



Policy Wording

Body Corporate Liability



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Preamble

Whereas the Insured, (as defined herein and named in the Schedule hereto) has made to Vero Liability Insurance Limited (hereinafter called 'the Company'), a written proposal containing particulars and statements which it is hereby agreed are the basis of this contract and are to be considered as incorporated herein and have paid the premium stated in the Schedule for the following indemnity during the Period of Insurance or during any further period for which the Company may accept payment for renewal of this Policy.

Insuring Clause

The Company agrees subject to the limitations, terms and conditions hereinafter mentioned or endorsed hereon to indemnify the Insured against all claims (including the legal costs and expenses of defending such claims) which are first made against the Insured during the Period of Insurance specified in the Schedule and which are immediately notified to the Company in writing during the Period of Insurance specified in the Schedule arising out of a Wrongful Act which occurred subsequent to the Retroactive Date.

The amount in respect of all claims under this Policy shall not in aggregate exceed the Limit of Indemnity stated in the Schedule inclusive of claimants' costs and expenses and the costs and expenses incurred by or with the Company's written consent in the investigation, defence or settlement of any claim, during the currency of any of Period of Insurance.

Exclusions

1. The Company shall not be liable under this Policy to make any payment for any loss in connection with any claim(s) made against any Insured in respect of or by reason of:
 - a. **Personal Profit**
any Insured gaining or having gained any personal profit or advantage to which he/she is not legally entitled or for which he/she may be held accountable to the Body Corporate or any individual member thereof.
 - b. **Authorisation**
monies or gratuity given to any Insured without authorisation by the members of the Body Corporate where such authorisation is necessary pursuant to the rules of the Body Corporate or as prescribed by law.
 - c. **Dishonesty**
the dishonest or fraudulent act(s) of any Insured, regardless of whether or not any advantage has been gained by the Insured provided that this Exclusion shall not apply to the costs incurred by an Insured in successfully defending any claim or suit in relation thereto.
 - d. **Reimbursement**
any loss for which the Insured shall be reimbursed:
 - (i) by the Body Corporate pursuant to its rules;
 - (ii) by reason of having given notice of any circumstance which might give rise to a claim under any policy(ies) the terms of which have expired prior to the inception of this Policy.
 - e. **Bodily Injury**
bodily injury, sickness, disease or death of any person or property damage (including the loss of use thereof), except as arising from any negligent failure by or on behalf of the Insured to effect valid Public Liability insurance on behalf of the Body Corporate as required by law.
 - f. **Fines**
fines or penalties imposed by law.

- g. **Conflict**
a conflict of duty and interest to an Insured.
- h. **Exercise of Powers**
an intentional exercise of the powers conferred on the Insured as Officer, for a purpose other than the purpose for which such powers are conferred by the rules of the Body Corporate.
- i. **Insurance**
any failure or omission to effect or maintain insurance.
- j. **War, Terrorism**
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) 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 government(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;
- k. **Litigation**
any litigation in existence at the commencement of the Period of Insurance.
- l. **"Leaky Buildings" – Moisture or Water Penetration, Building Defects**
any liability for, or to 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 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, 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.

m. 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. The Company shall not be liable under this Policy to make payment for any loss in connection with any claims:
 - (a)
 - (i) made or threatened or in any way intimated on or before the inception date of the Policy specified in the Schedule.
 - (ii) arising from any circumstance or circumstances of which the Insured shall become aware prior to the Policy inception and which a reasonable person in the position of the Insured would at any time prior to the inception of the Policy have considered may give rise to a claim or claims under this Policy.
 - (iii) First notified to the Company after the expiry of the Policy.
 - (b) brought against the Insured in a court of law outside New Zealand.
 - (c) brought about or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of the Insured.
3. It is agreed that any fact pertaining to any Insured shall not be imputed to any other Insured for the purpose of determining the application of these Exclusions.

General Conditions

1. Consent

The Insured shall not admit liability for or settle any claim or incur any costs or expense in connection therewith without the written consent of the Company which shall be entitled at any time to take over and conduct in the name of the Insured (which shall be a condition precedent to the Insured's right to be covered under this Policy) the defence or settlement of any claim.

However, if the Insured shall refuse to consent to any settlement recommended by the Company and shall elect to contest or continue any legal proceedings in connection therewith, the Company's liability for the claims shall not exceed the amount for which the claim could have been so settled plus the costs and expenses incurred up to the date of such refusal.

2. Due Diligence

The Insured shall use due diligence and do and concur in doing all things reasonable practicable to avoid or diminish any loss hereunder, and shall give all such information and assistance to the Company as it may reasonably require to enable it to investigate and to defend the claim and/or to enable the Company to determine its liability under this Policy.

The Company may, on the receipt by it of notice from the Insured of any request for indemnity under this Policy, take whatever action that it considers appropriate to protect the Insured's position in respect of the claim against the Insured and such action by the Company shall not be

regarded as in any way prejudicing its position under the Policy and no admission of the Insured's entitlement to indemnity under the Policy shall be implied.

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.

3. More than one Insured

The inclusion in this Policy of more than one Insured shall not operate to increase the Limit of Indemnity specified in the Schedule.

4. Excess

In respect of each and every claim against the Insured the amount of the Excess specified in the Schedule shall be borne by the Insured at their own risk and is uninsured. The Company shall only be liable to indemnify the Insured for the amount beyond the level of the Excess. The Excess applies also to the costs and expenses relating to the claim.

For the purpose of this condition the term 'claim' shall be understood to mean any and all claims which are within the scope of this Policy and which arise by reason of the same Wrongful Act.

5. Fraud

If the Insured shall make any application for indemnity under this Policy, knowing that such application for indemnity is false or fraudulent, this Policy shall become void and the Insured's right to indemnify hereunder shall be forfeited in respect of any past, present or future claims.

6. Subrogation

It is hereby agreed that if any payment is made under the Policy in respect of a claim, the Company is subrogated to all the Insured's rights of recovery in relation thereto. The Insured shall give all such assistance in the exercise of rights of recovery as the Company may reasonably require. However, the Company shall not exercise any subrogated rights of recovery against any employee or former 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 or former employee.

7. Other Insurance

If at the time a claim arises under this Policy the Insured is or would but for the existence of this Policy be entitled to indemnity under any other policy or policies, the Company shall not be liable except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this Policy not been effected.

8. Cancellation

- (a) The Insured may cancel the policy on account of all the Insureds by giving notice in writing to the Company stating when the cancellation shall be effective.

After cancellation by the named Insured, a percentage refund of premium for the current Period of Insurance will be allowed on the following basis:

When cancellation is effective:	Return Premium
(i) within 60 days of inception of this Policy or renewal thereof	50% of annual premium

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|-------|--|-----------------------|
| (ii) | between 61 and 120 days from inception or renewal | 30% of annual premium |
| (iii) | between 121 and 180 days from inception or renewal | 15% of annual premium |
| (iv) | after 180 days of inception or renewal | No return premium |
- (b) The Company may cancel the Policy by registered letter sent to the Insured's last known address, or by facsimile transmission (fax) giving not less than 30 days notice of their intention to cancel this Policy, such notice to run from 4pm of the day following that upon which the registered letter is posted. After cancellation by the Company, a refund premium will be allowed prorata to the unexpired portion of insurance.
- (c) When the premium is subject to adjustment, cancellation will not affect the obligation of the Insured to supply to the Company such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

9. Jurisdiction

This Policy shall be governed by the laws of New Zealand whose courts shall have jurisdiction in any dispute arising hereunder.

Definitions

Whenever appearing in this policy or any annexure forming a part hereof, the following terms shall only be interpreted in the manner described below;

1. **Body Corporate**
shall mean the corporation or entity specified in the Schedule.
2. **Claim**
shall mean:
 - (a) legal proceedings instituted and served upon the Insured or
 - (b) any threat or intimation of a claim or
 - (c) any circumstance which may give rise to a claim.
3. **Insured**
shall mean Officers for the time being of the Body Corporate jointly and severally.
4. **Loss**
shall mean the amount payable in respect of a claim or claims made against the Insured for a Wrongful Act and shall include damages, judgements, settlements and costs of investigation (excluding salaries of Officers or employees of the Body Corporate) and cost of defence of legal actions, claims or proceedings and appeals therefrom.
All losses arising out of the same act or inter-related acts or one or more Insured persons shall be considered a single loss only.
5. **Officer(s)**
shall mean committee members of the Body Corporate where required by the Unit Titles Act 2010 (including the Chairperson), or otherwise the unit owners of all units in the unit plan.

6. Retroactive Date

shall be the date specified in the Policy Schedule.

7. Wrongful Act

shall mean any actual or alleged error or wrongful misstatement or misleading statement or act or omission or neglect or breach of duty by the Insured or any of them while acting in their individual or collective capacities on any matter, not excluded by the terms and conditions of this Policy, claimed against them solely by reason of their being Officers of the Body Corporate.