

**Policy** Wording

# Directors & Officers Liability



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### Insuring Clause

1. In consideration of the payment of the premium, in reliance on the written proposal, declarations, statements and information (which are the basis of this Policy) and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("the Company") will indemnify each of the Insured Person(s), or the Insured Organisation if the Insured Person(s) is/are entitled to receive an indemnity from it, for all amounts which they shall become legally liable to pay on account of any claims alleging a Wrongful Act first made against the Insured Person(s), individually or otherwise, during the Period of Insurance stated in the Schedule and notified to the Company during the same period.
2. The Company will also pay all expenses incurred by the Company, Insured Person(s) or Insured Organisation with the prior written consent of the Company in the defence, investigation and/or settlement of any claim payable under this Policy, other than regular or overtime wages, salaries or fees of any Insured Person(s) or of any employee of the Insured Organisation.

### Limit of Indemnity and Excess

1. The limit of the Company's liability in respect of any one claim, including costs incurred pursuant to the Insuring Clause, or the total of all claims for any interrelated Wrongful Acts including costs incurred pursuant to the Insuring Clause, shall not exceed the Limit of Indemnity stated in the Schedule.
2. Each of the Insured Person(s) and the Insured Organisation shall be liable for the amount of the Excess stated in the Schedule, inclusive of all costs and expenses, in respect of each claim for a Wrongful Act made against them.

### Extensions

These Extensions shall only apply if noted as included on the Schedule attaching to and forming part of this Policy.

#### 1. Dishonesty of Directors and Officers

Exclusion 4 - Dishonesty of this Policy shall have no effect provided that:

- (a) the additional premium agreed has been paid;
- (b) this Extension is noted as included on the Schedule attaching to and forming part of this Policy;
- (c) this Extension shall not apply to any Insured Person or Insured Organisation who:
  - (i) is the subject of allegations of dishonesty, fraud, malice or criminal acts or omissions; or
  - (ii) has been aware of and/or condoned such acts or omissions;
- (d) this Extension shall not be voided for non-disclosure;
- (e) cover under this Extension is in all other respects subject to the terms, conditions, exclusions and endorsements of this Policy.

#### 2. Outside Directorships

Exclusion 10 - Outside Directorships of this Policy shall have no effect provided that:

- (a) the additional premium agreed has been paid;
- (b) this Extension is noted as included on the Schedule attaching to and forming part of this Policy;
- (c) Exclusion 10 - Outside Directorships is waived only in respect of claims alleging Wrongful Act(s) against Insured Person(s) committed or allegedly committed in the course of their duties to the Insured Organisation;
- (d) Exclusion 10 - Outside Directorships is waived only in respect of Outside Directorships declared to the Company on the proposal form;

- (e) this indemnity does not apply to any Outside Directorship of any company incorporated or resident in USA or Canada or their protectorates.
- (f) cover under this Extension is in all other respects subject to the terms, conditions, exclusions and endorsements of this Policy.

#### 3. Retroactive Cover

Exclusion 19 - Retroactive Date of this Policy shall have no effect provided that:

- (a) the additional premium agreed has been paid; and
- (b) this Extension is noted as included on the Schedule attaching to and forming part of this Policy; and
- (c) Exclusion 19 - Retroactive Date is waived only in respect of claims alleging Wrongful Act(s) against Insured Person(s) committed or allegedly committed in the course of their duties to the Insured Organisation;
- (d) cover under this Extension is in all other respects subject to the terms, conditions, exclusions and endorsements of this Policy.

#### 4. Statutory Defence Costs

Notwithstanding anything in this Policy to the contrary, this Policy will indemnify the Insured Persons or Insured Organisation for defence costs incurred under the:

- (a) Commerce Act
  - (b) Companies Act
  - (c) Consumer Guarantees Act
  - (d) Fair Trading Act
  - (e) Financial Reporting Act
- and associated legislation and regulations

PROVIDED THAT:

- (a) the additional premium agreed has been paid;
- (b) this Extension shall not apply to:
  - (i) any deliberate or reckless breach or contravention of any provision of the Acts, or the commission of any criminal offence under the Acts;
  - (ii) any deliberate or reckless failure to comply with any lawful order, demand, notice, requirement or determination made by any statutory authority or enforcement agency under any of the Acts;
  - (iii) any deliberate or reckless disregard for the provisions of any of the Acts;
  - (iv) any fine or penalty;
- (c) cover under this Extension is in all other respects subject to the terms, conditions, exclusions and endorsements of this Policy.

### Exclusions

This insurance does not apply to claims in respect of or alleging:

#### 1. Asbestos

any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, asbestos in whatever form or quantity.

#### 2. Assumed Liability

liability assumed by the Insured Person(s) under any agreement, other than written agreements stated in the Schedule;

#### 3. Breach of Duty

any breach of duty owed in the Insured Person(s)' professional capacity other than as a Professional Director;

- 4. Dishonesty**  
dishonest, fraudulent, criminal or malicious act or omission by or on behalf of any Insured Person(s);
- 5. Failure to Maintain Insurance**  
any failure or omission to effect or maintain insurance;
- 6. Fines, Penalties**  
liability for any fine or penalty;
- 7. Insider Trading**  
insider trading in terms of the Securities Amendment Act 1988, or any similar statute or regulation;
- 8. Jurisdiction Limits**  
any claims, suits, actions or demands brought in Courts of Law outside the Jurisdiction Limits stated in the Schedule or heard in accordance with or subject to the law outside those Jurisdiction Limits.
- 9. "Leaky Buildings" – Moisture or Water Penetration, Building Defects**  
any liability for, or fulfil any obligation in respect of any claim or defence costs, which are directly or indirectly caused by or contributed to, or arises directly or indirectly out of:
- (a) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or
  - (b) any cost or expense arising out to 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, gradual deterioration, micro-organisms, bacteria, protozoa or similar or like forms, in any building or structure; or
  - (c) the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:
    - (i) external water or moisture; or
    - (ii) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.
- 10. Outside Directorship**  
liability arising out of any Outside Directorship;
- 11. Personal Injury**  
Personal Injury or Property Damage;
- 12. Personal Profit**  
or based upon or attributable to any Insured Person(s) having gained a personal profit or advantage to which she/he was not legally entitled;
- 13. Pollution**  
seepage, pollution or contamination or the breach of any statute, regulation, by-law or ordinance prohibiting or controlling emissions or effluents of any kind or from any enforcement action or proceeding brought under or pursuant to any statute, regulation, by-law or ordinance;
- 14. Prior Claims**  
any claim made, threatened, or in any way intimated against any Insured Person(s), prior to the commencement of the Period of Insurance stated in the Schedule, or in respect of any circumstance or occurrence which any Insured Person(s) is aware or ought reasonably to have been aware at the commencement of the Period of Insurance may give rise to a claim against any Insured Person(s), whether notified under any other insurance or not.
- 15. Prior Litigation**  
liability arising out of any litigation in existence at the commencement of the Period of Insurance stated in the Schedule;
- 16. Prospectus**
- (a) any public or private issue of shares, preference shares (redeemable or otherwise), debentures of whatever kind, promissory notes or any other form of negotiable or non negotiable security for the raising of capital by equity, debt or any other means;
  - (b) the issue of any prospectus or similar document or the making of any written or oral representation, in connection with (a) above.
- 17. Radioactivity**  
Personal Injury or Property Damage directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component;
- 18. Remuneration**  
liability for the return by any Insured Person(s) of any remuneration to which such Insured Person(s) is not entitled;
- 19. Retroactive Date**  
any Wrongful Act prior to the retroactive date stated in the Schedule.
- 20. Spouses, Dependents**  
any claims or allegations made against the Insured by:
- (a) any Insured Person(s), the Insured Organisation or the Parent Organisation, except a claim made on behalf of the Insured Organisation or Parent Organisation by any claimant(s) who is/are not Insured Persons or by any receiver or liquidator;
  - (b) any spouse, dependant or relative of any Insured Person(s) or any of their employees, directors or principals, or any entity operated or controlled by or on behalf of any of them, or in which they have a direct or indirect interest collectively or individually.
- 21. War, Terrorism**  
resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or
  - (b) any Act of Terrorism.
- Definition: "Act of Terrorism" means an act, including but not limited to the use of force or violence and/or 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 governments(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic, 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.

This exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

### Conditions

#### 1. Agency

All persons and organisations entitled to any benefit under this Policy irrevocably appoint the Insured Organisation as their agent for all purposes in relation to this insurance.

#### 2. Cancellation

This Policy may be cancelled by the Company at any time by giving written notice by registered mail to the last known address of the Insured Person(s) and/or Insured Organisation. Cancellation will be effective at 4.00pm on the 30<sup>th</sup> day after posting of the written notice. In the event of such cancellation the Company will refund premium pro rated for the unexpired period of insurance.

The Policy may be cancelled by the Insured Person(s) and/or Insured Organisation at any time from the date of receipt by the Company of the Insured's written instructions and the Company will refund 80% of the premium pro rated for the unexpired period of insurance.

#### 3. Claims

- (a) The Insured Person(s) and/or the Insured Organisation shall give immediate notice in writing to the Company of any:
  - (i) circumstance of which the Insured Person(s) first becomes aware during the Period of Insurance stated in the Schedule that might give rise to a claim;
  - (ii) notice of any intimation by any person or organisation of possible intention to make a claim against the Insured Person(s);
  - (iii) demand, threat or claim against the Insured Person(s);
  - (iv) legal proceeding or process alleging a loss and/or liability for which there might be indemnity under this Policy.
- (b) The Insured Person(s), the Insured Organisation or anyone acting on their behalf, shall not admit liability for, or offer to pay or compromise any claim, or incur any costs or expenses, without the prior written consent of the Company.
- (c) The Company is entitled at any time to take over and conduct in the name of the Insured Person(s) and/or the Insured Organisation the defence or settlement of any claim and any counterclaim (which shall be a condition precedent to the Insured Person(s) and/or the Insured Organisation's right to be covered under this Policy), provided that no legal proceeding shall be defended unless a Queen's Counsel (to be mutually agreed) advises that the proceeding should be defended.
- (d) If the Company agrees or is found liable to indemnify the Insured Person(s) and/or the Insured Organisation, the Company shall be subrogated to all their rights.
- (e) The Insured Person(s) and the Insured Organisation shall give to the Company or its authorised representatives all information, assistance and co-operation as it may reasonably require in considering, accepting or defending any claim under this Policy or any proceeding relating to it, including the execution of whatever documents may be necessary to enable the Company to effectively exercise any subrogation or other rights granted by this Policy, and shall upon the Company's request

assist in making settlements, the conduct of suits and enforcing any right of contribution or indemnity against any person or organisation who may be liable because of injury or damage with respect to which insurance is afforded under this Policy, and shall attend mediations, hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

- (f) If the Insured Person(s) and/or the Insured Organisation refuses to consent to or co-operate in any settlement recommended by the Company, the Company may relinquish conduct of the claim, including any legal proceedings, and the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled, including costs and expenses incurred up to the date of such refusal, subject to the Excess stated in the Schedule.

#### 4. Cessation of Insurance

The insurance provided by this Policy ceases absolutely at the time and date stated in the Schedule. However, provided notice referred to in Condition 3(a) has been given to the Company prior to the expiry date stated in the Schedule, any claim or loss arising from the notified circumstances, which is subsequently made after the expiry date stated in the Schedule, shall be deemed to have been made during the Period of Insurance stated in the Schedule.

#### 5. Jurisdiction

This Policy shall be governed by the law of New Zealand, the courts of which shall have exclusive jurisdiction.

#### 6. Merger

If after the commencement of this Policy the Insured Organisation creates, acquires, consolidates or amalgamates with, is merged into or acquired by, any other organisation, the Insured Person(s) and/or the Insured Organisation shall give to the Company:

- (a) immediate written notice;
- (b) any further information that the Company may require;
- (c) any additional premium that the Company may require.

#### 7. Other Insurance

If, at the time of a claim first made against any Insured Person(s), there is any other applicable policy, this Policy shall only provide insurance in excess of such other policy and the limit of Indemnity under this Policy shall be reduced to the extent of the indemnity afforded under such other policy, even if that other policy has a condition to the same or similar effect as above.

#### 8. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured Person(s) and/or the Insured Organisation, the Insured Person(s) and/or the Insured Organisation authorise(s) the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured Person(s) and/or the Insured Organisation waive(s) any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

### Definitions

#### 1. Insured Organisation

means the Insured designated in the Schedule and includes any Subsidiary Company(ies).

**2. Insured Person(s)**

means any Officer(s) of the Insured Organisation, including those named in the Schedule and those who have retired or relinquished their positions. For the purpose of this Definition, "Officer":

- (a) means any natural person occupying at the relevant time the position of director (by whatever name called) including employees who may be deemed to be directors pursuant to s.126(1)(a) Companies Act 1993;
- (b) excludes any person referred to in s.126(1)(b)-(d), (2) & (3) Companies Act 1993 or s.180(1)(b)-(d) Companies Act 1955, other than employees referred to in paragraph (a) above;
- (c) excludes any external auditor, external professional adviser or shareholder.

Each insured person(s) or organisation is insured jointly.

**3. Outside Directorship**

means an executive position held by an Insured Person at the specific request of the Insured Organisation in any other corporation, joint venture, trust or other enterprise, other than the Insured Organisation.

**4. Parent Organisation**

means any organisation which holds directly or indirectly more than 50% of the voting shares of the Insured Organisation.

**5. Period of Insurance**

means the period in the current Schedule.

**6. Personal Injury**

means

- (a) bodily injury, sickness, disability or disease, including death whenever resulting;
- (b) nervous shock, mental anguish, mental injury and humiliation;
- (c) false or wrongful arrest, imprisonment, detention or eviction.

**7. Policy**

means the proposal, any declaration, this wording including any endorsements, and the current schedule, being the schedule issued at inception or the renewal schedule (whichever presently applies). Collectively they constitute a separate contract of insurance.

**8. Property Damage**

means physical injury to or destruction of tangible property, including the loss of use of any tangible property at any time resulting from physical injury or destruction.

**9. Subsidiary Company**

means any company that is or was:

- (a) controlled by the Insured through legal or beneficial ownership of more than 50% of the issued voting stock; or
- (b) deemed a subsidiary of the Insured by virtue of any applicable legislation or law, including companies held either directly or indirectly through one or more subsidiaries (ie, subsidiaries of subsidiaries).

**10. Wrongful Act**

means any error, misstatement or misleading statement, act or omission, or neglect or breach of duty allegedly made or committed within the Territorial Limits stated in the Schedule by any Insured Person, individually or otherwise, in the course of her/his duties to the Insured Organisation, including anything claimed against her/him solely by reason of her/him serving the Insured Organisation. All causally connected errors, statements, acts, omissions, neglects, breaches of duty or other things claimed against one or more Insured Person(s) will be treated as interrelated.

"Wrongful Act" does not mean any act, error or omission involving conflict between any entities within the definitions of Insured Organisation or Parent Organisation, or preferring the interests of any such entity over those of any other such entity.