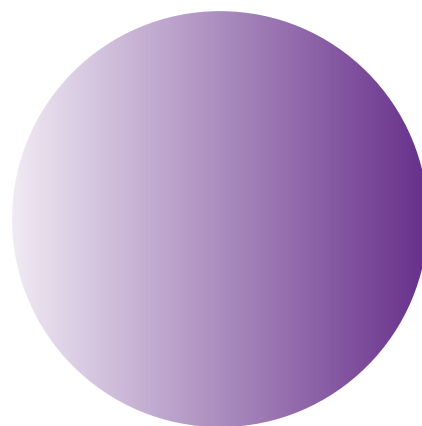
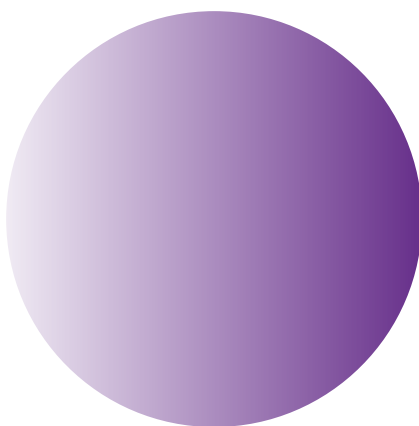
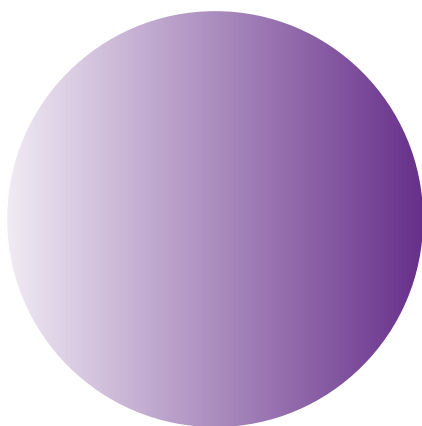
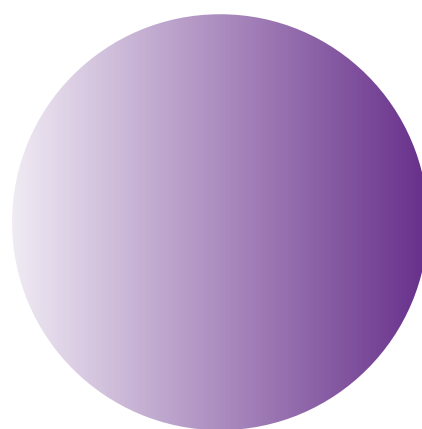
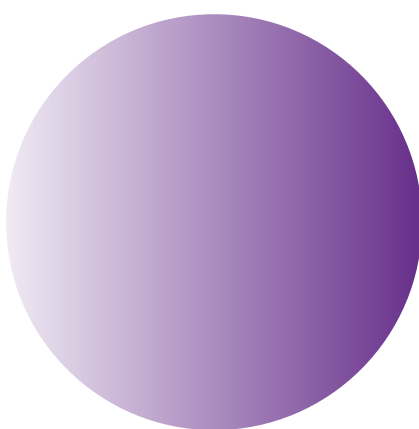
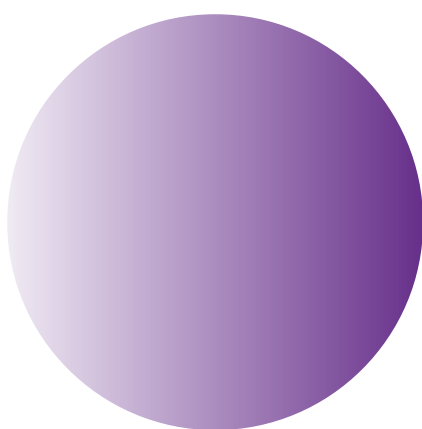


Zurich Combined Liability Package Insurance

Policy Wording



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Zurich Combined Liability Package Insurance

About Zurich

Zurich New Zealand is proud to present the Zurich Combined Liability Package Insurance product.

The insurer of this product is Zurich Australian Insurance Limited (ZAIL incorporated in Australia) trading as Zurich New Zealand. In this policy wording, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is a member of the Swiss-based Zurich Group, offering an extensive range of general insurance, investment, life insurance and superannuation products and services for individuals, small to medium sized businesses, larger companies and multi-national corporations.

We italicise terms in this document, to show that words are abbreviations or have a particular defined meaning. You should refer to the Definition section of this document on page 3 to obtain the full meaning of such terms.

We have also provided additional Definitions in some individual cover sections within the policy.

How to apply for this insurance

Zurich in New Zealand distributes its products through insurance brokers or advisers. Insurance brokers or advisers are qualified professionals who are able to access a wide selection of insurance products from which they are able to recommend those best suited to *your* insurance requirements, after taking into account *your* individual circumstances.

Throughout this document when we are referring to *your* insurance broker or adviser, we may simply refer to them as *your* intermediary. If *you* are interested in buying this product, *you* should contact *your* intermediary. *Your* intermediary can help *you* tailor *your* insurance policy to best suit *you*. If *you* then decide to apply for insurance and we accept *your* proposal, we will issue *you* with a policy *schedule*, which is a document that sets out the details of *your* particular insurance policy with us.

If *you* have any inquiries about this product, *you* should speak to *your* intermediary who should be able to provide *you* with all the information and assistance *you* require. You can contact us at the address or telephone number shown on the back cover of this policy. However, we are only able to provide general information about the product and are not able to discuss *your* personal insurance needs.

Our contract with you

Your policy is a contract of insurance between *you* and Zurich and contains all the details of the cover that we provide.

Your policy is made up of:

- the policy wording. This is common to all customers who buy our Zurich Combined Liability Package Insurance product. It tells *you* what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the proposal, or declaration, which is the information *you* provide to us when applying for insurance cover;
- *your* most current policy schedule issued by us. The policy schedule is a separate document unique to *you*, which shows the insurance details relevant to *you*. It includes any changes, exclusions, terms and conditions made to suit *your* individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in *your* policy *schedule* are insured.

This policy wording is used for any offer of renewal we may make. Please keep *your* policy in a safe place.

We reserve the right to change the terms of this policy wording where permitted to do so by law.

Duty of Disclosure

Before *you* enter into a contract of general insurance with us, *you* have a duty at common law to disclose to us every matter *you* know, or could reasonably be expected to know that a prudent insurer would want to take into account in deciding whether to insure *you* and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

You have the same duty to disclose those matters to us before *you* renew, extend, vary or reinstate a contract of general insurance. *Your* duty however, does not require disclosure of a matter:

- that diminishes the risk to be insured;
- that is of common knowledge;
- that we know or in the ordinary course of our business we ought to know;
- that we state to *you* that we do not want to know.

Non-disclosure or Misrepresentation

If *you* make a material misrepresentation to us, or if you do not comply with *your* duty of disclosure we may treat *your* policy as if it never existed.

Important Information

Some cover sections of this policy are 'Claims Made and Notified' liability insurance policy. It only provides cover if:

1. A claim is made against *you*, by some other person, during the period when the policy is in force; and
2. The claim arises out of an occurrence which takes place after the *retroactive date* stipulated in the policy *schedule*.

Headings

Headings have been included for ease of reference, but do not form part of the policy. Where any words are given special meaning in this policy, those words will, unless the context otherwise requires, have that same meaning wherever they may appear in the policy.

Our Agreement

Subject to the prior payment of or *your* agreement to pay the premium set out in the *schedule*, we agree with *you* to provide insurance as set out in this policy.

In issuing this policy, we have relied on the information contained in the proposal form and or any other information given by or on *your* behalf.

Definitions applying to all cover sections

When used in this policy, its *schedule* and its endorsements the following definitions shall apply:

Act of terrorism

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), which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Aircraft

aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

Computer equipment

computer equipment means data or part of data, computer hardware, operating system, computer network, equipment, web sites, servers, extranet, software, applications software, computer chip including microprocessor chip and coded instructions as well as any new technology, product or service replacing or improving existing technology, product or service.

Excess

excess means the amount *you* first bear in relation to each *occurrence*. The *excess* applies to all amounts payable under this policy including the indemnity provided under additional payments under the General and Products Liability cover section.

Extended reporting period

extending reporting period means the Extended Reporting Period stated in the *schedule*.

Hovercraft

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.

Limit of liability

limit of liability means the Limits of Liability stated in the *schedule*.

North America

North America means:

- (a) the United States of America and Canada; and
- (b) any state or territory incorporated in, or administered by, the United States of America or Canada.

Period of insurance

period of insurance means the Period of Insurance stated in the *schedule*.

Pollutants

pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

Retroactive date

retroactive date means the Retroactive Date stated in the *schedule*.

Schedule

schedule means the Schedule attaching to and forming part of the policy, including any *schedule* substituted for the original *schedule*.

Subsidiary company

subsidiary company means a company or legal entity in respect of which *you* directly or indirectly:

- (a) control or controlled the composition of the board of directors; and/or
- (b) control or controlled more than half of the voting power; and/or
- (c) hold or held more than half of the issued share capital or other ownership of the entity,

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated within *your* accounts pursuant to the Company Law or the applicable New Zealand Accounting Standard.

Vehicle

vehicle means any machine and attachments thereto including a trailer designed to travel on wheels or on self-laid tracks and to be propelled by other than manual or animal power.

Watercraft

watercraft means any vessel, craft or thing made to or intended to float on or in or travel on or through or under water.

You, Your, Insured

you, your, insured means:

- (a) the Insured named in the *schedule*;
- (b) *subsidiary companies* of the Insured named in the *schedule* now or hereafter formed or constituted and incorporated in New Zealand.

General Exclusions applying to all cover sections

We will not pay anything in respect of:

1. Asbestos

any liability of whatsoever nature in connection with, directly or indirectly caused by or contributed to by or arising from asbestos or asbestos products or asbestos contained in any products.

2. War, Act of terrorism

any liability caused by or arising out of the following regardless of any other cause or event contributing concurrently or in any other sequence by:

- (a) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- (b) any *act of terrorism* or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

3. Radioactive contamination

any:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion combustion shall include any self-sustaining process of nuclear fission;
- (b) nuclear weapons material.

4. Aggravated, Punitive or Exemplary damages, Fines or Penalties

any fines, penalties, exemplary, punitive, liquidated or aggravated damages, unless express cover is provided within each cover section.

5. Building defects

any liability of whatsoever nature in connection with, any building or structure being affected by:

- (a) moisture or water or the penetration of external moisture or water;
- (b) the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms;
- (c) the failure of any building or structure to comply with or perform to the requirements of any building code or to meet the level of performance, quality, fitness or durability of its intended purpose.

In addition we shall not be liable for any costs or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or similar or like forms.

6. Tobacco and tobacco smoke

the inhalation or ingestion of, or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

7. Material change in the nature of your business

any change in the nature of *your business* which:

- (a) occurred during the currency of this policy; and
- (b) was known to an *insured person*, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of *personal injury* or *property damage* for which indemnity is provided under this policy.

8. Information technology hazards

any liability caused or contributed by or arising directly or indirectly out of or in connection with any:

- (a) total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation, misappropriation or other use of *computer equipment*;
- (b) error in creating, amending, entering, directing, deleting, or using *computer equipment*;
- (c) total or partial inability or failure to receive, send, access or use *computer equipment* for any time or at all.

General Conditions applying to all cover sections

1. Assignment

This policy and any rights thereunder shall not be assigned without our prior written consent.

2. Authorisation

With the issuance of this policy, *you* agree to act on behalf of any *subsidiary company* with respect to giving or receiving any notice of claim or termination, payment of premiums and receiving any return premiums that may become due under this policy, acceptance of endorsements, and giving or receiving of any other notice provided for in this policy, and each *subsidiary company* agrees that *you* shall act on their behalf.

3. Consolidation or Merger

If *you* acquire by merger, consolidate with, or are merged into or acquired by, any other entity after the inception date of the *period of insurance*, *you* must give written notice of such merger, consolidation or acquisition to us as soon as practicable together with such additional information as we may require. We shall be entitled to charge and receive payment of any reasonable additional premium that may be required.

4. Fraudulent claim

If *you* or an *insured person* or anyone acting upon the *insured person's* behalf is in any way fraudulent in obtaining any benefit under this policy, we may deny liability in respect of such claim or event and cancel the policy pursuant to General Conditions applying to all cover sections 7. 'Cancellation'.

5. Notice

Every notice or communication to us shall be in writing and sent to our office where the policy was issued.

6. Proper law and Jurisdiction

- (a) The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with New Zealand law.
- (b) In the event of any dispute arising under this policy including, but not limited, to its construction and/or validity and/or performance and/or interpretation, *you* will submit to the exclusive jurisdiction of any competent Court in New Zealand.

7. Cancellation

- (a) *You* may cancel this policy at any time by giving notice in writing to us;
- (b) We may cancel this policy at any time by giving notice in writing to *you*, such cancellation to take effect after 30 days from the time of notification received by *you*;
- (c) Upon cancellation by *you* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*;
- (d) Upon cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

8. Payments in respect to Goods and Services Tax

All sums insured in this policy (except for the excess) exclude GST where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to claim payments. However, this does not apply to the excess which is GST inclusive.

9. Waiver of privilege

If we instruct any lawyer to investigate or defend any claim against any *insured person*, *you* authorise the lawyer to provide us with any documents, information or advice in respect of the claim, including in relation to indemnity, and *you* waive any privilege to the extent necessary to give full effect to our entitlement in this respect.

10. Singular and Plural

Except where the context otherwise requires, a reference to the singular includes the plural and vice versa.

11. Change of risk

Every change materially affecting the facts or circumstances degree or amount of risk existing at the commencement of this insurance or at any subsequent renewal date shall be notified in writing to us as soon as such change comes to the notice of *you* or any of *your* officers or representatives. On receipt of such notice we may vary the terms of this policy and/or charge such additional premium as we may determine appropriate in the circumstances.

12. Severability and non-imputation

Where this policy insures more than one party, the application for insurance is construed as a separate application by each *insured*. When determining whether coverage is available under this policy:

- (a) any failure by an *insured* to comply with the Duty of Disclosure shall not be imputed to any other *insured*, where that *insured* is innocent of and had no prior knowledge of the failure; and
- (b) for the purposes of the exclusions, no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

Section 1 – General and Products Liability cover section

Definitions

When used in this policy, its *schedule* and its endorsements the following definitions shall apply:

Business

business means all *your* activities and operations stated in the *schedule* and includes the ownership and tenancy of premises, private work carried out with *your* consent by *your* employees for any director or senior executive officer of *you*, and the provision or management of canteen, social or sports organisations for *your* employees and internal first aid, fire and ambulance services.

Insured person

insured person means *you* and/or the parties described under the heading Cover for Others.

Occurrence

occurrence means an event or series of events including continuous or repeated exposure to substantially the same general conditions which results, unexpectedly and unintentionally from *your* standpoint, in *personal injury* or *property damage* during the *period of insurance*. All *personal injury* or *property damage* happening during the *period of insurance* attributable to one source or to a common cause or to the same general conditions shall be deemed to be one *occurrence*.

Personal injury

personal injury means:

- (a) bodily injury, death, sickness, disease, shock, fright, mental anguish or mental injury or humiliation;
- (b) false arrest, false detention, wrongful imprisonment, malicious prosecution;
- (c) wrongful entry or wrongful eviction or other invasion of privacy;
- (d) defamation, libel and slander;
- (e) assault and/or battery committed by an *insured person* whilst engaged in *your business* activities and for the purpose of preventing or eliminating danger to persons or property.

Products

products means anything which is or is deemed to have been manufactured, grown, extracted, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by *you* (including packaging or containers) in the course of the *business* and after it has ceased to be in *your* physical or legal control.

Property damage

property damage means:

- (a) physical injury to or loss of or destruction of tangible property including loss of use of that property at any time resulting therefrom;
- (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.

Territorial limits

territorial limits means anywhere in the world (subject to the limitations set out in Exclusions 14. and 19.).

Tool of trade

tool of trade means the use or operation of a *vehicle* and/or equipment, tool or apparatus which forms part of the *vehicle*, but only whilst engaged in and undertaking its designed purpose of digging, scraping, shovelling, grading, boring, drilling, compacting, harvesting, ploughing, shredding, lifting, clearing, levelling, hosing, pumping, spraying, vacuuming or suction activities.

Insuring Clause

Subject to the *limit of liability* and the terms and conditions of this policy, we will pay all sums which the *insured person* shall become legally liable to pay as compensation in respect of:

- *personal injury*;
- *property damage*;

happening during the *period of insurance* within the *territorial limits* as a result of an *occurrence* in connection with *your business* or *products*.

Extensions of cover applying to this cover section

Additional Payments

In addition to the *limit of liability*, we will pay as additional payments all:

- (a) reasonable legal costs and expenses incurred by the *insured person* with our written consent in the defence of any claim;
- (b) expenses incurred by any *insured person* for first aid to others;
- (c) reasonable expenses incurred by *you* for the temporary repair or shoring up or preservation of property which has been damaged;
- (d) interest accruing after entry of judgment against the *insured person* until we have paid, tendered or deposited in court such part of the judgment as does not exceed the *limit of liability*,

resulting from an *occurrence* which is otherwise covered by this policy, provided that:

- (i) if a payment exceeding the *limit of liability* has to be made to dispose of a claim, our liability to pay any additional payments shall be limited to that proportion of those amounts as the *limit of liability* bears to the amount paid to dispose of the claim;
- (ii) in the event of a claim covered by this policy, being made against an *insured person* in any Court or before any other legally instituted body in *North America*, the *limit of liability* shall apply to such claim inclusive of all additional payments;
- (iii) we shall not be obligated to pay any compensation or additional payments, or judgment or to defend any suit after our *limit of liability* has been exhausted by payment of claims, judgments and/or settlements.

Cover for Others

The cover under this policy is extended to the following:

- (a) any of *your* directors, partners, executive officers or employees but only whilst acting within the scope of their duties in such capacity;
- (b) any office bearer or member of the canteen, social, or sports organisations for *your* employees and internal first aid, fire or ambulance services formed with *your* consent, but only whilst acting within the scope of their activities in such capacity;

- (c) any of *your* directors, partners or senior executives in respect of private work undertaken by *your* employees for such directors, partners or senior executives;
- (d) any principal but only for its liability for *personal injury* or *property damage* that is directly caused by *your* performance of the work for that principal and only to the extent that we would cover *you* under this policy for *your* liability to that principal had the principal made a claim against *you* in respect of the circumstances giving rise to the principal's liability,

Provided that:

the work was carried out by *you* in an attempt to comply with a contract to perform work, that was made between *you* and the principal; and

our liability shall not exceed the lesser of the minimum amount of liability insurance cover required by the contract to perform the work and the *limit of liability*; and

for avoidance of doubt it is further provided that where a principal makes a claim under this clause, the 'Employer's liability' exclusion shall apply so that we will not pay for that principal's liability for *personal injury* to any person in the service of either:

- (i) *you*; or
- (ii) that principal.

Forest and Rural Fire Act

The cover under this policy is extended to indemnify *you* for all sums that any *insured person* shall become legally liable to pay for:

- (a) costs agreed by, or levies imposed, and apportioned to that *insured person* by any Fire Authority under sections 46 and 46A of the Forest and Rural Fires Act 1977; and
- (b) costs and losses recoverable from that *insured person* under section 43(1) of the Forest and Rural Fires Act 1977,

arising from fire or threat of fire happening during the *period of insurance* in New Zealand as a result of an *occurrence* in connection with *your business*.

Provided that:

- (i) our liability under this extension shall not exceed the sub-limit stated in the *schedule*; and
- (ii) *you* shall bear the amount of the excess shown in the *schedule* in the aggregate for all sums payable arising out of any *occurrence* or a series of *occurrences* consequent on or attributed to one source or original cause.

This extension shall apply:

- (a) whether *property damage* has happened or not;
- (b) to any *vehicle* (in so far as liability covered by this extension is not otherwise insured).

Punitive and Exemplary Damages

The cover under this policy is extended to indemnify *you* for all sums that any *insured person* shall become legally liable to pay for punitive or exemplary damages arising from *personal injury* subject to:

- (a) the claim must first be made against an *insured person* during the *period of insurance*, and notified by *you*, to us during the *period of insurance*. A claim is first made when, a third party first indicates to an *insured person* that the third party is holding the *insured person* responsible, in part or in whole, for the *personal injury*;
- (b) the limit of cover shall not exceed the sub-limit stated in the *schedule*;
- (c) *you* shall bear the amount of the excess shown in the *schedule*.

We will also indemnify *you* against such claims for punitive and exemplary damages made against an *insured person* after the *period of insurance*. However, the claims must arise from facts or circumstance that *you* had notified to us during the *period of insurance*.

In this extension of cover, *personal injury* means bodily injury, sickness, disability or disease. It includes death resulting from bodily injury, sickness, disability or disease. It also includes mental disability, mental shock, mental anguish and mental injury.

This extension will not cover any of the following:

- (i) claims made, threatened, or in any way indicated against any *insured person* and not notified to us, prior to the start of the *period of insurance*;
- (ii) claims arising from a fact or *occurrence* that at the time the *period of insurance* starts, an *insured person* knew, or should have known, may give rise to a claim against an *insured person*;
- (iii) claims notified or arising out of *occurrences* notified, or which should have been notified, under any previous policy of insurance held by *you*;
- (iv) claims arising out of any claim or *occurrence* noted on the proposal or any other information *you* provided to us for the *period of insurance* or for any previous *period of insurance*;

- (v) claims arising from *personal injury* to any employee in or arising from their employment with *you*;
- (vi) claims brought against an *insured person* outside New Zealand or any settlement or compromise of a claim entered into outside New Zealand;
- (vii) claims arising out of any statement, action or omission by an *insured person* made, done or omitted outside New Zealand;
- (viii) claims as a result of any judgement entered in any court, other than a New Zealand Court applying the law of New Zealand, or any debt incurred by *you* as the result of such a judgement.

For the purposes of this extension only, General Exclusions applying to all cover sections 4. 'Aggravated, Punitive or Exemplary damages' in this policy is amended by, deleting the words 'punitive and exemplary damages'.

Product Recall Expenses

Notwithstanding Exclusion 7. 'Recall of products' of this cover section, we will indemnify *you*, up to the sub-limit expressed in the policy *schedule*, which *you* shall have paid as *product recall expense* and which this policy applies, caused by an *occurrence*, as the result of a claim first made against *you* and reported to us during the *period of insurance*. This insurance does not apply to *occurrences* before the *retroactive date* shown in the policy *schedule* or *occurrences* after the *period of insurance*. A claim shall be deemed to have been made only when written notice of such claim is received by us.

Limit of Liability

Regardless of the number of:

1. *insured persons* under this extension of cover; or
2. persons or organisations who sustain expenses; or
3. types, classes or models of *products* simultaneously recalled,

our liability is limited to the *ultimate net loss* in excess of *your* excess payable and then for an amount not exceeding 90% of the *ultimate net loss* as finally determined. The remaining 10% is warranted by *you* to be retained for *your* account and is deemed uninsured.

The *limit of liability* as the result of any one *occurrence* shall be as stated in the policy *schedule*. For the purpose of determining our liability, all *products recall expense* incurred in the simultaneous recall of any types, classes or models of the same product shall be considered as arising out of one *occurrence*.

There is no limit to the number of payments resulting from one or more *occurrences* which may be made during the *period of insurance*, except that our maximum liability paid or payable hereunder during the *period of insurance* shall not exceed the sub-limit stated in the *schedule*.

Territorial Limit

Notwithstanding Exclusion 19. 'Territorial Limits' of this cover section, this extension of cover applies only to *product recall expense* incurred in New Zealand, during the *period of insurance* for the recall of *your products* which were manufactured, sold, handled or distributed no earlier than twelve (12) months prior to the inception of this extension of cover.

Definitions

When used in this Extension of Cover:

Product Recall Expense

product recall expense means the reasonable and necessary costs incurred by *you* for:

- (a) communications including radio and television announcements and printed advertisements;
- (b) the cost of shipping *your products* from any purchaser, distributor or user to the place or places designated by *you*;
- (c) the cost of hire of necessary, additional persons other than *your* regular employees;
- (d) remuneration paid to regular, hourly employees (other than salaried employees) to *you* at basic rates for necessary straight time or overtime, if required;
- (e) expenses incurred by employees for transportation and accommodation where necessary;
- (f) the extra cost for rent or hire of additional warehouse or storage space,

but only when such costs are incurred exclusively for the purpose of recalling *your products*.

Occurrence

occurrence means in this extension of cover, the ascertainment that the use or consumption of *your products* that has resulted or may result in bodily injury, sickness, disease or death of any person or physical injury to or destruction of tangible property which results in the necessity of recovering possession or control of *your products* from any purchaser, distributor or user, or the destruction of such products, but only because of:

- (a) the accidental omission of a substance in the manufacture of *your products*; or
- (b) the accidental introduction or the accidental substitution of a deleterious substance in the manufacture of *your products*; or
- (c) error or deficiency in the manufacture, design, blending, mixing, compounding or labelling of *your products*, but only if such error or deficiency is known or recognised as such in the industry at the time of processing or packaging.

It is specifically agreed that recall by ruling of a federal, state, or other regulatory body or official is also included in the definition of *occurrence* but the reasons for which ruling must meet the requisites of (a), (b) or (c) under 'Occurrence' above.

Ultimate Net Loss

ultimate net loss means the sum actually paid or payable in cash in settlement or satisfaction of *product recall expense* incurred by *you* for the recall of *your product* after making proper deduction for all recoveries and salvages collectible.

Exclusions

In addition to the standard policy exclusions and apart from Exclusion 7. 'Recall of products' of this cover section, this extension of cover does not apply to expenses incurred by *you* for the *recall of product* by reason of:

1. (a) their being kindred *products of yours*, or;
- (b) their being of the same trade or brand name but of different batches than that which has been determined to possible or likely become a cause of loss under this policy if *you* have represented at time of application for this policy that the products are identifiable by batch, code, or other means, or;
2. failure of the *your product* to accomplish their intended purpose, including any breach of warranty of fitness, quality, efficacy or efficiency; or

3. inherent deterioration, decomposition or transformation of the *your product* changes; or
4. loss of customer faith, or approbation, or any costs incurred to regain customer approval, or other consequential loss; or
5. redistribution or replacement of the recalled *products* by like *products*, or substitution therefore; or
6. changes in quality of the *product*, or any part thereof after packaging, or;
7. prior knowledge of *you* at the inception of this policy of any pre-existing condition of the *products* likely or possible becoming a cause of loss under this policy, or prior knowledge of any *insured person* defined herein as respect its participation in such recall of any pre-existing condition of the *products* likely or possibly becoming a cause of loss under this policy; or
8. circumstances that are a result of an arbitrary and capricious act by an *insured person* or by any regulatory official; or
9. misleading through use of existing label inventories, which are placed on containers or packages after the final date of a reasonable 'use interval' authorised by an agency of government or promulgation modified labelling regulation; or
10. disposal of withdrawn *products*; or
11. withdrawal of *product* without knowledge that use or consumption of the *product* will result in either a bodily injury or a damage to tangible property; or
12. a decrease in sales due to changes in population, customer tastes, economic conditions, seasonal sales variation, competitive environment, or removal of *your product* for reasons unrelated to a product defect; or
13. continued use of materials by an *insured person* that have been banned or declared unsafe by any authorised government entity; or
14. acts, errors or omissions of any of an *insured person's* employee with the prior knowledge of any of *your* officers or directors.

Limit of Liability

Our liability to pay compensation as a result of an *occurrence* shall not exceed the *limit of liability*.

Our total aggregate liability to pay compensation in respect of or in any way related to *products* shall not exceed the *limit of liability*.

Exclusions

We will not pay anything in respect of:

1. Employer's liability

- (a) *personal injury* to any person arising out of, or sustained in the course of, the employment of such person in the service of any *insured person*, or through the breach of any duty owed to that person, where any *insured person*:
 - (i) is indemnified or entitled to be indemnified (either in whole or in part and/or whether such insurance is limited in amount or not) in respect of claims for damages under a policy of insurance (which expression includes arrangements made by any insured person to provide accident insurance for any insured person's workers under a licence to self insure) arranged (whether by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
 - (ii) would have been indemnified or entitled to be indemnified (either in whole or in part and/or whether such insurance is limited in amount or not) had any *insured person* arranged a policy of insurance as required by such legislation.
- (b) mental anguish, mental injury, shock or fright suffered by any person arising out of, or in the course of, that person's employment by, or service to, any *insured person*.
- (c) *personal injury* arising out of the wrongful or unfair dismissal, denial of natural justice, harassment, libel, slander, defamation, misleading representation, misleading advertising or humiliation of, or discrimination against, any person while in any *insured person's* service, prospective employment or while employed by any *insured person*.

- (d) which indemnity previously would have been provided in whole or in part under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current *period of insurance* of this policy.
- (e) the imposition of any liability by the provisions of any workers' compensation legislation or accident compensation legislation or any industrial award, agreement or determination.

2. Vehicles

personal injury or property damage caused by or arising out of the ownership, use, possession, or control by any *insured person* of any *vehicle*:

- (a) which is registered; or
- (b) in respect of which registration is required by virtue of any legislation relating to vehicles.

Exclusion 2. does not apply to claims for:

- (i) *property damage* arising out of and during loading and unloading of goods to or from any *vehicle*;
- (ii) *property damage* caused by any *tool of trade* other than whilst in transit or whilst being used for transport or haulage.

3. Property in the physical or legal control

property damage to property owned by or in the physical or legal control of an *insured person*.

Exclusion 3. does not apply to *property damage* to:

- (a) personal effects of *your* employees;
- (b) premises leased or rented to *you*;
- (c) property, other than a *vehicle*, an *aircraft*, *watercraft* or *hovercraft*, not owned by but in *your* physical or legal control subject to a maximum of \$250,000 for any one *occurrence* and in the aggregate during any one *period of insurance*;
- (d) *vehicles* in a car park unless:
 - (i) the *vehicles* are owned or used by or on behalf of the *insured person*, or
 - (ii) the car park is occupied or operated by the *insured* for reward.

4. Property worked upon

property damage to that part of any property upon which an *insured person* is or has been working where *property damage* arises from the work of that *insured person*.

5. Faulty workmanship

the cost of performing, completing, correcting or improving any work done or undertaken by an *insured person*.

6. Damage to products

property damage to *products* if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

7. Recall of products

the withdrawal, recall, inspection, repair, adjustment, replacement, removal, disposal or loss of use of the *products* and/or the withdrawal or recall of any property of which such *products* form a part.

8. Products guarantee

any *products* warranty or guarantee given by *you* or on *your* behalf.

Exclusion 8. shall not apply to the requirements of any legislation as to product safety.

9. Professional liability

the rendering of or failure to render professional advice or service provided by an *insured person* or any error or omission connected therewith.

Exclusion 9. shall not apply in respect of professional advice or service about any *products*, which is not given for a fee.

10. Design, Specification, Formula

any design, plan, specification, formula or pattern provided by an *insured person* or any error or omission connected therewith.

Exclusion 10. shall not apply in respect of any design, plan, specification, formula or pattern about any *products*, which is not given for a fee.

11. Watercraft, Aircraft, Hovercraft

personal injury or property damage caused by or arising directly or indirectly out of or in connection with:

- (a) the ownership, use, maintenance, possession, operation, legal control, loading or unloading by an *insured person* or on behalf of an *insured person* of:
 - (i) any *watercraft* or *hovercraft*, except where such *watercraft* or *hovercraft* are owned and operated by others and used by an *insured person* for business entertainment;
 - (ii) any *aircraft*;
 - (iii) any property used for the purpose of an airport or any *aircraft* landing strip;
- (b) *your products* which an *insured person* knew or had reasonable cause to believe would be, or are installed in any *aircraft* or other aerial device.

12. Defamation, Libel, Slander

the publication or utterance of a defamation, libel or slander made, prior to the inception date of this policy or at the direction of an *insured person* with knowledge of the falsity thereof.

13. Advertising liability

any liability of whatsoever nature in connection with, directly or indirectly caused by or contributed from any publishing, advertising, broadcasting or television activities of or on *your* behalf.

14. Pollution

- (a) *personal injury or property damage* directly or indirectly arising out of the discharge, seepage, migration, dispersal, release or escape of *pollutants* into or upon any property, land, the atmosphere or any watercourse or body of water (including ground water);
- (b) *personal injury or property damage* directly or indirectly arising out of the discharge, seepage, migration, dispersal, release or escape of *pollutants* caused by any *product* that has been discarded, dumped, abandoned or thrown away by others;
- (c) the cost of removing, nullifying or cleaning up *pollutants*;
- (d) the cost of preventing the escape of *pollutants*.

Exclusion 14. (a) and (c) shall not apply where the claim arises from a sudden identifiable, unintended and unexpected event from *your* standpoint which takes place in its entirety at a specific time and place during the *period of insurance* and occurs outside of *North America*, however the total aggregate *limit of liability* during any one *period of insurance* shall not exceed the *limit of liability*.

15. Contractual liability

any liability or obligation assumed by an *insured person* under any agreement or contract except to the extent that:

- (a) the liability or obligation would otherwise have been imposed by law;
- (b) the liability or obligation arises from a provision in a contract for lease of real or personal property other than a provision which obliges *you* to effect insurance or provide indemnity in respect of the subject matter of contract;
- (c) the liability or obligation is assumed by an *insured person* under any warranty under the requirement of legislation in respect to product safety;
- (d) the liability or obligation is assumed under those agreements specified in the *schedule*.

16. Assault and battery

personal injury or property damage arising directly or indirectly out of assault and battery committed by an *insured person*.

Exclusion 16. will not apply when such assault and battery is committed for the purpose of preventing or eliminating danger to persons or property.

17. Intentional conduct

any alleged or actual fraudulent, dishonest, malicious, intentional or criminal act or omission of an *insured person*.

18. Loss of use

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

- (a) a delay in or lack of performance by or on behalf of an *insured person* of any contract or agreement;
- (b) the failure of the *products* to meet the level of performance, quality, fitness or durability expressly or implied warranted or represented by an *insured person*.

Exclusion 18. (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 *products* after such *products* have been put to use by any person or organisation other than *you*.

19. Territorial limits

any liability:

- (a) occurring in *North America*;
- (b) caused by or arising out of the *products* knowingly exported by an *insured person* or its agents to *North America*;
- (c) where claims are made upon an *insured person* outside New Zealand where the *insured person* is represented by a branch or company or firm or individual holding *your* power of attorney; or
- (d) where claims arise out of any contract entered into by an *insured person* under the terms of which work is to be performed outside New Zealand.

Exclusion 19. will not apply to:

- (i) *products* exported to *North America* without the knowledge of *you*, *your* agents or employees;
- (ii) *business* visits by executives and salespersons normally resident in New Zealand.

Standard Conditions

1. Reasonable care and precautions

- (a) *You* must exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition.
- (b) The *insured persons* shall take all reasonable care and precautions:
 - (i) to prevent *personal injury* or *property damage* losses;
 - (ii) to prevent the manufacture, sale or supply of defective *products*;
 - (iii) to comply with all statutory obligations, by-laws or regulations imposed by any public authority.
- (c) *You* shall at *your* own expense withdraw, inspect, repair, replace, trace, recall or modify any of the *products* containing any defect or deficiency of which *you* have knowledge or have reason to suspect.

2. Notice and proof of claim

Upon the discovery of any *personal injury* or *property damage* loss or circumstance giving rise or which may give rise to a claim (whether or not the *insured person* believes the claim amount might fall below the applicable excess) under this policy, the *insured persons* shall:

- (a) give notice in writing to us as soon as practicable after the *insured person* becomes aware of such loss or circumstance and within 30 days thereafter provide, at the *insured person's* own expense, a written statement detailing or relevant information;
- (b) advise of the cause and the amount of loss and any other proof or information with respect to the claim that may be reasonably required;
- (c) furnish to us details of any other insurance covering or which may cover the same loss;
- (d) take reasonable steps to prevent further loss;
- (e) at all reasonable times permit us or its agents to inquire into, investigate and examine the circumstances of any loss.

3. Liability not to be admitted

The *insured persons* shall not admit liability for or offer to or agree to settle any claim without our written consent. We shall be entitled to take over and defend, any claim with full discretion in the conduct of that claim.

4. Joint insured

Where *you* are comprised of more than one legal entity, information supplied to us shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to us or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such entities.

5. Subrogation

Any *insured person* shall at any time, at the request and expense of us, permit all reasonable steps required to enforce any rights to which we would be entitled.

6. Other insurance

If any *insured person* is entitled to indemnity under any other insurance policy, *you* must advise us of the particulars of that other insurance policy when making a claim.

7. Premium

Unless otherwise stated, the premium is adjustable. *You* shall, within 30 days after the expiry of each *period of insurance*, provide such information as we may require to adjust the premium. Any difference in premium shall be paid by or allowed to *you*, provided that the adjusted premium will not be less than any minimum premium specified in the *schedule*. *You* shall at all times allow us to inspect such records.

8. Cross liability

Subject to Standard Condition 4. 'Joint insured' for the purpose of this policy, when an *insured person* consists of more than one party, the *insured person* shall be considered as a separate *insured person* as though a separate policy had been issued to each of the said parties but nothing herein contained shall operate to increase our *limits of liability*.

9. Inspection and Audit

We shall be permitted but not obligated to inspect the *insured person's* property and operations at any reasonable time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an *insured person* or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation. We may examine and audit *your* books and records at any time during the policy period and within 3 years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

Section 2 – Employers Liability cover section

Definitions

When used in this policy, its *schedule* and its endorsements the following definitions shall apply:

Damages

damages means the total amount which *you* become legally obligated to pay on account of all claims, investigations, inquiries, administrative or regulatory proceedings, suits, legal actions, summons, writs, examinations made or commenced against *you* (Including any written demands communicated to *you* alleging a *personal injury* by whatever means) for any *personal injury* to which cover under this policy applies, including but not limited to damages, judgments, settlements, interest, claimant costs and claimant expenses, but not including *defence costs*.

Defence costs

defence costs means:

- (a) the legal costs and expenses (including defence witness costs and expenses and defence expert costs and expenses) of being represented at any hearing, prosecution, inquiry, investigation, proceeding, settlement negotiation or review, relating to any *personal injury*;
- (b) the costs of applying to set aside a Court order or conducting an appeal of any action or proceeding, relating to any *personal injury*;
- (c) the costs of applying to a Court to determine whether an employee's *personal injury* is properly covered by the Injury Prevention, Rehabilitation and Compensation Act 2001 or any amendment to or re-enactment of that Act.

Penalties

penalties means any court costs, reparation order, prosecution witness costs and expenses and prosecution solicitors' costs imposed by the Court on *you*, upon conviction for an offence under the Health and Safety In Employment Act 1992. Provide this does not include any fine or infringement fee, unless, the employee sustained the relevant personal injury before 5 May 2003.

Personal injury

personal injury means bodily injury, sickness, disease or infection, including resulting death, and disability, shock, fright or mental anguish or injury. For the purposes of this policy, disease shall be sustained when the employee is first exposed to conditions in New Zealand out of which the disease the subject of the claim arose.

Insuring Clause

Subject to the terms and conditions of this policy, we will indemnify *you* against claims for *damages*, and all *defence costs*, which *you* shall become legally liable to pay as a result of any direct employee (including any temporary or part-time employee) of *yours* sustaining *personal injury* arising out of or in the course of their employment and which is notified to us during the *period of insurance* stated in the *schedule* or within 30 days after its expiry, or, if exercised, the *extended reporting period*.

Provided that:

- (a) the *personal injury* has taken place on or after the *retroactive date*;
- (b) the maximum amount payable by us for *damages* and *defence costs* for all claims under this policy shall not exceed the *limit of liability*.

Limit of Liability

All claims for *damages* and *defence costs* arising out of any one *personal injury* or inter-related *personal injuries* are deemed to be one claim. Any claim arising from inter-related *personal injuries* is deemed to have originated in the earliest *period of insurance* in which any of the *personal injuries* is first notified to us. Our liability under this policy applies only to that part of such claims exceeding the excess stated in the *schedule*.

Our aggregate liability under this policy in respect of claims arising out of *personal injuries* will not exceed the *limit of liability* stated in the *schedule* for any one *period of insurance*.

Extensions of cover applying to this cover section

Extended reporting period

If we terminate or refuse to renew this policy, *you* are entitled to an extension of the cover granted under this cover section for a further period of 12 months immediately following termination or non-renewal of the policy, but only in respect of any *personal injury* taking place both before the effective date of termination or non-renewal and after the *retroactive date*. If this right is exercised, then this further period shall be part of the last *period of insurance* and not an additional period.

The entitlement to this extension must be exercised by written notice from *you* prior to the effective date of termination or within 30 days following the effective date of non-renewal.

Newly created or Acquired subsidiary company

If any *subsidiary company* is created or acquired by *you* after the inception of this policy, *your* new *subsidiary company* shall be included provided that:

- (a) written notice of such creation or acquisition is given to us together with appropriate underwriting information and the payment of any additional premium required by us;
- (b) in respect of acquisitions, cover granted under this policy shall only apply to *personal injuries* both discovered by *you* after the date of such acquisition and suffered after the *retroactive date*, and that *you* have agreed to cover any such *subsidiary company*.

Subsidiary company change of ownership

- (a) In the event that an entity ceases to be a *subsidiary company* prior to or during the *period of insurance*, cover under this policy with respect to such *subsidiary company* shall continue until the expiry date of the *period of insurance*. Provided that such cover shall only apply in respect of a *personal injury* suffered after the *retroactive date* or the date of creation or acquisition by *you* (whichever is the later), and until the date such entity ceased to be a *subsidiary company*.
- (b) Where the entity has ceased to be a *subsidiary company* because it is acquired by a third party, then this extension shall only apply where *you* have agreed to retain a continuing obligation to indemnify the third party for claims for *damages* and *defence costs* against *you* arising out of any *personal injury* that has been suffered whilst it is a *subsidiary company*.

Exclusions

We will not pay anything in respect of:

1. Employer's liability

- (a) any *personal injury* for which cover to any extent is provided by the Injury Prevention, Rehabilitation and Compensation Act 2001 or would have been, had a claim been made;
- (b) any *personal injury* which has resulted from any breach or contravention of any provisions of the Health and Safety in Employment Act 1992 or any failure to comply with any improvement or prohibition notice issued thereunder;

- (c) any judgment entered in any Court other than a New Zealand Court, or any debt incurred by *you* as the result of such a judgment;
- (d) any claim which is or should properly be brought in the Employment Tribunal or Employment Court, or for any personal grievance.

2. Fines or Penalties

any fines or penalties levied against *you*.

3. Prior and Pending

- (a) any claim made, threatened or in any way intimated against *you* and not notified to the us prior to the commencement of the *period of insurance* or, if this policy is renewed, prior to the effective date of renewal;
- (b) any claim for *personal injury* which has taken place or allegedly taken place prior to the *retroactive date* stated in the *schedule*;
- (c) any circumstance or *personal injury* of which, at the commencement of the *period of insurance* or, if this policy is renewed, the effective date of renewal, *you* were aware or ought reasonably to have been aware and may give rise to a claim against *you*;
- (d) any liability arising out of any litigation in existence at the commencement of the *period of insurance*.

4. Territorial limits

any liability for any claim arising out of *personal injury* for *damages* and *defence costs* suffered outside of New Zealand and from any proceeding brought in any Court outside of New Zealand.

Standard Conditions

1. Notice and proof of claim

- (a) As a condition precedent to *your* right to be indemnified under this policy, *you* must give us notice in writing as soon as practicable of:
 - (i) any claim made against *you*;
 - (ii) the receipt of notice from any person or party of any intention to hold *you* responsible for any *personal injury* for which cover is provided by this policy;

(iii) any circumstance which *you* become aware of which may give rise to a claim or claims under this policy;

irrespective of whether the claim is considered justified and/or the quantum is likely to be within the excess stated in the *schedule*.

- (b) The insurance provided by this policy ceases absolutely at the expiry of the *period of insurance*. Provided that if the notice referred to in 'General Conditions applying to all cover sections' – Cancellation 7. (a) has been given to us prior to the expiration of the *period of insurance*, or within 30 days after its expiry, or if exercised, during the *extended reporting period*, any claim arising from the notified circumstances, which is subsequently made after the expiration of the *period of insurance*, shall be deemed to have been made during the subsistence of this policy.
- (c) *You* shall give to us or our authorised representatives all such information and assistance as they may reasonably require. We may assume control and conduct of any claim, and any counterclaim (which shall be a condition precedent to *your* right to be covered under this policy).
- (d) *You* shall not in relation to any claim under this policy:
- (i) make any admission of liability;
 - (ii) incur any expense;
 - (iii) make any payment or settlement of liability;
- without our prior written consent. Such consent shall not be unreasonably withheld. We are not liable for any admissions, expenses, payments or settlements made without our prior written consent.
- (e) If *you* refuse to consent to any settlement recommended by us, and shall elect to contest or continue any legal proceedings, our liability for the claim shall not exceed the amount for which the claim could have been so settled (over and above the excess stated in the *schedule*), including *defence costs* incurred up to the date of such refusal.
- (f) *You* shall not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon) shall advise such proceedings should be contested by *you*.

2. Other insurance

If, at the time of any claim arising under this cover section, there is any other valid and collectable insurance covering all or part of the same *personal injury*, this policy will apply to the amount in excess of that recoverable or in fact recovered under the other insurance, whether such insurance is stated to be primary or excess, unless such other insurance is written only as specific excess insurance over the limit of liability under this policy.

3. Prejudice

Where *you* breach or fail to comply with Standard Conditions 1. 'Notice and proof of claim' or 4. 'Reasonable precautions' of this cover section, and this results in prejudice to us in relation to the handling of any claim, the indemnity afforded by this policy in respect of such claim, shall be reduced to such sum as would have been payable by us in the absence of such prejudice.

4. Reasonable precautions

As a condition precedent to our liability, *you* shall take all reasonable precautions to:

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

5. Subrogation

- (a) We shall be entitled to use *your* name in any proceedings to enforce, for the benefit of us, any order made for costs or otherwise, and shall have the right of subrogation in respect of all rights which *you* may have against any person or entity who may be responsible to *you* in respect of any claim for any *personal injury* covered by this policy, and *you* shall do everything necessary to secure and preserve such rights including executing any necessary documents for the purpose of vesting such rights to us. Any monies recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of us to the extent of the amount paid by us in respect of that claim (including related costs and expenses), and the remaining monies shall become *your* property.
- (b) If no recovery is made as a result of proceedings conducted solely by us, then we shall bear the expenses.

Definitions

Section 3 – Statutory Liability cover section

When used in this policy, its *schedule* and its endorsements the following definitions shall apply:

Acquitted

acquitted means the 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).

Act of Parliament

Act of Parliament means any Act of the New Zealand Parliament, and any Code or Regulations or other subordinate legislation made under those Acts.

Civil defence legal costs

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.

Defence costs

defence costs means the legal costs and expenses, including witness costs and expenses, necessarily and reasonably incurred with our prior consent, in investigating and/or defending any prosecution or threatened prosecution alleging the commission of an *offence*.

Event

event means any occurrence, act, circumstance or omission in the course of the *business* that gives rise, or may give rise, to a prosecution for an *offence*, a formal inquiry by a regulatory body, which could lead to a prosecution for an *offence*, or proceedings before a Human Rights or Privacy Complaints Review Tribunal.

Excluded Act

excluded Act means the following:

- (a) Arms Act 1983;
- (b) Aviation Crimes Act 1972;
- (c) Crimes Act 1961;
- (d) Proceeds of Crime Act 1991;
- (e) Summary Offences Act 1981;
- (f) Transport Act 1962;
- (g) Transport (Vehicle and Driver Registration and Licensing) Act 1986;

and any other *Act of Parliament* specified in the *schedule* as an Excluded Act.

Fine

Fine means any fine, infringement fee, court costs, witness expenses or solicitor's costs, ordered by a court to be paid by *you* upon *your* conviction for an *offence*, for which we may legally indemnify *you*. 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.

Inception date

inception date means the commencement date of the *period of insurance* stated in the *schedule*.

Offence

offence means any information alleging the commission by *you* of an offence under an *Act of Parliament*, for which *you* are liable to a *fine* if convicted.

Insuring Clause

Subject to the terms and conditions of this policy, we will pay:

- (a) any *fine* payable by *you* upon *your* conviction of an *offence* under any *Act of Parliament*, except an *excluded Act*; and
- (b) *defence costs* incurred by *you* in relation to *your* defence.

Provided that:

- (i) the *event* giving rise to the *offence* happened on or after the *retroactive date*;
- (ii) *you* notified us of the *event*, in writing during and the *period of insurance*, or with 21 days after its expiry.

Limit of Liability

1. Our liability to indemnify *you* for all claims under this policy is limited in the aggregate to the amount specified in the *schedule* applicable for the *period of insurance* within which *you* have, or should have, first notified us of the *event*.
2. Where an *event* is alleged to have taken place on, over or between a number of specified dates, which fall within more than one *period of insurance*, for the purposes of the applicable *limit of liability* and *excess*, the *event* will be treated as if it occurred in the *period of insurance* in which *you* have, or should have, first notified us of the *event*.
3. The *excess* specified in the *schedule* shall be borne by *you* in respect of each and every *event*.

Extensions of cover applying to this cover section

Additional defence costs

Subject to the terms and conditions of this policy, if it is alleged that *you* have knowingly, wilfully or intentionally breached an *Act of Parliament*, except an *excluded Act*, we will pay *defence costs* incurred by *you* in relation to *your* defence but only if *you* are *acquitted*. For the purposes of the cover under this extension, Exclusion 5. (a) does not apply.

Extended reporting period

If we refuse to renew this policy, *you* may, upon payment of an additional premium not exceeding 100% of the full annual premium payable for the expiring *period of insurance*, extend the cover under this policy for a further 12 months from the date of expiry.

Provided that:

- (a) this option to extend the policy must be notified in writing to us within 30 days of the date of expiry;
- (b) the extension shall only apply in respect of an *event* before the expiry date;
- (c) an offer by us of any renewal terms or premiums different from expiring terms or premiums shall not constitute a refusal to renew;
- (d) the *limit of liability* under this extension is part of and not in addition to the *limit of liability* specified in the *schedule*.

Newly created or Acquired subsidiary company

If any *subsidiary company* is created or acquired by *you* after the inception of this policy, *your* new *subsidiary company* shall be included provided that:

- (a) written notice of such creation or acquisition is given to us together with appropriate underwriting information and the payment of any additional premium required by us;
- (b) in respect of acquisitions, cover granted under this policy shall only apply any *occurrence* both discovered by *you* after the date of such acquisition and suffered after the *retroactive date*, and that *you* have agreed to cover any such *subsidiary company*.

Official investigations

Subject to the terms and conditions of this policy, we will pay your *civil defence legal costs* in relation to any inquiry involving *you*.

Subsidiary company change of ownership

- (a) In the event that an entity ceases to be a *subsidiary company* during the *period of insurance*, cover under this policy with respect to such *subsidiary company* shall continue until the expiry date of the *period of insurance*. Provided that such cover shall only apply in respect of an *event* committed after the *retroactive date* or the date of creation or acquisition by *you* (whichever is the later), and until the date such entity ceased to be a *subsidiary company*.
- (b) Where the entity has ceased to be a *subsidiary company* because it is acquired by a third party, then this extension shall only apply where *you* have agreed to retain a continuing obligation to indemnify the third party arising out of an *event* that has taken place whilst it is a *subsidiary company*.

Exclusions

We will not pay anything in respect of:

1. Daily continuing offences

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

2. Orders and Costs

- (a) any pecuniary penalty, restitution, compensation or order for payment pursuant to sections 80, 83 or 89 (3) (b) of the Commerce Act 1986;
- (b) any order for payment of costs made under the Commissions of Inquiry Act 1908;
- (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;
- (d) any action, proceeding, inquiry, investigation or prosecution taken against *you* by the Inland Revenue Department or any other revenue collecting authority.

3. Deliberate disregard

the prosecution for an *offence* which has allegedly resulted from the:

- (a) deliberate or reckless disregard by *you* of any of the provisions of any *Act of Parliament* which *you* are alleged to have contravened;
- (b) *you* instructing another person to discharge one or more of *your* obligations under any of the provisions of the Acts and failing to take all reasonable steps to ensure that *your* obligations were discharged as instructed;
- (c) failure by *you* 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.

4. Personal grievances

any 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 or inquiry by the Department of Labour pursuant to the Health & Safety in Employment Act.

5. Private prosecutions

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

6. Retroactive date

any *event* after the *retroactive date* but before the *inception date*, if *you* knew, or ought reasonably to have known, of the *event* and failed to notify the *event* to us before the *inception date*.

7. Territorial limits

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

Standard Conditions

1. Apportionment of costs

- (a) if there are claims against *you* which contain uninsured allegations or allegations against other parties then we, shall use our best efforts to agree upon fair and proper allocation of *defence costs* between insured and uninsured allegations.
- (b) if *you* and Zurich disagree over the allocation of *defence costs*, then we shall advance such *defence costs* we believe to be covered under this policy, until a different allocation is negotiated, arbitrated or judicially determined. In this case we will, if requested by *you*, refer the dispute for determination of allocation to an expert mutually agreeable to all parties and such determination shall apply retrospectively to all *defence costs* incurred in the defence of that particular claim or *event*.

2. Claims notification and Duties

As a condition precedent to our liability, *you* shall give us immediate notice in writing of any *event*. At the same time, or as soon thereafter as possible, *you* shall:

- (a) provide full details of any notice, circumstance or *event* together with any documentation, information and details that are relevant to the claim;
- (b) use *your* best endeavours to preserve all property, products, appliances, plant and other things which may assist us in the investigation or conduct of a claim. So far as may be reasonably practical no alteration or repair shall be effected until we have first had the opportunity of inspection;
- (c) co-operate with us or our authorised representatives in all aspects of the claim;
- (d) not make any admission of fact or liability, offer, promise or payment or settlement without our prior written consent;
- (e) if the offence alleged is a continuing one, immediately take, at its expense, all reasonable steps to prevent its continuation.

3. Conduct of defence

- (a) Upon acceptance by us of *your* claim to be indemnified, we shall have the right to nominate a solicitor to act as *your* solicitor and shall have the total discretion as to the conduct and control of *your* defence, including strategy, in respect of any prosecution, inquiry, settlement, negotiation or proceedings against *you*.
- (b) Where *you* disagree with us over *your* defence, including strategy, we shall provide *you* in writing with our reasons and shall refer them to an independent barrister for a final determination as to their reasonableness. This independent determination shall be binding on all parties.

4. Other insurance

If, at the time of any claim arising under this cover section, there is any other valid and collectable insurance covering all or part of the same *event* this policy will apply to the amount in excess of that recoverable or in fact recovered under the other insurance, whether such insurance is stated to be primary or excess, unless such other insurance is written only as specific excess insurance over the *limit of liability* under this policy.

5. Prejudice

Where *you* breach or fail to comply with Standard Conditions 2. 'Claims notification and duties' or 7. 'Reasonable precautions' of this cover section, and this results in prejudice to us in relation to the handling of any claim, the indemnity afforded by this policy in respect of such claim, shall be reduced to such sum as would have been payable by us in the absence of such prejudice.

6. Progress payment of legal expenses

In the event of an *event* for which we have agreed to indemnify *you*, 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 *you*.

7. Reasonable precautions

As a condition precedent to our liability, *you* shall take all reasonable precautions to:

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

8. Subrogation

In the event of a payment under this policy to or on *your* behalf, we shall be subrogated to all *your* rights of recovery against all persons and organisations. *You* shall do all that is necessary to assist us in the exercise of such rights, including prosecuting proceedings in *your* name at our expense.

Section 4 – Fidelity cover section

Definitions

When used in this policy, its *schedule* and its endorsements the following definitions shall apply:

Dishonest act

dishonest act means the unlawful taking of *property* with the intent to cause loss to the *insured* or financial gain to the *employee*.

Employee

employee means:

- (a) a person under contract of service to the *insured* whom the *insured* remunerates by salary, wages or commissions and whom the *insured* has the right to control and direct in the performance of their duties;
- (b) any director or trustee of any *insured* while performing acts falling within the scope of the usual duties of an *employee*;
- (c) any *ex-employee* for a period not exceeding 30 days after termination/resignation of employment with the *insured*, arising out of the duties of that *employee* during his/her employment with the *insured*;
- (d) any temporary personnel assigned to perform *employee* duties for any *insured* within the *insured's* premises by any agency furnishing temporary personnel on a contingent or part-time basis, provided however, that this policy does not cover any loss caused by such individual if such loss is also covered by any insurance held by the agency furnishing such temporary personnel;
- (e) any work experience student.

The definition of *employee* does not include a broker, commission agent, consignee, contractor or other agent or similar representative.

Property

property means currency, coin, bank notes, bullion, negotiable and non-negotiable instruments, goods or other items either belonging to, or in the care, physical custody or control of the *insured* and for which the *insured* is legally liable other than property excluded by this policy.

Time limitations

time limitations means the *period of insurance* and the earlier of either 12 months after the expiration of the *period of insurance* or the period up to the date upon which the *employee* committing a *dishonest act* is terminated.

Insuring Clause

Subject to the *limit of liability* stated in the *schedule* and the terms and conditions of this policy, we will reimburse the *insured* for loss of *property* which:

- (a) directly results from a *dishonest act* of an *employee* committed alone or in collusion with others; and
- (b) is discovered during the *time limitations*.

Limitations of Cover

1. Excess

- (a) Our liability under this policy shall apply only to that part of loss which exceeds the excess and such excess shall be borne by the *insured* uninsured and at the *insured's* own risk.
- (b) Should any loss be discovered which is partly recoverable under this policy and partly recoverable under a prior policy containing an excess amount, the excess amount specified in the *schedule* shall be reduced by the excess amount applied to such loss by the prior policy.

2. Limit of liability

- (a) We shall not be liable for more than the *limit of liability* stated in the *schedule* for any loss:
 - (i) arising directly or indirectly from any one *employee* or any number of *employees* acting in collusion, or in respect of which the *employee* is implicated regardless of whether the *dishonest act* was committed or the loss occurred during more than one *period of insurance*; and
 - (ii) in respect of one *dishonest act* or series of *dishonest acts* arising from the one source or original cause, regardless of whether the *dishonest act* was committed or the loss occurred during more than one *period of insurance*.
- (b) Where more than one *dishonest act* is committed and/or loss occurs during more than one *period of insurance*, the *dishonest act* is deemed to have been committed on the date of the first *dishonest act* or alternatively the loss is deemed to have occurred on the date upon which the first loss occurred.

3. Territorial and Jurisdictional limits

This cover section shall only apply to *dishonest acts* committed within the New Zealand.

Extensions of cover applying to this cover section

Continuity of cover

If this policy has been substituted for any prior policy providing comparable cover held by the *insured* with any other insurer and there is unbroken continuity of cover apart from the substitution, this insurance applies to any loss discovered within the *time limitations* provided by this policy if it would have been covered under the prior policy except for the fact that it was discovered after the *time limitations* under that policy had expired.

Provided that:

- (a) the amount payable shall form part of and will not be in addition to the *limit of liability*; and
- (b) the loss would have been covered under this policy if this policy with its terms, conditions and exclusions as at the date of substitution had been in force when the *dishonest act* causing the loss was committed; and
- (c) the amount payable will not exceed the lesser of:
 - (i) the amount which would have been payable under the prior policy if the prior policy had continued in force or had applied at the date of discovery of the loss; or
 - (ii) the *limit of liability* at the date of substitution; and
- (d) the loss arises from a *dishonest act* committed after the Retroactive Date in the *schedule*, and
- (e) the loss has not been notified to any other insurer.

Unidentifiable employees

If a loss is alleged to have been caused by the fraud or dishonesty of any one or more of the *employees* and the *insured* shall be unable to designate the specific *employee* causing the loss, the *insured's* claim in respect of such loss shall not be invalidated by their inability to do so, provided the *insured* is able to furnish evidence to prove to us that the loss was in fact due to the fraud or dishonesty of one or more of its *employees*.

Exclusions

We will not pay anything in respect of any:

1. Cost of reproducing information

loss involving the cost of reproducing any information contained in any lost or damaged manuscripts, records, accounts, microfilms, tapes or other records.

2. Inventory / Profit and loss

loss or part of a loss where proof of its existence or amount depends on any comparison of inventory records with a physical count or a profit and loss computation.

Exclusion 2. does not apply to the extent that the *insured* can prove the existence or amount of the loss through evidence wholly independent of the comparison or computation.

2. Knowledge of prior theft

loss caused by an *employee* if an elected or appointed officer of the *insured* possessed at any time knowledge of any act or acts of theft, fraud or dishonesty committed by such *employee* during the term of the employment of such *employee*, or prior to employment by the *insured*.

3. Legal proceedings

costs incurred by the *insured* in connection with any legal proceeding.

4. Loss of potential income

- (a) loss of potential income not in fact earned; or
- (b) other consequential or indirect loss.

5. Loss of trade secrets

loss of trade secrets, confidential processing methods or other confidential information of any kind.

6. Non-payment / Default of loan

loss arising from the complete or partial non-payment of or default on any loan, extension of credit, discounted or acquired accounts or invoices or other transactions of similar character.

7. Subsequent losses

loss arising from any *dishonest act* committed by an *employee* after the *insured* has discovered any other *dishonest acts* by the *employee*.

8. Trading losses

loss resulting directly or indirectly from trading in securities or derivatives whether or not in the name of the *insured* and whether or not in a genuine or fictitious account.

Section 5 – Directors and Officers cover section

Definitions

When used in this policy, its *schedule* and its endorsements the following definitions shall apply:

Claim

claim means

- (a) any writ, summons, application or other originating legal or arbitral process, cross claim, or counter claim or appeal issued against or served upon any *insured person* alleging any *wrongful act*;
- (b) any written demand to any *insured person* alleging a *wrongful act*; or
- (c) any circumstance which any *insured person* shall become aware which may give rise to a claim under this policy.

Defence costs

defence costs means reasonable costs, charges or expenses (other than regular or overtime wages, salaries or fees of the *insured person*) incurred by Zurich or with our prior written consent (which shall not be unreasonably withheld) in defending or investigating *claims* or proceedings or bringing or defending appeals therefrom or in attending and being represented at inquiries, prosecutions and hearings.

Employment practices claim

employment practices claim means a *claim* which is brought and maintained by any past, present, future or prospective *employee* of the *insured entity* against any *insured person* for any *wrongful act* in connection with any actual or alleged wrongful dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi-employment contract, employment related misrepresentation, violation of employment discrimination laws, wrongful failure to employ or promote, wrongful disciplinary action, wrongful deprivation of a career opportunity, denial of natural justice, negligent evaluation, invasion of privacy, employment related defamation, or employment related wrongful infliction of emotional distress.

For the purpose of the *employment practices claim* definition:

employee means:

any person in the regular service of the *insured entity* in the ordinary course of the *insured entity's* business and whom the *insured entity* compensates by salary, wages and/or commissions and has the right to govern and direct in the performance of such services.

Insured

insured means the *insured entity* and the *insured person(s)*.

Insured entity

insured entity means the entity as specified in the *schedule* and all its *subsidiary companies*.

Insured person(s)

insured person(s) means any past, present or future natural person being a director, secretary, executive officer, senior manager or any employee acting under the direction or request of a director, secretary or executive officer in the management of the *insured entity*, including any natural person who is deemed by applicable legislation or at law to be a director or officer or shadow director or officer of the *insured entity*.

insured person(s) shall not include an external auditor, administrator (including voluntary appointed administrators), receiver, receiver and manager, official manager, liquidator, trustee or other person administering a compromise or arrangement of the *insured entity* or any employee of any such person.

Loss

loss means the total amount which any *insured person(s)* becomes legally liable to pay in respect of a *claim* made against such *insured person(s)* for a *wrongful act*, including but not limited to damages, compensation, interest and costs (whether determined by judgment or by settlement) and *defence costs*. Loss does not include fines or penalties imposed by law, punitive, exemplary or multiple damages or matters uninsurable under the law pursuant to which this policy is construed.

However,

in respect of Exclusion 2. 'Insured vs Insured' (a) (i) *loss* shall not include:

- (a) any obligation under any law or any regulation in any jurisdiction in respect of workers' compensation, occupational health and safety, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law or regulation whatsoever; or
- (b) forward pay, future loss, future damages or future economic relief or equivalent thereof, of the *insured entity*, or the continued employment of the claimant; or

- (c) any employment related benefits (other than back pay) attributable to the employment reinstatement, the continued employment or the commencement of employment of the claimant; or
- (d) benefits (other than salary or wages) due or to become due or the equivalent value of such benefits or any form of non-monetary relief.

Wrongful act

wrongful act means any act, error, mis-statement, misleading statement, misleading conduct, omission, neglect or breach of duty made, committed, attempted or allegedly made, committed or attempted by an *insured person*, individually or otherwise, in the course of the duties of that *insured person* as director, secretary, executive officer or employee with authorised management responsibilities of the *insured entity* after the Retroactive Date.

Insuring Clauses

In respect of any *claim* first made against any *insured person(s)*, whether jointly or severally, during the *period of insurance*:

1. Directors and officers liability coverage

Zurich agrees to pay on behalf of such *insured person(s)* any *loss* in respect of which the *insured person(s)* is not lawfully indemnified by the *insured entity*; and

2. Company reimbursement coverage

Zurich agrees to pay on behalf of the *insured entity* any *loss* for which the *insured entity* is lawfully permitted or required to indemnify such *insured person(s)*.

Limitations of Cover

1. Excess

Our liability under this policy shall apply only to that part of *loss* which exceeds the *excess* and such *excess* shall be borne by the *insured* uninsured and at the *insured's* own risk.

2. Limit of liability

The total aggregate limit of our liability to the insured (for all *loss* including *defence costs*) in respect of all *claims* made or deemed to be made during any one *period of insurance* against all *insured person(s)* shall not exceed the aggregate *limit of liability* as specified in the *schedule*.

The total aggregate limit of our liability for all *claims* made by the *insured* under this policy or any other directors and officers liability or company reimbursement policy, issued by the Zurich Group of insurance companies in respect of the same *period of insurance*, shall not exceed the aggregate limit for all *claims* set out in the *schedule* of this policy.

Our liability hereunder shall apply only to that part of *loss* (including *defence costs*) in respect of each *claim* which exceeds any applicable excess amount specified in the *schedule* and such excess amount shall be borne by the *insured* uninsured and at the *insured's* own risk.

For the purpose of this policy, all *claims* arising out of one *wrongful act* and/or causally inter-related *wrongful acts* of any *insured person(s)* shall be deemed to be one *claim* made in the *period of insurance* in which the *claim* is first made or deemed to be made against any *insured person(s)*.

3. Territorial and Jurisdictional limits

This policy shall apply to:

- (a) *wrongful acts* committed, attempted or alleged to have been committed or attempted, in New Zealand;
- (b) *claims* made and actions brought in New Zealand.

Extensions of cover applying to this cover section

Estates and legal representatives

We agree to cover the estate, heirs, legal representatives or assigns of an *insured person* who is incapable of managing his or her own affairs by reason of mental disorder or other incapacity, or is deceased, insolvent or bankrupt, to the same extent as any *claim* made against such *insured person*.

Spousal loss

If a *claim* against an *insured person* includes a claim against the *insured person's* lawful spouse solely by reason of:

- (a) such spouse's status as spouse of the *insured person*; or
- (b) such spouse's ownership interest in property which the claimant seeks as recovery for alleged *wrongful acts* of the *insured person*,

then all loss which such spouse becomes legally obligated to pay by reason of such claim shall, for the purposes of this policy, be treated as *loss* which the *insured person* becomes legally obligated to pay on account of the *claim* made against the *insured person*. Such spousal *loss* shall be covered under this policy only if and to the extent that such *loss* would be covered if incurred by the *insured person*. Coverage shall not apply to any *claim* which alleges any act or omission by an *insured person's* spouse.

Exclusions

This policy does not provide an indemnity against any *loss* or part thereof arising from any *claim*:

1. Bodily injury and Property damage

in respect of, arising from or attributable to:

- (a) bodily injury, sickness, disease or death of any person, but not including mental injury, mental anguish, nervous shock or emotional distress which is unrelated to bodily injury;
- (b) destruction or loss of or damage to any tangible property, including loss of use thereof.

2. Insured vs insured

brought by, at the instigation of, or on behalf of:

- (a) an *insured person* provided that this exclusion shall not apply:
 - (i) to an *employment practices claim* brought or maintained by any *insured person* or *employee*; or
 - (ii) a *claim* brought or maintained by an *insured person* for contribution or indemnity, if the *claim* directly results from another *claim* covered under this policy; or
 - (iii) any *claim* brought or maintained by any former director, secretary or executive officer;
- (b) the *insured*, except a *claim* made on its behalf:
 - (i) by or on behalf of the *insured* at the instigation of a security holder, receiver, a receiver and manager, official manager, liquidator or by the Investments Commission, pursuant to the Investments Commission Act 2001 or otherwise, or any like legislation; or
 - (ii) by one or more claimants, who are not *insured person(s)*, who make such *claim* without the co-operation or solicitation of any *insured*; or
 - (iii) as part of a shareholder derivative action, provided that this only applies to those shareholders not also an *insured* and such action is made without the co-operation or solicitation of any other *insured*.

3. Initial public offering

in respect of, arising from or attributable to the initial public offering of securities of the *insured entity* during the *period of insurance*.

4. Major shareholders

brought by, at the instigation of, or on behalf of any individual or entity that has representation on the board of the *insured entity* and holds directly or beneficially 15 percent or more of the issued share capital or voting rights.

5. Personal profit / advantage

in respect of, arising from or attributable to any *insured person(s)*:

- (a) having gained in fact any personal profit, advantage or remuneration to which he or she was not entitled or which was not validly approved by the *insured entity*; or
- (b) having improperly benefited in fact from financial transactions as a result of sensitive information or material that is not generally available to other persons engaging in such transactions.

6. Prior and pending

- (a) made against the *insured* prior to the prior and pending date specified in the *schedule*, or
- (b) arising from or attributable to any *claim*, facts or circumstances notified or disclosed to Zurich (or any other insurer) before the prior and pending date specified in the *schedule*; or
- (c) arising from or attributable to any *claim*, facts or circumstances which could have been, but which were not notified or disclosed to Zurich (or any other insurer) prior to the prior and pending date specified in the *schedule*.

7. Professional liability

in respect of, arising from or attributable to breach of duty in respect of any professional services provided by the *insured*, other than that of a director or officer per se.

8. Retroactive date

in respect of, arising from or attributable to any *wrongful act* committed, attempted, or alleged to have been committed or attempted prior to the Retroactive Date specified in the *schedule*.

9. Superannuation fund trustees

in respect of, arising from or in consequence of any actual or alleged violation of the responsibilities, obligations or duties owed by fiduciaries, trustees, administrators or any others charged with duties with respect to any superannuation, pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing pensions, annuities or any other form of benefits to employees of an *insured entity*.

10. Wilful breach

in respect of, arising from or attributable to:

- (a) conduct involving a wilful breach of duty in relation to the *insured entity*; or
- (b) contravention of the New Zealand Securities Amendment Act 1998 or any similar statute or regulation, admitted by the *insured* or established by a judgment or other final adjudication of any Court, Tribunal or Arbitrator to have been committed with fraudulent, dishonest or criminal intent or purpose, or knowledge that the act or omission was in breach of any statute or contract.

Standard Conditions

1. Allocation

In a situation where:

- (a) a *claim* is made against both the *insured entity* and one or more *insured person(s)*; or
- (b) part of the *loss* which is the subject of a *claim* against an *insured person(s)* is covered under this policy but the remainder is not;

there is to be an allocation of all the *defence costs* incurred by us in connection with that *claim* between Zurich and the *insured entity* or the *insured person(s)*, as the case may be. Subject always to the other terms, conditions and limits of this policy:

- (i) In the event of 1. (a) above, we will pay in full any *defence costs* the incurring of which benefits only the *insured person(s)*. If *defence costs* are incurred which benefit both the *insured person(s)* and the *insured entity*, we will pay only the percentage of those *defence costs* equal to the percentage which the amount of *loss* for which the *insured person(s)* may be held liable represents of the total amount of *loss* claimed. The *insured entity* will bear responsibility, on its own account, for the percentage of *defence costs* equal to the percentage which the amount of *loss* for which the *insured entity* might be found liable, if none of the allegations of *wrongful acts* on the part of the *insured person(s)* were proven, bears to the total amount of *loss* claimed;
- (ii) in the case of 1. (b) above, we will pay in full *defence costs* which relate solely to that part of the *loss* which is covered under this policy. Where *defence costs* are necessarily incurred in relation to both covered and uncovered *loss*, we will pay only that proportion of those *defence costs* which the covered *loss* bears to the total *loss* claimed against the *insured person(s)*.

2. Defence and settlement

The *insured* may, with the prior written consent of Zurich, proceed to conduct their own defence of any *claim*. In the absence of agreement to the contrary, Zurich has the right to conduct the defence to any *claim*.

The *insured* shall not admit liability for or settle any *claim* without the consent of Zurich or incur any costs or expenses without our consent. Such consent shall not be unreasonably withheld.

The *insured* shall assert all appropriate defences and cross claims for contribution, indemnity or damages and take all reasonable steps in defence of the *claim*.

Zurich shall not settle any *claim* against any *insured person* without the consent of the relevant *insured person*. Zurich shall retain the right to actively participate in the defence and settlement of any *claim* under this policy.

If Zurich and the *insured* cannot agree upon an allocation and/or a settlement, then the matter will be determined by advice of Senior Counsel (to be mutually agreed by the *insured person* and Zurich and to be paid for by us, which shall be in addition to the *limit of liability*).

3. Reporting and notice

The *insured* shall, as a condition precedent to their right to indemnity under this policy, give to Zurich written notice as soon as practicable but not later than the expiry of the *period of insurance* of any *claim*.

All notices under any provision of the policy shall be put in writing and given by courier, certified mail or fax properly addressed to the appropriate party. All notices under or in connection with this policy that relates to a *claim* or *loss* shall be given to the appropriate Zurich branch office.

4. Other insurance

Upon giving notice pursuant to Standard Conditions 3. 'Reporting and notice' the *insured* shall at the time inform Zurich of any other insurances or indemnities pursuant to which the *insured* may be entitled to any benefit in respect of that *claim*.

Optional Extension of Cover

Employment Practices Entity Coverage

Cover if shown in the *schedule* is provided, for the Optional Extension of Cover described below. This extension is subject to the other provisions of this policy and this extension shall not increase our *limit of liability*, unless expressly stated otherwise.

The following additional Insuring Clause is added to this policy:

Insuring Clauses

In respect of any *claim* first made against any *insured person(s)*, whether jointly or severally, during the *period of insurance*:

3. Employment practices entity coverage

Zurich agrees to pay on behalf of the *insured entity* any *loss* in respect of an *employment practices claim*, which is brought and maintained against the *insured entity* and/or against at least one *insured person*.

Definitions

When used in this Optional Extension of Cover:

Employment Practices Claim

employment practices claim means for all purposes in connection with the cover provided Optional Extension of Cover, a *claim* which is brought and maintained by any past, present, future or prospective employee of the *insured entity* against any *insured person* for any *wrongful act* in connection with any actual or alleged wrongful dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi-employment contract, employment related misrepresentation, violation of employment discrimination laws, wrongful failure to employ or promote, wrongful discipline, wrongful deprivation of a career opportunity, denial of natural justice, negligent evaluation, invasion of privacy, employment related defamation or employment related wrongful infliction of emotional distress.

Employee

employee means any person in the regular service of the *insured entity* in the ordinary course of the *insured entity's* business and whom the *insured entity* compensates by salary or wages and has the right to govern and direct in the manner of performance of such service, but does not include any independent contractor, employee of an independent contractor, a person engaged by the *insured entity* through a labour hire firm under an agreement between the *insured entity* and such a firm, or any employee whom the *insured entity* employs, temporarily, to substitute for a permanent employee on leave or to meet seasonal or short-term work load conditions.

Exclusions

In respect of *employment practices claims* to which this Optional Extension of Cover applies, this policy does not provide any payment in respect of any loss or part thereof arising out of or in connection with any claim that is excluded by any of the provisions of the main policy wording, or any *claim*:

1. for any payment in respect of any *loss* or part thereof arising from or in connection with any *employment practices claim*:
 - (a) arising from or in connection with any *wrongful act* occurring or alleged to have occurred outside of the jurisdiction of New Zealand; or
 - (b) legal proceedings in respect of which are brought before any Court or Tribunal outside of the jurisdiction of New Zealand; or
 - (c) for the enforcement of any judgment, order or award in or in connection with any proceeding brought before any Court or Tribunal outside the jurisdiction of New Zealand.

It is agreed that Exclusion 1. in respect of any *employment practices claims* covered under Insuring Clause 1. 'Directors and officers liability coverage' or 2. 'Company reimbursement coverage' the above exclusion will apply.

2. for the performance of any obligation under any contract, award, law or regulation in any jurisdiction in respect of terms and conditions of employment, workers compensation, occupational health and safety, disability benefits, unemployment benefits or compensation, disability/income protection, salary continuance or unemployment insurance, retirement benefits, social security benefits, severance pay or payment of benefits in the case of termination of employment due to redundancy or any other cause.

3. for the performance of any other obligation assumed by the *insured entity*, under award, individual contract or otherwise; provided, however, that where such an obligation would nevertheless have attached to the *insured entity* in the absence of any such assumption, cover is provided (subject always to the other terms and conditions of this the policy) in respect of any *claim* for *loss* over and above the amount of that underlying obligation, resulting from the *insured entity's* failure to comply with it.
4. arising from or in connection with inability of the *insured entity* to meet its debts as and when they fall due or *wrongful acts* which occur upon or after the appointment of a receiver, receiver and manager, liquidator, provisional liquidator, administrator, scheme manager or any similar official to take control of, supervise, administer, manage or liquidate the *insured entity* and/or its assets or business. This exclusion shall also apply in the situation where the *insured entity* becomes a debtor in possession.
5. arising from or in connection with *wrongful acts* which occur or are alleged to have occurred during or after any form of lock out, strike, picket line, stand down, work place reorganisation or other similar action resulting from industrial disputes and/or negotiations.
6. for modifications to any premises, in order to make them more accessible or accommodating to persons with disabilities, or for the provision of any special facilities, arrangements, variations or alterations to the work place, working hours, work systems or procedures, for the benefit of disabled persons, persons in special circumstances or persons requiring any form of special accommodation due to family or carer responsibilities, cultural, religious, social or political considerations.
7. arising from or in connection with any failure to comply with any law, regulation or lawful governmental or administrative order, or with any order or award of a lawfully constituted court, tribunal or dispute resolution facility, if it is established, by judgment, express or implied acknowledgement or final adjudication, that:
 - (a) the *insured entity* was responsible for, was complicit in or expressly or impliedly consented to that failure; and
 - (b) the failure to comply involved dishonest, criminal, fraudulent or wilful conduct on the part of any person.
8. arising from or in connection with any publication of defamatory or allegedly defamatory material:
 - (a) before the *retroactive date* specified in the *schedule*; or
 - (b) by or at the direction of the *insured entity*, with the *insured entity* having actual or constructive knowledge of or reckless indifference as to the material's defamatory character.
9. for the setting aside, variation, deletion or amendment of any contract or contractual provision, including but not limited to any such provision in a contract of employment, on grounds that it is or is alleged to be harsh, unfair, unreasonable, unconscionable, in restraint of trade or otherwise contrary to the public interest.

Claims Condition

In respect only of *employment practices claims* to which this Optional Extension of Cover applies, Standard Condition 2. 'Defence and Settlement' is deleted in its entirety and replaced with the following:

2. Defence and Settlement

Zurich shall have the right at all times to conduct the defence of any *claim* made against the *insured entity*.

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