU** AND REPORTED TO **US** IN WRITING DURING THE **PERIOD OF INSURANCE**, OR WITHIN THIRTY (30) DAYS FOLLOWING THE END OF THE **PERIOD OF INSURANCE**. COVERAGE DOES NOT APPLY TO ANY ACTS OR OMISSIONS BEFORE THE **RETROACTIVE DATE**.

SECTION 2: INSURING AGREEMENT

In consideration of the payment of the premium and subject to all the terms and conditions of this Policy:

4.1 Statutory Liability

We will pay any **Fine** arising out of a **Claim** made against **You** in connection with **Your Business**.

Provided that:

- i. **You** first became aware of, or ought to have been aware of, the **Claim** during the **Period of Insurance**; and
- ii. the **Claim** is notified to **Us** during the **Period of Insurance** or no later than 30 days after the **Period of Insurance** ends; and
- iii. the **Event** giving rise to the **Claim** occurred on or after the **Retroactive Date**; and
- iv. **We** are not legally prohibited from indemnifying **You**.

4.2 Defence Costs

In addition to the applicable **Limit of Indemnity**, **We** shall pay the **Defence Costs** necessarily and reasonably incurred by **You** with **Our** prior written consent, to defend:

- i. a prosecution that, if proven, could result in a **Fine** that would be indemnified under this **Policy**;
- ii. a proceeding that, if proven, could result in **Statutory Damages** that would be indemnified under this **Policy**;
- iii. a prosecution under the Health and Safety in Employment Act 1992.

Provided that:

- a. **Our** maximum liability in the aggregate in respect of all **Defence Costs** during the **Period of Insurance** shall not exceed the amount of the **Limit of Indemnity**.
- b. upon **Our** payment of the **Limit of Indemnity** in respect of any **Fine, Reparation** or **Statutory Damages**, **Our** liability in respect of any further **Defence Costs** in connection with that **Claim** shall cease.
- c. if a payment exceeding the **Limit of Indemnity** has to be made to dispose of a **Claim**, **Our** liability to pay **Defence Costs** in connection with that **Claim** shall be limited to such proportion of the **Defence Costs** as the **Limit of Indemnity** bears to the amount paid to dispose of the **Claim**.

4.3 Limit of Indemnity

Our liability for all **Claims** and **Events** during the **Period of Insurance** shall not exceed the **Limit of Indemnity** as specified in the Schedule.

4.4 Separate Limits

The limits under Clause 4.3 (Limit of Indemnity) and Clause 4.2 (Defence Costs) are separate. This means the **Limit of Indemnity** to meet **Claims** under Clause 4.3 (Limit of Indemnity) cannot be used to meet **Defence Costs**, and the **Limit of Indemnity** under Clause 4.2 (Defence Costs) cannot be used to meet any **Claim**.

4.5 Excess

You must pay the **Excess** specified in the **Schedule** in respect of each and every **Claim** including **Defence Costs**.

SECTION 2: AUTOMATIC EXTENSIONS

The following Extensions apply automatically and are subject to the terms of this **Policy** unless stated otherwise. The amounts payable under these Extensions are included within the **Limit of Indemnity** and are not in addition to it.

5.1 Defence Costs if Acquitted

We shall reimburse **Your** reasonable **Defence Costs** incurred to defend a prosecution where it is alleged that **You** have acted, or omitted to act, knowingly, wilfully or intentionally and **You** are subsequently **Acquitted**.

5.2 Official Investigations

We will indemnify **You** in respect of **Defence Costs** necessarily and reasonably incurred for **You** to be represented at any **Official Investigation**, public examination or commission, provided that:

- i. the investigation arises out of an **Event**, or potential **Event**, that occurred in New Zealand after the **Retroactive Date** in connection with **Your Business**; and
- ii. **You** first knew, or ought to have known, during the **Period of Insurance** of the **Official Investigation**, public examination or commission in relation to that **Event**; and
- iii. **You** have advised **Us** of the **Official Investigation**, public examination or commission, as soon as possible, but no later than 30 days after the period of insurance ends.

5.3 Attendance at Inquiries

We shall reimburse **You** for time and expenses incurred by an **Employee** for attendance at a formal court hearing or formal interview conducted in connection with a **Claim** where **We** have given prior consent and consider such attendance to be necessary or beneficial to reduce liability which may result in a payment under this **Policy**.

Reimbursement for time shall be for actual hours in attendance at discovery and trial and shall be limited to 70% of the customary hourly billing rate or NZ\$100.00 per hour, whichever is less.

Reimbursement for expenses shall be limited to those amounts reasonably incurred for travel, accommodation and meals, for the actual attendance at discovery and trial

The total amount payable under this Extension is NZ \$50,000 and is included in Insuring Agreement 4.2 (Defence Costs).

5.4 Previous Subsidiary Companies

The definition of **You** will include any entity that ceased to be **Your** subsidiary before or during the **Period of Insurance**.

However, **We** shall not indemnify any subsidiary for any **Claim** arising out of an **Event** that occurs before the **Retroactive Date** or after it ceased to be **Your** subsidiary.

5.5 Statutory Damages and Reparations

Notwithstanding Exclusion 6.12 (Punitive or Exemplary Damages) **We** shall indemnify **You** in respect of Your legal liability to pay **Statutory Damages** or **Reparations** arising out of an act or omission that occurred after the **Retroactive Date** in connection with **Your Business**.

SECTION 2: EXCLUSIONS

There is no cover under this Section of the Policy for:

6.1 Commerce Act

any **Claim** in connection with a breach of the Commerce Act 1986.

However, this Exclusion does not apply to any individual person(s) covered under this Policy.

6.2 Compliance Costs

- i. any costs incurred in complying with any abatement, compliance, enforcement or remedial notice or order;
- ii. any **Fine** (or part of a **Fine**) which is a penalty imposed for failing to comply with any abatement, compliance, enforcement or remedial notice or order.

6.3 Continuing Offences

that part of any **Fine**, **Statutory Damages** or **Reparation** which is imposed for a continuing offence under an Act and which relates to the period after **You**:

- i. know an offence was being committed; or
- ii. ought to have known that an offence was being committed.

6.4 Excluded Acts

any **Claim** under the following **Acts of Parliament**:

- i. Arms Act 1983
- ii. Aviation Crimes Act 1972
- iii. Crimes Act 1961
- iv. Land Transport Act 1998
- v. Misuse of Drugs Act 1975
- vi. Criminal Proceedings (Recovery) Act 2009
- vii. Criminal Investigations (Bodily Samples) Act 1995
- viii. Summary Offences Act 1981

and any other Act of Parliament specified in the **Schedule** as an excluded **Act of Parliament**.

6.5 Health and Safety in Employment Act

any fine that **You** are ordered to pay following conviction under the Health and Safety in Employment Act 1992.

6.6 Infringement Fees

any infringement fees of any kind.

6.7 Intentional or Reckless Breach

any intentional or reckless breach of any **Act of Parliament**.

6.8 Known Claims and Circumstances

any **Claims**:

- i. **made against, or intimidated to, You prior to the commencement of the Period of Insurance;**
- ii. notified under any previous **Policy**;
- iii. arising out of or connected with any **Event** that:
 - a. **You** were aware of prior to commencement of the **Period of Insurance**; and
 - b. a reasonable person in **Your** position would have considered may give rise to a **Claim**.

6.9 Monetary Amounts Paid or Offered Before Sentence

any sum paid, or offered to be paid, by **You** prior to sentencing by the Court where the sum is paid or offer made without **Our** prior written consent.

6.10 Personal Grievances

anything arising out of any contract of employment or service or any intended contract of employment or service with any current, former or prospective **Employee**, including any personal grievance or similar action by an **Employee**.

6.11 Private Prosecutions

any investigation, defence, proceeding, inquiry, or prosecution taken by a person or entity other than the statutory authority or enforcement agency given responsibility for administering enforcement of an **Act of Parliament**.

6.12 Punitive or Exemplary Damages

any damages, including punitive, aggravated, liquidated, multiple or exemplary damages, imposed by a court for the breach of any **Act of Parliament**.

SECTION 3 - EMPLOYERS LIABILITY

THIS SECTION OF THE **POLICY** IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS. COVERAGE APPLIES ONLY TO THOSE **CLAIMS** THAT ARE FIRST MADE AGAINST **YOU** AND REPORTED TO **US** IN WRITING DURING THE **PERIOD OF INSURANCE**, OR WITHIN THIRTY (30) DAYS FOLLOWING THE END OF THE **PERIOD OF INSURANCE**. COVERAGE DOES NOT APPLY TO ANY EVENTS, CIRCUMSTANCES OR ACCIDENTS BEFORE THE **RETROACTIVE DATE**.

SECTION 3: INSURING AGREEMENT

In consideration of the payment of the premium and subject to all the terms and conditions of this Policy:

7.1 Employers Liability

We shall indemnify **You** in respect of **any Claim for which You become legally liable to pay as Damages (including Punitive or Exemplary Damages)** as a result of an **Employee** sustaining a **Personal Injury** in New Zealand that arose in connection with **Your Business**. Provided that:

- i. the **Claim** against **You** is first made during the **Period of Insurance**; and
- ii. the **Claim** is notified to **Us** as soon as practicable by **You** during the **Period of Insurance** but no later than 30 days of its expiry; and
- iii. the **Personal Injury** arose out of an event, circumstance or accident that occurred before the expiry of the **Period of Insurance**.

7.2 Limit of Indemnity

The limit of **Our** liability for all **Claims** during the **Period of Insurance** shall not exceed the **Limit of Indemnity** as specified in the **Schedule**.

7.3 Defence Costs

In addition to the applicable **Limit of Indemnity**, **We** shall pay the **Defence Costs** for any **Claim** covered by this **Policy**. Provided that:

- i. **Our** maximum liability in the aggregate in respect of all **Defence Costs** during the **Period of Insurance** shall not exceed the amount of the **Limit of Indemnity** in the **Schedule**.
- ii. upon payment by **Us** of the **Limit of Indemnity** in respect of any **Claim**, judgement or settlement, **Our** liability in respect of any further **Defence Costs** in connection with that **Claim** shall cease.
- iii. if a payment exceeding the **Limit of Indemnity** has to be made to dispose of a **Claim**, **Our** liability to pay **Defence Costs** in connection with that **Claim** shall be limited to such proportion of the **Defence Costs** as the **Limit of Indemnity** bears to the amount paid to dispose of the **Claim**.

7.4 Separate Limits

The limits under Clause 7.2 (Limit of Indemnity) and Clause 7.3 (Defence Costs) are separate. This means the **Limit of Indemnity** to meet **Claims** under Clause 7.2 (Limit of Indemnity) cannot be used to meet **Defence Costs**, and the **Limit of Indemnity** under Clause 7.3 (Defence Costs) cannot be used to meet any **Claim**.

7.5 Excess

You must pay the **Excess** specified in the **Schedule** in respect of each and every **Claim** including **Defence Costs**.

SECTION 3: AUTOMATIC EXTENSIONS

The following Extensions apply automatically and are subject to the terms of this **Policy** unless stated otherwise. The amounts payable under these Extensions are included within the **Limit of Indemnity**.

8.1 Continuous Cover Clause

We shall indemnify **You** in respect of **Claims** that would be covered under this **Policy** but are excluded by Exclusion 9.6, iii. (Circumstances Known at Inception), subject to the following additional conditions:

- i. **You** held employers liability insurance at the primary level under a policy ('the former policy') at the time when **You** first became aware of the circumstances that subsequently gave rise to the **Claim**;
- ii. **You** continued, without interruption, to hold employers liability insurance at the primary level from the time when **You** first became aware of the circumstances up until such time as the **Claim** was made against **You** and notified to **Us**;

- iii. **Our** liability is limited to the amount for which **We** would have been liable at the time referred to in 8.1, i. in accordance with the terms and conditions of the former policy; and
- iv. **Our** liability will be reduced by the amount that fairly represents the extent to which liability for the **Claim** could have been reduced had the circumstances been duly reported under the former policy.

8.2 Previous Subsidiary Companies

The definition of You will include any entity that ceased to be Your subsidiary company before or during the Period of Insurance. However, We shall not indemnify any such previous subsidiary for any Claim arising out of a **Personal Injury** occurring before the **Retroactive Date** or after it ceased to be **Your** subsidiary.

SECTION 3: EXCLUSIONS

There is no cover under this Section of the **Policy** for:

9.1 ACC

liability for compensation that is available under the Accident Compensation Act 2001, or would have been available under that Act except for **Your** status as an exempt employer under that Act.

9.2 Employment Disputes

liability arising out of or in connection with:

- i. an employment relationship problem, or for an **Employee** or former **Employee** seeking compensation under the Employment Relations Act 2000;
- ii. unpaid wages or other benefits due to any **Employee**.

9.3 Existing Litigation

liability in connection with any litigation in existence at the commencement of the **Period of Insurance**.

9.4 Fines and Contractual Obligations

liability for:

- i. any fine or penalty imposed on **You** (whether under contract or statute);
- ii. any contractual obligation in the nature of a performance warranty or claim for liquidated damages.

9.5 Health and Safety in Employment Act

liability in connection with an **Employee** sustaining a **Personal Injury** which arose out of the failure by **You** to comply with any improvement, prohibition or suspension notice issued to **You** or **Your Employees** under the Health and Safety in Employment Act 1992.

9.6 Circumstances Known at Inception

liability in connection with any **Claims**:

- i. made against, or intimated to, **You** prior to the commencement of the **Period of Insurance**;
- ii. notified under any previous policy;
- iii. arising out of or connected with any facts or circumstances that:
 - a. **You** were aware of prior to commencement of the **Period of Insurance**; and
 - b. a reasonable person in **Your** position would have considered may give rise to a **Claim**.

9.7 Retroactive Date

liability in connection with any event, circumstance or accident that occurred prior to the **Retroactive Date**.

GENERAL POLICY EXCLUSIONS

There is no cover under any Section of this **Policy** for:

10.1 Abuse

liability arising out of or in connection with any actual or alleged **Abuse**.

10.2 Asbestos

liability arising from or in connection with asbestos.

10.3 Communicable Disease

liability arising out of or in connection with any actual, threat or fear of any pathogen or disease, including any virus, bacterium, parasite or variation of these, which can be transmitted by any means from any organism to another organism and can cause, or have the potential to cause:

- i. damage to human health or welfare
- ii. physical damage or destruction to tangible property, including the deterioration, loss of use or reduction in value of the tangible property.

10.4 Cyber Loss

liability arising out of or in connection with any **Cyber Loss**.

10.5 Deliberate and Dishonest Acts

liability arising out of or in connection with any deliberate, intentional, dishonest, fraudulent, criminal or malicious act or omission by any of **You**.

10.6 Legal Jurisdiction

liability arising out of or in connection with:

- i. any legal action, threatened or actual prosecution, investigation or inquiry brought in a court or tribunal in a **Non-Territorial Country**;
- ii. any legal action brought in a court or tribunal within New Zealand to enforce a judgement or **Fine** handed down in a court or tribunal in a **Non-Territorial Country** whether by way of a reciprocal agreement or otherwise;
- iii. any legal action to which the proper law to be applied is that of a **Non-Territorial Country**;
- iv. liability under the law of any country, state or territory outside of New Zealand that requires such liability to be insured or secured with an insurer or organisation in that country, state or territory to grant such insurance or security.

10.7 Nuclear Fuel

liability in connection with the:

- i. use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;
- ii. use, handling or transportation of radioactive materials;
- iii. use, handling, transportation of any weapon of war or explosive device employing nuclear fission or fusion.

10.8 Terrorism

liability in connection with any **Act of Terrorism**, regardless of any contributing cause or event, including in connection with controlling, preventing, suppressing, retaliating against, or responding to an **Act of Terrorism**.

10.9 War

liability in connection with war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, expropriation, confiscation, nationalisation, destruction or damage to property by or under the order of any government or public or local authority.

DEFINITIONS

The following defined words and expressions are assigned a particular meaning. That meaning will apply everywhere the word or expression appears and it applies to the plural and derivatives of the word or expressions.

11.1 Abuse shall mean:

- i. Any act of hurting or injuring mentally or physically by maltreatment or ill use;
- ii. Repeated or continuing contemptuous, coarse or insulting words and/or behaviour;
- iii. Actual or attempted sexual relations, sexual conduct or sexual intimacy, sexual harassment or sexual exploitation, or any act for the purpose of obtaining sexual gratification.

11.2 Acquitted shall mean the dismissal of charges before or after a defended hearing, or the entry of a not guilty verdict. Acquitted does not include the disposition of a charge pursuant to a plea bargain where multiple charges or information have been laid.

11.3 Act of Parliament shall mean any Act of the New Zealand Parliament, including any amendment, enactment or replacement legislation or any regulations, rules or codes issued under an Act.

11.4 Act of Terrorism shall mean any unlawful act, or preparation in respect of action, or threat of action designed to influence or coerce 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 that:

- i. involves violence against one or more persons;
- ii. involves damage to property;
- iii. endangers life other than that of the person committing the action;
- iv. creates a risk to health or safety of the public or a section of the public;
- v. is designed to interfere with or disrupt an electronic system.

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

11.6 Claim shall mean:

- i. In respect of Section 2 – Statutory Liability:
 - a. any threatened or actual prosecution or investigations or inquiry regarding an **Event** which may give rise to **Fine, Reparation or Statutory Damages**;
 - b. any circumstance which indicates to a reasonable person in **Your** position that a prosecution, investigation or inquiry regarding an **Event** may give rise to a **Fine, Reparation or Statutory Damages**.
- ii. In respect of Section 3 Employers Liability:
 - a. Legal proceedings instituted and served upon **You**;
 - b. Any threat or intimation that legal proceeding will be issued against **You**;
 - c. Any circumstance that a reasonable person in **Your** position would have considered may give rise to a demand for **Damages**.

11.7 Computer Network shall mean a group of **Computer Systems** and other electronic devices or network facilities connected via a form of communications technology, including the internet, intranet and virtual private networks (VPN), allowing the networked computing devices to exchange **Data**.

11.8 Computer System shall mean any computer, hardware, software, application, process, code, programme, information technology, communications system or electronic device owned or operated by the Insured or any other party. This includes any similar system and any associated input, output or data storage device or system, networking equipment or back up facility.

11.9 Cyber Loss shall mean any loss, damage, liability, expense, fines or penalties or any other amount directly or indirectly caused by:

- i. the use or operation of any **Computer System** or **Computer Network**;
- ii. the reduction in or loss of ability to use or operate any Computer System, Computer Network or **Data**;
- iii. access to, processing, transmission, storage or use of any **Data**;
- iv. inability to access, process, transmit, store or use any **Data**;
- v. any threat of or any hoax relating to i. to iv. above;
- vi. any error or omission or accident in respect of any **Computer System, Computer Network** or **Data**

11.10 Damages shall mean monetary compensation ordered to be paid, or agreed to be paid, pursuant to a judgment or settlement of any common law action brought or capable of being brought in a New Zealand court in respect of **Personal Injury** to an **Employee of Yours**, but does not include any such monies payable pursuant to any remedy, relief or penalty provided in any statute of New Zealand, whether by way of damages, fine, reparation or other order.

11.11 Data shall mean information used, accessed, processed, transmitted or stored by a **Computer System**.

11.12 Defence Costs shall mean legal costs and disbursements, witnesses' costs, assessors' or adjusters' costs or expert's costs that relate directly to the investigation, defence, compromise or handling of any claim, incurred by **Us**, or by **You** with **Our** prior written consent.

In respect of Section 3 – Employers Liability Defence Costs shall also include costs associated with You making an application to the Court to determine whether a Personal Injury is properly the subject of cover under the Accident Compensation Act 2001.

Defence Costs do not include any cost of Your time, including any time spent in assisting Us or Our appointed solicitors with the conduct of any claim, including any time spent by directors, officers, partners or Employees or reimbursement of any remuneration for such people.

11.13 Employee shall mean any person who is employed by **You** in connection with **Your Business** and in respect of whose remuneration **You** deduct PAYE tax at source.

11.14 Event shall mean an act or omission by **You** in connection with **Your Business** that is the accidental commission of an offence under an **Act of Parliament**.

11.15 Excess shall mean the first part of each and every claim borne by **You** as follows:

- i. In respect of Section 1 – General and Products Liability, the amount stated in Item 7 of the **Schedule**.
- ii. In respect of Section 2 – Statutory Liability, the amount stated in Item 10 of the **Schedule**
- iii. In respect of Section 3 – Employers Liability, the amount stated in Item 12 of the **Schedule**

11.16 Fine shall mean any monetary penalty or costs for which **You** are liable to pay on conviction of any offence under an **Act of Parliament**.

11.17 Hot Work shall mean any work involving:

- i. the application of heat, a naked flame or an open heat source, or work that produces sparks;
- ii. the use of gas, welding, arc welding, oxyacetylene welding equipment including cutting with such equipment;
- iii. cutting involving the use of rotary disc or grinding equipment;
- iv. soldering, brazing or use of heat guns.

11.18 Limit of Indemnity shall mean:

- i. In respect of Section 1 – General and Products Liability, the amount stated in Item 5 of the Schedule.
- ii. In respect of Section 2 – Statutory Liability, the amount stated in Item 9 of the Schedule
- iii. In respect of Section 3 – Employers Liability, the amount stated in Item 11 of the Schedule

11.19 Named Insured shall mean the individual, company, partnership or firm as stated in Item 1 of the **Schedule**.

11.20 Non-Territorial Country shall mean:

- i. In respect of Section 1 – General and Products Liability, any country other than the **Territorial Limits**.
- ii. In respect of Section 2 – Statutory Liability, any country other than New Zealand.
- iii. In respect of Section 3 – Employers Liability, any country other than New Zealand.

11.21 Occurrence shall mean an event, including continuous or repeated exposure to substantially the same general conditions or liability, which results in **Personal Injury** or **Property Damage** that is neither expected nor intended by **You**

11.22 Official Investigations shall mean an investigation:

- i. by a body empowered under an **Act of Parliament** to investigate, and
- ii. relating to a breach or potential breach of an **Act of Parliament**

11.23 Period of Insurance shall mean the period of time between the effective date and the expiration date, or the earlier termination date, specified in Item 4 of the **Schedule**.

11.24 Personal Injury shall mean:

- i. accidental death or accidental bodily injury including sickness, disease, disability, shock, fright, mental anguish and mental injury;
- ii. false arrest, false imprisonment, wrongful entry or wrongful eviction and wrongful detention;
- iii. invasion of rights of privacy;
- iv. assault and battery not committed by **You** or at **Your** direction unless committed for the purpose of preventing or eliminating danger to persons or property.

11.25 Policy shall mean the following:

- i. **Your** application for insurance and any oral or written supporting statements or documents supplied; and
- ii. this policy wording (including any amending endorsements); and
- iii. the **Schedule**.

11.26 Pollution shall mean the discharge, dispersal, release or escape of **Pollutants** into or upon land, the atmosphere or any watercourse or body of water.

11.27 Pollutants shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

11.28 Products shall mean anything, after it has ceased to be in **Your** possession of or under **Your** control, that is manufactured, constructed, erected, assembled, installed, applied, repaired, serviced, grown, treated, sold, supplied or distributed by **You**, including any packaging or container but excluding **Vehicles**.

11.29 Property Damage shall mean:

- i. accidental physical damage to, or destruction of, or accidental physical loss of, tangible property including the loss of use thereof, resulting from such accidental physical damage;
- ii. accidental loss of use of tangible property, which has not been physically damaged or destroyed, provided such loss of use arises out of physical damage to, or destruction or loss of other tangible property.
- iii. accidental loss of use of tangible property, which has not been physically damaged or destroyed, provided such loss of use is neither expected nor intended from **Your** standpoint and arises out of **Your Business**.

11.30 Reparation shall mean an amount of money **You** are ordered to pay as reparation under Section 32 of the Sentencing Act 2002.

11.31 Retroactive Date shall mean the date shown in Item 13 in the **Schedule**.

11.32 Schedule shall mean the most recent **Policy** schedule issued by **Us**.

11.33 Statutory Damages shall mean damages payable by **You** under either the Privacy Act 1993 or the Human Rights Act 1993 for an accidental breach of the applicable Act.

11.34 Territorial Limits shall mean the territory or location specified in Item 8 of the **Schedule**.

11.35 Vehicle shall mean any type of machine on wheels or on self-laid tracks made or intended to be propelled other than by manual or animal power, including attachments designed to be drawn by any such machine and includes its accessories, tools, specialised equipment and spare parts.

11.36 Watercraft shall mean any vessel, hovercraft, craft or thing made or intended to float on or in, or travel on or through the water.

11.37 We/Our/Us shall mean certain underwriters at Lloyd's

11.38 You/Your/Yours shall mean:

- i. the **Named Insured**;
- ii. any subsidiary company (including a subsidiary thereof) of the **Named Insured** provided that it is incorporated in New Zealand;
- iii. any other organisation:
 - a. where the **Named Insured** is exercising more than 50% management control; and
 - b. over which the **Named Insured** is exercising active management; and
 - c. whose place of incorporation is in New Zealand;
- iv. any director, executive officer, **Employee** or partner of an entity referred to in i, ii or iii above, but only whilst the person is acting within the scope of their duties in such capacity and does not extend to include any person or **Employee** who is bringing a **Claim** under Section 3 – Employers Liability.

In respect of Section 1 - General and Products liability, **Your/Your/Yours** shall also include:

- v. any principal who is a party to a contract with an entity referred to in i, ii or iii above, but only in respect of the principal's liability arising as a result of that principals acts or omissions under the contract and limited to the coverage provided by this **Policy**;
- vi. any office bearer or member of a social or sporting club, welfare organisation or an employee superannuation fund formed with the consent of an entity referred to in i, ii, or iii, but only in respect of claims arising from duties connected with activities of such club or organisation;
- vii. contractors or sub-contractors but only while they are engaged by, and working in New Zealand for an entity referred to in i, ii or iii above, provided that they are not otherwise insured. General Policy Condition 12.8 (Cross Liability) does not apply in respect of such contractors or sub-contractors.

11.39 Your Business shall mean **Your** business and undertakings, as stated in Item 3 of the **Schedule**, including any change in the activities undertaken by **You** provided that **You** have given prior written notice of such activities to **Us** and have received **Our** written confirmation of coverage of those activities.

GENERAL POLICY CONDITIONS

The following General Conditions shall apply to this **Policy**.

12.1 Assignment

No assignment of interest under this Policy shall bind **Us** unless **Our** written consent is obtained and endorsed on this **Policy**.

12.2 Cancellation

You may cancel this **Policy** at any time by notifying **Us** in writing.

We may cancel this **Policy** at any time by giving notice in writing or by electronic means to **You** (or to **Your** broker or agent). The **Policy** will be cancelled from 4pm on the 30th day after the date of the notice.

12.3 Adjustment of Premium:

- i. After cancellation by **You**, **We** will retain or be entitled to the premium for the period during which this **Policy** has been in force based on **Our** cancellation rates.
- ii. After cancellation by **Us**, **You** are entitled to a pro-rata refund of any unused premium.

12.4 Allocation of Costs (Applicable to Section 2 - Statutory Liability and Section 3 - Employers Liability)

If **Defence Costs** are incurred in respect of both a **Claim** insured under this **Policy** and a matter that is not insured under this **Policy** then **We** shall be liable to pay only a fair proportion of the **Defence Costs**. In the event that **We** and **You** are unable to agree a fair proportion, then a lawyer, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion. If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

12.5 Change of Terms (Applicable to Section 2 - Statutory Liability and Section 3 - Employers Liability)

We may change the terms of this **Policy**, including the **Excess**, by giving notice in writing or by electronic means to **You** or to **Your** broker or agent. Unless otherwise specified in this **Policy**, the change in terms will take effect from 4pm on the 30th day after the date of the notice.

12.6 Compliance with the Policy

You and any other person or entity covered must comply with the conditions of this **Policy** at all times. If **You**, or any other person or entity covered under this **Policy** or anyone acting on **Your** behalf, breaches any of the terms and/or conditions of this **Policy**, **We** may:

- i. decline the **Claim**/request for coverage either in whole or in part; and/or
- ii. declare either this **Policy**, or all insurance **You** have with **Us** to be of no effect and to no longer exist.

12.7 Conduct of Claims

- i. **You** shall not make any admission, offer, promise or payment in connection with any **Occurrence** or **Claim** without **Our** prior written consent.
- ii. **We** shall be entitled to take over and conduct in **Your** name the defence or settlement of any claim brought against **You** in respect of which indemnity is granted under this **Policy**. **We** shall be entitled to appoint **Our** own solicitors to conduct the defence of such claim and shall have full discretion in the conduct of any proceedings. **You** shall give all information and assistance as **We** may require.

The solicitors shall at all times be at liberty to disclose to **Us** any information obtained in the course of so acting, whether from **You** or otherwise. **You** hereby waive all claims to legal professional privilege that **You** might otherwise have as between **Yourself** and **Us** in respect of such information.

- iii. **You** shall use **Your** best endeavours to preserve all property, products, appliances, plant and all other things that may assist in the investigation and defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable, no alteration or repair shall be effected without **Our** prior written consent and until **We** shall have had an opportunity to inspect and give authorisation for such repairs.

- iv. In the event of an **Occurrence**, or the likelihood of an **Occurrence**, **You** shall, at **Your** own expense, promptly take all reasonable steps to prevent **Personal Injury or Property Damage** from arising or continuing out of the same or similar conditions, but such expense shall not be recoverable from **Us**.
- v. **We** may at any time pay **You**, in respect of all claims against **You** arising directly or indirectly from one **Occurrence**, the amount of the **Limit of Indemnity** or the applicable sub-limit (after deduction for any amounts already paid in respect thereof) or any lesser sum for which the claim or claims can be settled. Upon such payment, **We** shall relinquish conduct and/or control of the claim or claims, and **We** will be under no further liability under this **Policy** in connection with such claim or claims except for its proportion of **Defence Costs** incurred prior to the date of such payment.
- vi. If **We** believe that the **Claim** will not exceed the **Excess** **We** may instruct **You** to assume responsibility for the conduct of the **Claim** at **Your** own expense. Should the **Claim** subsequently exceed the **Excess**, **We** agree to reimburse the reasonable costs and expenses incurred by **You** that exceed the **Excess**. **You** must advise **Us** as soon as the total costs of the **Claim** exceed the **Excess** or it becomes apparent that they are likely to do so.

12.8 Cross Liability

Where **You** consist of more than one legal entity, the word “You” shall apply to each as if a separate **Policy** had been issued to each. However this Condition shall not apply to entities that are deemed insured pursuant to the definition of **You** at 11.38, vii. (contractors or sub-contractors).

Nothing contained in this **Condition shall increase the Limit of Indemnity in respect of any Claim, Occurrence or Period** of Insurance.

12.9 Defence of Legal Proceedings

- i. If the lawyer appointed to defend **You** advises that the claim should not be defended then **We** are not required to defend a claim. If **You** disagree with the lawyer’s advice not to defend a claim, a second lawyer that **We** and **You** agree to will be instructed to provide a second opinion.
- ii. If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society. In formulating their advice, the lawyer must be instructed to consider the:
 - a. economics of the matter; and
 - b. damages and costs likely to be recovered; and
 - c. likely costs of defence; and
 - d. prospects of successfully defending the claim.
- iii. The cost of the second lawyer’s opinion is to be taken as part of the **Defence Costs** covered under this **Policy**.
- iv. If the second lawyer advises that the claim should be settled and if the terms of settlement that **We** recommend are within limits that are reasonable (in the second lawyer’s opinion, and in the light of the matters they are required to consider), then:
 - a. **You** cannot object to the settlement, and
 - b. **You** must immediately pay the **Excess**.

12.10 Fraudulent Claims

If **You** make any claim knowing it to be false or fraudulent in any respect, this **Policy** shall become void and any claims hereunder shall be forfeited.

12.11 Goods and Services Tax

Where **You** are liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985, upon receiving any indemnity payment under this **Policy**, **We** will indemnify **You** in respect of the costs of that tax. The indemnity under this Condition is payable by **Us** in addition to the **Limit of Indemnity**.

12.12 Disputes about this Policy

The law of New Zealand applies to disputes about this **Policy** and the New Zealand Courts have exclusive jurisdiction.

12.13 Inspection of Property

We shall be permitted, but not obliged, to inspect **Your** property and operations at any time. Neither **Our** right to make inspections, the making of any inspections, or any report issued following such an inspection, shall constitute an undertaking or warranty that such property or operations are safe.

12.14 Your Warranty

It is agreed between **Us** and **You** that the written proposal provided by **You** and any other underwriting information shall be deemed to be incorporated into and forms the basis of this **Policy** and **You** warrant the truth of all statements made therein.

12.15 Legislation Changes

Any reference to any **Act of Parliament** or subordinate rules referred to in this **Policy** includes any amendments made or substitutions to that law.

12.16 Material Change of Facts or Circumstances

You shall give **Us** notice in writing as soon as possible, of every change that materially varies any of the facts or circumstances that existed, or that **You** thought existed, at the commencement of this **Policy**. **We** shall be entitled to vary the **Policy** terms, conditions and Exclusions and charge an additional premium.

12.17 New Subsidiary Companies

This **Policy** is extended to insure any subsidiary company created or acquired by **You** during the **Period of Insurance**, provided that:

- i. the new subsidiary does not represent more than a twenty percent increase in the **Named Insured's** total revenue as of the date of acquisition;
- ii. the operations and activities of the new subsidiary company are the same as **Your Business**; and
- iii. **You** give **Us** notice that **You** wish to extend cover to the new subsidiary within 30 days of the acquisition or creation of the new subsidiary company; and
- iv. **We** shall be entitled to vary the **Policy** terms, conditions and Exclusions and charge an additional premium.

There is no cover for any **Claim** in connection with any act, circumstance, accident, **Occurrence** or **Event** that has occurred prior to the date of creation or acquisition of the subsidiary company.

12.18 Other Insurance

You shall give notice to **Us** of any other insurance policy that covers any of the risks covered under this **Policy**.

This **Policy** does not indemnify any **Claim** or **Occurrence** if it is indemnified to any extent under any other insurance policy. We will not contribute towards any claim under any other insurance policy.

12.19 Reasonable Care

You shall take reasonable care at all times to avoid circumstances that could result in a claim and shall take all reasonable steps to minimise any claim and avoid any further loss or liability arising.

12.20 Reporting of Claims

- i. Irrespective of the quantum, **You** must give **Us** immediate notice in writing of:
 - a. every **Claim**, **Occurrence**, summons, proceedings, impending prosecution or inquest or other matter which may give rise to a payment under this **Policy**;
 - b. the receipt of notice, or information as to any intention by any party to make a claim against **You**;
 - c. any circumstance or **Event** that a reasonable person in **Your** position would have considered may give rise to a **Claim** or payment under this **Policy**.
- ii. In respect of Section 2 – Statutory Liability and Section 3 – Employers Liability such notice in writing must:
 - a. relate to a **Claim** or **Event** that occurred during the **Period of Insurance**; and
 - b. be given during the **Period of Insurance** or within 30 days after its expiry.in order to qualify as a Claim capable of being covered by this Policy.

iii. In respect of Section 2 – Statutory Liability, where notice of an **Event** is given to **Us** by **You**, any **Claim** that may subsequently be made against **You** shall be deemed to be a **Claim** made during the **Period of Insurance** when the **Event** was first reported to **Us**.

12.21 Sanctions

We shall not be deemed to provide any cover, pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

12.22 Subrogation

If **We** accept any part of **Your** claim under this **Policy**, **We are** entitled to assume **Your** legal right of recovery.

If **We** initiate a recovery, **We** will include the **Excess** and any other uninsured losses suffered by **You**. Where this happens, **You** agree to pay **Your** proportional share of the recovery costs, and subsequently the proceeds of the recovery will be shared on the same proportional basis, except that the **Excess** will be reimbursed to **You** first.

You shall execute all papers and do all that is necessary to assist **Us** in the full exercise of such rights. If **You** make any recovery in respect of any amount for which **You** received indemnity under this **Policy**, it shall account to **Us** for the full amount received.

12.23 Terms of Policy Conformed to Statute

Any term, condition, limitation or exclusion of this **Policy** which is in conflict with the laws of the province or territory in which this **Policy** is delivered, are hereby amended to conform to such laws.

DATA PRIVACY NOTICE

Your information has been, or will be, collected or received by MS Amlin. We will manage personal data in accordance with data protection law and data protection principles. We require personal data in order to provide good-quality insurance and ancillary services and will collect the personal data required to do this. This may be personal information such as name, address, contact details, identification details, financial information and risk details. The full Data Privacy Notice can be found on www.msamlin.com/en/site-services/data-privacy-notice.html. A paper copy of the Data Privacy Notice can be obtained by contacting the Data Protection Officer by email (dataprotectionofficer@msamlin.com) or at the below address:

Data Protection Officer
MS Amlin
MS Amlin Corporate Services
The Leadenhall Building
122 Leadenhall Street
London
EC3V 4AG

COMPLAINTS PROCEDURE

Our aim is to ensure that all aspects of **your** insurance are dealt with promptly, efficiently and fairly. At all times **we** are committed to providing **you** with the highest standard of service.

If **you** have any questions or concerns about **your** policy or the handling of a claim **you** should, in the first instance, contact **us** or **your** broker where applicable. In the event that **you** remain dissatisfied and wish to make a complaint, **you** can do so at any time. Making a complaint does not affect any of **your** legal rights.

Our contact details are:

Post: Complaints
MS Amlin Underwriting Limited
The Leadenhall Building
122 Leadenhall Street
London
EC3V 4AG

Telephone: +44 (0) 20 7746 1300

Fax: +44 (0) 20 7746 1001

Email: complaints@msamlin.com

If **your** complaint cannot be resolved by the Complaints Department within two weeks, or if **you** have not received a response within two weeks **you** are entitled to refer the matter to Lloyd's. Lloyd's will then conduct a full investigation of **your** complaint and provide **you** with a written final response.

Lloyd's contact details are:

Post: Lloyd's General Representative in New Zealand
c/o Hazelton Law
Level 29 Plimmer Towers
2-6 Gilmer Terrace
Wellington
New Zealand

Telephone: +64 4 472 7582

Fax: +64 4 472 7571

Details of Lloyd's complaints procedures are set out in a leaflet "Your Complaint – How We Can Help" available at www.lloyds.com/complaints and are also available from the above address.

Lloyd's is a member of the Insurance Council of New Zealand and its New Zealand Coverholders adhere to the Fair Insurance Code, which provides you with assurance that we have high standards of service for our customers.

