



## PROFESSIONAL INDEMNITY POLICY WORDING



Professional Indemnity  
Insurance  
Accountants  
Policy Wording



**DUAL New Zealand Accountants  
Professional Indemnity Policy Wording**

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# **DUAL New Zealand Accountants Professional Indemnity 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 CLAUSE**

**2.1** WE agree to indemnify the INSURED up to the INDEMNITY LIMIT for any CLAIM for compensation first made against the INSURED and reported to US during the INSURANCE PERIOD in respect of any civil liability resulting from any breach of professional duty by the INSURED in its conduct of its PROFESSIONAL BUSINESS.

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

**2.3** The POLICY shall only provide cover for breaches of professional duty committed after the RETROACTIVE DATE.

## **Section 3: AUTOMATIC EXTENSIONS**

The automatic extensions are subject to the Insuring Clauses and all other POLICY terms and conditions.

### **3.1 Attendance at Inquiries**

WE agree to provide cover in respect of any legal representation costs resulting directly from the attendance by the INSURED at any INQUIRY. We will only do this if:

- a) the INQUIRY is ordered or commissioned during the INSURANCE PERIOD, and
- b) OUR consent is obtained before such costs are incurred, and
- c) the INSURED notifies US during the INSURANCE PERIOD that the INSURED is legally compelled to attend the INQUIRY, and
- d) the conduct which is the subject of the INQUIRY occurred on or after the RETROACTIVE DATE, and
- e) the INSURED's attendance is required because of the INSURED's conduct of its PROFESSIONAL BUSINESS, and
- f) at our option, WE can nominate legal advisers to be used.

The cover provided under this extension is sub-limited to \$250,000 any one INQUIRY and in the aggregate for all INQUIRIES and a separate DEDUCTIBLE will apply to each INQUIRY under this extension. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. For the application of the terms and conditions of this POLICY to this Extension, INQUIRY is deemed to be a CLAIM.

### 3.2 Compensatory Penalties

WE agree to provide cover for CLAIMS for compensatory civil penalties notwithstanding Exclusion 7.2 (Fines and Penalties and Non-Compensatory).

Provided that WE will not be liable to cover the INSURED for any compensatory civil penalty:

- a) for which WE are legally prohibited at law from indemnifying the INSURED;
- b) based upon, contributable to or in consequence of any:
  - i) willful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
  - ii) gross negligence or recklessness; or
  - iii) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

### 3.3 Consultants, Subcontractors and Agents

WE agree to provide cover in respect of any CLAIM against the INSURED resulting from the conduct of any consultant, subcontractor or agent in the PROFESSIONAL BUSINESS of the INSURED and for whose acts, errors or omissions the INSURED is liable.

WE will not cover the consultant, subcontractor or agent.

### 3.4 Continuous Cover

Notwithstanding the Prior Knowledge Clause 6.19 (a) and (b), WE agree to provide cover in respect of any CLAIM made in the INSURANCE PERIOD where the INSURED:

- a) first became aware, prior to the INSURANCE PERIOD, that a CLAIM might or could arise from facts or circumstances known to it; and
- b) had not notified US of such facts or circumstances prior to the INSURANCE PERIOD.

Provided that:

- i) WE were the professional indemnity liability insurer of the INSURED when the INSURED first became aware of such facts and circumstances; and
- ii) WE have continued, without interruption, to be the INSURED's professional indemnity insurer up until this POLICY came into effect; and
- iii) There has not been any fraudulent non-disclosure or fraudulent misrepresentation by the INSURED in respect of such facts or circumstances; and
- iv) WE have the discretion to apply either the terms and conditions of the Policy on foot when the INSURED first became aware of the facts and circumstances, including but not limited to the INDEMNITY LIMIT and DEDUCTIBLE, or the terms and conditions of this POLICY; and
- v) The INSURED agrees to only make a CLAIM under one professional indemnity POLICY issued by US.

For the purpose of this Extension only, the definition of WE/US/OUR in clause 6.20 of this POLICY also includes the Underwriter(s) for which WE were the agent on any previous policy issued by US as such Underwriter's agent to the INSURED. Subject to the terms of this extension and the terms of the POLICY, the intention of this extension is to provide continuous cover to the INSURED notwithstanding any change in the identity of the Underwriters for which we presently act, or have previously acted, as agent.

### 3.5 Court Attendance Costs

WE agree to provide cover in respect of any court attendance costs of any partner, principal, director or EMPLOYEE of the INSURED who is legally required to attend Court as a witness in a CLAIM covered by the POLICY, to an amount not exceeding \$250 per day for EMPLOYEES and \$500 per day for those other persons. No DEDUCTIBLE applies.

The cover provided under this extension is sub-limited to \$100,000 any one CLAIM and in the aggregate which is part of, and not in addition to the INDEMNITY LIMIT.

### 3.6 Defamation

WE agree to provide cover in respect of any CLAIM against the INSURED which results from the INSURED making an unintentional defamatory statement in the conduct of the PROFESSIONAL BUSINESS.

### 3.7 Defence Costs In Addition

WE agree to provide cover for any DEFENCE COSTS in addition to the INDEMNITY LIMIT, in an amount not exceeding the INDEMNITY LIMIT

We will only pay these, however, if:

- a) WE incur them; or
- b) The INSURED incurs them after first obtaining OUR agreement in writing and the DEFENCE COSTS are in OUR view reasonable and necessary.

We will not be obliged to defend, or to continue to defend, any CLAIMS or pay, or continue to pay, any DEFENCE COSTS associated with such defence, once the INDEMNITY LIMIT has been exhausted.

DEFENCE COSTS does not include any internal or overhead expenses of the INSURED or the cost of the INSURED'S time.

### 3.8 Emergency Defence Costs

WE agree to provide cover for any DEFENCE COSTS incurred by the INSURED prior to obtaining our consent, WE will waive prior consent so long as OUR consent is obtained within 30 days of the first of such DEFENCE COSTS being incurred and provided that for the purposes of this Extension only:

- a) WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM and DEFENCE COSTS in excess of the DEDUCTIBLE, and
- b) If WE subsequently refuse to pay under the POLICY, the INSURED must reimburse US for any DEFENCE COSTS that WE have paid in advance, according to their respective rights and interests.

The sub limit of liability for all such payments under this Extension is \$100,000. This sub limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

### 3.9 Fair Trading Act

WE agree to provide cover in respect of any CLAIM for compensation made against the INSURED alleging breach of sections 9 -14 of the Fair Trading Act 1986 (or any similar legislation that may apply in the states, territories or countries of the jurisdiction specified in the Schedule).

### 3.10 Fidelity

WE agree to provide cover in respect of any CLAIM against, or loss discovered by, the INSURED resulting from:

- a) any loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit and other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property belonging to the INSURED or for which the INSURED is legally liable; and/or
- b) any actual or alleged fraudulent or dishonest instruction, direction or use of electronic equipment, including but not limited to telephony and the internet, resulting in the unauthorised transfer, delivery or payment of, or dealing with, money, land or any other property belonging to the INSURED or for which the INSURED is legally liable ("fraudulent transaction")

where such loss is sustained or fraudulent transaction occurs in consequence of any dishonest, fraudulent, malicious or reckless act or omission of any INSURED, provided always that:

- i) Such CLAIM is first made against the INSURED or loss or fraudulent transaction is first discovered by the INSURED during the INSURANCE PERIOD and is notified in writing to US within 30 days after such discovery and where the INSURED must bear any costs or expenses to substantiate the loss or fraudulent transaction;
- ii) We shall not be liable for any CLAIM based on or loss sustained in respect of any fraudulent transaction which occurs in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the INSURED concerned; nor will we be liable to indemnify any INSURED committing or condoning any dishonest or fraudulent conduct.
- iii) Where the CLAIM involves theft or misappropriation of funds for which the INSURED is legally liable to account to another, OUR liability is conditional upon:
  - (a) the INSURED maintaining a separate trust account for such funds, which shall be subject to independent audit by a duly qualified accountant at least annually; and
  - (b) all cheques drawn by EMPLOYEES of the INSURED on that trust account being signed by two authorised persons.

The cover provided under this extension is sub-limited to \$50,000 any one CLAIM or loss and in the aggregate all CLAIMS and losses. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. A separate DEDUCTIBLE of \$5,000 will apply to each loss under this extension.

### 3.11 Former Principals

WE agree to provide cover in respect of any CLAIM against any former principal, partner, director or EMPLOYEE of the INSURED in respect of the conduct of the INSURED's PROFESSIONAL BUSINESS.

### 3.12 Fraud and Dishonesty

WE agree to provide cover in respect of any CLAIM which would otherwise be excluded because of fraud and dishonesty in Exclusion 6.10 of the POLICY provided that WE will not provide cover in respect of any:

- a) person committing or condoning any act, omission or breach excluded by Exclusion 7.14 of the POLICY.
- b) CLAIM arising from or directly or indirectly attributable to or in consequence of:
  - i) any loss of money, negotiable instruments, bonds, coupons, currency, bank notes, stamps, cheques, bills of exchange, letters of credit or other instruments whether negotiable or not or whether matured or not or securities or documents evidencing title to or ownership of land or any other property; or
  - ii) any actual or alleged fraudulent or dishonest instruction or direction; or use of electronic equipment, including but not limited to, telephony or the internet; resulting in:
    - (a) any unauthorised transfer, delivery or payment of, or dealing with, any money, land or other property; or
    - (b) any unauthorised reduction in the amount of any funds or other assets held by any person with any bank, building society or other institution or person having a responsibility for the maintenance or care of such funds or assets; or
    - (c) any adverse effect upon any right of any person to the payment of money.

The sub limit of liability for all such payments under this Extension is \$100,000. This sub limit forms part of, and is not payable in addition to, the INDEMNITY LIMIT.

### **3.13 Heirs, Estates and Legal Representatives**

WE agree to provide cover in respect of any Estate, heirs, legal representatives or assigns of any deceased or mentally incompetent INSURED in respect of CLAIMS resulting from the conduct of the PROFESSIONAL BUSINESS by such INSURED.

### **3.14 Intellectual Property**

WE agree to provide cover in respect of any CLAIM which would otherwise be excluded by Exclusion 6.12 of the Policy (Intellectual Property), provided that the liability incurred from the breach of intellectual property rights results directly from the provision of advice by the INSURED in the conduct of the PROFESSIONAL BUSINESS.

### **3.15 Joint Venture Liability**

WE agree to provide cover in respect of any CLAIM against the INSURED resulting from its conduct of the PROFESSIONAL BUSINESS as a joint venturer.

WE will not cover any liability of the joint venture partner.

### **3.16 Loss of Documents**

WE agree to provide cover in respect of any costs and expenses incurred by the INSURED in replacing or restoring LOST DOCUMENTS for which the INSURED is legally responsible if:

- a) The loss of the DOCUMENTS is first discovered during the INSURANCE PERIOD;
- b) The INSURED notifies US within 30 days of discovery of the loss of the DOCUMENTS;
- c) The INSURED provides US with bills and accounts substantiating the costs and expenses incurred by the INSURED in replacing or restoring the LOST DOCUMENTS; and
- d) WE approve or a competent person nominated by US approves the bills and accounts.

OUR total liability under this extension for any one claim and in the aggregate from all claims during the INSURANCE PERIOD shall not exceed \$500,000. This sub-limit is part of and not in addition to the INDEMNITY LIMIT. A separate DEDUCTIBLE of \$2,000 or amount shown in Item 6 headed DEDUCTIBLE (whichever is the lesser) will apply to each loss under this extension.

#### **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** The construction and interpretation of the POLICY shall be determined in accordance with the law of the jurisdiction in which it is issued.
- 4.3** 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.
- 4.4** 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** CLAIM means:
- a) any civil proceeding brought by a third party against the INSURED for compensation; or
- b) a written or verbal demand by a third party for monetary damages or monetary relief.
- 5.2** DEDUCTIBLE means the amount specified in Item 6 of the Schedule or otherwise specified in any extension to this POLICY.
- 5.3** DEFENCE COSTS means any necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a CLAIM covered by the POLICY but not loss of earnings of profit.
- 5.4** DOCUMENTS means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bearer bonds or coupons, stamps, bank or currency notes, money or any negotiable instrument.
- 5.5** EMPLOYEE means any person employed by the INSURED under a contract of service or apprenticeship on a full-time, part-time or seasonal basis during or prior to the commencement of the INSURED PERIOD.
- 5.6** FAMILY MEMBER means the INSURED's:
- a) Legal or defacto spouse, domestic partner or companion;
- b) Parent, or the parent of the INSURED's legal or defacto spouse, domestic partner or companion;
- c) Children and children of (a) and (b) above;



d) Siblings

**5.7** INCIDENT means a matter in which the INSURED's reputation and skill in the conduct of the PROFESSIONAL BUSINESS is brought into question.

**5.8** INDEMNITY LIMIT means the amounts specified in Item 5 of the Schedule.

**5.9** INQUIRY means any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of the PROFESSIONAL BUSINESS of the INSURED.

**5.10** INSURANCE PERIOD means the period specified in Item 4 of the Schedule.

**5.11** INSURED means:

- a) The person, partnership, company, SUBSIDIARY or other entity, specified as the INSURED in the Schedule; and
- b) Any person who is during the INSURANCE PERIOD 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 PROFESSIONAL BUSINESS.

**5.12** LOST DOCUMENTS means DOCUMENTS that cannot be located following a diligent search, and documents that have been destroyed or damaged.

**5.13** 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.

**5.14** POLLUTANTS means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes

**5.15** PROFESSIONAL BUSINESS means the PROFESSIONAL ACTIVITY set out in the Schedule but shall only include services of:

- a) Accounts Preparation and Bookkeeping
- b) Audit Work (non publicly listed companies)
- c) Business and Management Consulting
- d) Insurance Agency referral work
- e) Advice and Training on Accounting software
- f) Superannuation Fund Accountancy per (a) above
- g) Tax Advice.

Unless otherwise expressed in the Schedule the following activities are excluded from PROFESSIONAL BUSINESS:

- i) Business Valuations;
- ii) Audit Work for Publicly Listed Companies;
- iii) Insolvency/Receivership/Liquidation.

**5.16** PROPOSAL means the written proposal made by the INSURED to US together with any attachments.

**5.17** PUBLIC RELATIONS EXPENSES means any reasonable fees, costs and expenses of a public relations consultant retained with OUR prior written consent (which shall not be unreasonably delayed or withheld).

**5.18** RETROACTIVE DATE means the date specified in Item 7 of the Schedule but no earlier than the commencement of the INSURED's business specified in the Schedule but only while in the course of the PROFESSIONAL BUSINESS.

**5.19** 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 50% of the issued voting shares of such entity.

**5.20** WE/US/OUR means DUAL New Zealand Limited as agent of the Underwriters named in the Schedule under the heading "Underwriters".

## **Section 6: EXCLUSIONS**

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

### **6.1 Asbestos**

Any CLAIM or 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 Associates**

- a) Any CLAIM by, on behalf of or for the benefit of any INSURED;
- b) Any CLAIM by, on behalf of or for the benefit of any SUBSIDIARY; or
- c) Any CLAIM by, on behalf of or for the benefit of any FAMILY MEMBER of the INSURED, unless the FAMILY MEMBER is acting without any prior direct or indirect solicitation or co-operation from the INSURED; or
- d) Any CLAIM by, or on behalf of any ASSOCIATED COMPANY, nominee or trustee of the INSURED.

irrespective of the capacity in which the CLAIM is brought.

For the purpose of this Exclusion the term ASSOCIATED COMPANY means any company named in the PROPOSAL and in which the COMPANY owns on or before the inception of the INSURANCE PERIOD more than or equal to 25% of the issued and outstanding voting shares, either directly or indirectly through one or more of its SUBSIDIARIES.

### **6.3 Assumed Liability/Contractual Liability**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of:

- a) any duty or obligation assumed by the INSURED by way of warranty, guarantee, indemnity, contract or agreement, unless the INSURED would have incurred the liability in the absence of such warranty, guarantee, indemnity, contract or agreement.
- b) the INSURED, without OUR written consent, has surrendered or waived any right of contribution or indemnity to which the INSURED might otherwise have been entitled.

### **6.4 Bodily Injury**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the death of, or bodily injury or illness to, any person, unless it results directly from the INSURED's conduct of the PROFESSIONAL BUSINESS.

### **6.5 Directors & Officers**

Any CLAIM alleging a breach by an INSURED of a duty owed or any alleged wrongful conduct in the capacity of a director or officer of a company, association or other legal entity.

## 6.6 Disclosure of Commissions / Conflict Of Interest

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of:

- a) any failure of any INSURED (or any of its agents) to disclose or adequately disclose any:
  - i) conflict of interest; or
  - ii) commissions, fees or other remuneration or benefits received or that may be received or payable.
- b) any transaction in which any INSURED (or any of its agents) has a direct or indirect beneficial ownership or interest as a buyer or seller of securities. This exclusion does not apply to a direct or indirect beneficial interest or shareholding of less than 5% in a public listed company.

## 6.7 Excluded Activities

Any CLAIM arising from or directly or indirectly attributable to or in consequence of:

- a) Mortgage Broking;
- b) Advice in connection with any investment which has not received confirmation from the Commissioner of Taxation and/or the Inland Revenue Department and/or the Australian Taxation Office of any allowable taxation concessions or deductions;
- c) Financial Planning, Investment or Financial advice or funds management, whether or not it requires the individual to be an Authorised or Registered person under the Financial Services Act.
- d) Advice or consulting in connection with mergers and acquisitions of entities or businesses or parts thereof;
- e) The sale or promotion of any contributory mortgage or contributory scheme including, acting as promoters, acting as a broker, and any advice in relation to investment in a contributory mortgage or contributory scheme.

## 6.8 Financial Conduct, Advice and Performance

Any CLAIM arising from or directly or indirectly attributable to or in consequence of:

- a) any actual or alleged dealings of any nature by which it is sought to affect the price of, or market in, any shares or debentures of any company or commodity or currency, or of any negotiable instrument, other than dealings carried out in accordance with the laws, rules and regulations applicable to such dealings;
- b) any advice, recommendation, guarantee or representation by the INSURED as to the performance of any investment or product;
- c) a failure by the INSURED to warn of the risks of market fluctuation of any investment.

## 6.9 Fines and Penalties and Non-Compensatory

- a) Taxes, fines or penalties;
- b) Punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment;
- c) Any demand for the repayment or refund by the INSURED to a third party of professional fees paid to the INSURED for the provision of professional or other services by way of damages or otherwise.

#### **6.10 Fraud and Dishonesty**

- a) Any CLAIM arising from or directly or indirectly attributable to or in consequence of any actual or alleged act or omission by the INSURED, its consultants, sub-contractors or agents which was reckless, fraudulent, dishonest, malicious or criminal.
- b) Any CLAIM arising from or directly or indirectly attributable to or in consequence of any wilful breach of any statute, regulation, contract or duty by the INSURED, its consultants, sub-contractors or agents.

#### **6.11 Insolvency Exclusion**

WE will not provide cover for the INSURED, including for DEFENCE COSTS or other loss, in respect of any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the insolvency of any person or entity including but not limited to the INSURED, the INSURED's client or clients, any authorised deposit taking institution, bank or banking firm, or any broker or dealer in securities or commodities, or the inability of any such person or entity to make payment or settle or effect any transaction of any kind provided that this Exclusion shall not apply to any breach of professional duty of an INSURED in the conduct of the PROFESSIONAL BUSINESS.

#### **6.12 Intellectual Property**

Any CLAIM arising from infringement or alleged infringement of any intellectual property right including but not limited to copyright, patent, trademark, privacy, plagiarism, design or confidentiality.

#### **6.14 Jurisdiction**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of any legal action or regulatory proceedings:

- a) first brought in a Court of Law outside the jurisdiction of the countries specified in the Schedule; or
- b) brought in a Court of Law within the jurisdiction of the countries specified in the Schedule to enforce a judgement of a Court of Law outside the jurisdiction of the countries specified in the Schedule whether by way of reciprocal agreement or otherwise; or
- c) in which proper law to be applied to the issues or any of them is that of a country other than the countries specified in the Schedule.

#### **6.15 Liability as Occupier**

Any CLAIM or liability arising from or incurred or alleged to have been incurred in connection with the use, occupation, ownership or lease of any real estate or personal property (whether mobile or immobile), by or on behalf of the INSURED.

#### **6.16 Liability to EMPLOYEE's**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of bodily injury, mental injury, sickness, disease or death of any EMPLOYEE or damage to or destruction of any property of any EMPLOYEE, including loss of use.

#### **6.17 Nuclear**

Any CLAIM or liability arising from or directly or indirectly attributable to or in connection with:

- a) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising therefrom or any consequential loss; or
- b) Any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from:

- i) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- ii) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### **6.18 Pollution**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the actual or alleged seepage, release or discharge of POLLUTANTS.

#### **6.19 Prior knowledge**

- a) Any CLAIM 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 a CLAIM;
- b) Any CLAIM 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.
- c) Any CLAIM that was first made, threatened or intimated against the INSURED prior to the INSURANCE PERIOD.
- d) Any CLAIM arising from any litigation or other proceeding pending or begun before the commencement of this POLICY.

#### **6.20 Product Liability**

Any CLAIM or liability arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the INSURED or the failure of such goods or products to perform in any way.

#### **6.21 Property Damage**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the loss or destruction of, or damage to, any property, unless it results directly from the INSURED's conduct of the PROFESSIONAL BUSINESS.

#### **6.22 Trading Debts**

Any CLAIM arising from or directly or indirectly attributable to any trading debt or business liability of the INSURED or any guarantee given by the INSURED for a debt.

#### **6.23 War/Terrorism**

Any CLAIM or 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 purposes 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 the lawyers and investigators and others appointed by US in relation to any CLAIM or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the CLAIM 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 CLAIM 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 CLAIM. The INSURED will allow the solicitor to disclose to US and OUR reinsurers any information obtained in the course of his duties,
- d) 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 CLAIM, and such action by US will not be regarded in any way as prejudicing the INSURE'S or OUR position and will not be an admission of the INSURED'S entitlement to indemnity.

### 7.2 Cover

The cover provided by the POLICY shall extend to the conduct of the PROFESSIONAL BUSINESS by the INSURED anywhere within the territorial limits specified in the Schedule.

### 7.3 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) and / or under the equivalent legislation in any other jurisdiction to which cover applies, 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.

### 7.4 INSURED's right to contest

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

### 7.5 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 CLAIM covered under this POLICY. WE shall have the right to appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM.
- b) WE shall have full discretion in managing any negotiation or proceeding as to the resolution of such CLAIM. WE shall be entitled to settle a CLAIM if WE so choose.
- c) The INSURED agrees not to admit liability for or settle any CLAIM or loss, make any admission, offer any payment or assume any obligation in connection with any CLAIM or loss, or incur any DEFENCE COSTS in connection with any CLAIM, 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 CLAIM 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.

## 7.6 Notification

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

- a) any CLAIM; or
- b) any incident of which the INSURED becomes aware, and which the INSURED or a reasonable INSURED should consider may give rise to a CLAIM.

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

Notice of any CLAIM or loss shall be given to DUAL Australia in writing via:

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

For the purpose of this clause only, "DUAL Australia" means:

The Claims Manager  
DUAL Australia Pty Limited  
Level 6  
160 Sussex Street  
Sydney NSW 2000  
Australia

[claims@dualaustralia.com.au](mailto:claims@dualaustralia.com.au)

## 7.7 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 of 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 a CLAIM or INQUIRY, the INDEMNITY LIMIT under this POLICY in respect of that CLAIM or inquiry shall be reduced by any amount paid by US (or member company, associate or affiliate) under such other insurance.

## 7.8 Senior Counsel

- a) WE shall not require the INSURED to contest a CLAIM nor shall the INSURED require US to contest a CLAIM, 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 CLAIM 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.

## **7.9 Severability and Non-Imputation**

Except for Exclusion Clause 6.19, 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 Clause 5.11(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 PROFESSIONAL ACTIVITY.

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

WE may not cover the INSURED for any CLAIM 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
- 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:

Lloyds 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, "this Insurance" means the POLICY, "you" means the INSURED.

#### 8.5 Governing Law and Jurisdiction

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

#### 8.7 Several Liability Notice

The subscribing insurers' 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 insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

#### 8.8 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 CLAIM 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 CLAIM 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 CLAIM. Subject to clause (c) below, WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM 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, 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) For the purposes of determining the DEDUCTIBLE(S) applicable to any CLAIM(S) covered by the POLICY, all CLAIMS arising from the same breach of professional duty, or related breaches of professional duty, shall be regarded as one CLAIM.

## **9.2 Indemnity Limit**

Subject to Clause 3.7 – Defence Costs in Addition -, OUR total liability under the POLICY for any one CLAIM excluding DEFENCE COSTS and in the aggregate from all CLAIMS excluding DEFENCE COSTS shall not exceed the INDEMNITY LIMIT. For the purposes of determining the INDEMNITY LIMIT available for each CLAIM covered by the POLICY, all CLAIMS arising from the same breach of professional duty, or related breaches of professional duty, shall be regarded as one CLAIM.

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

## **Section 10 AUTHORITY**

**10.1** This is to certify that in accordance with the authorisation 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.