

Liability Package Insurance

Policy Wording



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Welcome to Zurich

About Zurich

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

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

Important information

Cover sections 2 'Employers Liability' and 3 'Statutory Liability' are a 'Claims Made and Notified' liability insurance policy. They only provides cover if:

1. A claim occurs during the *period of insurance* and is notified to us during the *period of insurance*; and
2. The claim arises out of an event which takes place after the *retroactive date* stipulated in the *schedule*.

Duty of Disclosure

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

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

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

Non-disclosure or Misrepresentation

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

Our contract with you

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

Your policy is made up of:

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

Please note, only those covers shown in *your* policy *schedule* are insured. This policy wording is used for any offer of renewal we may make. Please keep *your* policy in a safe place.

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

Liability Package Insurance

In consideration of the *insured* having paid or agreed to pay the premium, Zurich, on the basis of all information provided to us, agrees with the *insured* to provide insurance, subject to the provisions of this policy.

1. General Definitions

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

1.1 Act of terrorism

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

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

1.2 Aircraft

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

1.3 Business

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

1.4 Computer virus

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

1.5 Cyber event

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

- 1.5.1 an *IT Network*; or
- 1.5.2 *computer virus*.

1.6 Excess

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

1.7 Extended reporting period

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

1.8 Hovercraft

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

1.9 Internet operations

internet operations mean:

- 1.9.1 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*;
- 1.9.2 access through the *insured's* network to the world wide web or a public internet site by the *insured* or *the insured's* employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within the *insured's* organisation;
- 1.9.3 access to the *insured's* intranet (meaning internal company information and computing resources) which is made available through the world wide web for the *insured's* customers or others outside the *insured's* organisation; and
- 1.9.4 the operation and maintenance of the *insured's* web site.

1.10 IT network

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

1.11 Limit of liability

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

1.12 North America

North America means:

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

1.13 Period of insurance

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

1.14 Pollutants

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

1.15 Retroactive date

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

1.16 Schedule

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

1.17 Silica

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

1.18 Silica related dust

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

1.19 Subsidiary

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

1.19.1 control or controlled the composition of the board of directors; and/or

1.19.2 control or controlled more than half of the voting power; and/or

1.19.3 hold or held more than half of the issued share capital or other ownership of the entity,

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

1.20 Vehicle

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

1.21 Watercraft

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

1.22 You, Your, Insured

you, your, insured means:

1.22.1 the Insured named in the *schedule*;

1.22.2 *subsidiary* of the Insured named in the *schedule* now or hereafter formed or constituted and incorporated in New Zealand;

1.22.3 any of *your* directors, partners, executive officers or employees but only whilst acting within the scope of their duties in such capacity;

1.22.4 any office bearer or member of the canteen, social, or sports organisations for *your* employees and internal first aid, fire or ambulance services formed with *your* consent, but only whilst acting within the scope of their activities in such capacity; and

1.22.5 any of *your* directors, partners or senior executives in respect of private work undertaken by *your* employees for such directors, partners or senior executives.

2. General Exclusions

We will not pay anything in respect of:

2.1 Aggravated, Punitive or Exemplary damages, Fines or Penalties

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

2.2 Asbestos

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

2.3 Building defects

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

2.3.1 moisture or water or the penetration of external moisture or water;

2.3.2 the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms;

2.3.3 the failure of any building or structure to comply with or perform to the requirements of any building code or to meet the level of performance, quality, fitness or durability of its intended purpose. This expressly includes the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 in relation to:

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

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

2.4 Cyber risks

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

2.5 Molestation

any liability of whatsoever nature in respect of *personal injury* directly or indirectly caused by or arising out of or consequent upon or contributed to or in connection with the molestation and/or assault of any person.

2.6 Radioactive contamination

any liability arising out of:

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

However, this Exclusion shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical, scientific or research pursuits.

2.7 Silica

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

2.8 Terrorism

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

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

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

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

2.9 War

any liability caused by or arising out of any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

3. General Conditions

3.1 Assignment

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

3.2 Authorisation

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

3.3 Cancellation

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

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

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

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

3.4 Change of risk

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

3.5 Consolidation or Merger

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

3.6 Fraudulent claim

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

3.7 Notice

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

3.8 Payments in respect to Goods and Services Tax

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

3.9 Plurals and titles

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

3.9.1 headings are descriptive only, not an aid to interpretation;

3.9.2 singular includes the plural and vice versa;

3.9.3 the male includes the female and neuter; and

3.9.4 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a claim is made.

3.10 Proper law and jurisdiction

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

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

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

3.11 Sanctions regulation

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

3.12 Severability and non-imputation

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

3.12.1 any failure by an *insured* to comply with the duty of disclosure shall not be imputed to any other *insured*, where that *insured* is innocent of and had no prior knowledge of the failure; and

3.12.2 for the purposes of the exclusions, no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

3.13 Waiver of privilege

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

Section 1 – General and Products Liability

Introduction

This cover section only forms part of *your* policy when General Liability is shown in the *schedule* and is limited to the *period of insurance* indicated.

1. Insuring Clause

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

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

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

2. Limit of Liability

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

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

3. Additional Payments

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

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

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

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

4. Definitions

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

4.1 Advertising liability

advertising liability means:

- 4.1.1 infringement of copyright of, or passing off of a title or slogan;
- 4.1.2 unfair competition, piracy or idea misappropriation contrary to an implied contract;
- 4.1.3 invasion of privacy; or
- 4.1.4 defamation, libel, slander,

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

4.2 Defective workmanship

defective workmanship means defective repair work, defective service work, defective construction work, defective erection work, defective installation work, defective treatment work or defective alteration work performed by *you* or on *your* behalf in connection with *your products*.

4.3 Drone

drone means a remotely piloted aircraft system (RPAS), Unmanned Aerial Vehicle (UAV), Unmanned Aircraft System (UAS), Remotely Piloted Vehicle (RPV), or model aircraft, and that:

- 4.3.1 is not used to carry or deliver cargo or equipment of any nature, other than carrying a camera, GPS or audio equipment; and
- 4.3.2 does not exceed a gross take-off weight of 5 kilograms; and
- 4.3.3 is operated by *you* from a ground-based controller; and
- 4.3.4 is not powered by an internal combustion engine.

4.4 Occurrence

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

4.5 Personal injury

personal injury means for this section:

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

4.6 Products

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

4.7 Property damage

property damage means:

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

4.8 Territorial limits

territorial limits mean anywhere in the world (subject to the limitations set out in Exclusions 6.13 and 6.18).

4.9 Tool of trade

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

5. Extensions of Cover

Subject to all of the terms, conditions, exclusions and limitations of this policy (including the Insuring Clause) cover is extended by the following coverage extensions. These Extensions of Cover form part of and do not increase the *limit liability* stated as 'General Liability' in the *schedule*.

5.1 Business Advice / Service / Medical Advice

Notwithstanding Exclusion 6.13 'Professional liability', the cover under this section is extended to indemnify the *insured* in respect of liability for *personal injury* or *property damage* arising out of:

- 5.1.1 the rendering of or failure to render medical advice or service by medical persons employed by the *insured* to provide first aid on the *insured's* premises; or
- 5.1.2 other professional advice or service not given for a fee.

5.2 Care, custody or control

Notwithstanding Exclusion 6.14 'Property in your care, custody or control', the cover under this section is extended to indemnify *you* for all sums that *you* are legally liable to pay compensation for *property damage* to property whilst such property is in *your* care, custody or control in connection with *your business*:

Provided that:

- 5.2.1 the understanding of 'property' does not include any *vehicle*;
- 5.2.2 this does not apply to real property, property owned by or premises leases or rented to or used by any *insured*;
- 5.2.3 our liability under this Extension of Cover shall not exceed \$500,000 or the amount specified in the *schedule* for this Extension 5.2 'Care, custody or control';
- 5.2.3 an excess \$1,000 shall apply for this Extension of Cover.

5.3 Contractor or Sub-contractor

The cover under this section is extended to include any contractor or sub-contractor, but only while they are engaged and working in New Zealand for *you* and/or on *your* behalf, including any entity referred to in General Definition 1.20.1 and 1.20.2, provided that they are not otherwise insured. Standard Conditions 7.1 'Cross liability' and 7.3 'Joint Insured' does not apply in respect of such contractors or sub-contractors..

5.4 Defective workmanship

Notwithstanding 6.6 'Defective workmanship' the cover under this section is extended to indemnify *you* for all sums that *you* are legally liable to pay as compensation for the cost in respect to physical damage to or destruction of *your products*, where that physical damage or destruction:

- (a) arises out of *your defective workmanship*; and
- (b) is neither expected nor intended from the standpoint of any *insured*; and
- (c) happens during the *period of insurance* in connection with *your business*.

Provided that we will not indemnify *you* under this Extension of Cover in respect of liability:

- 5.4.1 for the costs resulting from or remedying a defect in manufacture or in any design, plan, specification, formula or pattern; or
- 5.4.2 indemnity which is provided under Extensions of Covers 5.13 'Service and Repair – Machinery materials' and 5.14 'Service and Repair – Vehicle and Watercraft'; and
- 5.4.3 our liability under this Extension of Cover shall not exceed \$100,000 or the amount specified in the *schedule* for this Extension 5.4 'Defective workmanship';
- 5.4.4 an excess \$1,000 shall apply for this Extension of Cover.

For the avoidance of doubt this Extension of Cover is always subject to General Exclusion 2.3 'Building defects'.

5.5 Drones

The cover under this section is extended to indemnify *you* for all sums that any *insured* shall become legally liable to pay for *personal injury* or *property damage* that happens in New Zealand during the *period of insurance* caused by an *occurrence* in connection with *your* use or operation of a *drone* where such use or operation is in connection with *your business*.

Provided that *you*:

- 5.5.1 do not hold, and are not required to hold, a Civil Aviation Authority Rules Part 102 unmanned aerial operations certificate; and
- 5.5.2 comply with all Civil Aviation Authority rules and regulations regarding the use of *drones*; and
- 5.5.3 comply with all central or local government laws or bylaws regarding the use of *drones*.

For the purposes of this extension only, Exclusion 6.20.1 (b) – 'Watercraft, Aircraft, Hovercraft' does not apply.

The maximum we will pay under this Extension of Cover is \$1,000,000 for any one *occurrence* and in the aggregate during the *period of insurance*, and subject to a \$1,000 *excess*.

5.6 Goods on hook

Notwithstanding Exclusion 6.14 'Property in your care, custody or control', the cover under this section is extended to indemnify *you* for all sums that *you* are legally liable to pay as compensation for *property damage* to property damaged whilst it is slung on or on the hook of any crane or similar apparatus which is being utilised by and under *your* control and arising in connection with *your business*.

Provided that:

- 5.6.1 our liability under this Extension of Cover shall not exceed \$250,000;
- 5.6.2 an excess \$2,500 shall apply for this Extension of Cover.

5.7 Indemnity to principals and others

The cover under this section is extended to indemnify any person or organisation to which the insured (as defined in General Definition 1.20.1 or 1.20.2 only) is obligated by virtue of a written contract to provide insurance as is afforded by this policy, but only for the vicarious liability of such person or organisation arising out of the performance by the *insured* (as defined in General Definition 1.20.1 or 1.20.2 only) of such written contract and for such coverage.

5.8 Innkeeper's liability

Notwithstanding Exclusion 6.14 'Property in your care, custody or control', the cover under this section is extended to indemnify *you* for all sums that *you* are legally liable to pay as compensation under the Innkeeper Act 1962 for loss of or *property damage* happening during the *period of insurance* and in connection with *your business*.

An excess \$1,000 shall apply for this Extension of Cover.

5.9 Landlords liability

Notwithstanding Exclusion 6:14 'Property in your care, custody or control', the cover under this section is extended to indemnify *you* for all sums that *you* are legally liable to pay as compensation for *personal injury* and/or *property damage* in connection with the legal ownership, but not physical occupation, of any premises owned by *you*.

5.10 Lost or stolen keys

Notwithstanding Exclusion 6:14 'Property in your care, custody or control', the cover under this section is extended to indemnify *you* for the reasonable and necessary costs incurred in altering and replacing locks and their keys or combinations, if the keys or combinations are lost, stolen or believed on reasonable grounds to have been duplicated without proper authority, during the *period of insurance* where the keys or combinations are in *your* possession in connection with *your business*.

Provided that:

- 5.10.1 *you* do not own, leases or rent the property to which the keys or locks relate; and
- 5.10.2 our liability under this Extension of Cover shall not exceed \$250,000;
- 5.10.3 an excess \$1,000 shall apply for this Extension of Cover.

5.11 Product recall expenses

Notwithstanding Exclusion 6:16 'Recall of products', the cover under this section is extended to indemnify *you* for 80% of the costs and expenses incurred to instigate and carry out a withdrawal or recall of *your products* from use in New Zealand, which has already given rise to a claim for *personal injury* or *property damage* under this policy.

Provided that:

- 5.11.1 the prior approval from us was obtained prior to the withdrawal or recall *your products*; and
- 5.11.2 our liability under this Extension of Cover shall not exceed \$100,000;
- 5.11.3 an excess \$1,000 shall apply for this Extension of Cover.

5.12 Punitive and Exemplary Damages

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

- 5.12.1 the claim must first be made against an *insured* during the *period of insurance*, and notified by *you*, to us during the *period of insurance*. A claim is first made when a third party first indicates to an *insured* that the third party is holding the *insured* responsible, in part or in whole, for the *personal injury*;
- 5.12.2 our liability under this Extension of Cover shall not exceed \$1,000,000 or the amount specified in the *schedule* for this Extension 5.12 'Punitive and Exemplary Damages';
- 5.12.3 an excess \$5,000 shall apply for this Extension of Cover.

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

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

This extension will not cover any of the following:

- (i) claims made, threatened, or in any way indicated against any *insured* and not notified to us, prior to the start of the *period of insurance*;
- (ii) claims arising from a fact or *occurrence* that at the time the *period of insurance* starts, an *insured* knew, or should have known, may give rise to a claim against an *insured*;

- (iii) claims notified or arising out of *occurrences* notified, or which should have been notified, under any previous policy of insurance held by *you*;
- (iv) claims arising out of any claim or *occurrence* noted on the proposal or any other information *you* provided to us for the *period of insurance* or for any previous *period of insurance*;
- (v) claims arising from *personal injury* to any employee in or arising from their employment with *you*;
- (vi) claims brought against an *insured* outside New Zealand or any settlement or compromise of a claim entered into outside New Zealand;
- (vii) claims arising out of any statement, action or omission by an *insured* made, done or omitted outside New Zealand;
- (viii) claims as a result of any judgement entered in any court, other than a New Zealand Court applying the law of New Zealand, or any debt incurred by *you* as the result of such a judgement.

For the purposes of this extension only, General Exclusion 2.1 'Aggravated, Punitive or Exemplary damages' in this section is amended by deleting the words 'punitive and exemplary damages'.

5.13 Service and Repair – Machinery

Notwithstanding Exclusion 6.15 'Property worked upon' the cover under this section is extended to indemnify *you* for liability in respect of *property damage* to all machinery and parts thereof that are, or have been, in *your* care custody or control for the purposes of service and/or repair, subject to our liability under this Extension of Cover shall not exceed \$250,000 or the amount specified in the *schedule* for this Extension 5.13 'Service and Repair – Machinery' in the aggregate any one *period of insurance*.

Provided that in all cases there is no cover for liability for the costs of rectifying defective or faulty:

5.13.1 workmanship; or

5.13.2 materials; and

5.13.3 an excess \$2,500 shall apply for this Extension of Cover.

5.14 Service and Repair – Vehicle and Watercraft

Notwithstanding Exclusion 6.15 'Property worked upon' and Exclusion 6.20 'Watercraft, Aircraft, Hovercraft' the cover under this section is extended to indemnify *you* for liability in respect of *property damage* to all *watercraft* and *vehicles*, and parts thereof that are, or have been, in *your* care custody or control for the purposes of service and/or repair, subject to our liability under this Extension of Cover shall not exceed \$500,000 or the amount specified in the *schedule* for this Extension 5.14 'Service and Repair – Vehicle and Watercraft' in the aggregate any one *period of insurance*.

Provided that in all cases there is no cover for liability for the costs of rectifying defective or faulty:

5.14.1 workmanship; or

5.14.2 materials; and

5.14.3 an excess \$1,000 shall apply for this Extension of Cover.

5.15 Tenants liability

Notwithstanding Exclusion 6.14 'Property in your care, custody or control', the cover under this section is extended to indemnify *you* for all sums that *you* are legally liable to pay as compensation for *personal injury* and/or *property damage* happening during the *period of insurance* and in connection with *your business* to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by *you* always subject to the Property Law Act 2007, but no cover is provided by this section if *you* have assumed the responsibility to insure such premises.

5.16 Underground services

The cover under this section is extended to indemnify *you* for all sums that any *insured* shall become legally liable to pay in respect of *personal injury* arising out of, and *property damage* in New Zealand to existing underground services, cables, pipes or equipment.

Provided that:

- 5.16.1 prior to the commencement of any work, the *insured* inquired of the relevant authority, corporation or company as to the location of such underground services, cables, pipes or equipment and *you* took all reasonable precautions to prevent *personal injury* or *property damage*; and
- 5.16.2 our liability under this Extension of Cover shall not exceed \$250,000 or the amount specified in the *schedule* for this Extension 5.16 'Underground services'.
- 5.16.3 an excess \$5,000 shall apply for this Extension of Cover.

5.17 Vehicle / Mechanical plant

Notwithstanding Exclusion 6.14 'Property in your care, custody or control', the cover under this section is extended to indemnify *you* for all sums that *you* are legally liable to pay as compensation for *personal injury* and/or *property damage*:

- 5.17.1 arising out of and during loading and unloading of goods to or from any *vehicle* used by *you* or on *your* behalf, but not where the *vehicle* is under *your* care custody or control;
- 5.17.2 arising from any *vehicle* while is being operated and being used as a *tool of trade* other than whilst in transit or whilst being used for transport or haulage.

5.18 Vibration and Removal of support

The cover under this section is extended to indemnify *you* for all sums that any *insured* shall become legally liable to pay in respect of *personal injury* and *property damage* in New Zealand arising from the vibration, or removing, weakening or interfering with, the support of land or buildings.

Provided that:

- 5.18.1 the land or buildings are not owned or occupied by *you* and the *personal injury* or *property damage* arises from *your* actions; and
- 5.18.2 our liability under this Extension of Cover shall not exceed \$500,000 or the amount specified in the *schedule* for this Extension 5.18 'Vibration and Removal of support'.
- 5.18.3 an excess \$5,000 shall apply for this Extension of Cover.

6. Exclusions

We will not pay anything in respect of:

6.1 Advertising liability

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

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

6.2 Assault and battery

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

Exclusion 6.2 will not apply when such assault and battery is committed for the purpose of preventing or eliminating danger to persons or property.

6.3 Contractual liability

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

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

6.4 Damage to products

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

6.5 Defamation, Libel, Slander

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

6.6 Defective workmanship

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

6.7 Design, Specification, Formula

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

Exclusion 6.7 shall not apply in respect of any design, plan, specification, formula or pattern about any *products*, which is not given for a fee.

6.8 Employer's liability

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

- (a) is indemnified or entitled to be indemnified (either in whole or in part and/or whether such insurance is limited in amount or not) under the Accident Compensation Act 2001, or any similar amending or replacement legislation; or
- (b) would have been indemnified or entitled to be indemnified (either in whole or in part and/or whether such insurance is limited in amount or not) had any *insured* arranged a policy of insurance as required by such legislation.

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

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

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

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

6.9 Intentional conduct

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

6.10 Loss of use

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

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

6.10.2 the failure of the *products* to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by an *insured*.

Exclusion 6.10.2 does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the *products* after such *products* have been put to use by any person or organisation other than *you*.

6.11 Offshore gas or oil platforms

any liability of whatsoever nature in connection with, caused by or arising from work performed on or about any offshore gas or oil platform.

6.12 Pollution

6.12.1 *personal injury* or *property damage* directly or indirectly arising out of the discharge, seepage, migration, dispersal, release or escape of *pollutants* into or upon any property, land, the atmosphere or any watercourse or body of water (including ground water);

6.12.2 *personal injury* or *property damage* directly or indirectly arising out of the discharge, seepage, migration, dispersal, release or escape of *pollutants* caused by any *product* that has been discarded, dumped, abandoned or thrown away by others;

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

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

Exclusion 6.12.1 and 6.12.3 shall not apply where the claim arises from a sudden identifiable, unintended and unexpected event from *your* standpoint which takes place in its entirety at a specific time and place during the *period of insurance* and occurs outside of *North America*. However, the total aggregate *limit of liability* during any one *period of insurance* shall not exceed the *limit of liability*.

6.13 Professional liability

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

6.14 Property in your care, custody or control

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

6.14.1 property leased or rented to *you*;

6.14.2 property not belonging to *you* but in *your* care, custody or control other than the property described in Extension of Cover – 5.2 'Care, custody or control'.

6.15 Property worked upon

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

6.16 Recall of products

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

6.17 Specific products and substances

any liability arising out of:

- 6.171 urea formaldehyde;
- 6.172 silicon based human implants;
- 6.173 AIDS, HIV or HIV related illness;
- 6.174 contraceptives and RU 486;
- 6.175 human biological materials including extracts thereof (e.g. blood, plasma, plasmaproteins, immunoglobulins, cells, tissue, organs, urine, excretions, etc.);
- 6.176 genetically modified seeds or organisms;
- 6.177 vaccines;
- 6.178 application or use of polychlorinated biphenyls including polychlorinated biphenyl generated dibenzofurans and dioxins;
- 6.179 tobacco and tobacco related products;
- 6.1710 the manufacture or supply of all pharmaceutical active ingredients including medical implants; or
- 6.1711 DES and orally taken oxycholine.

6.18 Territorial limits

any liability:

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

Exclusion 6.18 will not apply to *business* visits by executives and salespersons normally resident in New Zealand.

6.19 Vehicles

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

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

6.20 Watercraft, Aircraft, Hovercraft

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

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

7. Standard Conditions

7.1 Cross liability

Subject to Standard Condition 7.3 'Joint insured' for the purpose of this section, when an *insured* consists of more than one party, the *insured* shall be considered as a separate *insured* as though a separate policy had been issued to each of the said parties, but nothing herein contained shall operate to increase our *limits of liability*.

7.2 Inspection and Audit

We shall be permitted but not obligated to inspect the *insured's* property and operations at any reasonable time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an *insured* or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation. We may examine and audit *your* books and records at any time during the policy period and within 3 years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

7.3 Joint insured

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

7.4 Liability not to be admitted

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

7.5 Notice and proof of claim

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

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

7.6 Other insurance

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

7.7 Reasonable care and precautions

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

7.7.2 The *insured* shall take all reasonable care and precautions:

- (a) to prevent *personal injury* or *property damage* losses;
- (b) to prevent the manufacture, sale or supply of defective *products*;
- (c) to comply with all statutory obligations, by-laws or regulations imposed by any public authority.

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

7.8 Subrogation

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

Section 2 – Employers Liability

Introduction

This cover section only forms part of *your* policy when Employers Liability is shown in the *schedule* and is limited to the *period of insurance* indicated.

1. Insuring Clauses

1.1 Damages

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

Provided that 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. Definitions

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

2.1 Damages

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

2.2 Defence costs

defence costs for the purpose of this cover section means:

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

2.3 Employee

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

2.4 Penalties

penalties mean 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.

2.5 Personal injury

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

3. Limit of Liability

Our liability to indemnify *you* for all claims under this cover section:

- 3.1 for *damages* under Insuring Clause 1.1 of this cover section 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
- 3.2 for *defence costs* under Insuring Clause 1.2 of this cover section 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
- 3.3 under Insuring Clauses 1.1 and 1.2 of this cover section 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 cover section applies only to that part of such claims exceeding the *excess* stated in the *schedule*.

4. Extensions of Cover

4.1 Extended reporting period

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

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

4.2 Newly created or Acquired subsidiary company

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

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

4.3 Subsidiary change of ownership

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

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

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

5. Exclusions

We will not pay anything in respect of:

5.1 Employer's liability

- 5.1.1 any *personal injury* for which cover to any extent is provided by the Accident Compensation Act 2001 or would have been, had a claim been made;
- 5.1.2 any *personal injury* which has resulted from any breach or contravention of any provisions of the Health and Safety at Work Act 2015 or any failure to comply with any improvement or prohibition notice issued thereunder;
- 5.1.3 any judgment entered in any Court other than a New Zealand Court, or any debt incurred by *you* as the result of such a judgment;
- 5.1.4 any claim which is or should properly be brought in the Employment Tribunal or Employment Court, or for any personal grievance.

5.2 Fines or Penalties

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

5.3 Prior and Pending

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

5.4 Territorial limits

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

6. Standard Conditions

6.1 Notice and proof of claim

- 6.1.1 As a condition precedent to *your* right to be indemnified under this section, *you* must give us notice in writing as soon as practicable of:
 - (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 *excess* stated in the *schedule*.
- 6.1.2 any circumstance notified to us during the *period of insurance*, any subsequent claim that arises from that claim is covered under this section as though the claim itself was notified during the *period of insurance*;
- 6.1.3 The insurance provided by this section ceases absolutely at the expiry of the *period of insurance*.

Provided that if the notice referred to in General Conditions – ‘Cancellation 3.3.1’ has been given to us prior to the expiration of the *period of insurance*, or within 30 days after its expiry, or if exercised, during the *extended reporting period*, any claim arising from the notified circumstances, which is subsequently made after the expiration of the *period of insurance*, shall be deemed to have been made during the subsistence of this section.

6.1.4 *You* shall give to us or our authorised representatives all such information and assistance as they may reasonably require. We may assume control and conduct of any claim, and any counterclaim (which shall be a condition precedent to *your* right to be covered under this policy).

6.1.5 *You* shall not in relation to any claim under this section:

- (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.

6.1.6 If *you* refuse to consent to any settlement recommended by us, and shall elect to contest or continue any legal proceedings, our liability for the claim shall not exceed the amount for which the claim could have been so settled (over and above the *excess* stated in the *schedule*), including *defence costs* incurred up to the date of such refusal.

6.1.7 *You* shall not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon) shall advise such proceedings should be contested by *you*.

6.2 Other insurance

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

6.3 Prejudice

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

6.4 Reasonable precautions

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

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

6.5 Subrogation

We will 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* will 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 will become *your* property.

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

Section 3 – Statutory Liability

Introduction

This cover section only forms part of *your* policy when Statutory Liability is shown in the *schedule* and is limited to the *period of insurance* indicated.

1. Insuring Clauses

1.1 Statutory liability

We will pay any *fine* payable by *you* for an *offence* under any *Act of Parliament* in connection with the *business*.

1.2 Defence costs

We will pay any *defence costs* incurred by *you* in relation to *your* defence.

2. Definitions

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

2.1 Acquitted

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

2.2 Act of Parliament

Act of Parliament means any Act of the New Zealand Parliament including amendments to or re-enactments of those Acts, and any Code or Regulations or other subordinate legislation made under those Acts, but does not include Acts within Exclusion 5.4 'Excluded Acts'.

2.3 Change in control

change in control means an event or events occurring, with the result that any person, entity or group:

2.3.1 acquires more than 50% of the *insured's* share capital;

2.3.2 acquires the majority of the voting rights in the *insured*;

2.3.3 assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the *insured*;

2.3.4 assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the *insured*; or

2.3.5 merges with the *insured*, such that the *insured* is not the surviving entity.

2.4 Civil defence legal costs

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

2.3.1 a formal inquiry by a regulatory body, which could lead to a prosecution for an *offence*;

2.3.2 proceedings before a Human Rights or Privacy Complaints Review Tribunal.

2.5 Defence costs

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

2.6 Event

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

2.7 Fine

fine means any fine or costs assessed by a court pursuant to any statute, upon conviction for an *offence*, for which we may legally indemnify *you*. This does not include a *fine* imposed pursuant to the Health and Safety at Work Act 2015, but this definition is extended to include a sentence of reparation imposed following a conviction under that Act.

Fine does not include any pecuniary penalty, damages, compensation or other sums ordered by a court.

2.8 Inception date

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

2.9 Offence

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

2.10 Securities

securities mean any bond, debenture, note, share, stock, American Depository Receipts or other equity or security for debt which is issued or given by the company, and includes any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items.

3. Limit of Liability

Our liability to indemnify *you* for all *events* under this cover section:

- 3.1 for *finer* under Insuring Clause 1.1 of this cover section in respect of all *events* is limited in the aggregate to the *limit of liability* specified for Insuring Clause 1.1 in the *schedule*; and
- 3.2 for *defence costs* under Insuring Clause 1.2 of this cover section in respect of all *events* is limited in the aggregate to the *limit of liability* specified for Insuring Clause 1.2 in the *schedule*; and
- 3.3 under Insuring Clauses 1.1 and 1.2 of this cover section in respect of all *events* is limited in the aggregate to the *limit of liability* specified for Insuring Clauses 1.1 and 1.2 in the *schedule*,

for the *period of insurance* within which *you* have, or should have, first notified us of the *event*.

Where an *event* is alleged to have taken place on, over or between a number of specified dates, which fall within more than one *period of insurance*, for the purposes of the applicable *limit of liability* and *excess*, the *event* will be treated as if it occurred in the *period of insurance* in which *you* have, or should have, first notified us of the *event*.

The *excess* specified in the *schedule* will be borne by *you* in respect of each and every *event*.

4. Extensions of Cover

4.1 Additional defence costs

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

4.2 Enforceable undertakings

Subject to the terms and conditions of this section, we will cover *you* for the following costs in respect to an enforceable undertaking accepted by the regulator under Section 123 of the Health and Safety at Work Act 2015, and arising out of an *event* covered under this section, always subject to our prior consent:

- (a) any payment of reparations paid to the victim(s) of the contravention; and
- (b) reasonable *defence costs* incurred in the drafting and preparation of the enforceable undertaking,

Provided that:

- 4.2.1 the *event* has resulted in a charging document being filed under the Health and Safety at Work Act 2015 or its regulations; and
- 4.2.2 the payment of amends to the victim will not exceed the amount we would expect to pay to cover a reparation order at sentencing; and
- 4.2.3 the amount payable overall under this Extension of Cover will not exceed the amount we would expect to pay had *you* been convicted and sentenced.

There is no cover under this Extension of Cover for:

- (i) any costs associated with the regulators administration fee; or
- (ii) any costs in connection with compliance, rectifications, consultation, improvements, training, donations, remedial actions or otherwise meeting the enforceable terms of the enforceable undertaking; or
- (iii) any costs associated with compliance monitoring activities for the enforceable undertaking; or
- (iv) any amount payable to any party, other than the victim (or their estate in the event of death) under the definition of victim under the Sentencing Act 2002 (or equivalent definition in a succeeding *Act of Parliament*) had the *event* resulted in a conviction; or
- (v) any *fin*es or *defence costs* that may arise from *your* failure to comply with or cause *you* to be in contravention of terms contained in the enforceable undertaking; or
- (vi) any expert costs incurred in the drafting and preparation of the enforceable undertaking without our prior consent.

4.3 Extended reporting period

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

Provided that:

- 4.3.1 this option to extend this section must be notified in writing to us within 30 days of the date of expiry;
- 4.3.2 the extension applies in respect of a circumstance reasonably expected to result in a *fine* before the expiry date;
- 4.3.3 an offer by us of any renewal terms or premiums different from expiring terms or premiums does not constitute a refusal to renew;
- 4.3.4 the *limit of liability* under this extension is part of and not in addition to the *limit of liability* specified in the *schedule*.

4.4 Newly created or Acquired subsidiary

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

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

4.5 Official investigations

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

4.6 Subsidiary change of ownership

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

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

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

5. Exclusions

We will not pay anything in respect of:

5.1 Aggravated, Punitive or Exemplary damages

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

5.2 Daily continuing offences

5.2.1 the cost or payment of any abatement, enforcement order, remedial order or compliance order;

5.2.2 failing to comply with an abatement, compliance, enforcement or remedial notice or order;

5.2.3 any *fine* imposed in relation to a daily continuing *offence* where the *fine* is imposed in relation to a period of time after *you* first received notice from the informant or his employing body of the intention to commence a prosecution in relation to that *offence*.

5.3 Deliberate disregard

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

5.3.1 the deliberate or reckless disregard by *you* of any of the provisions of any *Act of Parliament* which *you* are alleged to have contravened;

5.3.2 *you* instructing another person to discharge one or more of *your* obligations under any of the provisions of the Acts and failing to take all reasonable steps to ensure that *your* obligations were discharged as instructed;

5.3.3 the failure by *you* to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building consent, Notice to Rectify, Compliance Schedule, Gazetted Notice, or order made by a Human Rights or Privacy Review Tribunal.

5.4 Dishonest acts

any *event* actually or allegedly brought about or contributed to, by any dishonest, fraudulent or malicious act or omission by or on *your* behalf.

5.5 Excluded Acts

any *fine* under, and any *defence costs* or *civil defence legal costs* payable in relation to:

5.5.1 Arms Act 1983;

5.5.2 Aviation Crimes Act 1972;

5.5.3 Crimes Act 1961;

5.5.4 Criminal Investigations (Blood samples) Act 1995;

5.5.5 Criminal Proceeds (Recovery) Act 2009;

5.5.6 Land Transport (Road Safety and Other Matter) Amendment Act 2011;

- 5.5.7 Misuse of Drugs Act 1975;
 - 5.5.8 Summary Offences Act 1981;
 - 5.5.9 Land Transport Act 1998: or
 - 5.5.10 Anti-Money Laundering and Countering Financing of Terrorism Act 2009,
- and any other *Act of Parliament* specified in the *schedule* as a further Excluded Act.

5.6 Orders and Costs

- 5.6.1 any order for payment of costs made under the Commissions of Inquiry Act 1908;
- 5.6.2 any court order in the nature of damages or compensation, except a sentence of reparation following a Health and Safety at Work Act 2015 prosecution;
- 5.6.3 any action, proceeding, inquiry, investigation or prosecution taken against *you* by the Inland Revenue Department or any other revenue collecting authority.

5.7 Personal grievances

any contract of service with any current, former or prospective employee, including any personal grievance or similar action by an employee, but this exclusion does not apply to any investigation or inquiry by WorkSafe New Zealand pursuant to the Health and Safety at Work Act 2015.

5.8 Prior and Pending

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

5.9 Private prosecutions

any investigation of or defence of any action, proceeding, inquiry, investigation or prosecution taken against *you* by a person other than the statutory authority or enforcement agency given that responsibility under the relevant *Act of Parliament*, but this exclusion does not apply to any private prosecution brought under the Health and Safety at Work Act 2015 or any amendment to or re-enactment of that Act or regulations or other subordinate legislation made under that Act.

5.10 Securities

any actual or alleged offence under an *Act of Parliament* in relation to the offer, sale or distribution of *securities*.

5.11 Taxes

any *event* or act or omission in connection with a requirement to pay taxes, rates, duties, levies, charges fees or any other kind of revenue under an *Act of Parliament*.

5.12 Territorial limits

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

6. Standard Conditions

6.1 Apportionment of costs

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

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

6.2 Claims notification and Duties

As a condition precedent to our liability, *you* must give us notice in writing of any *event* within 30 days. At the same time, or as soon as possible thereafter, *you* must:

- 6.2.1 provide full details of any notice or circumstance of an *event* together with any documentation, information and details that are relevant;
- 6.2.2 give any notice or circumstance notified to us during the *period of insurance*, any subsequent claim that arises from that *event* is covered under this policy as though the *event* itself was notified during the *period of insurance*;
- 6.2.3 use *your* best endeavours to preserve all property, products, appliances, plant and other things which may assist us in the investigation or conduct of *your* defence. So far as may be reasonably practical, no alteration or repair is to be effected until we have first had the opportunity of inspection;
- 6.2.4 co-operate with us or our authorised representatives in all aspects of the claim;
- 6.2.5 not make any admission of fact or liability, offer, promise or payment or settlement without our prior written consent;
- 6.2.6 if the *offence* alleged is a continuing one, immediately take, at *your* expense, all reasonable steps to prevent its continuation.

6.3 Conduct of defence

- 6.3.1 Upon acceptance by us of *your* claim, we shall have the right to nominate a solicitor to act on *your* behalf and we shall have the total discretion as to the conduct and control of *your* defence, including strategy, in respect of any prosecution, inquiry, settlement, negotiation or proceedings against *you*.
- 6.3.2 If we and the insured cannot agree upon the appropriateness or otherwise of a settlement, then the matter will be determined in accordance with advice of Queen's Counsel, the choice of whom will be mutually agreed by the insured and us and whose fees will be paid by us, in addition to the *limit of liability*.

6.4 Change in control

If during the *period of insurance* the *insured* undergoes a *change in control*, then the cover provided by this policy will be amended to only apply in respect of conduct occurring prior to the effective date of such *change in control* until the policy expiry date. The *insured* will give us written notice of such *change in control* as soon as reasonably practicable.

6.5 Other insurance

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

6.6 Prejudice

Where *you* breach or fail to comply with Standard Conditions 6.2 'Claims notification and duties' or 6.8 'Reasonable precautions' of this section, and this results in prejudice to us in relation to the handling of any claim, the indemnity afforded by this section in respect of such claim, shall be reduced to such sum as would have been payable by us in the absence of such prejudice.

6.7 Progress payment of legal expenses

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

6.8 Reasonable precautions

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

6.7.1 avoid, prevent or minimise any circumstances that may give rise to an *event*;

6.7.2 comply with all relevant statutory obligations.

6.9 Subrogation

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

In no event, however, will we exercise our rights of subrogation against a natural person insured under this policy who is a trustee, director, officer, sole trader, partner or employee unless it is determined by a court judgment or final non-appealable adjudication in the underlying action or in a separate action or proceeding that such person had engaged in any conduct which is the subject of Exclusion 5.2 'Deliberate disregard' or 5.3 'Dishonest acts'.

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(incorporated in Australia)

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