



## Statutory Liability Insurance Policy Wording

### Section 1: PREAMBLE

In consideration of the payment of the premium to US, WE shall provide the cover described in the POLICY, subject to its terms and conditions, for the INSURANCE PERIOD.

### Section 2: INSURING CLAUSES

WE agree to indemnify the INSURED for:

2.1 Any FINE payable by the INSURED upon conviction of an OFFENCE.

2.2 WE also agree to pay DEFENCE COSTS either incurred by US or by the INSURED with OUR prior written consent.

Incurred under any ACT OF PARLIAMENT not otherwise excluded, resulting from the conduct by the INSURED of its BUSINESS and only if WE are not legally prohibited from paying the FINE.

### Section 3: AUTOMATIC EXTENSIONS

#### 3.1 Consolidation or Merger

If the INSURED acquires by merger, consolidates with, is merged into or acquired by any other entity after the commencement of the INSURANCE PERIOD, the INSURED shall give written notice to US as soon as practicable, together with such information as WE may require; and the INSURED shall pay US any required additional premium.

#### 3.2 Newly Created or Acquired Subsidiary Company

If any SUBSIDIARY is created or acquired by the INSURED after the commencement of the INSURANCE PERIOD, such SUBSIDIARY shall be included as an INSURED provided that:

- (a) written notice of such creation or acquisition is given to US, together with appropriate underwriting information and payment of any required additional premium; and
- (b) in respect of acquisitions, cover granted under this POLICY shall only apply to any EVENT which occurred or allegedly occurred after the date of such acquisition and which took place after the RETROACTIVE DATE, and if the INSURED has agreed to indemnify the SUBSIDIARY in respect of the EVENT.

#### 3.3 Official Investigations

WE shall provide cover for CIVIL DEFENCE LEGAL COSTS incurred by the INSURED in relation to an inquiry involving the INSURED.

### 3.4 Progress Payment of Legal Expenses

In the event of an EVENT for which WE have agreed to indemnify the INSURED, on production of acceptable evidence of expenditure prior to the final settlement of the claim, WE shall pay DEFENCE COSTS or CIVIL DEFENCE LEGAL COSTS necessarily and reasonably incurred by the INSURED.

## Section 4: INTERPRETATION

In the POLICY:

- 4.1 (a) Person includes individuals, partnerships, bodies corporate and associations.
- (b) The singular includes the plural and the masculine includes the feminine.
- (c) The headings are for descriptive purposes only.
- 4.2 In the event that any portion of the POLICY is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- 4.3 All POLICY documents shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

## Section 5: DEFINITIONS

In the POLICY:

- 5.1 ACQUITTED means dismissal of charges before or after a defended hearing or entry of a not guilty verdict (but shall not include the disposition of a charge pursuant to a plea bargain where multiple informations have been laid).
- 5.2 ACT OF PARLIAMENT means any Act of the New Zealand Parliament, other than an EXCLUDED ACT (including any amendment to or re-enactment, and any code, rules, regulations, bylaws or other subordinate legislation made under such Act).
- 5.3 BUSINESS means the Business specified in the Schedule.
- 5.4 CIVIL DEFENCE LEGAL COSTS means the legal costs and expenses, including witness costs and expenses, necessarily and reasonably incurred in relation to:
- (a) a formal inquiry by a regulatory body, which could lead to a prosecution for an OFFENCE;
- (b) proceedings before a Human Rights or Privacy Complaints Review Tribunal.
- 5.5 DEDUCTIBLE means the amount specified in the Schedule.
- 5.6 DEFENCE COSTS means the legal costs and expenses, including defence witness costs and expenses, necessarily and reasonably incurred with OUR prior written consent in investigating and/or defending any prosecution or threatened prosecution alleging the commission of an OFFENCE.
- 5.7 EVENT means any occurrence, act, circumstance or omission in the course of the BUSINESS that gives rise, or may give rise, to:
- (a) a prosecution for an OFFENCE; or
- (b) a formal inquiry by a regulatory body, which could lead to a prosecution for an OFFENCE; or
- (c) proceedings before a Human Rights or Privacy Complaints Review Tribunal.

- 5.8 EXCLUDED ACT means the following:
- Arms Act 1983
- Aviation Crimes Act 1972
- Crimes Act 1961
- Proceeds of Crime Act 1991
- Summary Offences Act 1981
- Transport Act 1962
- Transport (Vehicle and Driver Registration and Licensing) Act 1986
- and any other ACT OF PARLIAMENT specified in the Schedule as an EXCLUDED ACT.
- 5.9 FINE means any fine, infringement fee, court costs, witness expenses or solicitor's costs, ordered by a court to be paid by the INSURED upon its conviction for an OFFENCE, for which WE may legally indemnify the INSURED. This does not include a FINE imposed pursuant to the Health and Safety in Employment Act, but this definition is extended to include a sentence of reparation imposed following a conviction under that Act.
- 5.10 INDEMNITY LIMIT means the amount specified in the Schedule.
- 5.11 INSURANCE PERIOD means the period specified in the Schedule.
- 5.12 INSURED means:
- (a) the person, partnership, company or other entity that is specified as the INSURED in the Schedule, including a SUBSIDIARY who was at the time of the EVENT a SUBSIDIARY; and
  - (b) any person who is during the INSURANCE PERIOD, or was at the time of the EVENT, a principal, partner, director or employee of the person, partnership, company, SUBSIDIARY or other entity specified as the INSURED in the Schedule, but only while acting in the course of the BUSINESS.
- 5.13 OFFENCE means any information alleging the commission by the INSURED of an offence under an ACT OF PARLIAMENT, for which the INSURED is liable to a FINE if convicted.
- 5.14 POLICY means this policy wording, the Schedule, the PROPOSAL and any Endorsement attaching to and forming part of the policy either at commencement or during the INSURANCE PERIOD.
- 5.15 PROPOSAL means the written proposal made by the INSURED to US together with any attachments.
- 5.16 RETROACTIVE DATE means the date specified in the Schedule.
- 5.17 SUBSIDIARY means any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the INSURED or in which the INSURED owns or controls, directly or indirectly more than 50% of the issued voting shares of such entity.
- 5.18 WE/US/OUR means DUAL New Zealand Limited for and on behalf of certain Underwriters at Lloyd's.

## Section 6: EXCLUSIONS

WE will not cover the INSURED, including for DEFENCE COSTS or other loss, in respect of:

### 6.1 Asbestos

Any liability arising from or directly or indirectly attributable to or in consequence of, or in any way involving the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of, asbestos or other things that contain it.

### 6.2 Daily Continuing Offences

- (a) The cost or payment of any enforcement order, remedial order or compliance order; or
- (b) any fine imposed in relation to a daily continuing OFFENCE where the fine is imposed in relation to a period of time after the INSURED first received notice from the informant or his employing body of the intention to commence a prosecution in relation to that OFFENCE.

### 6.3 Deliberate Disregard

A prosecution, unless the INSURED is ACQUITTED, for any OFFENCE which has allegedly resulted from the:

- (a) deliberate disregard by the INSURED of any of the provisions of any ACT OF PARLIAMENT which the INSURED is alleged to have contravened; or
- (b) INSURED instructing another person to discharge one or more of its obligations under any of the provisions of the Acts and failing to take all reasonable steps to ensure that the INSURED'S obligations were discharged as instructed; or
- (c) failure by the INSURED to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building consent, Notice to Rectify, Compliance Schedule, Gazetted Notice, or order made by a Human Rights or Privacy Review Tribunal.

### 6.4 Dishonest Acts

Any OFFENCE actually or allegedly brought about or contributed to by any dishonest, fraudulent or malicious act or omission by or on behalf of the INSURED.

### 6.5 Orders and Costs

- (a) Any pecuniary penalty, restitution, compensation or order for payment pursuant to the Commerce Act 1986; or
- (b) any order for payment of costs made under the Commissions of Inquiry Act 1908; or
- (c) any court order in the nature of damages or compensation, except a sentence of reparation following a Health and Safety in Employment Act prosecution; or
- (d) any action, proceeding, inquiry, investigation or prosecution taken against the INSURED by the Inland Revenue Department or any other revenue collecting authority.

### 6.6 Personal Grievances

Any contract of service or any intended contract of service with any current, former or prospective employee, including any personal grievance or like action by an employee, but this Exclusion shall not apply to any investigation, inquiry or prosecution by the Department of Labour pursuant to the Health & Safety in Employment Act.

6.7 **Prior Knowledge**

- (a) Any OFFENCE arising from or in connection with a fact or circumstance that the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD might or could give rise to an OFFENCE; or
- (b) any OFFENCE arising from or in connection with a fact or circumstance of which notice has been or reasonably should have been given under any previous insurance; or
- (c) any OFFENCE that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD; or
- (d) any OFFENCE arising from any litigation or other proceeding pending or begun before the commencement of this POLICY.

6.8 **Private Prosecutions**

Any investigation of and defence of any action, proceeding, inquiry, investigation or prosecution taken against the INSURED by a person other than the statutory authority or enforcement agency given that responsibility under the Act.

6.9 **Retroactive Date**

Any EVENT or conduct which occurred or allegedly occurred prior to the RETROACTIVE DATE.

6.10 **Sanctions Limitation and Exclusion**

Any claim or any benefit to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose US to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

6.11 **Territorial Limits**

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

6.12 **War / Terrorism**

Any liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) any ACT OF TERRORISM; or
- (c) any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

For the purpose of this Exclusion, an ACT OF TERRORISM means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

## Section 7: CLAIM CONDITIONS

### 7.1 Co-operation

- (a) The INSURED shall, at the INSURED'S own cost, frankly and honestly provide US with all information and assistance required by US and/or lawyers and investigators and others appointed by US in relation to any EVENT or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the EVENT or loss, in whole or part.
- (b) The INSURED shall, at its own cost, do all things reasonably practicable to minimise the INSURED'S liability in respect of any EVENT or loss.
- (c) The INSURED waives all claims to legal professional privilege between themselves and any solicitor retained by US to act on the INSURED'S behalf in relation to any EVENT. The INSURED will allow the solicitor to disclose to US and OUR reinsurers any information obtained in the course of his duties.
- (d) If the OFFENCE is a continuing one, the INSURED shall promptly take, at its expense, all reasonable steps to prevent its continuation.
- (e) WE may, upon receipt of notice from the INSURED of any request for indemnity under this POLICY, take whatever action WE consider appropriate to protect the INSURED'S position in respect of the EVENT, and such action by US will not be regarded in any way as prejudicing the INSURED'S or OUR position and will not be an admission of the INSURED'S entitlement to indemnity.

### 7.2 Goods & Services Tax

Where upon receiving any indemnity payment under this POLICY, the INSURED is liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) WE will indemnify the INSURED for the amount of that tax. The indemnity under this clause is payable by US in addition to the INDEMNITY LIMIT.

### 7.3 Insured's Right to Contest

In the event that WE recommend settlement of a loss and the INSURED does not agree to the settlement of the loss, and the INSURED decides to contest the EVENT, OUR liability shall not exceed the amount for which the loss could have been settled, and DEFENCE COSTS incurred up to the date upon which the loss could have been settled.

### 7.4 Legal Defence and Settlement

- (a) Unless otherwise agreed, WE shall have the right to assume, in the name of the INSURED, the legal defence of any EVENT covered under this POLICY. WE shall have the right to appoint the lawyers that will defend and represent the INSURED in respect of any EVENT.
- (b) WE shall have full discretion in managing any negotiation or proceeding as to the resolution of the EVENT. WE shall be entitled to settle a loss if WE so choose.
- (c) The INSURED agrees not to admit liability for or settle any loss, make any admission, offer any payment or assume any obligation in connection with any loss, or incur any DEFENCE COSTS in connection with any EVENT, without OUR written consent.
- (d) WE shall not be liable for any settlement, DEFENCE COSTS, admission, offer, payment or assumed obligation made, incurred or entered into without OUR written consent.
- (e) If WE are of the opinion that a loss will not exceed the DEDUCTIBLE, WE may require the INSURED to conduct the defence of the claim. If the DEFENCE COSTS and/or any other payment exceed the DEDUCTIBLE then WE will pay the amount in excess of the DEDUCTIBLE.

**Notification**

The INSURED shall notify US as soon as practicable and within the INSURANCE PERIOD of:

- (a) any EVENT; or
- (b) any EVENT of which the INSURED becomes aware, and which the INSURED or a reasonable INSURED should consider may give rise to an OFFENCE.

If during the INSURANCE PERIOD, the INSURED notifies US of any EVENT which the INSURED considers or a reasonable INSURED should have considered may give rise to an OFFENCE, and this EVENT later gives rise to an OFFENCE first made to the INSURED after expiry of the INSURANCE PERIOD, WE will treat the OFFENCE as first made against the INSURED during the INSURANCE PERIOD. In this context, the EVENT must be sufficiently specific that the INSURED can and does provide to US details of name(s) of potential claimants and potential wrongful acts/omissions.

Notice of any EVENT or loss shall be given to US in writing via:

- (i) your insurance broker (email or letter); or
- (ii) the DUAL New Zealand Limited office for the attention of the Claims Manager.

The Claims Manager  
DUAL New Zealand Limited  
Level 20  
191 Queen Street  
Auckland 1010

claims@dualnewzealand.co.nz

**Other Insurance**

This POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy entered into by the INSURED even if the other insurance or indemnity has a term to that effect.

This POLICY will only cover loss to the extent that the amount of such loss is in excess of any indemnity or cover available to the INSURED in respect of that loss under any other policy effected on behalf of the INSURED or under which the INSURED is a beneficiary even if the other insurance or indemnity has a term to that effect (but not a policy to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies to such other insurance that is written only as specific excess insurance over the INDEMNITY LIMIT provided in this POLICY.

If such other insurance is provided by US, or any other member company, associate or affiliate, and it covers a loss covered by this POLICY in respect of an EVENT, the INDEMNITY LIMIT under this POLICY in respect of that EVENT or inquiry shall be reduced by any amount paid by US (or member company, associate or affiliate) under such other insurance.

**Senior Counsel**

- (a) WE shall not require the INSURED to contest an OFFENCE unless a Senior Counsel (to be mutually agreed upon by the INSURED and US, or in default of agreement, nominated by US) advises that the OFFENCE should be contested, taking into account all likely DEFENCE COSTS, prospects of successfully defending the claim and the damages and costs likely to be recovered by the third party claimant.
- (b) The costs of Senior Counsel's advice shall be regarded as part of the DEFENCE COSTS.

**Severability and Non-Imputation**

Except for Exclusion 6.7 (Prior Knowledge) no state of mind or knowledge possessed by any one INSURED will be imputed to any other INSURED for the purpose of determining whether any provision in this POLICY applies.

However, any state of mind or knowledge possessed by any past or present principal, director, partner of the INSURED will be imputed to the INSURED in Definition 5.12 (Insured) (a) of this POLICY.

The terms of the POLICY apply to each INSURED provided that the failure by any INSURED to observe and fulfil the terms of this POLICY will not prejudice this insurance in relation to any other INSURED.

Notwithstanding the above, the maximum aggregate amount payable under all Insuring Clauses and Extensions will apply to all INSUREDS combined.

## **Section 8: GENERAL CONDITIONS**

### **8.1 Alteration to Risk**

The INSURED must notify US in writing as soon as practicable but always within 90 calendar days of any material alteration to the risk during the INSURANCE PERIOD including:

- (a) the INSURED going into voluntary bankruptcy, receivership or liquidation; or
- (b) the INSURED failing to pay debts as and when those debts become due; or
- (c) the INSURED breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- (d) any material change in the nature of the BUSINESS.

WE may impose additional premiums or terms and conditions arising from such alteration of the risk.

WE may not cover the INSURED for any EVENT if the INSURED does not notify US in writing as soon as practicable of any material alteration to risk.

### **8.2 Assignment**

The INSURED must not assign the POLICY or any rights under the POLICY without OUR prior written consent by way of Endorsement to the POLICY.

### **8.3 Cancellation**

- (a) The INSURED may cancel the POLICY at any time by notifying US in writing.
- (b) WE may cancel the POLICY at any time by sending 30 days notice in writing to the INSURED named in the Schedule of the date from which cancellation is to take effect. Such notice may be delivered personally, posted, emailed or faxed to the INSURED named in the Schedule or their representative last notified to US.
- (c) On cancellation of this POLICY, we will retain the proportion of the premium calculated pro rata as at the date of the cancellation plus fifteen percent (15%) of that amount.

### **8.4 Complaints Procedures**

Any enquiry or complaint relating to this POLICY should be referred to US in the first instance. If this does not resolve the matter or YOU are not satisfied with the way a complaint has been dealt with, YOU should write to:

Lloyd's General Representative in New Zealand  
c/o Hazelton Law  
Level 3  
101 Molesworth Street  
PO Box 5639  
Wellington  
New Zealand



For the purpose of this clause only, YOU means the INSURED.

**8.5 Fraud**

If any answers or statements in support of any EVENT, or in any information provided to obtain, amend or renew this insurance, are false in any way, WE shall not provide any indemnity under this POLICY.

**8.6 Governing Law and Jurisdiction**

This POLICY is governed by the laws of New Zealand. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of New Zealand.

**8.7 Reasonable Precautions**

As a condition precedent to OUR liability, the INSURED shall take all reasonable precautions to:

- (a) avoid, prevent or minimise any circumstances that may give rise to an EVENT; and
- (b) comply with all relevant statutory obligations.

**8.8 Several Liability Notice**

The subscribing Underwriters' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

**8.9 Subrogation**

- (a) Where WE have paid an amount under the POLICY WE become entitled to any rights of the INSURED against any party in relation to the EVENT or loss, to the extent of OUR payment.
- (b) The INSURED, at its own cost, must assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.
- (c) WE shall not exercise any subrogated rights of recovery against any employee of the INSURED unless the EVENT has been brought about or contributed to the dishonest, fraudulent, criminal or malicious act or omission of the employee.

**Section 9: LIMIT OF LIABILITY**

**9.1 Deductible**

- (a) The INSURED is responsible for the DEDUCTIBLE in respect of each and every EVENT. Subject to (c) below, WE are only liable to indemnify the INSURED for that part of the INSURED'S liability in respect of each EVENT and DEFENCE COSTS in excess of the DEDUCTIBLE.
- (b) Where WE have paid on the INSURED'S behalf part or all of the DEDUCTIBLE, the INSURED shall reimburse US.
- (c) Unless otherwise expressed in the Schedule or as detailed below (9.1 e), all DEDUCTIBLES are inclusive of DEFENCE COSTS up to the amount of the DEDUCTIBLE.
- (d) Costs and expenses incurred by US in determining whether WE are liable to indemnify the INSURED under the POLICY shall not be subject to the DEDUCTIBLE and will be met by US.
- (e) Specific Deductible for the following acts any one Event

a. Resource Management Act 1991,	\$5,000
b. Health and Safety Act 1992	\$ 5,000
c. Hazardous Substances and New Organisms Act 1996,	\$7,500
d. Injury Prevention, Rehabilitation and Compensation Act 2001	\$5,000
e. Financial Market Authority Act 2011	\$25,000
f. Fair Trading Act 1986	\$7,500
g. Credit Contracts Act and Consumer Finance Act 2003	\$10,000

## 9.2 Indemnity Limit

OUR total liability under the POLICY for any one EVENT including DEFENCE COSTS and in the aggregate from all EVENTS including DEFENCE COSTS shall not exceed the INDEMNITY LIMIT.

WE may at any time pay the INDEMNITY LIMIT applying to any one EVENT or series of EVENTS (after deduction of sums already paid) or any lesser amount for which such EVENTS can be settled and will then be under no further liability in connection with such EVENTS except for its proportion of DEFENCE COSTS incurred prior to the date of payment.

## Section 10: AUTHORITY

10.1 This is to certify that authorisation is granted under contract to the undersigned by the Underwriters.

10.2 In consideration of the premium paid the Underwriters are hereby bound, severally and not jointly, to insure in accordance with the terms and conditions contained herein or endorsed hereon.