

Policy Wording



Defamation



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Preamble

Whereas the party(ies) named in the Schedule (hereinafter called "The Insured") have made to Vero Liability Insurance Limited (hereinafter called "the Company") a written proposal bearing the date stated in the Schedule containing particulars and statements which influenced the acceptance of this insurance by the Company and which it is hereby declared are the basis of this contract and are to be considered as incorporated herein.

Operative Clause

Now This Policy Witnesseth that in consideration of the payment of the Premium stated in the Schedule the Company will indemnify the Insured against loss for which the Insured shall become legally liable by way of damages and/or costs resulting directly from claims first made upon the Insured during the Policy Period by reason of alleged injury or potential injury to the reputation, name, title, goodwill, office, calling, profession, trade, business or credit of parties in consequence of any libel and/or slander and/or defamation as more fully defined in the policy.

Provided That:

1. The liability of the Company for loss arising from anyone occurrence or number of occurrences, directly or indirectly arising from one source or original cause inclusive of all professional costs and expenses incurred by the Company during the conduct of the claim shall not exceed the limit of liability as stated in the Schedule.
2. The liability of the Company hereunder shall not exceed in the aggregate for all claims under this Policy the Limit of Liability stated in the Schedule.
3. The liability of the Company is limited to loss arising from occurrence(s) which occur on or after the retroactive date stated in the Schedule and for which the Company have physically received notification during the period of insurance stated in the Schedule.
4. This policy shall not provide indemnity other than whilst the Insured is acting in the capacity of the business stated in the Schedule and when indemnity is sought in respect of a specific contingency the policy shall not provide indemnity other than as clearly defined in this Policy.

General Exclusions

1. Exclusions

This insurance shall not indemnify the Insured against any claims:

(a) Insolvency

as a result of the insolvency of the Insured; or

(b) Professional Services

in respect of any business or professional services rendered by the Insured or any employee of the Insured whilst under the influence of intoxicants or drugs; or

(c) Failure by the Insured

for failure by the Insured or any employee of the Insured to render necessary business or professional services because of being under the influence of intoxicants or drugs; or

(d) Radiation

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

- (i) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (ii) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or

(e) Prior Claims

made or threatened prior to the commencement of the policy.

(f) War/ Terrorism

for death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, 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:

- (i) (i) 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
- (ii) 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 (i) and/or (ii) above;

(g) Year 2000

Year 2000 exclusion removed as no longer applicable.

(h) Prior Litigation

arising from any litigation in existence at the commencement of the Period of Insurance.

(i) Territory

outside the Territorial Limits stated in the Schedule

2. Other Insurance

The policy does not cover liability which is insured or would, but for the existence of this insurance be insured by any other insurance except in respect of any excess beyond the amount which would have been payable under such other policy had this insurance not been effected.

3. Liability Assumed

The policy does not cover liability assumed by the Insured by agreement unless such liability in the opinion of the Solicitor is likely to have attached to the Insured notwithstanding such agreement.

4. Wet Buildings

The Company shall not indemnify the Insured against 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.

5. Asbestos

This policy does not cover 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.

General Conditions

1. Misrepresentation

This policy shall be voidable in the event of misrepresentation, misdescription, or non-disclosure in any material particular.

2. Advice of a Claim

Upon the happening of any occurrence likely to give rise to a loss under this policy, or upon receipt by the Insured of notice of any claim, irrespective of the policy excess, whether well or ill founded, the Insured shall **immediately** give notice of the same to the Solicitor, as defined in this policy, and supply all particulars then available of the alleged occurrence along with any communication received from any claimant or representative of any claimant.

3. Claim Data

The Insured shall further as and when required by the Solicitor or the Company and with all reasonable despatch furnish to the Solicitor or the Company such other particulars and information as may be required.

4. Conduct of the Claim

On the notification of any claim referred to in Condition 2 hereof the Company shall have the absolute conduct and control of all negotiations and or defence of any such claim (which shall be a condition precedent to the Insured's right to be covered under this Policy) and shall be entitled to prosecute in the name of the Insured and for their own benefit any claim for indemnity or damages or otherwise the Insured shall render the Company every assistance within their power.

The Insured agrees to broadcast, publish or effect any retraction or apology as may be deemed appropriate by the Solicitor and/or the Company immediately on request. Provided always that in consultation with the Solicitor and before agreeing to any retraction apology or settlement the Company shall:

- (i) advise the Insured of its intention to retract and/or apologise and/or enter into a settlement of any complaint or claim;
- (ii) provide the Insured with the opportunity to make any representations it may deem appropriate to the Company;
- (iii) have regard to representations and opinions of the Insured or the Solicitor;
- (iv) not require the Insured to broadcast any retraction or apology which is not in a form suitable for broadcast.

5. Admission of Liability

The Insured shall not disclose the fact that they are insured and shall not make admission of liability in connection with any claim without first obtaining consent of the Solicitor or the Company thereto.

6. Cancellation

- (a) This Policy may be cancelled at any time at the request of the Insured, in which case the Company will retain the customary short-period rate for the time this policy has been in force.
- (b) The Company may also cancel this Policy by giving the Insured written notice to that effect where:
 - (i) the Insured or any person who was at any time the Insured failed to comply with the duty of utmost good faith;
 - (ii) the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
 - (iii) the person who was the Insured at the time when this policy was entered into made a misrepresentation to the Company during the negotiations for this policy but before it was entered into;
 - (iv) the Insured or any person who was at any time an Insured failed to comply with a provision of this policy, including a provision with respect to the payment of the Premium;
 - (v) the Insured has made a fraudulent claim under this policy or any other policy of insurance (whether with the Company or some other Insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
 - (vi) the Insured acted in contravention of or omitted to act compliance with any condition of this policy which empowers the Company to refuse to pay, or reduce their liability in respect of a claim in the event of such contravention or omission;
- (c) The Company's notice of cancellation takes effect at the earlier of the following times:
 - (i) the time when another policy of insurance between the Insured and the Company or some other Insurer, being a policy that is intended by the Insured to replace this Policy is entered into; or
 - (ii) 4.00 pm on the thirtieth business day after the day on which notice was given to the Insured.

In the event that the Company cancels this Policy, the Company will repay to the Insured a rateable proportion of the premium for the unexpired period of insurance from the date of cancellation.

7. Other Insurance

If there is other insurance against a loss described by this policy this insurance shall be determined excess insurance over and above the applicable limits of all such other Insurance.

8. Due Diligence

Subject to General Condition 5 the Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss hereunder.

9. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises 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 waives

any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

Clauses

1. Policy Excess

The policy excess, as noted in the schedule, applies to legal fees incurred by the company in the conduct defence and/or settlement of the claim.

2. Subrogation and Waiver of Subrogation Against Employees

In consideration of the premium paid herein it is hereby agreed that if any payment is made under this policy in respect of a claim the Company is thereupon subrogated to all Insured's rights to recovery in relation thereof.

The Company shall not exercise any such rights against any employee of the Insured unless the claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Employee.

Definitions

1. Loss

shall mean:

Amounts paid to or on behalf of claimants as damages or costs in satisfaction of judgements or settlements of claims and all other costs and expenses incurred by the Insured with the consent of the Company in respect of each occurrence insured by the Operative Clause.

2. Solicitor

shall mean:

The phrase "the Solicitor" shall mean as agreed.

3. A. Radio and/or Television

Defamation shall mean:

any libel, slander, infringement of copyright, breach of confidence, false attributions of authorship, appropriation of personality, infringement of trademark or design, infringement of patent, defamation of title, defamation of goods, action for malicious falsehood, action based on or analogous to infringement of copyright and actions for passing off arising from a broadcast or broadcasts whether by sound only or vision only or a combination of both made by or on behalf of the Insured from the sound or vision broadcasting station(s) as stated in the Schedule.

Special Exclusion No.1

This policy shall not indemnify the Insured against any claim arising from:

- (i) the broadcasting of any matter prohibited by or in violation of any present or future laws, amendments, rules or regulations under the jurisdiction of which the broadcast are made;
- (ii) the suspension or cancellation or loss of licence or other rights or privileges.

4. B. Authors

"Defamation" shall mean:

- (i) any libel arising from the use of a name or names or by the description of any character, scene or incident or by comment thereon, or otherwise defame any living person or person; or
- (ii) any infringement of copyright of any other person or person; or
- (iii) any warranty given by the Insured to any Publisher or Manager, whose principal place of business is within the territorial limits specified in the Schedule, to the effect that the work to be published or performed (the Insured being the author or part

author) does not infringe copyright or contain anything libellous and that the said Insured will indemnify the said Publisher or Manager against loss or damage as a result of actions taken on the grounds that the work as published or performed is libellous or infringes copyright.

Special Condition No.1

This policy shall not indemnify the Insured against any claim unless either:

- (i) the defamation or infringement was unwitting or unintentional; or
- (ii) in the case of an intentional reference to a living person (either directly or under the guise of a fictitious name) the Insured had reasonable grounds for supposing there would be a sound defence to an action for libel.

5. C. Printers

"Defamation" shall mean:

any libel or slander of title to goods or action on a case appearing or arising from the appearance of any matter printed by the Insured and/or on their behalf, and also for any infringement of copyright in such printed matter.

6. D. News Service Agents

"Defamation" shall mean:

any libel, slander, infringement of copyright, breach of confidence, false attribution of authorship, appropriation of personality, infringement of trademark or design, infringement of patent, libel or slander of title, libel or slander of goods, action for malicious falsehood, action based on or analogous to infringement of copyright and action for passing off arising from news matter prepared and/or supplied by the Insured on behalf of their clients and published through the medium of sound and/or vision broadcasting, newspapers, periodicals and the like.

7. E. Publishers of Newspapers, Magazines, Trade Journals and other Periodical Publications

"Defamation" shall mean:

any actual or alleged libel or slander of title or goods or action(s) on a case appearing or arising from the appearance in the publication(s) and/or infringement of copyright in such publication(s) as stated in the Schedule.

8. F. Book Publishers

"Defamation" shall mean:

any libel appearing in any book or books published by the Insured.