

General Liability Policy

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Introduction

We are committed to complying with the Fair Insurance Code as published by the Insurance Council of New Zealand.

This means **We** will:

- (a) provide insurance contracts which are understandable and show the legal rights and obligations of both **Us** and the policyholder;
- (b) explain the meaning of legal or technical words or phrases;
- (c) explain the special meanings of particular words or phrases as they apply in the **Policy**;
- (d) manage claims quickly, fairly and transparently;
- (e) clearly explain the reason(s) why a claim has been declined;
- (f) provide policyholders with a written summary of **Our** complaints procedure as soon as disputes arise and advise them how to lodge a complaint and tell them about the Insurance and Financial Services Ombudsman Scheme.

Section 1: Coverage

In consideration of the payment of the premium to **Us** and in reliance on the written proposal and any other underwriting information provided, which will be deemed to be incorporated into and to be the basis of this **Policy**, **We** will indemnify **You**, subject to the **Policy** terms, as follows.

1.1 Public and Products Liability

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** happening during the **Period of Insurance** within the **Policy Territory** and caused by an **Occurrence** in connection with **Your Business**.

1.2 Limit of Indemnity

- (a) **Our** maximum liability in respect of any claim, or any series of claims, arising out of one **Occurrence**, or in the aggregate during the **Period of Insurance** in respect of an **Occurrence** involving **Your Products**, will not exceed the **Limit of Indemnity** stated in the **Schedule**, or any specified sub-limit. All **Personal Injury** or **Property Damage** in respect of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one **Occurrence**.

Provided that:

- (i) immediately after **We** have paid the **Limit of Indemnity**, or the sub-limit in any applicable Automatic Coverage Clause, in respect of any judgment or settlement, **Our** liability in relation to **Costs and Expenses** will cease; and
- (ii) if a payment exceeding the **Limit of Indemnity** has to be made to dispose of a claim, **Our** liability in relation to **Costs and Expenses** will be limited to the same proportion as the **Limit of Indemnity** bears to the amount required to dispose of the claim.

1.3 Costs and Expenses

In addition to the applicable **Limit of Indemnity** or any specified sub-limit, **We** will pay **Costs and Expenses** necessarily and reasonably incurred in relation to a claim against **You** for which there is cover under this **Policy** irrespective of whether or not **You** are found legally liable.

1.4 Excess

- (a) The **Excess**, will be borne by **You** in respect of each and every claim, or series of claims, arising out of one **Occurrence**.
- (b) A single **Excess** will apply to a claim where indemnity may be payable under Coverage Clause 1.1 (Public and Products Liability) or any applicable Automatic Coverage Clause, or an endorsement to the **Policy**. The applicable **Excess** will be the highest of the specified **Excesses**.

Section 2: Automatic Coverage Clauses

To be read in conjunction with the Coverage Clauses above, and subject to the **Policy** terms. The following sub-limits and **Excesses** apply unless there is a different sub-limit or **Excess** shown in the **Schedule**. The sub-limits are included in, are not in addition to, and may be less than the **Limit of Indemnity**.

2.1 Advertising Liability

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of claims for **Advertising Liability** caused by an **Occurrence** happening during the **Period of Insurance** in connection with **Your Business**.

Provided that:

- (a) **We** will not indemnify **You** for any claim in respect of or alleging **Advertising Liability** arising out of:
 - (i) statements made at **Your** direction with knowledge that such statements are false;
 - (ii) the failure of performance of contract. Provided that this exclusion will not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
 - (iii) any incorrect description of **Your Products** or services;
 - (iv) any mistake in the advertised price of **Your Products** or services;
 - (v) the failure of **Your Products** or services to conform with advertised performance, quality fitness or durability;
 - (vi) liability incurred by **You** if **Your Business** is advertising, broadcasting, publishing or telecasting.
- (b) A **Limit of Indemnity** of \$1,000,000 any one **Period of Insurance** will apply.
- (c) An **Excess** of \$1,000 will apply.

2.2 Business Advice or Service

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** caused by an **Occurrence** arising out of an error or omission in:

- (a) advice or services in respect of **Your Products** without charge; or
- (b) product training and/or demonstrations rendered by **You** without charge; or
- (c) professional medical advice by **Medical Persons** employed by **You** to provide first aid and other medical services on **Your** premises.

Exclusion 4.18 (Professional Liability) will not apply to this Automatic Coverage Clause.

2.3 Car Park Liability

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** caused by an **Occurrence** relating to the operation or ownership of a car park including the parking of **Vehicles** by **You** so as to cause damage to **Vehicles** within it (other than to **Vehicles** belonging to or used by or on behalf of **You**).

Exclusion 4.23 (Vehicles) will not apply to this Automatic Coverage Clause.

2.4 Contractors or Subcontractors

Labour only contractors or sub-contractors employed by **You** designated in Definition 3.23(a) and 3.23(b) (**You** or **Your**) are treated as **Your** employees under Definition 3.23 (c) (**You** or **Your**) of this **Policy**,

Provided that:

- (a) this Automatic Coverage Clause only applies while such contractors or sub-contractors are carrying out work for **Your Business**;
- (b) such contractors or sub-contractors are not otherwise insured under any other policy;

- (c) the coverage provided under Condition 5.7 (Cross Liability/Joint Insureds) does not apply to contractors or sub-contractors insured under the **Policy** by this Automatic Coverage Clause.

2.5 Defective Workmanship

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Defective Workmanship** caused by an **Occurrence** happening during the **Period of Insurance** within the **Policy Territory**.

Provided that:

- (a) **Limit of Indemnity** of \$100,000 will apply in respect of all **Defective Workmanship** claims during any one **Period of Insurance**; and
- (b) an **Excess** of \$1,000 will apply.

Exclusion 4.7(c) (Defective Materials, Design & Workmanship), Exclusion 4.26 (Your Products) and Exclusion 4.23 (Vehicles) will not apply to this Automatic Coverage Clause.

2.6 Forest and Rural Fires

We will indemnify **You** in respect of liability under the Forest and Rural Fires Act 1977 for:

- (a) costs and losses incurred during the **Period of Insurance** recoverable from **You** under section 43(1)(a);
- (b) levies imposed by a Fire Authority and apportioned to **You** during the **Period of Insurance** under sections 46 and 46A;
- (c) This clause applies:
- (i) regardless of whether or not **Property Damage** has occurred; and
 - (ii) to **Vehicles** notwithstanding Exclusion 4.23 (Vehicles);

Provided that:

- (i) that a **Limit of Indemnity** of \$1,000,000 any one **Period of Insurance** will apply; and
- (ii) an **Excess** of \$500 will apply.

2.7 Goods on Hook

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** for **Property Damage** to property while being lifted or lowered or moved or carried by any crane (s) owned, hired, or otherwise **Your** responsibility caused by an **Occurrence**.

Provided that:

- (a) a **Limit of Indemnity** of \$250,000 any one **Period of Insurance** will apply; and
- (b) an **Excess** of \$2,500 will apply;

Exclusions 4.7 (Defective Materials, Design & Workmanship) and 4.19 (Property Owned) will not apply to this Automatic Coverage Clause.

2.8 Hot Work

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** arising from **Hot Work** caused by an **Occurrence** carried out by **You** in connection with **Your Business**, during the **Period of Insurance**.

Provided that:

- (a) where **You** carry out **Hot Work** it is warranted that **You** will comply with the New Zealand Standard 4781:1973 Code of Practice for Safety in Welding and Cutting) or any substitute; and
- (b) **You** take all reasonable and necessary steps to ensure no **Occurrence** causing **Personal Injury** or **Property Damage** occurs; and
- (c) **You** comply with the conditions of any specific **Hot Work** permit.

Exclusion 4.10 (Hot Work) shall not apply to this Automatic Coverage Clause.

2.9 Innkeeper's Liability

We will indemnify **You** for all sums, which **You** become legally liable to pay as compensation as provided for under the Innkeepers Act 1962.

Provided that an **Excess** of \$1,000 will apply.

2.10 Landlord's Liability

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** arising from **Your** legal ownership, but not physical occupation of, any premises caused by an **Occurrence**.

2.11 Lost or Stolen Keys

We will indemnify **You** for costs reasonably and necessarily incurred in altering or replacing locks where keys or combinations giving access to properties, for which **You** are responsible but do not own, hire, lease or rent, are lost, stolen or believed on reasonable grounds to have been duplicated without proper authority.

Provided that:

- (a) a **Limit of Indemnity** of \$50,000 any one **Period of Insurance** will apply; and
- (b) an **Excess** of \$1,000 will apply.

2.12 Mechanical Plant Liability

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** caused by an **Occurrence**:

- (a) arising from loading or unloading any **Vehicle** used by or on **Your** behalf but not in **Your** care, custody or control;
- (b) arising from any **Vehicle** while it is being operated for its specialised function or purpose, and not being driven on a public road as a **Vehicle**;
- (c) relating to any bridge, viaduct, weighbridge, road or anything beneath the **Vehicle** caused by vibration or by the weight of any **Vehicle** and/or its load provided that any designated weight restrictions were not exceeded.

Exclusion 4.23 (Vehicles) will not apply to this Automatic Coverage Clause.

2.13 Product Withdrawal Costs

We will indemnify **You** for costs reasonably incurred in the withdrawal or recall from use in the **Policy Territory** of **Your Products** which have the same defect as a product that has already given rise to a claim in respect of which **You** are entitled to indemnity under:

- (a) Coverage Clause 1.1 (Public and Products Liability); or
- (b) any Automatic Coverage Clause.

Provided that:

- (i) a **Limit of Indemnity** of \$100,000 will apply in respect of all such withdrawals or recalls during any one **Period of Insurance**;
- (ii) an **Excess** of \$2,500 inclusive of **Costs and Expenses**, will apply to each such withdrawal or recall.

Exclusion 4.25 (Withdrawal or Repair of Products) will not apply to this Automatic Coverage Clause.

2.14 Property in Care, Custody or Control

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Property Damage**, including employees' property caused by an **Occurrence** where the liability arises while the property is in **Your** care, custody or control.

Provided that:

- (a) real property, property owned by or premises leased or rented to or by **You** is excluded;
- (b) a **Limit of Indemnity** of \$500,000 any one **Period of Insurance** will apply; and
- (c) an **Excess** of \$1,000 will apply;

Exclusion 4.19 (Property Owned) shall not apply to this Automatic Coverage Clause.

Coverage under this Automatic Coverage Clause is subject to Exclusion 4.7 (Defective Materials, Design & Workmanship).

2.15 Punitive or Exemplary Damages

We will indemnify **You** in respect of punitive or exemplary damages awarded for **Personal Injury** caused by an **Occurrence** in New Zealand.

Provided that:

- (a) any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- (b) any award of punitive or exemplary damages by any Court outside New Zealand is excluded;
- (c) a **Limit of Indemnity** of \$1,000,000 any one **Period of Insurance** will apply; and
- (d) an **Excess** of \$500 will apply;

Exclusion 4.9 (Fines, Penalties etc.) will not apply to this Automatic Coverage Clause.

2.16 Tenant's Liability

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** to premises (including landlord's fixtures and fittings) leased, rented or hired, but not owned by **You** caused by an **Occurrence**.

Exclusion 4.19 (Property Owned) will not apply to this Automatic Coverage Clause.

2.17 Underground Services

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** in New Zealand to existing underground services, cables, pipes or equipment caused by an **Occurrence**.

Provided that:

- (a) prior to the commencement of any work **You** enquired of the relevant authority, corporation or company as to the location of such services;
- (b) **You** took all reasonable precautions to prevent **Personal Injury** or **Property Damage**; and
- (c) an **Excess** of \$2,500 will apply.

2.18 Vehicle or Watercraft, Equipment or Machinery Service or Repair

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** caused by an **Occurrence** in New Zealand arising from **Your** service or repair of any:

- (a) **Vehicle** and/or its engine, accessories or fitting; or
- (b) **Watercraft** not exceeding ten metres in length, and/or its engine, accessories or fittings; or
- (c) equipment or machinery.

Provided that:

- (i) the **Vehicle** or **Watercraft**, equipment or machinery is not owned, hired, leased or rented by **You**, and is or was in **Your** care, custody or control for the purpose of the service or repair;
- (ii) the cost of rectifying, repairing or replacing defective materials or remedying **Defective Workmanship** in respect of the actual part or parts worked on is excluded but resultant **Property Damage** arising from defective materials or workmanship is not excluded;
- (iii) a **Limit of Indemnity** of \$500,000 any one **Period of Insurance** will apply in respect of **Property Damage** to the **Vehicle** or **Watercraft**, equipment or machinery which is or has been in **Your** care, custody or control for service or repair;
- (iv) an **Excess** of \$1,000 will apply to **Property Damage** to the **Vehicle** or **Watercraft**, which is or has been in **Your** care, custody or control for service or repair;
- (v) an **Excess** of \$2,500 will apply to **Property Damage** to equipment or machinery, which is or has been in **Your** care, custody or control for service or repair.

Exclusions 4.1 (Aircraft and Watercraft), 4.7 (Defective Materials, Design & Workmanship), 4.19 (Property Owned), 4.23 (Vehicles), and 4.26 (Your Products) will not apply to this Automatic Coverage Clause.

2.19 Vibration or Removal of Support

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** caused by an **Occurrence** in New Zealand arising from vibration, or removing, weakening or interfering with the support of land or buildings.

Provided that:

- (a) the land or buildings are not owned or occupied by **You**;
- (b) the **Personal Injury** or **Property Damage** arises from **Your** actions;

- (c) a **Limit of Indemnity** of \$500,000 any one **Period of Insurance** will apply;
- (d) an **Excess** of \$5,000 will apply.

2.20 Visits to North American Countries:

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** caused by an **Occurrence** in the **North American Countries** arising solely out of the actions of non-resident directors, executives and salespersons temporarily visiting the **North American Countries** in the course of **Your Business**.

Provided that:

- (a) **You** have no premises, branch or subsidiary operation in the **North American Countries**;
- (b) any work performed in, on, or in connection with the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of **Your Products** is excluded;
- (c) the ownership, possession, control, or maintenance or use of any **Vehicle** or **Watercraft** is excluded;
- (d) notwithstanding Coverage Clause 1.3 (Costs and Expenses), the **Limit of Indemnity** inclusive of **Costs and Expenses**, any one **Period of Insurance** will be the **Limit of Indemnity** shown in the **Schedule**;

Exclusions 4.13 (North American Countries) and 4.14 (North American Exports) will not apply to this Automatic Coverage Clause.

2.21 Warrant of Fitness

We will indemnify **You** for all sums that **You** become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** caused by an **Occurrence** during the **Period of Insurance** and arising out of a negligent act, error or omission, in connection with **Your Business**.

Provided that:

- (a) for the purpose of this Automatic Coverage Clause only, "Your Business" means:
 - (i) the inspection and certification of **Vehicles** for the issuing of a warrant of fitness or other inspection certificate as may be required by law; and
 - (ii) 'pre-purchase' or **Vehicle** appraisal services;
- (b) a **Limit of Indemnity** of \$100,000 any one **Period of Insurance** will apply;
- (c) an **Excess** of \$2,500 will apply;
- (d) the coverage under this Automatic Coverage Clause does not extend to include the valuation of any **Vehicle**, motorcycle, **Watercraft**, motor and/or accessory of any type whatsoever;
- (e) **You** are licensed and qualified to issue a warrant of fitness or other inspection certificates as may be required by law;

Exclusion 4.18 (Professional Liability) will not apply to this Automatic Coverage Clause.

Section 3: Definitions

In this **Policy**, including any endorsements, unless specifically stated to the contrary:

3.1 Act of Terrorism means:

An act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for or in connection with political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

3.2 Advertising Liability means:

Liability arising out of one or more of the following:

- (a) Defamation except arising out of defamatory statements or disparaging material made or produced prior to the inception date of this **Policy**.
- (b) Infringement of copyright, title or slogan.
- (c) Unfair competition, misappropriation of advertising ideas or style of doing business.
- (d) Invasion of privacy committed or alleged to have been committed in any Advertisement and arising out of any advertising activities conducted by **You** or on **Your** behalf, in the course of carrying out **Your Business**.

For the purposes of this Definition Advertisement means any manner of communication given to the public including by way of any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet or exhibit.

3.3 Aircraft means:

Any machine, craft or thing made or intended to fly or move in or through the atmosphere or space.

3.4 Costs and Expenses means:

(a) Any legal costs, disbursements, witnesses' costs, assessors or adjusters' costs or experts' costs incurred by **Us**, or by **You** with **Our** prior written consent.

(b) Any first aid expenses incurred by **You** arising from a **Personal Injury**.

Costs and Expenses does not include any costs of **Your** time including for the avoidance of doubt, any time spent in assisting **Us** or **Our** appointed lawyers with the conduct of any claim.

3.5 Damages means:

Any amount payable as compensation.

3.6 Defective Workmanship means:

The rectifying, remedying, removal, repair, alteration, treatment or replacement of **Your Products** or part thereof which have proven to be defective, harmful or fail to perform the function for which they were sold, supplied, manufactured or installed.

3.7 Excess means:

The excess specified in the **Schedule** or otherwise specified in this **Policy**.

3.8 Hot Work means:

Any work involving:

(a) the application of heat, a naked flame or open heat source or work that produces sparks; or

(b) cutting involving the use of rotary disc or grinding equipment; or

(c) the use of gas welding, arc welding, oxyacetylene welding equipment including cutting with such equipment; or

(d) soldering, brazing, use of heat guns.

3.9 Limit of Indemnity means:

The limit of indemnity specified in the **Schedule**, or applicable Automatic Coverage Clause.

3.10 Medical Persons means:

Any legally qualified medical practitioner, legally qualified registered nurse, dentist or first aid attendant.

3.11 North American Countries means:

The United States of America and Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.

3.12 Occurrence means:

An event including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** that is neither expected nor intended from **Your** standpoint.

3.13 Period of Insurance means:

The period of insurance specified in the **Schedule**.

3.14 Personal Injury means:

Bodily injury including resulting death, illness or care needs, disability, shock, fright, mental anguish or mental injury, including such injury arising from:

(a) false arrest, wrongful detention, false imprisonment or malicious prosecution or humiliation committed by **You**;

(b) wrongful entry or eviction or other invasion of the right of privacy committed by **You**;

- (c) assault and battery committed by **You**, provided that this was not committed by **You** or at **Your** direction except for the purpose of preventing or eliminating danger to persons or property; or
- (d) trespass to the person committed by **You**.

3.15 Policy means:

This document, the **Schedule** and any endorsements issued by **Us**.

3.16 Policy Territory means:

Worldwide, unless otherwise stated in the **Schedule**, and subject to Exclusions 4.13 (North American Countries) and 4.14 (North American Exports), and the limitations to New Zealand only in Automatic Coverage Clauses 2.6 (Forest and Rural Fires), 2.13 (Product Withdrawal Costs), 2.15 (Punitive or Exemplary Damages), 2.17 (Underground Services), 2.18 (Vehicle or Watercraft, Equipment or Machinery Service or Repair) and 2.19 (Vibration or Removal of Support).

3.17 Pollutants means:

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

3.18 Property Damage means:

- (a) physical injury to or destruction or loss of tangible property including resulting loss of use; or
- (b) loss of use of tangible property, which has not been physically injured or destroyed.

3.19 Schedule means:

The current schedule issued by **Us**.

3.20 Vehicle means:

Any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine, and includes its accessories, tools, specialised equipment and spare parts.

3.21 Watercraft means:

Any vessel, craft or thing made or intended to float on or in or travel on or through water. Any reference in this **Policy** to the length of the Watercraft is to be measured in length overall being stem to stern excluding any fixed or movable projections extending beyond these points.

3.22 We or Our or Us means:

Ando Insurance Group Limited for and on behalf of the Underwriters noted in the **Schedule**.

3.23 You or Your means:

- (a) The insured(s) named in the **Schedule**.
- (b) All subsidiaries incorporated in New Zealand, and any other organisation under the sole control of the insured named in the **Schedule** and which it actively manages;
 - (i) as at the commencement of the **Period of Insurance**;
 - (ii) acquired or taken control of during the **Period of Insurance**, provided that a named insured gives **Us** written notice and obtains **Our** acknowledgement of coverage within sixty (60) days of acquisition or taking control.
- (c) Every director, officer, employee, partner or shareholder of an insured designated in paragraphs 3.23(a) and 3.23(b) whilst acting within the scope of their duties as such, except in respect of any liability under the Companies Act.
- (d) Every principal in respect of their vicarious liability arising solely out of the performance by an insured as defined under 3.23(a), 3.23(b) or 3.23(c) of any contract of work for such principal, but always subject to the terms of this **Policy**.
- (e) Every office bearer or member of social and sporting clubs formed with **Your** consent (other than an insured designated in paragraph 3.23(d) or 3.23(f)) in respect of claims arising from the duties connected with the activities of any such club.
- (f) Each joint venture, co-venturer or joint lessee of a named insured but only with respect to liability incurred as a joint venture, co-venturer or joint lessee, provided that the insured named in the **Schedule** gives written notice to **Us** and obtains **Our** written acknowledgement of coverage for such joint venture, co-venture or joint lease.

3.24 Your Business means:

- (a) The business stated in the **Schedule**, which will include:
 - (i) the provision and management of lunch room facilities, social, sports, welfare and similar organisations for the benefit of **Your** employees;
 - (ii) Fire Brigade, first aid, medical and ambulance services;
 - (iii) property owners, lessors, lessees and tenants;
 - (iv) organisation of and participation in exhibitions, trade fairs, conferences and the like;
 - (v) the organisation of charitable events or similar fundraising activities;
 - (vi) sponsorship of events, organisations, entities and individuals.
- (b) Any other activity that **You** may undertake provided that **You** give **Us** prior written notice and obtain **Our** written acknowledgement of coverage.

3.25 Your Products means:

Any goods, products, including labels, instructions for use and advice and property after they have ceased to be in **Your** possession or under **Your** control, manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by **You** (including any container, other than a **Vehicle**).

Section 4: Exclusions

We will not indemnify **You** for any claim under this **Policy** in respect of or alleging:

4.1 Aircraft and Watercraft

Personal Injury or **Property Damage** arising out of **Your** ownership, possession, control, operation, use, maintenance, service or repair, manufacture, sale, supply, loading or unloading of any:

- (a) **Aircraft** or hovercraft;
- (b) **Watercraft** exceeding ten metres in length.

4.2 Aircraft products

Personal Injury or **Property Damage** arising out of any of **Your Products** which, with **Your** knowledge were, or were intended to be, incorporated into the hull, structure, machinery or controls of any **Aircraft** or aerial device.

4.3 Asbestos

Any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from, in consequence of, contributed to, or aggravated by asbestos in whatever form or quantity.

4.4 Building Defects

Personal Injury or **Property Damage** arising out of:

- (a) the failure or alleged failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code contained in the First Schedule of the Building Regulations 1992 or any applicable New Zealand Standard (or amended or substituted Regulation or Standard) in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system; or
- (b) mould, fungi, mildew, rot, decay, gradual deterioration, microorganisms, bacteria, protozoa or any similar or like forms in any building or structure.

4.5 Contractual Liability

Liability assumed by **You** under any contract or agreement except to the extent that **You** would have been liable even if there had been no contract in existence. However, this exclusion will not apply to liability pursuant to any:

- (a) lease or hire of real or personal property;
- (b) representation or warranty of fitness or quality In respect of **Your Products**, or a representation or warranty that work performed by or on behalf of **You** will be done in a workmanlike manner; or
- (c) contracts or agreements noted in the **Schedule**.

4.6 Defamation

Liability arising out of defamation where any statement is made at **Your** direction with knowledge that such statement is false.

4.7 Defective Materials, Design and Workmanship

Liability for:

- (a) defective materials;
- (b) any defect in any design, plan or specification;
- (c) **Defective Workmanship** or improving any work undertaken by **You**.

However, subject to the **Policy** terms, **We** will indemnify **You** for resultant **Property Damage** arising from defective materials, design or workmanship.

4.8 E-commerce

- (a) **Personal Injury** or **Property Damage** arising, directly or indirectly, out of, or in any way involving **Your** Internet Operations.
- (b) This exclusion does not apply to **Personal Injury** or **Property Damage** arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.
- (c) For the purposes of this exclusion Internet Operations means the following:
 - (i) use of electronic mail systems by **You** or **Your** employees, including part-time and temporary staff, contractors and others within **Your** organisation;
 - (ii) access through **Your** network to the internet by **Your** employees, including part time and temporary staff, contractors and others within **Your** organisation;
 - (iii) access to **Your** Intranet (meaning internal company information and computing resources) which is made available through the world wide web for **Your** customers or others outside **Your** organisation; and
 - (iv) the operation and maintenance of **Your** web site.
- (d) **Property Damage** to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
 - (i) the use of any computer hardware or software;
 - (ii) the provision of computer or telecommunication services by **You** or on **Your** behalf;
 - (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised, including damage caused by any computer virus.

4.9 Fines & Penalties

Liability arising for any fines, penalty, performance warranty or liquidated damages, punitive and/or exemplary damages.

4.10 Hot Work

Personal Injury or **Property Damage** arising out of **Hot Work**.

4.11 Loss of use

Loss of use of tangible property, which has not been physically damaged or destroyed resulting from:

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

4.12 Molestation

Liability caused by, in connection with or contributed to by the molestation and of any person.

4.13 North American Countries

Personal Injury, **Property Damage** and **Pollution** happening in the **North American Countries** or proceedings issued in respect of any **Personal Injury** or **Property Damage** in **North American Countries**, including any liability from or based on a settlement or arbitration in, or a judgment or order of a court in the **North American Countries**.

4.14 North American Exports

Liability arising from any of **Your Products** knowingly exported by **You** (or exported by **Your** agents or distributors with **Your** knowledge) to the **North American Countries**, including any liability arising from or based on a settlement or arbitration in, or a judgment or order of a court in the **North American Countries**.

4.15 Offshore Gas or Oil Platforms

Liability arising from work performed on or around any offshore gas or oil platform.

4.16 Personal Injury to Employees

- (a) **Personal Injury** arising directly or indirectly out of or in the course of employment with **You**.
- (b) An obligation on **You** under any accident or workers compensation legislation or any industrial award, employment contract, agreement or determination.

4.17 Pollution

Personal Injury or **Property Damage**, including **Costs and Expenses** incurred in the prevention, removing, nullifying or clean up, arising out of the discharge, dispersal, release or escape of **Pollutants** into or on land, the atmosphere, or any watercourse or body of water, unless the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended from **Your** standpoint and takes place in its entirety at a specific time and place.

4.18 Professional Liability

Any error or omission in advice or service of a professional nature.

4.19 Property Owned

Property Damage to any property owned by **You** or in **Your** care, custody or control.

4.20 Radioactivity

Any actual or alleged liability whatsoever for any claim or claims directly or indirectly caused by, contributed to or arising from:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

4.21 Sanctions

Liability arising where the provision of such cover, payment of such claim or provision of such indemnity would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.

4.22 Terrorism

- (a) any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

4.23 Vehicles

Personal Injury or **Property Damage** arising out of **Your** ownership, possession, control, operation, use, maintenance, service or repair by or on behalf of **You** of any **Vehicle** which is:

- (a) required by legislation to be registered and/or licensed and/or insured;
- (b) being operated while in an unsafe condition;
- (c) being operated by any person who has consumed any liquor or taken any substance or drug. However subject to the **Policy** terms **We** will indemnify **You** provided that:
 - (i) this extension does not extend to indemnify the driver or operator of the **Vehicle** causing the **Occurrence**;
 - (ii) the driving or operation of the **Vehicle** was without the knowledge or consent of any of **Your** directors, officers, managers or supervisors;

- (iii) **You** have not waived any rights of recovery against the driver or operator causing the **Occurrence**:
- (d) insured, or in respect of which **You** are insured under any other policy, even if the other insurance is not collectable because of a breach of Condition or applicable Exclusion.

4.24 War

Liability arising out of war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, military rising, rebellion, revolution, insurrection, military or usurped power, martial law or looting or pillaging in connection therewith, strike, lock-out, riot, civil commotion, mutiny, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority or any act or condition incidental to any of the above.

4.25 Withdrawal or Repair of Products

The recall, including making any refund on the price paid, repair, withdrawal, inspection, removal, altering, treating, modification, replacement or loss of use of **Your Products** or any property of which such products form a part, or of work undertaken by or for **You**, if such products, property or work are withdrawn from the market or from use, because of any defect or deficiency which **You** knew or had reason to suspect or because of any Government or statutory ban, order or notice.

4.26 Your Products

Property Damage to Your Products.

Section 5: Conditions

5.1 Allocation of Costs

If **Costs and Expenses** are incurred both in respect of a claim insured under this **Policy** and a matter which is not insured under this **Policy** then **We** shall be liable to pay only a fair proportion of such **Costs and Expenses**. In the event that **You** and **We** are unable to agree as to a fair proportion, then legal counsel, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion.

5.2 Cancellation

- (a) **You** may cancel this **Policy** at any time by giving notice to **Us**. **We** will refund to **You** on a pro rata basis the amount of the unexpired premium already paid subject to any applicable minimum premium.
- (b) **We** may cancel this **Policy** after sending at least thirty days' notice to **You** in accordance with Conditions 5.13 (b) and (c) (Notices by Us). **We** will refund on a pro rata basis the amount of any unexpired premium already paid.

5.3 Conduct of Claims

- (a) **You** will not (without **Our** prior written consent) make any admission, offer, promise or payment in connection with any **Occurrence** or claim. **We** will be entitled to take over and conduct in **Your** name the defence or settlement of any claim, and the prosecution of any available counterclaim. **We** will have full discretion in the conduct of any proceedings in connection with any claim or available counterclaim.
- (b) **You** will use best endeavours to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation.
- (c) In so far as may be reasonably practicable, no alteration or repair will be effected without **Our** written consent until **We** have had an opportunity of inspection and have authorised such repairs.
- (d) In the event of an **Occurrence**, or the likelihood of an **Occurrence**, **You** will promptly take at **Your** own expense all reasonable steps to prevent **Personal Injury** or **Property Damage** from arising or continuing out of the same or similar conditions, but such expense will not be recoverable from **Us**.
- (e) **You** will give all information, co-operation and assistance as **We** may require in the prosecution, defence or settlement of any claim, including any available counterclaim.
- (f) **You** hereby waive all claims to legal privilege that might otherwise have existed as between **You** and solicitors retained by **Us** to act on **Your** behalf, in respect of such information.

5.4 Claims Notification

You will advise in writing as soon as practicable and provide all information to **Us** of any:

- (a) **Occurrence** or circumstances, which might give rise to a claim under this **Policy**.
- (b) notice of claim, summons, proceedings, impending prosecution or inquest which might give rise to a claim under this **Policy** regardless of whether **You** believe that:

- (i) a claim will not be made;
- (ii) any claim which is made, would fall below the applicable **Excess**;
- (iii) any claim which is made, would be groundless.

5.5 Conditions Precedent

Conditions 5.3 (Conduct of Claims), 5.4 (Claims Notification), 5.9 (Fraud), 5.12 (Material Change) and 5.17 (Reasonable Care) are conditions precedent to **Our** acceptance of indemnity under this **Policy** and **We** shall be entitled to avoid this **Policy** or reduce liability to the maximum extent permitted by law in the event of any breach, of these conditions precedent.

5.6 Constructive Notice/No Waiver

- (a) Except as provided by statute, notice to any agent or broker or knowledge possessed by any agent, broker or other person will not constitute notice to **Us**.
- (b) The terms of this **Policy** will not be waived or changed, except by written agreement with **Us**.

5.7 Cross Liability/Joint Insureds

- (a) If more than one legal entity is insured under this **Policy**, each entity is covered in the same manner as though **We** had issued them with a separate **Policy**.
- (b) Notwithstanding clause 5.7(a), where the insured named in the **Schedule** is a company with a single director the knowledge of the sole director shall be imputed to the insured named in the **Schedule**.
- (c) If there is a claim against more than one entity in respect of the same **Occurrence**, only one **Excess** and one **Limit of Indemnity** will apply, regardless of the number of entities indemnified. Where the **Limit of Indemnity** is insufficient to fully indemnify all insured entities, it will apply in priority to the named insured.
- (d) This Condition does not apply to entities which are insured under this **Policy** by Definition 3.23(f) (You or Your).

5.8 Defence of Legal Proceedings

- (a) **We** will not require **You** to defend any legal proceedings against **You**, nor will **You** require **Us** to defend, on **Your** behalf, any legal proceedings unless a legal counsel (to be mutually agreed upon by **You** and **Us**) advises that such proceedings should be defended.
- (b) In formulating such advice, appointed counsel shall take into consideration the economics of the matter, having regard to the **Damages** and costs which are likely to be recovered by the plaintiff, the likely **Costs and Expenses** to be incurred in the defence and the prospects of **You** successfully defending the action. The cost of counsel's opinion will be treated as part of the **Costs and Expenses** of any claim.
- (c) In the event that counsel advises that, having regard to all the circumstances, the matter should be settled, provided that settlement can be achieved within certain limits which, in counsel's opinion, are reasonable, then **You** shall co-operate with **Us** to effect such settlement.

5.9 Fraud

If any answers or statements in respect of any claim, or in any information provided to obtain, amend or renew this insurance, are false in any way, **We** will not provide any indemnity to **You** under this **Policy**.

5.10 Goods and Services Tax

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

5.11 Inspection of Property

We will be permitted, but not obligated to inspect **Your** property and operations at any reasonable time.

5.12 Material Change

You will give immediate notice to **Us** of any material change to any of the facts or circumstances existing at the commencement of the **Period of Insurance**. **We** will be entitled to vary the **Policy** terms and/or charge an additional premium.

5.13 Notices by Us

- (a) Any notice given in writing by **Us** to the first named insured in the **Schedule**, or to the broker through which **You** arranged this **Policy** with **Us**, will be deemed to be notice to each insured.

- (b) Any notices by **Us** may be effected by sending an email or letter to the last known contact address.
- (c) Any such notice will be deemed to have been received, if sent by email, at the time of transmission, and if sent by post, three business days after the date of posting.

5.14 Other Insurance

Upon giving notice of any claim, **You** will provide **Us** with written details of any other insurance that may cover or partially cover that claim.

In the event that **You** hold other insurance cover with another insurer in respect of any claim then the indemnity under this **Policy** shall not be available until the **Limit of Indemnity** under any other policy has been exhausted.

5.15 Payment of Limit of Indemnity

At any time, **We** will be entitled to pay to **You** the balance of indemnity available up to the applicable **Limit of Indemnity**, or such lesser sum for which the claim can be settled. Upon such payment, **We** will have no further liability to **You** under this **Policy**, except for **Costs and Expenses** already incurred up until the time of payment.

5.16 Policy Disputes

This **Policy** will be governed by the laws of New Zealand whose courts will have exclusive jurisdiction in relation to any dispute.

5.17 Reasonable Care

You will take all reasonable steps to avoid the happening of any **Occurrence** and, in particular, will ensure that:

- (a) all employees are properly trained and supervised;
- (b) every employee complies with all statutory obligations;
- (c) there are proper safety systems, equipment, practices and procedures in place, and that all employees use and comply with them at all times; and
- (d) all plant is kept properly maintained.

5.18 Subrogation

- (a) If **We** make any payment under this **Policy** to or on behalf of **You**, whether in respect of any judgment, settlement, **Damages** or **Costs and Expenses**, **We** will be subrogated to all **Your** rights of recovery.
- (b) **You** will execute all papers and do all that is necessary to assist **Us** in the full exercise of such rights, including prosecuting proceedings in **Your** name at **Our** expense.
- (c) If **You** effect any recovery in respect of the claim, **You** will account to **Us** for the full amount received.

5.19 Words

Certain words in this **Policy** have a specific meaning. These words appear in bold and **You** will find the meaning listed in Section 3 'Definitions' of this **Policy**. Words importing persons will include companies and other legal entities. The singular includes reference to the plural and vice versa, and reference to any gender includes all other genders.

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