

Miscellaneous Professional Liability Insurance



AIG Insurance New Zealand Limited

Policy Wording



Bring on tomorrow



Miscellaneous Professional Liability Insurance

This Policy is issued / insured by AIG Insurance New Zealand Limited.

PO Box 1745
Shortland Street,
Auckland 1140
New Zealand

Fair Insurance Code

The **Insurer** is a signatory to the Fair Insurance Code. This aims to raise the standards of practice and service in the insurance industry, improve the way that claims and complaints are handled and help people better understand how general insurance works. Information brochures on the Code are available upon request.

Your Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

However, your duty of disclosure does not require you to disclose matters:

- that diminish the risk to be undertaken by the insurer;
- that are of common knowledge;
- that your insurer knows or, in the ordinary course of its business, ought to know;
- as to which compliance with your duty is waived by the insurer.

Consequences of Non-Disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

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This document contains your Insurance Policy terms, Provisions, Exclusions and Conditions. It is important that you read it, understand it and retain it in a safe place.



Policy Wording

Miscellaneous Professional Liability Insurance

Notice

This is a claims made insurance policy. This policy will only apply to **Claims** first made against the **Insured** by a **Third Party** and reported to the Insurer during the **Policy Period**. The **Limits of Liability** available to pay judgments or settlements shall be reduced by amounts incurred for legal defence. Further, please note that the amounts incurred for legal defence shall be applied against the **Retention** amount.

In consideration of the payment of the **Premium** and subject to all of the provisions of this policy, the **Insurer** agrees as follows.

SECTION A: Covers

All cover under this policy is afforded solely with respect to **Claims** first made against an **Insured** during the **Policy Period** and reported to the **Insurer** as required by this policy.

Professional Liability	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for any Breach of Duty of the Insured .
Misleading or Deceptive Conduct	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for any Misleading or Deceptive Conduct of the Insured .
Intellectual Property	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for any Infringement .
Defamation	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for libel or slander committed unintentionally by an Insured .
Fraud / Dishonesty	The Insurer will pay on behalf of any Insured , who is not the actual perpetrator, all Damages resulting from any Claim for Fraud/Dishonesty of any Employee .
Defence	The Insurer has the right to defend any Claim which this policy may respond to under its Covers or Extensions. The Insurer shall pay Defence Costs incurred in defending such Claim .

The **Insurer** is under no obligation to pay **Loss**, unless the **Wrongful Act**:

- (i) first takes place on or after the **Retroactive Date**; and
- (ii) is committed solely in the performance of or failure to perform **Professional Services**.



Extensions

Court Attendance For any person described in (i) and (ii) below who actually attends court as a witness in connection with a **Claim** notified under and covered by this policy, **Defence Costs** will include the following rates per day for each day on which attendance in court has been required:

- (i) for any principal, partner, or director **Insured** \$500
- (ii) for any **Employee** \$250

No **Retention** shall apply to this Extension.

Extended Reporting Period If the **Insurer** cancels or does not renew this policy, other than for non-payment of **Premium** or any other breach of the terms of this policy by an **Insured**, the **Policyholder** shall have the right to a period of 30 days following the date of cancellation or expiry in which to give notice of any covered **Claim** first made against the **Insured**. That extended reporting period shall not apply if this policy or its cover has been replaced.

Lost Documents

With respect to a **Third Party's Documents**:

- (i) for which an **Insured** is legally responsible; and
- (ii) that, during the **Policy Period**, have been destroyed, damaged, lost, distorted, erased or mislaid solely in the performance or non-performance of **Professional Services**,

Damages shall also include costs and expenses reasonably incurred by the **Insured** in replacing or restoring such **Documents** provided that:

- (i) such loss or damage is sustained while the **Documents** are either:
 - a) in transit; or
 - b) in the custody of the **Insured** or of any person to whom the **Insured** has entrusted them;
- (ii) where the lost or mislaid **Documents** have been the subject of a diligent search by or on behalf of the **Insured**;
- (iii) the amount of any **Claim** for such costs and expenses shall be supported by evidence of expenditure that shall be subject to written approval by a competent person to be nominated by the **Insurer** with the consent of the **Insured**; and
- (iv) the **Insurer** shall not be liable for any **Claim** arising out of wear, tear and/or gradual deterioration, moth and vermin, or other matters beyond the **Insured's** control.

This Extension will be subject to a Sub-limit of Liability as set out in the Schedule. A separate retention of \$1,000 instead of the **Retention** will apply to each **Claim** covered under this Extension.

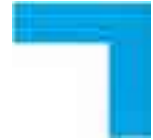
Definitions

Bodily Injury Means physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.

Breach of Duty Means any actual or alleged breach of duty, act, error, misstatement, breach of confidentiality or omission in the performance of or failure to perform **Professional Services**.

Claim Means any:

- (i) written demand; or
- (ii) civil or administrative proceeding,

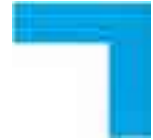


that seeks **Damages** as a result of **Wrongful Acts**.

Damages	Means any amount that an Insured shall be legally liable to pay to a Third Party in respect of judgments rendered against an Insured , or for settlements which conform with the consent requirements set out in the "Claims" Conditions, subject to the limitations of Loss .
Defence Costs	<p>Means reasonable fees, costs and expenses incurred by or on behalf of the Insured, with the Insurer's prior approval, in the investigation, defence, adjustment, settlement or appeal of any Claim.</p> <p>Defence Costs shall not mean any internal or overhead expenses of any Insured or the cost of any Insured's time.</p>
Documents	Means all documents of any nature whatsoever including computer records and electronic or digitized data; but does not include any currency, negotiable instruments or records thereof.
Employee	<p>Means any natural person who is or has been expressly engaged as an employee under a contract of employment with the Policyholder or any Subsidiary.</p> <p>Employee shall not mean any:</p> <ul style="list-style-type: none">(i) principal, partner or director; or(ii) temporary contract labour, self-employed person or labour-only sub-contractor.
Fraud/Dishonesty	<p>Means fraudulent or dishonest conduct of an Employee:</p> <ul style="list-style-type: none">(i) not condoned, expressly or implicitly, by; and(ii) that results in liability to; <p>the Policyholder or any Subsidiary.</p>
Infringement	Means an unintentional infringement of any intellectual property right of any Third Party , other than patents and Trade Secrets .
Insured	<p>Means:</p> <ul style="list-style-type: none">(i) the Policyholder or any Subsidiary;(ii) any natural person, who is or has been a principal, partner or director of the Policyholder or any Subsidiary;(iii) any Employee; and(iv) any temporary contract labour, self-employed persons, labour-only sub-contractors, solely under contract with, and under the direction and direct supervision of the Policyholder or any Subsidiary; <p>but only when providing Professional Services in the foregoing capacities.</p> <p>Insured also includes any estate or legal representatives of any Insured described in (ii) and (iii) of this definition with respect to the Insured's provision of Professional Services in any such capacity.</p>
Insurer	Means the entity specified as such in the Schedule.
Limit of Liability	Means the applicable limit of liability set out in the Schedule.



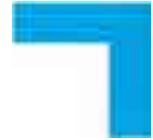
Loss	Means Damages and Defence Costs . Loss shall not mean and this policy shall not cover any (i) taxes payable by the Insured ; (ii) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages; (iii) restitutionary relief; (iv) fines or penalties; (v) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; (vi) employment related compensation or benefits, overhead, charges or expenses of any Insured ; or (vii) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a Claim is brought.
Misleading or Deceptive Conduct	Means any actual or alleged misleading or deceptive conduct at law or under the Fair Trading Act 1986 or any similar legislation.
Policy Period	Means the period of time specified in the Schedule unless the policy is cancelled in which event the Policy Period will end on the effective date of the cancellation.
Policyholder	Means the entity or natural person specified as such in the Schedule.
Pollutants	Means, but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or Waste. "Waste" includes, but is not limited to, material to be recycled, reconditioned or reclaimed.
Premium	Means the amount specified as such in the Schedule and any premium adjustment reflected in an endorsement to this policy.
Professional Services	Means the professional services of the Policyholder and any Subsidiary as specified in the Schedule.
Property Damage	Means damage to or loss of or destruction of tangible property or loss of use thereof.
Retention	Means the amount specified as such in the Schedule.
Retroactive Date	Means the date specified as such in the Schedule.
Subsidiary	Means companies in which the Policyholder , either directly or indirectly through one or more of its Subsidiaries ; (i) controls the composition of the board of directors; (ii) controls more than half of the voting power; or (iii) holds more than half of the issued share capital. For any Subsidiary or any Insured thereof, cover under this policy shall only apply to Wrongful Acts committed while such entity is a Subsidiary of the Policyholder .
Third Party	Means any entity or natural person; provided, however, Third Party does not mean: (i) any Insured ; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the Policyholder or any Subsidiary .
Trade Secret	Means information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.
Wrongful Act	Means any Breach of Duty , Misleading or Deceptive Conduct , Infringement , libel, slander, or Fraud/Dishonesty .



Exclusions

This policy shall not cover **Loss** in connection with any **Claim**:

Anti-competitive Conduct	Arising out of, based upon or attributable to any actual or alleged restrictive trade practices, restraint of trade or unfair competition;
Bodily Injury / Property Damage	Arising out of, based upon or attributable to Bodily Injury or Property Damage unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing Professional Services ;
Contractual Liability / Performance Guarantees	Arising out of, based upon or attributable to any: (i) contractual liability or other obligation assumed, that goes beyond the duty to use such skill and care as is ordinarily applied to the professional services provided, taking into consideration any specialised knowledge or expertise; (ii) guarantee or warranty; or (iii) delay in performing, failing to perform or failing to complete any Professional Services , unless such delay or failure arises from a Breach of Duty by an Insured ;
Costs Assessment	Arising out of, based upon or attributable to any failure by any Insured or other party acting for the Insured to make an accurate pre-assessment of the cost of performing Professional Services ;
Employment / Discrimination	Arising out of, based upon or attributable to any: (i) actual or alleged employment related: practices, harassment or discrimination; or (ii) intentional or systemic harassment or discrimination;
Insolvency	Arising out of, based upon or attributable to the insolvency, administration or receivership of the Insured or their actual or alleged inability to meet any or all of their debts as they fall due;
Intentional Acts	Arising out of, based upon or attributable to any deliberate or reckless Breach of Duty ;
Infrastructure	Arising out of, based upon or attributable to: (i) mechanical failure; (ii) electrical failure, including any electrical power interruption, surge, brown out or black out; or (iii) telecommunications or satellite systems failure;
Joint Ventures	Arising out of, based upon, or attributable to work carried out by the Insured for and in the name of any association or joint venture of which an Insured forms part;
Misdeeds	Arising out of, based upon or attributable to any act which a court, official tribunal or arbitrator finds, or which an Insured admits, to be a criminal, dishonest or fraudulent act; and in such event, the Insurer shall be reimbursed for all Loss paid in connection with such Claim ; provided, however, that this exclusion shall not apply to the Fraud/Dishonesty Cover;
Patent/Trade Secret	Arising out of, based upon or attributable to the breach of licences concerning infringement of, or misappropriation of patents or Trade Secrets ;
Pollution	Arising out of, based upon or attributable to: (i) the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of Pollutants , or (ii) any direction, request or effort to: (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise Pollutants , or (b) respond to or assess the effects of Pollutants ;
Prior Claims / Circumstances / Litigation	(i) made prior to or pending at the inception of this policy; or (ii) arising out of, based upon or attributable to any circumstance that, as of the inception of this policy, may reasonably have been expected by any Insured to give rise to a Claim ; or (iii) pending or prior litigation derived from the same or essentially the same facts as might be



	alleged in such prior or pending litigation, as at the Continuity Date ;
Trade Debts	Arising out of, based upon or attributable to any: (i) trading debt incurred by an Insured or (ii) guarantee given by an Insured for a debt;
U.S.A. / Canada	Made or pending within; or to enforce a judgment obtained in, the United States of America, Canada, or any of their territories or possessions; or
War / Terrorism	Arising out of, based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.

SECTION B: Costs and Expenses

If the **Insurer** (in its sole and absolute discretion) determines that any loss covered by any other section, cover, endorsement or extension of this **Policy** is subject to the existence or potential existence of a **Charge**, the **Insurer** shall not be obligated to advance any costs or expenses under that section, cover, endorsement or extension of this Policy but instead the **Insurer** shall pay such costs and expenses solely under this Section B – Costs and Expenses.

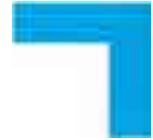
Section B: Conditions

1. All costs and expenses paid, or to be paid, under this Section B – Costs and Expenses shall:
 - (a) be subject to the same terms and conditions (including any Exclusions) which would have applied had the **Insurer** made payment under the applicable section, cover, endorsement or extension of this Policy which is subject to the existence or potential existence of a **Charge**,
 - (b) be subject to the **Section B: Limit of Liability** prescribed in the Schedule; and
 - (c) not include taxes other than an amount of GST for which an Insured is not entitled to an input tax credit; remuneration or employment-related benefits; loss or any other damages, compensation, fines or penalties; nor amounts which the Insurer is prohibited from paying by law.
2. Subject to clause 4 below, if:
 - (i) any loss covered by this Policy would have been paid by the **Insurer** but for the existence or potential existence of a **Charge**; and
 - (ii) that loss (or any part of that loss) has been paid to the Insured under Section B – Costs and Expenses; and
 - (iii) upon the final determination of the existence and extent of any such **Charge** the loss (or any part of the loss) is determined not to be, or to have been, subject to the **Charge** and could have been paid to the **Insured** under any other section, cover, endorsement or extension of this Policy;

the **Insurer** shall as soon as practicable reinstate the **Section B: Limit of Liability** (without deduction or set-off) by an amount equivalent to such loss or part of such loss falling within each of (i), (ii) and (iii) above and the **Limit of Liability** of the corresponding section, cover, endorsement or extension of this Policy shall be reduced by the amount of the reinstatement.

3. Subject to clause 4 below, if, prior to the final determination of the existence and extent of any **Charge**, the **Insurer** (in its sole and absolute discretion) determines that any loss paid to the **Insured** under Section B – Costs and Expenses could have been paid under any other section, cover, endorsement or extension of this Policy, the **Insurer** shall as soon as practicable reinstate the **Section B: Limit of Liability** by an amount equivalent to such loss (without deduction or set-off) and any such amounts reinstated under this clause shall apply in reduction of any reinstatement under clause 2 above and the **Limit of Liability** of the corresponding section, cover, endorsement or extension of this Policy shall be reduced by the amount of the reinstatement.
4. The maximum amount available to reinstate the **Section B: Limit of Liability** under clauses 2 and 3 above shall not exceed the **Section A: Limit of Liability** any one claim limit (if any) stated in the Schedule.

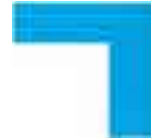
Additional Definition



1. “**Charge**” means a charge arising under section 9 of the Law Reform Act 1936 (New Zealand), section 6 of the Law Reform (Miscellaneous Provisions) Act 1946 (New South Wales), sections 25 to 28 of the Law Reform (Miscellaneous Provisions) Act 1955 (ACT), sections 26 to 29 of the Law Reform (Miscellaneous Provisions) Act 1956 (Northern Territory) and/or any other legislative provision of similar effect.

SECTION C: Claims

Notification of Claims	The Insured shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer (i) of any Claim first made against the Insured , (ii) of the receipt of notice from any person of an intention to make a Claim against any Insured , (iii) of any circumstances of which they shall become aware during the Policy Period which may give rise to a Claim against any Insured , or (iv) of the discovery of reasonable cause for suspicion of dishonesty or fraud on the part of any past or present partner or Employee of the Insured whether giving rise to a Claim under this Policy or not as practicable and during the Policy Period . All notifications must be in writing or by facsimile, and addressed as required in the Claims Notice Item on the Schedule.
Related Claims	If notice of a Claim , circumstance or discovery of dishonesty, against an Insured is given to the Insurer pursuant to the terms and conditions of this policy, then: (i) any subsequent Claim alleging, arising out of, based upon or attributable to the facts alleged in that previously notified Claim ; and (ii) any subsequent Claim alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in that previously notified Claim , shall be considered made against the Insured and reported to the Insurer at the time notice was first given. Any Claim or Claims arising out of, based upon or attributable to (i) the same cause, or (ii) a single Wrongful Act , or (iii) a series of continuous, repeated or related Wrongful Acts , shall be considered a single Claim for the purposes of this policy.
Continuity	Notwithstanding the Prior Claims/Circumstances/Litigation Exclusion, cover is provided under this Policy for any Claim , fact, matter or circumstance which could or should have been notified to the Insurer under any earlier policy. Provided always that: <ol style="list-style-type: none">(i) the Claim, fact, matter or circumstance could and should have been notified after the Continuity Date; and(ii) the cover provided by this Condition shall be on the same terms, exceptions and conditions as the policy under which the Claim, fact, matter or circumstance could or should have been notified.
Defence / Settlement	The Insurer does not assume any duty to defend, and the Insured shall not be required to contest any legal proceeding unless counsel (to be mutually agreed upon by the Insured and the Insurer) shall advise that such Claim should be contested by the Insured . The Insurer may elect in writing to take over and conduct the defence and settlement of any Claim . If the Insurer does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve the Insurer . The Insurer has the right at any time after notification of a Claim to make a payment to the Insured of the unpaid balance of the Limit of Liability , and upon making such payment, all obligations of the Insurer to the Insured under this policy, including, if any, those relating to defence, shall cease.
Insurer's Consent	As a condition precedent to cover under this policy, no Insured shall admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any Defence Costs without the prior written consent of the Insurer . Only those settlements, judgments and Defence Costs consented to by the Insurer , and judgments resulting from Claims defended in accordance with this policy, shall be recoverable as Loss under this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer shall be entitled to exercise all of its rights under the policy.



Insured's Consent	<p>The Insurer may make any settlement of any Claim it deems expedient with respect to any Insured, subject to such Insured's written consent. If any Insured withholds consent to such settlement, the Insurer's liability for all Loss on account of such Claim shall not exceed the amount for which the Insurer could have settled such Claim, plus Defence Costs incurred as of the date such settlement was proposed in writing by the Insurer, less coinsurance (if any) and the applicable Retention.</p>
Cooperation	<p>The Insured will at their own cost: (i) render all reasonable assistance to the Insurer and co-operate in the defence of any Claim and the assertion of indemnification and contribution rights; (ii) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any Loss under this policy; (iii) give such information and assistance to the Insurer as the Insurer may reasonably require to enable it to investigate any Loss or determine the Insurer's liability under this policy.</p>
Allocation	<p>Where any Loss is incurred in respect of any Claim which arises from both covered matters and matters not covered by this policy, the Insurer's liability under this policy is limited to the proportion of the Loss which represents a fair and equitable allocation between each Insured and the Insurer, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.</p> <p>Where the Insurer's liability under this policy is limited under this clause, the Insured and the Insurer must use their best endeavours to agree upon the allocation to be adopted by them as the fair and equitable allocation.</p>
Allocation Disputes	<p>If the parties are unable to agree, then the fair and equitable allocation is to be determined by a Senior Lawyer (to be mutually agreed upon by the Policyholder and the Insurer, or in the absence of agreement, to be appointed by the President of the Law Society, or equivalent organisation, in the jurisdiction in which the Loss was incurred).</p> <p>The Senior Lawyer is to determine the fair and equitable allocation as an expert, not as an arbitrator. The Policyholder (or its designee) and the Insurer may make submissions to the Senior Lawyer. The Senior Lawyer is to take account of the parties' submissions, but the Senior Lawyer is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgment and opinion. The Senior Lawyer's determination shall be final and binding. The costs of the Senior Lawyer's determination are to be borne by the Insurer.</p> <p>Subject to any applicable laws, for so long as the proportion of Defence Costs to be paid under the policy remains unagreed and undetermined, the Insurer shall pay the proportion of the Defence Costs which it considers represents a fair and equitable allocation. The fair and equitable allocation finally agreed or determined shall be applied retrospectively to any Defence Costs incurred prior to agreement or determination.</p>
Fraudulent Claims	<p>If any Insured shall give any notice or claim cover for any Loss under this policy knowing such notice or claim to be false or fraudulent as regards amounts or otherwise, such Loss shall be excluded from cover under the policy, and the Insurer shall have the right to cancel the policy.</p>



Purchase and Administration Policy Purchase

If the **Insurer** becomes entitled to avoid this policy from inception or from the time of any variation in cover, the **Insurer** may at its discretion maintain this policy in full force but exclude the consequences of and any **Claim** relating to any matter which ought to have been disclosed before inception or any variation in cover.

However, in any case where the **Insured** should have notified under any preceding insurance a circumstance which may give rise to a **Claim** and the indemnity or cover available under this **Policy** is greater or wider in scope than the indemnity which the **Insured** would have been entitled to under any preceding insurance (whether with the **Insurer** or not) then the **Insurer** shall only be liable to indemnify the **Insured** in respect of that **Claim** to the extent of the indemnity which would have been afforded by such preceding insurance.

Administration

The **Policyholder** has acted and shall act on behalf of each and every **Insured** with respect to: (i) negotiating terms and conditions of, binding and amending cover; (ii) exercising rights of **Insureds**; (iii) notices; (iv) **Premiums**; (v) endorsements; (vi) dispute resolution; (vii) claims management and consent to defence/settlement; and (viii) payments to any **Insured**.

Representation / Severability

In granting cover to the **Insured**, the **Insurer** has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied.

That written proposal form for coverage shall be construed as a separate proposal form individually submitted for each **Insured**. No state of mind or knowledge possessed by an **Insured** shall be imputed to any other **Insured** for the purpose of determining entitlement to coverage.

Limit and Retention

Limit of Liability

The total amount payable by the **Insurer** under this policy shall not exceed the applicable **Limit of Liability**. Sub-limits of Liability, amounts specified in the Extensions and **Defence Costs** are part of that amount and are not payable in addition to the **Limit of Liability**. The **Limit of Liability** for the period provided in the Extended Reporting Period Extension is part of, and not in addition to, the **Limit of Liability** for the **Policy Period**. The inclusion of more than one **Insured** under this policy does not operate to increase the total amount payable by the **Insurer** under this policy.

Retention

The **Insurer** shall only pay for the amount of any **Loss** which is in excess of the **Retention**. For the avoidance of doubt, the **Retention** also applies to **Defence Costs**. The **Retention** is to be borne by the **Insured** and shall remain uninsured. A single **Retention** shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act**.

Other Insurance

Such insurance as is provided under this Policy shall apply only as excess over any other valid and collectible insurance.

Non-Compliance

The amount of indemnity under this Policy shall be reduced where the **Insured's** breach of, or non-compliance with, the terms and conditions of this Policy prejudices the settlement or handling of a **Loss** or **Claim**, to such sum which in the opinion of the **Insurer** would have been payable by them without such prejudice.



General Provisions

Assignment	This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the Insurer .
Cancellation - By Policyholder:	This policy may be cancelled by the Policyholder as and in the manner permitted by law. In such case, if no Claim has been made and no circumstance has been notified prior to such cancellation, the Insurer shall retain the customary short rate proportion (unexpired portion of Premium less handling charges) of the Premium . Otherwise, Premium shall not be returnable and shall be deemed fully earned at cancellation.
By Insurer:	This policy may be cancelled by the Insurer as and in the manner permitted by law. In such case, the Insurer shall be entitled to a pro-rata proportion of the Premium . Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
GST	All amounts indicated in this Policy and the attached Schedule are exclusive of Goods and Services Tax where payable by law.
Insolvency	The insolvency, receivership or bankruptcy of any Insured shall not relieve the Insurer of any of its obligations hereunder.
Jurisdiction	It is hereby agreed that this insurance shall be governed by the laws of New Zealand whose Courts shall have jurisdiction in any dispute arising hereunder.
Plurals, Headings and Titles	The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in bold typeface have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.
Scope and Governing Law	Where legally permissible and subject to the U.S.A./Canada Exclusion, this policy shall apply to any Claim made against any Insured anywhere in the world. Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of New Zealand and in accordance with the English text as it appears in this policy.
Subrogation	If any payment is to be made under this policy in respect of a Claim , the Insurer shall be subrogated to all rights of recovery of the Insured whether or not payment has in fact been made and whether or not the Insured has been fully compensated for its actual loss. The Insurer shall be entitled to pursue and enforce such rights in the name of the Insured , who shall provide the Insurer with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The Insured shall do nothing to prejudice these rights. Any amount recovered in excess of the Insurer's total payment shall be restored to the Insured less the cost to the Insurer of such recovery. The Insurer agrees not to exercise any such rights of recovery against any Employee unless the Claim is brought about or contributed to by serious or wilful misconduct of the Employee in the course of or arising out of the employment. In its sole discretion, the Insurer may, in writing, waive any of its rights set forth in this Subrogation Clause.
Validity	This policy is not binding upon the Insurer unless it is countersigned on the Schedule by an authorised representative of the Insurer or its general agent.

BusinessGuard General & Products Liability Insurance

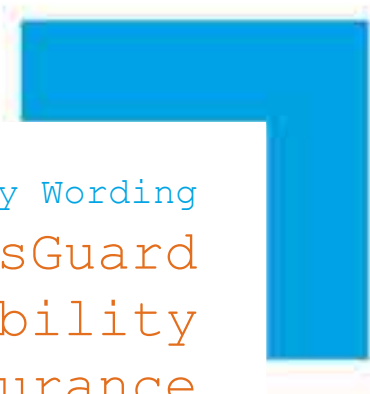


AIG Insurance New Zealand Limited

Policy Wording



Bring on tomorrow



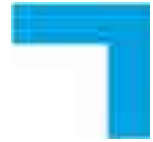
Policy Wording
BusinessGuard
General & Products Liability
Insurance

BusinessGuard

Cover sheet

Schedule:

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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:

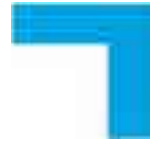
- a) Costs incurred and apportioned by any Fire Authority under section 43 of the Forest and Rural Fires Act 1977 or any amendments or replacing Act (the "Act"); and
- b) levies imposed by a Fire Authority and apportioned to the Insured during the Policy Period under sections 46 and 46A of the Act; and
- 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:

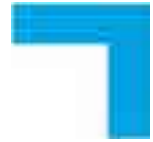
- a) the total amount payable under this Extension shall not exceed the sum described in the Schedule any one **Claim** and in the aggregate during any one **Policy Period**;
- b) a **Deductible** described in the Schedule shall apply for each **Occurrence**.

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**.

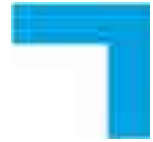


4.4 Regardless of the number of years this policy shall continue in force, the number of premiums paid and irrespective of whether it is or may be renewed, the Limits of Liability as specified in the Policy Schedules shall not accumulate from year to year or from **Policy Period** to **Policy Period**.



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.

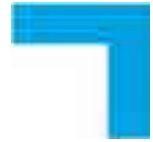
5.10 **Incidental Contracts** mean:

- 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**.

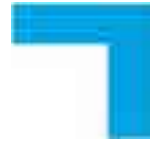
5.11 **Insured** means:

- 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.

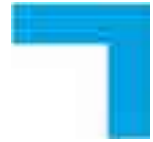
5.12 **Insured Contract** means that part of any contract or agreement pertaining to the **Named Insured's Business** under which the **Named Insured** assumes the tort liability of another party to pay for **Personal Injury** or **Property Damage** to a third person or organisation. However, the **Personal 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.

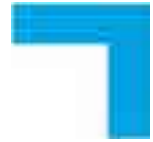
Spore (s) means any dormant or reproductive body produced by or arising or emanating out of any **Fungus (i)**, **Mould (s)**, mildew, plants, organisms or micro-organisms;

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

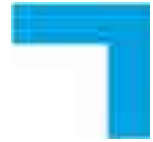
Provided that this Exclusion 6.16 does not apply to the rendering of or failure to render professional medical advice by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

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

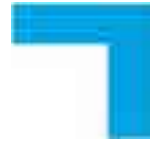
Personal Injury, **Property Damage** or **Loss** directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (with or without the declaration of war), civil war, civil commotion, factional civil commotion, rebellion, revolution, insurrection, military or usurped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

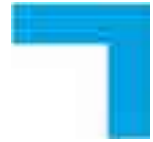
This policy shall be governed by and construed in accordance with the laws of New Zealand and the courts of New Zealand shall have exclusive jurisdiction in any dispute arising hereunder.

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.

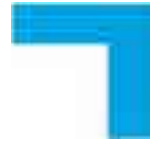
We have the right to:

- 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

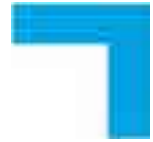
It is agreed that the **Named Insured** acts on behalf of all **Insured's** with respect to the exercise of all their rights and the discharge of all their duties in respect of this policy, including but not limited to:

- 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.

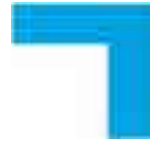
7.21 Reference to Statute

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: 6 June 2016