

# Zurich Statutory Liability & Legal Costs Insurance

Policy Wording



## Important

### **Statutory Notice – Section 40 Insurance Contracts Act 1984 (Cth)**

This notice is provided in connection with but does not form part of the policy. This is a 'claims made' liability insurance policy. It only provides cover if:

1. a *claim* is made against the *insured*, by some other person, during the *period of insurance*; and
2. the *claim* arises out of a *wrongful breach* committed, attempted or alleged to have been committed or attempted after the *retroactive date* stipulated in the *schedule*.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if the insured becomes aware, during the period of insurance, of any circumstance or fact which might give rise to a claim against them by some other person, then provided that the insured notifies Zurich of the matter as soon as reasonably practicable after the insured becomes aware of the circumstance or fact and before this policy expires, Zurich may not refuse to indemnify merely because a claim resulting from the matter is not made against the insured prior to the end of the period of insurance.

If the *insured*, inadvertently or otherwise, does not notify the relevant circumstances or facts to Zurich before the expiry of the policy, the *insured* will not have the benefit of Section 40(3) of the Insurance Contracts Act 1984 (Cth) and Zurich may refuse to pay any subsequent *claim*, notwithstanding that the events giving rise to it or the *wrongful breaches* alleged in it may have taken place during the *period of insurance*.

If a *claim* is actually made against the *insured* by some other person during the *period of insurance* but is not notified to Zurich until after the policy has expired, Zurich may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.

# Contents

## Welcome to Zurich

<b>About Zurich</b> .....	<b>3</b>
<b>Duty of disclosure</b> .....	<b>3</b>
<b>Our contract with you</b> .....	<b>3</b>

## Zurich Statutory Liability & Legal Costs Insurance – Policy Wording

<b>1. Insuring Clause</b> .....	<b>4</b>
<b>2. Extensions of Cover</b>	
2.1 Advance payment of defence costs.....	4
2.2 Continuous cover .....	4
2.3 Crisis containment.....	5
2.4 Estates and legal representatives.....	5
2.5 Extended reporting period .....	5
2.6 Late arising extensions.....	6
2.7 Outside directorship .....	6
2.8 Subsidiary – newly created / acquired.....	7
2.9 Subsidiary – past.....	7
2.10 Workplace audits.....	7
<b>3. Definitions</b>	
3.1 Act .....	8
3.2 Act of terrorism .....	8
3.3 Business .....	8
3.4 Change in control .....	8
3.5 Claim .....	8
3.6 Deductible .....	9
3.7 Defence costs.....	9
3.8 Employee .....	9
3.9 Extended reporting period .....	9
3.10 Financial impairment .....	9
3.11 Insured .....	9
3.12 Investigation.....	9
3.13 Limit of liability .....	10
3.14 Loss .....	10
3.15 Officer.....	10
3.16 Outside directorship .....	10
3.17 Penalty .....	10
3.18 Period of insurance.....	11
3.19 Policyholder.....	11
3.20 Public relations expenses .....	11
3.21 Regulatory authority .....	11
3.22 Representation costs.....	11
3.23 Retroactive date .....	11
3.24 Schedule .....	11
3.25 Securities.....	11
3.26 Senior officer.....	11
3.27 Submission .....	11

3.28	Subsidiary.....	12
3.29	Territorial limits.....	12
3.30	Workplace audit.....	12
3.31	Workplace regulatory authority.....	12
3.32	Wrongful breach.....	12
<b>4.</b>	<b>Limit of Liability.....</b>	<b>12</b>
<b>5.</b>	<b>Exclusions</b>	
5.1	Asbestos.....	13
5.2	Certain Acts.....	13
5.3	Daily continuing offences and other costs.....	13
5.4	Knowledge.....	13
5.5	Personal gain and dishonesty.....	13
5.6	Personal grievances.....	13
5.7	Prior and pending.....	14
5.8	Prior notice.....	14
5.9	Professional services.....	14
5.10	Radioactive contamination.....	14
5.11	Taxes.....	14
5.12	Securities.....	14
5.13	Vehicle operation.....	14
5.14	War and/or Acts of terrorism.....	14
5.15	Wilful and intentional breaches.....	15
<b>6.</b>	<b>Conditions</b>	
6.1	Applicable law.....	15
6.2	Assignment.....	15
6.3	Cancellation.....	15
6.4	Changes in circumstances.....	15
6.5	Change in control.....	15
6.6	Confidentiality.....	15
6.7	Defence costs, settlements and allocation.....	16
6.8	Goods and Services Tax.....	17
6.9	Notices under Acts.....	17
6.10	Notification.....	17
6.11	Other insurance.....	18
6.12	Plurals and titles.....	18
6.13	Preservation.....	18
6.14	Reasonable care.....	18
6.15	Sanctions regulation.....	18
6.16	Severability and Non-Imputation.....	19
6.17	Subrogation.....	19
6.18	Territorial scope.....	19

# Welcome to Zurich

## About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507, a subsidiary of Zurich Financial Services Australia Limited (ZFSA). In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

## Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract 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 *submission*, 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 document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

# Zurich Statutory Liability & Legal Costs Insurance – Policy Wording

Subject to your agreement to pay the premium set out in the *schedule*, we agree with the *policyholder* to provide insurance in accordance with the terms, conditions and limitations of this policy.

## 1. Insuring Clauses

We will pay to or on behalf of the *insured* any:

- 1.1 *loss* arising from any *claim* which alleges a *wrongful breach* and/or that the *insured* is liable to pay a *penalty*, first received by the *insured* and notified to us; and/or
- 1.2 *representation costs* for the *insured* to prepare for and attend an *investigation* first commenced, during the *period of insurance* or any *extended reporting period* (if applicable).

## 2. Extensions of Cover

Cover is automatically provided for the Extensions of Cover described below. Each Extension of Cover is subject to the terms, conditions and limitations of this policy. Each Extension of Cover does not increase our *limit of liability*, unless expressly stated otherwise.

### 2.1 Advance payment of defence costs

We will advance the *defence costs* incurred by an *insured* in the defence of a *claim*, as they are incurred and prior to the final adjudication of the *claim*, where:

- 2.1.1 indemnity under this policy is confirmed in writing by us; or
- 2.1.2 without admitting indemnity, we agree to advance such *defence costs*.

All such payments shall be repaid to us by the *insured* (or where more than one *insured* has received such payments, by such *insured* severally and according to their respective interests) in the event and to the extent that the *insured* is not entitled to payment of such *defence costs* under the terms and conditions of this policy.

We will not rely on Exclusion 5.5 'Personal gain and dishonesty' to refuse to advance *defence costs* under this extension of cover until the conduct in question has been finally established by a judgment or other final adjudication, including by available appeals.

### 2.2 Continuous cover

If the *insured* has innocently neglected, to notify a circumstance which could give rise to a *claim* or *wrongful breach* or to an *investigation* or *workplace audit* during the period of an earlier policy(ies) of the same type as this one issued by another insurer, then provided that the *insured* has maintained uninterrupted insurance of the same type since the expiry of that earlier policy(ies) we will, notwithstanding Exclusion 5.7 'Prior and pending', permit the matter to be reported under this policy and indemnify the *insured* in respect of any *claim* arising from the matter during the *period of insurance* on the condition that:

- 2.2.1 we may reduce the indemnity entitlement by the monetary equivalent of any prejudice which we have suffered as a result of the delayed notification;
- 2.2.2 neither the *claim* nor the circumstance which could give rise to a *claim* or *wrongful breach*, nor the *investigation* nor *workplace audit* has been earlier notified to us or at any time to an insurer under any policy;
- 2.2.3 cover under this extension of cover will be pursuant to the terms, conditions, exclusions and limitations of the policy in force at the time the *insured* first became aware of the *claim* or the circumstance which could give rise to a *claim* or *wrongful breach* or the *investigation* or *workplace audit*, but only where such earlier policy(ies) affords no broader coverage; and
- 2.2.4 there has been no fraudulent non-disclosure or misrepresentation to us.

## 2.3 Crisis containment

We agree to pay *public relations expenses* to or on behalf of the *policyholder* for the sole purpose of protecting the reputation of same, which has been brought into question as a direct result of:

2.3.1 any covered *claim* against the *insured* first made during the *period of insurance* or the *extended reporting period* (if applicable);

2.3.2 any *investigation* for which the *insured* is entitled to cover for *representation costs*.

However:

- (i) the *insured* must notify us within 30 days of first becoming aware that the reputation of the parties noted in 2.3.1 and 2.3.2 are being brought into question and provide full written details outlining the circumstances surrounding the event; and
- (ii) we must have given prior written consent to retain the services of such public relations firm or consultant or crisis management firm; and
- (iii) the sub-limit for this extension of cover is \$50,000 or the amount specified in the *schedule*, for all *public relations expenses* payable and in the aggregate for any one *period of insurance*.

## 2.4 Estates and legal representatives

We agree to cover the estate, heirs, legal representatives or assigns of an *officer or employee* that is incapable of managing his or her own affairs by reason of mental disorder or other incapacity, or is deceased, insolvent or bankrupt, to the same extent as any *claim* made against such *officer or employee*.

## 2.5 Extended reporting period

2.5.1 In the event of a non renewal, other than for non-payment of premium, or if a *change in control* occurs, the *policyholder* automatically has the right, without payment of any additional premium, to a single coverage extension under this policy for a period of 90 days after the expiry of the *period of insurance*, in relation to:

- (a) any written notice that a *workplace audit* is to be conducted by a *workplace regulatory authority* during such 90 day period; or
- (b) any *claim* made against any *insured* during such 90 day period; and
- (c) any *investigation* where the legal requirement on any *insured* to attend first arises during such 90 day period,

but only with respect to any *wrongful breach* or conduct allegedly committed prior to the expiry date of the *period of insurance* or (if applicable) the effective date of the *change in control* (whichever is the earlier).

2.5.2 In the event of a non renewal, other than for non-payment of premium, or if a *change in control* occurs, the *policyholder* shall have the right to a single coverage extension under this policy for a period of:

- (a) 12 months; or
- (b) 24 months,

after the expiry date of the *period of insurance* for:

- (i) any *claim* made against any *insured* during the selected *extended reporting period*; or
- (ii) any *investigation* where the legal requirement on any *insured* to attend first arises during such selected *extended reporting period*,

but only with respect to any *wrongful breach* or conduct allegedly committed prior to the expiry date of the *period of insurance* or (if applicable) the effective date of the *change in control* (whichever is the earlier).

This clause 2.5.2 does not apply to the cover under Extension of Cover 2.10 'Workplace audits'.

Extension of Cover 2.5 'Extended reporting period' 2.5.2 is subject to such terms and conditions as we may reasonably impose. Further and subject to Extension of Cover 2.5 'Extended reporting period' 2.5.3 below, cover is only available under this extension of cover if the applicable additional premium has been paid by the *policyholder*, as required by us.

If the *policyholder* selects an *extended reporting period* as described above, the *policyholder* shall not have a right to cover under Extension of Cover 2.5 'Extended reporting period' 2.5.1 above.

- 2.5.3 The rights contained in Extension of Cover 2.5 'Extended reporting period' 2.5.3 shall terminate:
- (i) unless written notice is given to us by the *policyholder* no later than 30 days after the effective date of the non-renewal of this policy or (if applicable) *change in control* (whichever is the earlier), of its intention to elect an *extended reporting period* described above; and
  - (ii) unless as a condition precedent to the extended cover under Extension of Cover 2.5 'Extended reporting period' 2.5.2 above, the additional premium is paid promptly as required by us. Once elected, the entire premium for the *extended reporting period* shall be deemed fully earned at its commencement and non-refundable; and
  - (iii) immediately upon the effective date of any Statutory Liability Insurance contract of insurance or indemnity issued by Zurich or any other insurer, which effectively replaces or renews the coverage afforded by this policy, either in whole or in part, or otherwise affords such coverage. This clause also applies to the cover under Extension of Cover 2.5. 'Extended reporting period' 2.5.1.
- 2.5.4 The *insured* agrees that if we offer renewal terms that are different to this policy (including but not limited to premium, *limit of liability* or other terms, conditions or exclusions) this does not constitute a refusal by us to renew.

## 2.6 Late arising extensions

If during the *period of insurance* we develop a standard endorsement providing enhancements of coverage to our base Statutory Liability Insurance policy and such endorsement is to be made available to our clients for no additional premium, then the *policyholder* shall have the right to the benefit of, but not the obligation to accept, such new coverage enhancement endorsement, subject to all underwriting information or particulars as we may require, from the date of such availability.

This extension of cover shall not apply to any *policyholder*:

- 2.6.1 who is under *financial impairment*;
- 2.6.2 whose policy is operating within an *extended reporting period* as per Extension of Cover 2.5 'Extended reporting period'; or
- 2.6.3 which has advised us of a *change in control* as per Condition 6.5 'Change in control'.

## 2.7 Outside directorship

We shall pay on behalf of the *officer* or *employee*, subject to the terms and conditions of this policy, a *loss* arising from any *claim* or *representation costs* arising from any *investigation* in respect of any *outside directorship* held by such *officer* or *employee*.

Provided that:

- 2.7.1 this extension of cover only applies if the *outside directorship* is listed in the *schedule*;
- 2.7.2 such indemnity shall not be extended to the outside organisation in which such *outside directorship* is held, or to any other director, executive officer, company secretary or employee of such organisation; and
- 2.7.3 the coverage afforded by this extension shall not apply to any part of any *loss* covered by any indemnity permitted or required to be paid by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.



## 2.8 Subsidiary – newly created / acquired

We agree to extend cover to include any *subsidiary* acquired or created during the *period of insurance* by the *policyholder*. The following conditions apply to this extension:

- 2.8.1 the normal business of the new *subsidiary* is similar to the *business* described in the *schedule*;
- 2.8.2 cover will only apply in respect of any *investigation, workplace audit* or *claim* that would otherwise be covered under this policy where the *wrongful breach* or conduct was committed or alleged to have been committed after the date the *subsidiary* is acquired or created by the *policyholder*;
- 2.8.3 cover will apply automatically for a period of 90 days after the acquisition or creation of the *subsidiary* following which it will terminate. We may, at our sole discretion, extend coverage to such *subsidiary*, beyond such 90 days, if during such 90 day period the *policyholder* shall:
  - (a) notify us in writing of the acquisition of such entity;
  - (b) provide us with full underwriting information as we may require; and
  - (c) agree to any additional premium and/or amendment of the provisions of this policy required by us relating to such *subsidiary*.
- 2.8.4 In the event that no notification is provided to Zurich, this Extension of Cover shall not apply.

## 2.9 Subsidiary – past

Coverage shall extend to those entities which were once a *subsidiary* but have since ceased to be a *subsidiary*. Coverage in this respect shall only apply to *claims* that would otherwise be covered under this policy where the *wrongful breach* was committed or alleged to have been committed by an *insured*, between the date of the acquisition or creation of the *subsidiary* by the *policyholder* and the date such *subsidiary* ceased to be a *subsidiary*, subject always to the *retroactive date* specified in the *schedule*.

## 2.10 Workplace audits

We will pay for the costs necessarily and reasonably incurred by the *policyholder* in connection with a *workplace audit* which commenced and was notified to us during the *period of insurance*.

Provided that:

- 2.10.1 the *policyholder* gives us written notice that a *workplace audit* is to be conducted by a *workplace regulatory authority* within 30 days of the *policyholder* being advised. The written notice to us must include a copy of the *workplace audit* notice from the *workplace regulatory authority* that clearly identifies the type of *workplace audit* to be conducted; or
- 2.10.2 where a *workplace audit* has commenced in the absence of any notification document being issued by the *workplace regulatory authority*, the *policyholder* must provide us with details of the date of the first visit by the officer of the *workplace regulatory authority* together with the officer's contact details within 30 days of the first visit; and
- 2.10.2 we will only pay the *policyholder* once we receive final written confirmation to the *policyholder* from the *workplace regulatory authority* that the *workplace audit* has been completed; and
- 2.10.3 the sub-limit for this extension of cover is \$25,000 or the amount specified in the *schedule*, for all *workplace audit* costs payable and in the aggregate for any one *period of insurance*.

### 3. Definitions

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

#### 3.1 Act

*Act* means:

- 3.1.1 any Act of the Parliament of the Commonwealth of Australia and any Act of a Parliament of a State or Territory of the Commonwealth of Australia, including any subordinate or delegated legislation such as regulations made under those Acts; or
- 3.1.2 any Act of the Parliament of New Zealand, including any subordinate or delegated legislation such as regulations made under those Acts; and
- 3.1.3 any amendment, consolidation or re-enactment of any of the above Acts or subordinate or delegated legislation.

#### 3.2 Act of terrorism

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

- 3.2.1 involves violence against one or more persons;
- 3.2.2 involves damage to property;
- 3.2.3 endangers life other than that of the person committing the action;
- 3.2.4 creates a risk to health or safety of the public or a section of the public; or
- 3.2.5 is designed to interfere with or to disrupt an electronic system.

#### 3.3 Business

*business* means the business conducted by the *policyholder* as described in the *schedule*.

#### 3.4 Change in control

*change of control* means an event or events occur, with the result that:

- 3.4.1 any person, entity or group:
  - (a) acquires more than 50% of the *policyholder's* share capital;
  - (b) acquires the majority of the voting rights in the *policyholder*;
  - (c) assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the *policyholder*;
  - (d) assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the *policyholder*; or
  - (e) merges with the *policyholder*, such that the *policyholder* is not the surviving entity; or
- 3.4.2 a trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator, administrator or deed administrator (or similar official or person) is appointed for the *policyholder*.

#### 3.5 Claim

*claim* means any written notice from a *regulatory authority*, received by the *insured* which alleges a *wrongful breach* and/or that the *insured* is liable to pay a *penalty*.

### **3.6 Deductible**

*deductible* means in respect of:

3.6.1 the *policyholder*, the amount shown in the *schedule*;

3.6.2 *officers* and *employees*, the amount shown in the *schedule*,

which shall be responsibility of the *policyholder* to pay in respect of each *loss* or other expense for which cover is otherwise provided under this policy.

### **3.7 Defence costs**

*defence costs* means reasonable fees, costs, charges and expenses (other than remuneration payable to any *officer* or *employee* of the *policyholder*, the cost of their time or the costs or overhead of the *policyholder*), incurred by the *insured* in the investigation, defence, settlement or appeal of any *claim* made or brought against an *insured*.

*Defence costs* shall also include reasonable fees, costs, charges and expenses of any accredited expert retained through defence lawyers approved in writing by us on behalf of the *insured* to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*.

Provided that where proceedings are commenced to impose a *penalty* and those proceedings are also in respect of other matters, then we will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.

### **3.8 Employee**

*employee* means any past, present or future natural person being in the regular service or seasonal or casual or temporary service or under a contract of service or apprenticeship, traineeship, or work experience of the *policyholder* in the ordinary course of the *policyholder's business* and whom the *policyholder* compensates by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service during or prior to the commencement of the *period of insurance*.

The definition of *employee* shall not include independent contractors or agents, nor their respective employees.

### **3.9 Extended reporting period**

*extended reporting period* means the relevant period of cover arising or offered under Extension of Cover 2.5 'Extended reporting period'.

### **3.10 Financial impairment**

*financial impairment* means the status of the *policyholder* resulting from:

3.10.1 the appointment by any governmental, provincial, federal or state official, agency or court of any receiver, conservator, liquidator, trustee, administrator, deed administrator or similar official to take control of, supervise, manage or liquidate the *policyholder*;

3.10.2 the appointment by or on behalf of the *policyholder* of administrators; or

3.10.3 the *policyholder* being in receivership or liquidation.

### **3.11 Insured**

*insured* means, as applicable:

3.11.1 the *policyholder*; or

3.11.2 any *officer* whilst acting in the performance of their duties to the *policyholder*; or

3.11.3 any *employee* whilst acting in the performance of their employment by the *policyholder*.

### 3.12 Investigation

*investigation* means:

- 3.12.1 a formal criminal, administrative or regulatory investigation, examination, hearing or enquiry, commenced by any *regulatory authority*:
  - (a) where the *insured* receives written notice which requires or directs the *insured* to attend before or produce documents to, or answer questions by or attend interviews with, the *regulatory authority*; or
  - (b) identifies the *insured* as a target of the investigating *regulatory authority*, whether or not a *wrongful breach* is alleged; or
- 3.12.2 a coronial inquest, royal commission, special commission of inquiry, or other formal legal proceedings ordered or commissioned by any *regulatory authority*.

### 3.13 Limit of Liability

*limit of liability* means the amount specified in the *schedule* which shall be our maximum liability, in the aggregate, payable under this policy, subject to the terms and conditions of this policy.

### 3.14 Loss

*loss* means any *penalty* and *defence costs* which an *insured* becomes legally obligated to pay on account of any covered *claim* or any *representation costs* which an *insured* becomes legally obligated to pay on account of any covered *investigation*.

### 3.15 Officer

*officer* means any past, present or future director or officer (as defined by the Corporations Act 2001 (Cth) or the Financial Reporting Act 2013 (New Zealand) of the *policyholder*, but excluding:

- 3.15.1 a receiver, receiver and manager, judicial manager, liquidator, administrator, trustee or other person administering a scheme of company arrangement between the corporation or any other person or persons; or
- 3.15.2 any company, organisation or other body corporate.

### 3.16 Outside directorship

*outside directorship* means an executive position held by an *officer* or *employee* in connection with the *business* at the specific request of the *policyholder* in any corporation, joint venture, partnership, trust or other enterprise which is not included in the definition of the *policyholder*.

### 3.17 Penalty

*penalty* means any monetary sum payable by the *insured* to any *regulatory authority* pursuant to any *Act* for a *wrongful breach* by the *insured* but excluding any:

- 3.17.1 amounts payable as compensation or restitution;
- 3.17.2 compliance, remedial, reparation or restitution costs, apart from costs necessarily and reasonably incurred under Extension of Cover 2.10 'Workplace audits';
- 3.17.3 damages, including any exemplary or punitive damages;
- 3.17.4 consequential loss, economic or otherwise;
- 3.17.5 legal costs and associated expenses;
- 3.17.6 penalty the insurance of which is prohibited at law.

Notwithstanding clause 3.17.5, we will pay any reasonable legal costs and associated expenses payable by the *insured* to any *regulatory authority* upon the imposition of a *penalty* covered by this policy. Provided that where the proceedings that lead to the imposition of the *penalty* also include proceedings in respect of any of the matters set out in clauses 3.17.1 to 3.17.4, we will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in 3.17.1 to 3.17.4.

### **3.18 Period of insurance**

*period of insurance* means the period of time specified in the *schedule* to this policy including any Extension of Cover thereto agreed in writing by us.

### **3.19 Policyholder**

*policyholder* means the legal entity as specified in the *schedule* and/or any *subsidiary* which was a *subsidiary* prior to the commencement of the *period of insurance*.

### **3.20 Public relations expenses**

*public relations expenses* means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which the *policyholder* in the reasonable exercise of its discretion may engage with our written consent to prevent or limit adverse effects or negative publicity in respect of a *claim* or *investigation*.

### **3.21 Regulatory authority**

*regulatory authority* means a person or entity appointed, constituted or acting under a delegation pursuant to any *Act* for the purposes of enforcement of such *Act* or another *Act*.

### **3.22 Representation costs**

*representation costs* means reasonable fees, costs, charges and expenses (other than remuneration payable to any *officer* or *employee* of the *policyholder*, the cost of their time or the costs or overhead of the *policyholder*) incurred with our written consent, such consent not to be unreasonably withheld or delayed, by or on behalf of any *insured* directly in connection with its preparation for and attendance at an *investigation*.

*Representation costs* do not include any fines or *penalties*, or the equivalent, levied or imposed in connection with the *investigation*.

### **3.23 Retroactive date**

*retroactive date* means the date shown on the *schedule*. However, unless otherwise agreed in writing by us, such date in respect of any entity acquired or created by the *policyholder* shall be the date of acquisition or creation of that entity by the *policyholder* or the date shown the *schedule*, whichever is the later date.

### **3.24 Schedule**

*schedule* means the Schedule attached to this policy or any schedule subsequently substituted during the *period of insurance* and duly signed, stamped and dated by an authorised officer of Zurich.

### **3.25 Securities**

*securities* means 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.

### **3.26 Senior officer**

*senior officer* means any past, present or future director, chief executive officer, chief financial officer or company secretary of the *policyholder*.

### **3.27 Submission**

*submission* means:

3.27.1 any information and/or statements or materials;

3.27.2 any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or

3.27.3 the financial statements and annual reports of any *insured*,

requested by or supplied to us by or on behalf of the *policyholder* in connection with this policy.

### 3.28 Subsidiary

*subsidiary* means any entity in which the *policyholder*:

3.28.1 holds directly or indirectly more than 50% of the voting rights;

3.28.2 appoints a majority of the board of directors (or equivalent in any other country); or

3.28.3 has the right, pursuant to a written agreement with other shareholders, to appoint a majority of the board of directors (or equivalent in any other country),

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the named *policyholder* pursuant to the Corporations Act 2001 (Cth) or the Financial Reporting Act 2013 (NZ) (as applicable) or the applicable Australian or New Zealand accounting standard.

### 3.29 Territorial limits

*territorial limits* means anywhere in Australia and/or New Zealand.

### 3.30 Workplace audit

*workplace audit* means those audits undertaken by a *workplace regulatory authority*.

### 3.31 Workplace regulatory authority

*workplace regulatory authority* means a person or entity appointed, constituted or acting under a delegation pursuant to any Commonwealth, State or Territory occupational or workplace health and safety legislation or equivalent Act for the purposes of enforcement of such Act or another Act.

### 3.32 Wrongful breach

*wrongful breach* means any act, error or omission which occurs:

3.32.1 in connection with the *business*;

3.32.2 within the *territorial limits*; and

3.32.3 after the *retroactive date*,

whereby:

(i) the *insured* contravenes an *Act* or is involved in the contravention of an *Act*;

(ii) the *insured* commits an offence pursuant to an *Act*; or

(iii) such conduct is prohibited under an *Act*.

## 4. Limit of Liability

All *loss* arising out of:

**4.1** any one *wrongful breach* or interrelated *wrongful breaches*; and/or

**4.2** all interrelated *representation costs* arising from any *investigation* or a *workplace audit*,

are deemed to be one *loss* and such *loss* shall be deemed to have originated on the earliest date at which a *claim* is made against the *insured*.

Our liability under this policy applies only to that part of each *loss* in excess of the *deductible*.

Our liability under this policy in respect of all *loss* arising out of all *claims* covered by this policy will not exceed the *limit of liability* in the *schedule*.

## 5. Exclusions

We shall not be liable under this policy to provide cover for any *loss* or costs in connection with any *investigation* or any *claim*:

### 5.1 Asbestos

for liability of whatsoever nature in connection with, directly or indirectly caused by or contributed to by or arising from asbestos or asbestos products in whatever form or quantity.

### 5.2 Certain Acts

5.2.1 based upon, attributable to or in consequence of any contravention of sections 182, 183, 588G, 601FD, 601FE or 601JD of the Corporations Act 2001 (Cth) and any amendment, consolidation or re-enactment of any of those sections; or

5.2.2 based upon, attributable to or in consequence of any contravention of sections 78, 80, 83 or 89 (3) (b) of the New Zealand Commerce Act 1986 and any amendment, consolidation or re-enactment of any of those sections; or

5.2.3 a *wrongful breach* of any of the following Australian Acts: Fair Trading Act 1985 (Vic), Fair Trading Act 1987 (NSW), Fair Trading Act 1987 (SA), Fair Trading Act 1987 (WA), Fair Trading Act 1989 (Qld), Fair Trading Act 1990 (Tas), Fair Trading Act 1992 (ACT), Consumer Affairs and Fair Trading Act 1996 (NT), Trade Practices Act 1974 (Cth), Competition and Consumer Act 2010 (Cth) and any amendment, consolidation or re-enactment of any of those Acts. However where the breach is not wilful, intentional or deliberate, 5.2.3 shall not apply with respect to *loss* arising from any *claim* made against an *officer* or *employee*; or

5.2.4 a *wrongful breach* of any of the following New Zealand Acts: Arms Act 1983 (NZ), Aviation Crimes Act 1972 (NZ), Crimes Act 1961 (NZ), Criminal Investigations (Blood samples) Act 1995 (NZ), Criminal Proceeds (Recovery) Act 2009 (NZ), Land Transport (Road Safety and Other Matter) Amendment Act 2001 (NZ), Misuse of Drugs Act 1975 (NZ), Summary Offences Act 1981 (NZ) and any amendment, consolidation or re-enactment of any of those Acts.

However this exclusion shall only apply where the subject conduct has been established by a judgement or other final adjudication.

### 5.3 Daily continuing offences and other costs

5.3.1 for the cost or payment of any enforcement order, remedial order or compliance order;

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

### 5.4 Knowledge

based upon, attributable to or in consequence of, any *loss* or part of any *loss* which is attributable to the period after the *insured* knew that its conduct was a *wrongful breach*.

### 5.5 Personal gain and dishonesty

based upon, attributable to or in consequence of any *insured* gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled.

However this exclusion shall only apply where the subject conduct has been established by a judgment or other final adjudication adverse to the *insured*.

### 5.6 Personal grievances

based upon, attributable to or in consequence of, any contract of service with any current, former or prospective *senior officer* or an *employee*, including any personal grievance or similar action by a *senior officer* or an *employee*.

However this exclusion shall only apply to any *investigation* or inquiry by any relevant *workplace regulatory authority* or by the Department of Labour pursuant to the Health and Safety at Work Act 2015 (NZ).

## **5.7 Prior and pending**

- 5.7.1 made, threatened or in any way intimidated against the *insured* prior to the *period of insurance*;
- 5.7.2 arising from any circumstances of which the *insured* had become aware prior to the *period of insurance* and which the *insured* knew (or ought reasonably to have known) to be circumstances which may give rise to a *claim*;
- 5.7.3 arising from any *wrongful breach* where the *insured* knew (or ought reasonably to have known) prior to the *period of insurance* that there had been such a *wrongful breach*.

## **5.8 Prior notice**

arising from any matter disclosed to any Insurer (including us) prior to the *period of insurance* as either a *claim* or circumstance which may give rise to a *claim* against the *insured* or any *investigation* or circumstance which may give rise to an *investigation* or *workplace audit*.

## **5.9 Professional services**

for actual or alleged act or omission, including but not limited to any error, misstatement, misleading statement, neglect, breach of trust or breach of duty committed, attempted or allegedly committed or attempted in connection with the rendering of, or actual or alleged failure to render, any professional services to a third party.

## **5.10 Radioactive contamination**

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

## **5.11 Taxes**

based upon, attributable to or in consequence of a *wrongful breach* by the *insured* in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

## **5.12 Securities**

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

## **5.13 Vehicle operation**

based upon, attributable to or in consequence of:

- 5.13.1 a *wrongful breach* relating to the regulation of road rules for drivers of vehicles;
- 5.13.2 a *wrongful breach* relating to the regulation of air or marine traffic.

## **5.14 War and/or Acts of terrorism**

caused by or arising out of the following regardless of any other cause or event contributing concurrently or in any other sequence by:

- 5.14.1 any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- 5.14.2 any *act of terrorism* or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.



### 5.15 Wilful and intentional breaches

based upon, attributable to or in consequence of:

5.15.1 any wilful, intentional or deliberate *wrongful breach* by the *insured*;

5.15.2 a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any *Act* by the *insured*;

5.15.3 any *wrongful breach* caused by gross negligence or recklessness by the *insured*;

5.15.4 a dishonest, fraudulent or malicious act or omission of the *insured*.

However this exclusion shall only apply where the subject conduct has been established by a judgement or other final adjudication.

## 6. Conditions

### 6.1 Applicable law

In the event of any dispute relating to the construction, interpretation and/or meaning of the provisions of this policy, it is agreed that such disputes shall be exclusively governed by the law applicable in the Commonwealth of Australia and the relevant State in which this policy is issued by us.

### 6.2 Assignment

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

### 6.3 Cancellation

6.3.1 The *policyholder* may cancel this policy by giving notice in writing to us at any time.

6.3.2 We may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (Cth), such cancellation to take effect 30 days from the time of receipt of notification by the *insured*.

6.3.3 After cancellation by the *insured* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.

6.3.4 After cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

### 6.4 Change in circumstances

The *insured* shall give written notice as soon as possible to us of any change in any of the facts or circumstances existing at the commencement of this policy which materially changes the nature or extent of the risk insured by this policy.

### 6.5 Change in control

If during the *period of insurance* the *policyholder* undergoes a *change in control*, then the cover provided by this policy shall only apply in respect of *investigations* or *workplace audits*, *wrongful breaches* or other conduct occurring prior to the effective date of such *change in control*. The *policyholder* shall give us written notice of such *change in control* as soon as reasonably practicable. Notwithstanding the effect on cover caused by such a *change in control*, if the *policyholder* cancels this policy, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.

### 6.6 Confidentiality

The existence and terms of this policy shall be confidential as between the *policyholder* and us and shall not be published, disclosed or otherwise communicated except where:

6.6.1 the law requires disclosure in the financial statements or annual reports of payment by the *policyholder* of a premium in respect of a contract insuring persons against a liability; or

6.6.2 we consent in writing to disclosure of the existence and/or terms of this policy.

## 6.7 Defence costs, settlements and allocation

- 6.7.1 It shall be the duty of Zurich and not the *insured* to take all reasonable steps to defend a *claim* and the *insured* is required not to do anything to prejudice their and/or our position.
- 6.7.2 With respect to any *claim* or *investigations* or *workplace audits* which may potentially be covered by this policy, we shall:
- (a) have the right to be provided with all such information as we may reasonably require, at the *insured's* own cost;
  - (b) be kept fully informed as to all matters relating to or concerning the *investigation* or *workplace audit*, defence, settlement or appeal and shall have the right to receive copies of all relevant documentation relating thereto; and
  - (c) have the right to associate effectively with the *insureds* in the defence, investigation and the negotiation of any settlement of any *claim* or *investigation* or *workplace audit*.
- 6.7.3 The *insured* shall not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *defence costs* or *representation costs* and no legal representative shall be retained to defend any *insured*, without our prior written consent, such consent not to be unreasonably withheld or delayed.

Only those settlements, consent judgments and *defence costs* and *representation costs* that have been consented to by us in writing shall be recoverable as *loss* under the terms of this policy (other than as covered under Extension of Cover 2.1 'Advance payment of defence costs').

We shall not settle any *claim* against any *insured* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed.

In addition and notwithstanding any of the foregoing paragraphs in this condition, if all *insured* defendants are able to dispose of all *claims* which are subject to one *deductible* (inclusive of all *loss*) for an amount not exceeding the applicable *deductible*, then our consent shall not be required for such disposition.

- 6.7.4 Our liability under this policy is limited to the proportion of *loss* which is a fair and equitable allocation:
- (a) between the *insured* and any other uninsured person or entity (including the *policyholder*) where the *loss* has been jointly or jointly and severally incurred by them. Such allocation shall be determined having regard to the relative legal and financial exposures of, and relative benefits obtained by, the *insured* and those other persons or entities; and/or
  - (b) between the *insured*, the *policyholder* and us, having regard to the covered and uncovered matters and the relative legal and financial exposures attributable to those matters.

Where we and the *insured* are unable to agree upon a fair and equitable allocation then such allocation will be determined by Senior Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Bar Association, or equivalent organisation, for the State or Territory out of which the policy was issued).

The parties will be bound by Senior Counsel's determination as to the fair and equitable allocation. The costs of obtaining this determination will be paid by us and will not form part of the *limit of liability*.

For so long as no fair and equitable allocation has been agreed or determined in respect of any *claim*, we will advance *defence costs* in the proportion which we contend should be allocated to *loss* under this condition. Any such allocation negotiated or determined will be applied retrospectively to all *defence costs* incurred prior to the date of such negotiation or determination.

## 6.8 Goods and Services Tax

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 (Cth), in relation to that acquisition, whether or not that acquisition is actually made.

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy as compensation instead of payment for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or supply.

## 6.9 Notices under Acts

The *insured* shall comply with any lawful notice or direction received from, or any enforcement action taken by, any appropriate *workplace regulatory authority* or *regulatory authority* under any *Act* within the time specified or if no time is specified, within a reasonable time.

## 6.10 Notification

6.10.1 The *insured* shall as a condition precedent to the *insured's* right to be indemnified under this policy give us as soon as reasonably practical notice in writing:

- (a) of any *claim*, made against the *insured* or any circumstances that may lead to such a *claim*; or
- (b) any written requirements that an *insured* or the *policyholder* attend an *investigation* or *workplace audit* being conducted or any circumstance that may lead to such a request,

irrespective of whether the *loss* is likely to be within or above the amount of the *deductible*.

6.10.2 If a *claim* is made against the *insured* during the *period of insurance* and the *insured* notifies us of such *claim*, *investigation* or *workplace audit* within 30 days after the expiry of the *period of insurance*, such *claim*, *investigation* or *workplace audit* shall be deemed to have been notified to us during the *period of insurance*.

6.10.3 If during the *period of insurance* the *insured* becomes aware of any circumstances which may subsequently give rise to a *claim*, *investigation* or *workplace audit* against the *insured* and the *insured* gives written notice of such circumstances to us during the *period of insurance* (or within 30 days after the expiry of the *period of insurance*), then any *claim*, *investigation* or *workplace audit* arising from the circumstances subsequently made against the *insured* shall be deemed to be a *claim*, *investigation* or *workplace audit* made against the *insured* and notified to us during the *period of insurance*.

6.10.4 The *insured* shall upon our request and at its own expense:

- (a) provide all information and assistance as may be required;
- (b) give a complete and truthful account of the facts relevant to any *claim*, *investigation* or *workplace audit*;
- (c) supply all documents and other evidence relevant to the *claim*, *investigation* or *workplace audit*; and
- (d) obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested,

and in respect of a *claim* made against:

- (e) the *insured*, the *insured* shall, upon our request and at its own expense ensure that a *senior officer* attends and if necessary gives evidence, on behalf of the *insured*, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any *claim* made against the *insured*;
- (f) any *officer or employee*, the *officer or employee* shall, upon our request and at their own expense attend, and if necessary give evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any *claim* made against such *officer or employee*.

Written notice hereunder shall be provided in writing to:

The Financial Lines Claims Manager  
Zurich Australian Insurance Limited

Any notification, sent by post or email, will be effective from the date received by Zurich.

#### **6.11 Other insurance**

In the event that a policy of insurance or policies of insurance are listed in the *schedule*, those policies of insurance will act as primary insurance and this policy will only apply in excess of such policy(ies) of insurance.

The *insured* shall notify us immediately upon entering into any other policy(ies) of insurance that provides insurance cover in respect of the risks covered by this policy.

#### **6.12 Plurals and titles**

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

- 6.12.1 headings are descriptive only, not an aid to interpretation;
- 6.12.2 singular includes the plural, and vice versa;
- 6.12.3 the male includes the female and neuter;
- 6.12.4 all references to specific legislation include similar legislation in any jurisdiction in respect of which a *claim* is made; and
- 6.12.5 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made.

#### **6.13 Preservation**

Any provision of this policy which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions.

#### **6.14 Reasonable care**

The *policyholder* shall take reasonable care at all times to:

- 6.14.1 comply and ensure that its *officers, employees, agents and contractors* comply with the provisions of any *Act*; and
- 6.14.2 maintain all premises, fittings and plant in a safe and sound condition.

#### **6.15 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.

#### **6.16 Severability and Non-Imputation**

We agree that where the policy insures more than one party, any conduct on the part of any party or parties whereby such party or parties:

6.16.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth);

6.16.2 made a misrepresentation to us before this policy was entered into;

6.16.3 failed to comply with any term or condition of this policy; and/or

6.16.4 acted in a manner which gives rise to the application of an exclusion of this policy,

shall not prejudice the right of the remaining party or parties to indemnity as may be provided by this policy.

Provided that such remaining party or parties shall:

- (i) not have participated in and have had no prior knowledge of any such conduct; and
- (ii) as soon as is reasonably practicable upon becoming aware of any such conduct, advise us in writing of all known facts in relation to such conduct.

#### **6.17 Subrogation**

If any payment is made under this policy, we shall be subrogated to the extent of such payment to all of the *insured's* rights of recovery. In such case the *insured* shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable us to effectively bring suit in the name of the *insured*.

#### **6.18 Territorial scope**

Coverage under this policy is limited to *loss* incurred or an *investigation* or *workplace audit* carried out in Australia and/or New Zealand only.

**Zurich Australian Insurance Limited**  
ABN 13 000 296 640, AFS Licence No: 232507  
Head Office: 5 Blue Street, North Sydney NSW 2060

Client enquiries  
Telephone: 132 687  
[www.zurich.com.au](http://www.zurich.com.au)



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

