



Policy Wording

# BusinessGuard General & Products Liability Insurance

## BusinessGuard

### Cover sheet

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This policy incorporates the Policy Schedule, Cover, Definitions, Conditions, Exclusions, Endorsements and any other terms attached which are to be read together. Any word or expression to which a specific meaning has been given in any part of this policy shall bear this meaning whenever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

Throughout this policy the words "we," "us" and "our" refer to AIG Insurance New Zealand Limited.

Words and phrases that appear in **bold** print have special meaning as detailed in the Definitions section of the policy.

## 1. Cover

Subject to all provisions, terms, exclusions, conditions of this Policy **we** agree to indemnify the **Insured** for all amounts which the **Insured** shall become legally liable to pay as a result of **Claims** or **Legal Proceedings** for **Personal Injury** or **Property Damage** happening during the **Policy Period** and caused by an **Occurrence** within the **Territorial Limits** which arises from and within the course of the **Business** and provided that the action for damages is brought against the **Insured** in a court of law within the **Territorial Limits**.

## 2. Defence Provisions

- 2.1 **We** shall defend at **our** cost any **Claim** or **Legal Proceeding** against the **Insured** that seeks compensation, even if the **Claim** or **Legal Proceeding** is groundless, false or fraudulent.
- 2.2 In the defence of any **Claim** or **Legal Proceeding** against the **Insured** that seeks compensation covered by the policy **we** will:
- a) Investigate, negotiate and settle the **Claim** or **Legal Proceeding**; and
  - b) Pay the following supplementary payments:
    - (i) all costs taxed against the **Insured** in the **Claim** or **Legal Proceeding**;
    - (ii) pre-judgement interest awarded against the **Insured** on that part of the judgement **we** pay;
    - (iii) post-judgement interest that accrues after entry of judgement and before **we** have paid, offered to pay or deposited in court that part of the judgement that is within the applicable Limits of Liability; and
    - (iv) The **Insured** expenses incurred at **our** request or with **our** written consent (including actual loss of wages or salary, but not loss of other income).

Notwithstanding, **we** will only be liable for the amount of damages and claimants' costs and expenses arising from an **Occurrence** that is in excess of the **Deductible**. The **Deductible** amount shall be borne by the **Insured** and shall remain uninsured, with regard to all payments for which the **Insured** shall be liable.

- 2.3 **We** may undertake investigations, conduct negotiations and with the written consent of the **Insured** settle any **Claim** or **Legal Proceedings** where settlement has been agreed to by the parties being indemnified or has been recommended by a Senior Counsel. If consent to such settlement is still withheld by the **Insured** then **our** liability on account of that **Claim** or **Legal Proceeding** shall not exceed the amount for which **we** could have settled the **Claim** or **Legal Proceeding** plus the costs and expenses incurred to the date such settlement was recommended in writing to the **Insured**.
- 2.4 **We** will not defend any **Claim** or **Legal Proceeding** or investigate any **Claim** or **Legal Proceeding** after the exhaustion of the applicable Limits of Liability by the payment of loss.



### 3. Extensions to Cover

The following Extensions are only included in this policy if specified as such in the Schedule and any sub-limits that apply to these Extensions form part of, and are not in addition to, the Limit of Liability. All provisions of this policy apply to these Extensions, except where expressly indicated.

#### 3.1 Care, Custody and Control

Notwithstanding Exclusion 6.17 and 6.20, **we** agree to indemnify the **Insured** for **Property Damage** to:

- (a) Tangible property (excluding livestock) not owned by the **Insured**, but in the physical or legal control of the **Insured**;
- (b) Premises which are leased or rented to the **Insured**;
- (c) Premises and their contents not belonging to, leased or rented to the **Insured** at which the **Insured** is undertaking work in connection with the **Business**;
- (d) **Vehicles** and their contents (not belonging to or used by or on behalf of the **Insured**) in the **Insured's** physical or legal control where such **Property Damage** occurs while any such **Vehicle** is in a car park owned or operated by the **Insured**;

Cover under this Extension 3.1(d) does not apply if the **Insured** as part of the **Business** owns or operates a car park for reward;

- (e) Goods, Equipment, Merchandise and Property other than Real Property subject to cover being limited to a maximum of \$250,000 each **Occurrence** and in the aggregate during any one **Policy Period** for such **Property Damage**;

The total amount payable under this Extension, other than Extension 3.1(d) above, is for any one **Occurrence** and in the aggregate during the **Policy Period** as described in the Schedule.

A **Deductible** as described in the Schedule for each and every **Claim** applies to this Extension 3.1.

#### 3.2 Forest and Rural Fires Act

Notwithstanding Exclusion 6.7(a), (b) and (c) **we** agree to indemnify the **Insured** for:

- a) Costs incurred and apportioned by any Fire Authority under section 43 of the Forest and Rural Fires Act 1977 or any amendments or replacing Act (the "Act"); and
- b) levies imposed by a Fire Authority and apportioned to the Insured during the Policy Period under sections 46 and 46A of the Act; and
- c) Costs claimed by any other party in order to protect their property from fire.

This Extension shall apply also:-

- d) Whether the **Property Damage** has occurred or not and to the legal liability of the **Insured** for loss of or damage to property caused by or caused to the machinery, plant, trailers or mechanically propelled **Vehicles** used by the Fire Fighting Authority insofar as the liability covered by this Extension is not otherwise insured. Provided that:
  - i) the total amount payable under this Extension shall not exceed the sum described in the Schedule;
  - ii) a **Deductible** as described in the Schedule applies in the aggregate for all sums payable to any claimant or any number of claimants in respect of or arising out of all **Occurrences** of a serious consequent on or attributed to one source or original cause.



### 3.3 Landlords Liability

Notwithstanding Exclusion 6.17 **we** agree to indemnify the **Insured** for all sums which the **Insured** shall become legally liable to pay for **Personal Injury** and/or **Property Damage** in connection with the legal ownership, but not physical occupation, of any premises owned by the **Insured**.

### 3.4 Punitive and Exemplary Damages

Notwithstanding Exclusion 6.7(a) **we** agree to indemnify the **Insured** for punitive and/or exemplary damages awarded to, or on behalf of, a person who has suffered **Personal Injury** resulting from an event in connection with the business of the **Insured**, or the **Insured's** ownership, occupancy or tenancy of a building, structure or land, provided that:

- a) the **Claim** must be made against the **Insured** and reported to **Us** during the **Policy Period**;
- b) any punitive or exemplary damages awarded by any court outside of New Zealand are excluded;
- c) the total amount payable under this Extension shall not exceed the sum described in the Schedule, inclusive of all costs any one **Claim** and in the aggregate, during any one **Policy Period**;
- d) a **Deductible** as described in the Schedule, inclusive of costs shall apply to each and every **Claim**.

### 3.5 Vibration and Removal of Support

**We** agree to indemnify the **Insured** for all sums which the **Insured** shall become legally liable to pay for **Personal Injury or Property Damage** in New Zealand arising from the actions of the **Insured** in removing, weakening or interfering with the support of land or buildings, other than those owned or occupied by the **Insured**, provided that:

- a) the total amount payable under this Extension shall not exceed the sum described in the Schedule any one **Claim** and in the aggregate during any one **Policy Period**;
- b) a **Deductible** described in the Schedule shall apply for each **Occurrence**.

## 4. Limits of Liability

- 4.1 **Our** liability in respect of any one **Occurrence** shall not exceed the Limit of Liability as set forth in item 4(i) of the Policy Schedule. All **Personal Injury** and **Property Damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one **Occurrence**.
- 4.2 **Our** total aggregate liability during any one **Policy Period** for all **Occurrences** involving the **Products Hazard** shall not exceed the Limit of Liability as set forth in item 4 (ii) of the Policy Schedule.
- 4.3 Expenses incurred to defend or investigate any **Claim** or **Legal Proceeding** will be in addition to the applicable Limits of Liability. Provided however that, in the event of any **Claim** or **Legal Proceeding** being made against the **Insured** in any court or before any other legally constituted body in **North America**, the Limits of Liability shall apply to such **Claim** or **Legal Proceeding** inclusive of expenses to defend or investigate any **Claim** or **Legal Proceeding**.
- 4.4 Regardless of the number of years this policy shall continue in force, the number of premiums paid and irrespective of whether it is or may be renewed, the Limits of Liability as specified in the Policy Schedules shall not accumulate from year to year or from **Policy Period** to **Policy Period**.



## 5. Definitions

- 5.1 **Aircraft** means a vehicle designed to be used primarily in the air and to be supported by the dynamic reaction of the air upon the vehicle's wings or rotor-blades, and/or by the vehicle's buoyancy in the air. The term **Aircraft**, however, excludes missiles, spacecraft and the ground support or control equipment used therewith.
- 5.2 **Aircraft Products** means:
- a) **Aircraft** and any ground support or control equipment used therewith;
  - b) Any **Insured Product** furnished by the **Insured** and installed in **Aircraft** or used in connection with **Aircraft**;
  - c) any **tooling** used for the manufacture of (a) or (b) above;
  - d) any **ground** handling tools and equipment used in connection with (a) or (b) above including training aids, navigational aids, instruction or manuals;
  - e) blueprints, engineering or other data furnished by the **Insured** in connection with (a), (b), (c) or (d) above;
  - f) any advice, service and/or labour furnished by the **Insured** in connection with (a), (b), (c), (d) or (e) above.
- 5.3 **Business** means all usual activities and operations of the **Named Insured** as described in the Policy Schedule and includes:
- a) The ownership, tenancy or occupation of premises of the **Named Insured**;
  - b) Private work carried out with the consent of the **Named Insured** for any director, partner or senior official of the **Named Insured** by an **Employee**;
  - c) The provision or management of canteen, social or sports organisations for the **Named Insured's Employees**; and
  - d) The provision of the **Named Insured's** own internal fire, first aid, medical, security and ambulance services.
- 5.4 **Claim** means a written demand, notice or other written communication received by the **Insured** seeking a remedy and/or alleging liability or responsibility on the **Insured's** part for an **Occurrence** covered by this Policy.
- 5.5 **Deductible** means the uninsured first portion of each and every **Claim** that the **Insured** must pay. The amount of the **Deductible** is shown in item 5 of the Policy Schedule.
- 5.6 **Employee** means:
- a) Any person under a contract of service or apprenticeship with the **Named Insured**;
  - b) Any person hired or borrowed by the **Named Insured** from another employer under an agreement by which the person is deemed to be employed by the **Named Insured**;
  - c) Any person under a work experience or similar scheme while engaged and working under the direction and control of the **Named Insured** in connection with and in the course of the **Business**.
- 5.7 **Financial Loss** means a pecuniary or economic loss or expense.
- 5.8 **Grounding** means the withdrawal of one or more **Aircraft** from flight operations or the imposition of speed, passenger or load restrictions on such **Aircraft**, by reason of the existence of or alleged or suspected existence of any defect, fault or condition in such **Aircraft** or any part thereof sold, handled or distributed by the **Insured** or manufactured, assembled or processed by any other person or organisation according to the **Insured's** specifications, plans, suggestions, orders or drawings or with tools, machinery or other equipment furnished to such persons or organisations by the **Insured**, whether such **Aircraft** so withdrawn are owned or operated by the same or different persons, organisations or corporations. A **Grounding** will be deemed to commence on



the date of an **Occurrence** which discloses such condition or on the date an **Aircraft** is first withdrawn from service on account of such condition, whichever occurs first.

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

5.10 **Incidental Contracts** mean:

- a) Any written agreement for lease of real or personal property which does not impose upon the **Named Insured**:
  - (i) An obligation to insure such property; or
  - (ii) Any liability regardless of fault;
- b) Any written contract with any entity for the supply of water, gas or electricity but only to the extent of indemnifying any such entity in respect of liability arising out of the **Business** other than contracts for the performance of work or provision of services by the **Named Insured**.

5.11 **Insured** means:

- a) The **Named Insured** as listed in the Policy Schedule;
- b) Any organisation in which the **Named Insured** maintains an interest of more than fifty percent (50%) as of the effective date of this Policy;
- c) If the **Named Insured** is an individual, the **Named Insured's** spouse, but only with respect to the conduct of a **Business** of which the **Named Insured** is the sole owner;
- d) If the **Named Insured** is an individual and dies, the **Named Insured's** legal representative but only with respect to the legal representatives duties in administering or undertaking the **Named Insured's Business**;
- e) The **Named Insured's** partners, executive officers, **employees**, directors, shareholders or volunteers while acting within the scope of their duties on behalf of the **Named Insured's Business**;
- f) Any person or organisation to whom the **Named Insured** is obligated by a written **Insured Contract** to provide insurance such as is afforded by this Policy, but only with respect to their liability arising out of operations conducted by the **Named Insured** or on their behalf and not to any greater extent than required by the contract or agreement; and
- g) Any office bearer or member of social and/or sporting clubs formed with the written consent of the **Named Insured** in respect of **Claims** arising from duties connected with activities of any such club. Cover shall not apply to **Personal Injury** to or **Property Damage** of any participants of any game, match, race, practice or trial.

5.12 **Insured Contract** means that part of any contract or agreement pertaining to the **Named Insured's Business** under which the **Named Insured** assumes the tort liability of another party to pay for **Personal Injury** or **Property Damage** to a third person or organisation. However, the **Personal Injury** or **Property Damage** must arise out of an **Occurrence** that takes place subsequent to the execution of the **Insured Contract**. Tort liability means a liability that would be imposed by law upon the other party in the absence of any contract or agreement.

5.13 **Insured's Products** means any goods or products (after they have ceased to be in the **Insured's** possession or under the **Insured's** control) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, treated, imported, exported, produced, processed, assembled, erected, installed, repaired, serviced, sold, supplied or distributed by the **Insured**. **Insured Products** includes any packaging or containers, designs, formulae or specifications thereof, directions, instructions or advice given or omitted to be given in connection with such things other than a **Vehicle** or vending machine.

5.14 **Legal Proceedings** means litigation, arbitration, mediation, adjudication or any other process of dispute resolution.

5.15 **Medical Persons** means any medical doctor, medical nurse, dentist and first aid attendant.



- 5.16 **Named Insured** means the entity set forth in item 1 in the Policy Schedule.
- 5.17 **North America** means:
- a) The United States of America and Canada;
  - b) Any state, territory or protectorate incorporated in, or administered by, the United States of America or Canada; and
  - c) Any country or territory subject to the laws of the United States of America or Canada.
- 5.18 **Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended from the **Insured's** standpoint.
- All events of a series consequent on or attributable to one source or original cause shall be deemed one **Occurrence**.
- 5.19 **Personal Injury** includes:
- a) death, injury, sickness or disease or death sustained by a person resulting from such injury, sickness or disease and shall include mental injury, mental anguish and shock,
  - b) False arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation;
  - c) Libel, slander, defamation of character or invasion of privacy; and
  - d) Assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing or eliminating danger to persons or property.
- 5.20 **Policy Period** means the period set forth in Item 3 of the Policy Schedule, or any shorter period arising as a result of Cancellation of this Policy.
- 5.21 **Pollutants** means but is not limited to any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids or alkalis of any sort, chemicals and waste. Waste includes but is not limited to, material to be recycled, reconditioned or reclaimed.
- 5.22 **Products Hazard** means **Personal Injury** or **Property Damage** arising out of the **Insured's Products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **Personal Injury** or **Property Damage** occurs away from premises owned by, leased to, rented to or occupied by the **Insured** and after physical possession of such products has been relinquished to others.
- 5.23 **Property Damage** means:
- a) Physical injury to or destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; or
  - b) Loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by physical injury to or destruction of other tangible property.
- 5.24 **Territorial Limits** means anywhere in the world except North America where the policy will only apply in respect of the activities of travelling executives and salespeople.
- 5.25 **Tool of Trade** means any **Vehicle** which has attached as an integral part of such **Vehicle** any equipment for mechanical digging, scraping, grading, slashing, mowing, drilling, lifting or levelling, whilst such equipment is being used for the purpose for which it was designed.
- 5.26 **Vehicle** means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.
- 5.27 **Watercraft** means any vessel or watercraft made to or intended to float on or in or travel on or through or under water.



## 6. Exclusions

This Policy excludes all liability:

### 6.1 Aircraft, Hovercraft and Watercraft

Arising out of the ownership, possession, maintenance, operation or use by or on behalf of the **Insured**:

- a) Of any **Aircraft** or **Hovercraft**; or
- b) Any **Watercraft** or vessel exceeding eight (8) metres in length.

Provided that this Exclusion 6.1 b) shall not apply with respect to:

- i) **Watercraft** owned by others and used by the **Insured** for **Business** entertainment; or
- ii) Hand propelled or sailing craft.

This proviso 6.1 b) i) and ii) shall only apply where such **Watercraft** are sailing or operating in New Zealand territorial or inland waters.

### 6.2 Aircraft Products

The supply, distribution, sale or manufacture of **Aircraft Products** or reliance upon any representations or warranties made by the **Insured** with respect to **Aircraft Products** or arising out of the **Grounding** of any **Aircraft**.

### 6.3 Asbestos

For mesothelioma, asbestosis or for any death, disease, loss of use of property, damage to property (including consequential loss) arising directly or indirectly out of or in connection with or in consequence of:

- a) Inhaling, ingesting or physical exposure to asbestos or goods or products containing asbestos; or
- b) The use of asbestos in constructing or manufacturing any good, product or structure; or
- c) The removal of asbestos from any good, product or structure; or
- d) The manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos; or
- e) The presence of asbestos in any building.

### 6.4 Contractual Liability

For **Personal Injury** or **Property Damage**:

- a) Where the **Insured** assumes liability under any contract or agreement.

But this Exclusion 6.4 a) shall not apply to those written contracts:

- (i) designated under item 6 of the Policy Schedule;
- (ii) where liability would have been implied by law;
- (iii) where the **Insured** assumes liability under a warranty of fitness or quality as regards the **Insured's Products**;
- (iv) to **Incidental Contracts** entered into by the **Named Insured**;
- (v) to **Insured Contracts** entered into by the **Named Insured** where the **Named Insured** is obligated to provide insurance as is afforded by this Policy, to any person or organisation, but only with respect to their liability arising out of operations conducted by the **Named Insured** or on their behalf and not to any greater extent than required by the contract or agreement;





- b) Where the **Insured** has waived any rights, which but for the existence of such waiver would accrue to the **Insured**.

## 6.5 Expected or Intended

For **Personal Injury** or **Property Damage** expected or intended from the standpoint of the **Insured**. However, this exclusion does not apply to:

- a) **Personal Injury** or **Property Damage** resulting from the use of reasonable force to protect persons or property; or
- b) Liability of the **Insured** for compensation as the result of an act committed by the **Insured's Employee(s)** which results in **Personal Injury** or **Property Damage** expected or intended from the standpoint of the **Insured's Employee(s)**, provided such act was not committed at the direction of the **Insured**.

## 6.6 Financial Loss

For **Financial Loss**, unless such loss is a direct result of **Personal Injury** or **Property Damage** for which indemnity is provided by this Policy.

## 6.7 Fine, Penalties, Punitive, Aggravated, Exemplary Damages & Taxes

Subject to Extension 3.2 and 3.4 (if applicable)

- a) fines, penalties (civil or criminal), liquidated, punitive, aggravated or exemplary damages;
- b) Taxes;
- c) Non-pecuniary relief;
- d) Matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

## 6.8 Internet Operations Exclusion

For **Personal Injury** or **Property Damage** arising directly or indirectly out of or caused by or in connection with the **Insured's** internet operations, including but not limited to business conducted and/or transacted via the internet, intranet, extranet and/or via the **Insured's** own website, internet site, web address and/or via the transmission of electronic mail or documents by electronic means.

## 6.9 Libel and Slander

Arising out of a libel or slander:

- a) Made prior to the **Policy Period**; or
- b) Made by or at the **Insured's** direction with knowledge of the falsity or defamatory character thereof; or
- c) Related to advertising, broadcasting, publishing or telecasting activities including internet activity, conducted by the **Insured** or on the **Insured's** behalf.

## 6.10 Loss of Use

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

- a) A delay in or lack of performance by the **Insured** or on the **Insured's** behalf of any contract or agreement; or
- b) The failure of the **Insured's Products** to meet the level of performance, quality, fitness or durability express or implied, warranted or represented by the **Insured**.



Provided that this Exclusion 6.10 b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **Insured's Products** after such products have been put to use by any person or organisation other than the **Insured**.

### 6.11. Mould / Building Defect

Liability for any **Personal Injury** or **Property Damage** or any other loss, injury, damage, cost or expense, including, but not limited to, losses, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- a) Any **Fungus(i), Moulds(s)**, mildew or yeast, or
- b) Any **Spore(s)** or toxins created or produced by or emanating from such **Fungus(i), Mould(s)**, mildew or yeast, or
- c) Any substance, vapour, gas, or other emission or organic or inorganic body or substance produced by or arising out of any **Fungus(i), Mould(s)**, mildew or yeast, or
- d) Any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures or acts as a medium for any **Fungus(i), Mould(s)**, mildew, yeast, or **Spore(s)** or toxins emanating therefrom;

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that loss, injury, damage, cost or expense.

For the purposes of this exclusion, the following definitions are added to the Policy:

**Fungus(i)** includes, but is not limited to, Any of the plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including moulds, rusts, mildews, smuts and mushrooms.

**Mould(s)** includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce moulds.

**Spore(s)** means any dormant or reproductive body produced by or arising or emanating out of any **Fungus(i), Mould(s)**, mildew, plants, organisms or micro-organisms;

### 6.12. Nuclear Liability

Of whatsoever nature, directly or indirectly, caused by or contributed by 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.

### 6.13. Pollution

In respect of **Personal Injury** or **Property Damage** directly or indirectly arising out of, caused by or contributed to by:

- a) the discharge, dispersal, release or escape of **Pollutants** into or upon land the atmosphere or any watercourse or body of water;
- b) the cost of removing, monitoring, testing, containing, treating, detoxifying, neutralizing, nullifying or cleaning up **Pollutants** or **Pollutants** discharged, dispersed, released or escaped into or upon land, the atmosphere or any watercourse or body of water;
- c) fines, penalties, punitive, exemplary or multiple damages relating to the circumstances detailed in 6.13 (a) above.
- d) the cost of preventing the escape of **Pollutants**.



Exclusions 6.13(a) and 6.13(b) shall not apply where the **Claim** or **Legal Proceeding** arises from a sudden identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place and occurs outside of **North America**.

#### 6.14. Product Defect:

**Property Damage** to the **Insured's Products**

#### 6.15. Product Recall

For any cost or expense incurred or claimed for the withdrawal, inspection, repair, replacement, or loss of use of the **Insured's Products** or of any property of which such products form a part, if such products, or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

#### 6.16. Professional Liability

Arising out of the:

- a) rendering of or failure to render professional advice or services by the **Insured**; or
- b) any error or omission arising from the rendering of professional advice, design specification or services; for a fee

Provided that this Exclusion 6.16 does not apply to the rendering of or failure to render professional medical advice by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

#### 6.17. Property Owned or in the Insured's Physical or Legal Control

Subject to Extensions 3.1 and 3.3 (if applicable) for **Property Damage** to

- a) Property owned by, leased or rented to the **Insured**; or
- b) Property belonging to the **Insured** or in the care, custody or control of the **Insured** or any **Employee** of the **Insured**;
- c) That particular part of any real property on which the **Insured** or any contractors working directly or indirectly on the **Insured's** behalf are performing operations if the loss or **Property Damage** arises out of those operations.

#### 6.18. Silica

Directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form, or to any obligation of the **Insured** to indemnify any party because of **Bodily Injury** or **Property Damage** arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form.

#### 6.19. Terrorism

For **Personal Injury** or **Property Damage** arising directly or indirectly as a result of or in connection with terrorism including, but not limited to, any contemporaneous or ensuing **Personal Injury** or **Property Damage** caused by fire, looting or theft.

Terrorism means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection



with any organisation, government, power, authority or military force, when the effect is to intimidate or coerce a government, the civilian population or any segment thereof, or to disrupt any segment of the economy.

Terrorism shall also include any act which is verified or recognised by the government of any country in which the **Insured** operates or exports products into, as an act of terrorism.

#### 6.20. Vehicles

Subject to Extension 3.1(d) (if applicable) for **Personal Injury** or **Property Damage** caused by or arising out of the ownership, possession, use of or operation by the **Insured** of any **Vehicle** which is registered or in respect of which insurance is required by virtue of any legislation.

Provided that this Exclusion 6.20 shall not apply to the **Insured's** liability for **Personal Injury** or **Property Damage** arising from:

- a) The actual loading, unloading, delivery or collection of goods to or from any **Vehicle**;
- b) The use of any **Tool of Trade** either on any site where the **Insured** is undertaking work or at the **Insured's** premises.

This proviso 6.20 b) does not extend cover to the use of any **Tool of Trade**, whilst in transit or whilst being used for transport or haulage.

#### 6.21. War

**Personal Injury, Property Damage** or **Loss** directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (with or without the declaration of war), civil war, civil commotion, factional civil commotion, rebellion, revolution, insurrection, military or usurped power.

#### 6.22. Workers Compensation and Employers Liability

- a) In respect of **Personal Injury** sustained by an **Employee** which arises out of or in the course of their employment by the **Insured**;
- b) Imposed by the provisions of any:
  - i) Workers' compensation legislation or under any similar legislation;
  - ii) Accident compensation legislation or under any similar legislation;
  - iii) Industrial award, agreement or determination.
- c) For any obligation for which the **Insured** may be held liable under any Worker's Compensation Law or under any similar law.



## 7. Conditions

### 7.1 Alteration of Risk

The **Named Insured** shall notify **us** in writing within thirty (30) days of any material changes to the **Business** description as stated in the Policy Schedule. **We** reserve the right to accept or deny coverage at the time of such notification and to establish a separate rate and premium for any such change in description of **Business** as set forth in item 2 in the Policy Schedule.

### 7.2 Assignment

This policy and any rights hereunder cannot be assigned without our prior written consent.

### 7.3 Audit

We may audit and examine the **Named Insured's** books and records as they relate to this policy at any time during the Policy Period or anytime after the expiration or termination of this policy.

### 7.4 Cancellation

The Policy may be cancelled at any time at the written request of the **Named Insured** in which case **we** shall retain the customary short rate proportion of the premium. **We** may cancel the Policy as and in the manner permitted by law in which case **we** shall be entitled to retain the pro-rata proportion of the premium. However, if any **Claims, Legal Proceedings** or **Losses** have been notified to **us** during the relevant **Policy Period** and prior to the date of cancellation, no refund of premium shall be made to the **Named Insured**.

### 7.5 Changes

This policy can be changed only by a written endorsement that **we** make to this policy.

### 7.6 Choice of Law and Forum

This policy shall be governed by and construed in accordance with the laws of New Zealand and the courts of New Zealand shall have exclusive jurisdiction in any dispute arising hereunder.

### 7.7 Cross Liability

If the **Insured** comprises more than one party, **we** will provide indemnity to each in the same manner and to the same extent as if a separate policy had been issued to each, provided that **our** total liability for liability sustained by any or all of the **Insureds** shall not exceed the Limit of Liability stated in the Policy Schedule.

### 7.8 Currency

All premiums and payments made on **Claims** or **Losses** (if any) are payable in New Zealand and in New Zealand dollars.



## 7.9 Duties in the Event of an Occurrence, Claim or Legal Proceeding

Upon the happening of an **Occurrence** which may give rise to a **Claim** or **Legal Proceeding** under this Policy the **Insured** must:

- a) as soon as reasonably practicable-
  - i) notify **us** of such **Occurrence**;
  - ii) provide in writing as required all particulars and information as **we** may request;
- b) immediately-
  - i) on receipt forward to **us** every letter, **Claim**, writ of **Legal Proceedings** or other document served on the **Insured** or their representative;
  - ii) notify **us** of any impending prosecution, inquest, fatal inquiry or proceedings in any court;
- c) as **we** may require-
  - i) retain anything connected therewith;
  - ii) provide all assistance;
- d) promptly take at the **Insured's** own expense, all reasonable steps to prevent other **Personal Injury** or **Property Damage** arising out of the same conditions, but such expense shall not be recoverable under this Policy.

The **Insured** shall not:

- a) make any admission of liability;
- b) take any action which may be construed as an admission of liability;
- c) repudiate or settle any **Claim** or **Legal Proceeding**; or
- d) waive any rights of recovery without **our** prior written consent.

**We** have the right to:

- a) Defend any **Claim** or **Legal Proceeding** against the **Insured**;
  - i) take over and conduct the defence or settlement of any **Claim** or **Legal Proceeding**;
  - ii) prosecute for its own benefit any **Claim** or **Legal Proceeding** for indemnity or damages or otherwise in the name of the **Insured**;
- b) Have subrogation of all the **Insured's** rights of recovery against any person or organisation, whether before or after, indemnification by **us**;
- c) Exercise full discretion in the conduct of any **Legal Proceedings** and in the settlement of any **Claim** or **Legal Proceeding**, whether before or after indemnification by **us**.

## 7.10 Fraudulent Claim

If the **Insured** shall make any application for indemnity under this policy or submit any initial or final statement of **Loss** or **Claim** knowing that such application or such initial or final statement of **Loss** or **Claim** is false or fraudulent, **we** shall refuse to indemnify the **Insured** for any **Loss** or **Claim** relating to or consequent upon or established by such application or such initial or final statement of **Loss** or **Claim**.

## 7.11 Goods and Services Tax

All amounts expressed in this Policy and the Schedule are exclusive of Goods and Services Tax.



## 7.12 Headings

The descriptions in the headings of this policy are solely for convenience and form no part of the terms and conditions of coverage. Words and expressions in the singular include the plural and vice versa. Words that are **bolded** with the exception of headings have special meaning and are defined. Words that are not specifically defined in the policy have the meaning normally attributed to them.

## 7.13 Inspection

**We** have the right, but are not obligated, to inspect the **Insured's** premises and operations at any time without prior notice to the **Insured** subject to which **we** will use reasonable endeavours to give the **Insured** reasonable notice of any intended inspection. **Our** inspections are not safety inspections. They relate only to the insurability of the **Insured's** premises and operations and the premiums to be charged. The **Insured** will allow **us, our** agents, representatives, **Employees** or consultants (hereinafter referred as the "**Surveyor**"):

- a) access to its premises and other places of **Business**; and
- b) to conduct such enquiries as the **Surveyor** deems necessary, including (without limitation) by way of interviews with employees; and generally
- c) provide all reasonable cooperation and assistance as **we** or the **Surveyor** may require in a conduct of the Survey.

**We** may give the **Insured** reports on the conditions that **we** find. **We** may also recommend changes. **We** do not, however, undertake to perform the duty of any person or organisation to provide for the health or safety of the **Insured's Employees** or the public. **We** do not warrant the health and safety conditions of the **Insured** or **Insured's** premises or operations or represent that the **Insured** or **Insured's** premises or operations comply with laws, regulations, codes or standards.

## 7.14 Notice and Authority

It is agreed that the **Named Insured** acts on behalf of all **Insured's** with respect to the exercise of all their rights and the discharge of all their duties in respect of this policy, including but not limited to:

- a) negotiating the terms and conditions of cover;
- b) binding cover;
- c) the notification of a **Claim, Legal Proceeding** or **Loss**;
- d) the giving and receiving of any notice of cancellation;
- e) the payment of premium and the receipt of any refund of premium that may become due;
- f) the payment of the **Deductible**;
- g) the negotiation and receipt of any endorsement;
- h) the appointment of lawyers to defend a **Claim** or **Legal Proceeding** or **Loss**;
- i) the receipt of amounts payable by **us** under this policy.

## 7.15 Notices

Except as indicated to the contrary herein, all notices, applications, demands or requests provided for in this policy will be in writing and will be given to or made upon either party at its address shown in the Policy Schedule.



#### 7.16 Occurrence or Claim within the Deductible

**We** have the right to assume the defence of any **Claim** or **Legal Proceedings** whether or not the **Claim** is considered to fall within the **Deductible** by the **Insured**.

#### 7.17 Observance

By accepting this policy the **Named Insured** agrees that the statements in the proposal, broker submission, and any attachments are accurate and complete and acknowledges that we have issued this policy in reliance upon those representations.

#### 7.18 Other Insurance

If at the time of any **Occurrence** there is, or but for the existence of this policy would be, any other policy of indemnity or insurance in favour of or effected by or on behalf of the **Insured** applicable to such **Occurrence**, the insurance under this policy shall be excess insurance over and above the amount of liability covered under such other policy of indemnity or insurance and the Limits of Liability under this policy shall be reduced by an amount equal to the limits of liability afforded under such other policy.

#### 7.19 Premium

Unless otherwise provided the premium for this policy is a flat premium and is not subject to adjustment except as provided in Condition 7.4 herein. If either section is subject to audit adjustment, the premium may be based upon the rating basis as agreed prior to the **Policy Period**. Upon expiration of this policy or its termination during the **Policy Period**, or at the end of each policy year, the earned premium shall be computed as shown in the Policy Schedule. If the earned premium is more than the deposit premium paid, the **Named Insured** shall pay the excess to **us**. If less, **we** shall return to the **Named Insured** the unearned portion, subject to the annual minimum premium set forth in item 7 of the Policy Schedule for each twelve months of the **Policy Period**.

#### 7.20 Reasonable Care

The **Insured** shall take all reasonable care to prevent injury or loss or damage and to maintain the premises, plant and all other business assets in good repair, and to comply with all statutory obligations and regulations.

The **Insured** shall make good or remedy any defect or danger and take such additional precautions as may be required as soon as possible after discovery, but such expenses shall not be recoverable under this policy.

#### 7.21 Reference to Statute

In this Policy references to any statutory provision are to be construed as references to that statutory provision as amended, supplemented, re-enacted, or replaced from time to time and are to include any orders, regulations, instruments or other subordinated legislation made under or deriving validity from that statutory provision

#### 7.22 Severability, Construction and Conformance to Statute.

- a) If any provision contained in this policy is, for any reason, held to be invalid, illegal or unenforceable in any respect, it is hereby deemed to be severed and to have no effect on any other valid, legal and enforceable provision of this policy





- b) If any provision contained in this policy is for any reason held to be invalid, illegal or unenforceable, it will be construed by limiting it so as to be valid, legal and enforceable to the extent compatible with applicable law.
- c) Any provisions of this policy which are in conflict with the statutes or regulations of the state or country wherein this policy is issued are hereby amended to conform to such statutes or regulations.

### 7.23 Statutory Requirements

The **Insured** will take all reasonable measures to comply with all statutory obligations and regulations imposed by any statutory or governmental authority.

### 7.24 Subrogation

If any payment is made in respect of a **Claim, Legal Proceedings** or **Loss, we** shall be subrogated to all rights of recovery of the **Insured**, and **we** shall be entitled to pursue and enforce such rights in the name of the **Insured** who shall provide **us** with all reasonable assistance and co-operation including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any such amount recovered in excess of **our** total payment shall be restored to the **Insured** less the cost to **us** of such recovery.

Authorised Signatory

Date: 10 April 2013



AIG Insurance New Zealand Limited

The AIG Building, Level 19

PO Box 1745

Shortland Street

Auckland 1140

T +64 9 355 3100

F +64 9 355 3135

[www.aig.co.nz](http://www.aig.co.nz)

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