



**Policy** Wording

# Contaminated Products



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Vero Liability Insurance Ltd, ("the Company") has received a written Application and in issuing this Policy the Company has relied upon the representations contained in that Application.

### Insuring Clause

In consideration of the payment to the Company of the total premium specified in the Schedule, the Company will to the extent and in a manner hereinafter provided for, indemnify the Insured for Loss in excess of the Excess specified in the Schedule but not exceeding the Limit of Liability specified in the Schedule which results directly from any of the following Insured Events first discovered during the Policy Period as specified in the Schedule provided:-

- (a) The Insured first had knowledge of the occurrence of the Insured Event during the Policy Period;
- (b) The Insured notifies the Company of the occurrence of the Insured Event during the Policy Period or within thirty (30) days from the expiry date of the Policy in respect of such Insured Event;
- (c) That the Insured as of the inception date of this Policy as specified in the Schedule did not know nor could have reasonably been expected to know that such Insured Event or such Loss or any circumstances which might have led to the same had occurred or might likely occur.

### Insured Events

#### A. Accidental Contamination

Accidental Contamination is any accidental or unintentional contamination, Impairment or Mislabelling of an Insured Product or any Adverse Publicity implying such, which occurs during or as a result of its production, preparation, manufacture, packaging or distribution; provided that the use or consumption of such Insured Product:

- (a) has resulted in or would result in clear, identifiable, internal or external, visible physical symptoms of bodily injury, sickness, disease or death of any person(s), within one hundred and twenty (120) days following such consumption or use, or
- (b) has caused or would cause physical damage to (or destruction of) tangible property, including animals and/or livestock.

#### B. Product Tampering

Product Tampering is any actual, alleged or threatened, intentional, malicious and wrongful alteration or contamination of an Insured Product, or the creation of Adverse Publicity implying such, whether or not by an employee of the Insured, so as to render it unfit or dangerous for its intended use or consumption or to convey such impression to the public.

#### C. Product Extortion

Product Extortion is any threat or connected series of threats to commit a Product Tampering or allegation that a Product Tamper has occurred, for the purpose of demanding Ransom Monies, communicated to the Insured.

### Loss

Loss under this Policy includes only the following reasonable and necessary expenses or costs incurred by the Insured directly and solely as the result of a covered Insured Event and subject to the limit of liability stated in the Schedule. Except as otherwise provided with respect to Loss of Gross Profit and Extortion Costs, Loss is limited to expenses or costs incurred within twelve (12) months after the Insured Event first became known to the Insured. In no event will any amounts claimed and paid under one Insured Event be recoverable under another Insured Event.

#### A. Loss of Gross Profit & Extra Expense

Loss of Gross Profit and Extra Expense actually sustained by the Insured as a result of an Insured Event.

#### B. Recall Costs

Reasonable and necessary Recall Costs incurred by the Insured as a result of an Insured Event during the Policy Period, whether or not ordered by a federal, state, or local regulatory or judicial body.

#### C. Rehabilitation Expense

Reasonable and necessary extra expense incurred to rehabilitate or re-establish the Affected Product to the level of sales at which they would have been had the Insured Event not occurred. The Sublimit of liability for all such extra expense will be 25% of the Limit of Liability stated in the Schedule. This limitation does not increase the Limit of Liability as stated in the Schedule nor impose any additional Excess on the Insured.

#### D. Consultant Costs

Reasonable and necessary fees and costs of Pinkerton (Hong Kong) Ltd or its subsidiaries or other independent security or public relations, or recall consultants or advisers hired to assist the Insured in responding to an Insured Event approved by the Company. These expenses will fall inside the stated limit of liability listed in the Schedule. The Excess stated in the Schedule will apply to these expenses.

#### E. Extortion Costs

Reasonable and necessary Extortion Costs paid in response to a demand made upon the Insured under threat to commit a Product Tampering or allegation that a Product Tamper has occurred.

### Policy Definitions

#### A. Insured

Shall mean the entities set forth in the Schedule.

#### B. Affected Product

Shall mean an Insured Product which is the subject of an Insured Event and in the case of Product Tampering or Product Extortion shall include other Insured Products to which the effects of the Product Tampering or Product Extortion extend.

#### C. Adverse Publicity

means the reporting of an actual or alleged Accidental Contamination or Product Tampering during the Policy Period in local, regional, national media (including but not limited to radio, television, newspaper, magazines, or the Internet) or any governmental publication where the Insured Product is specifically named.

#### D. Insured Product

shall mean:-

- (a) All products of the Insured (or any of their ingredients or components) that; are in production, have been manufactured, handled or distributed by the Insured or manufactured by any contract manufacturer for the Insured, and those products being prepared for or are available for sale, that are set forth in the Schedule at the inception date of the Policy, and any new products within an existing product line on file with the Company.
- (b) Any new products outside the existing product line(s) to be included after the inception date of the Policy provided:-
  - (i) written notice is given to the Company within ninety (90) days of its introduction for sale; and
  - (ii) the Insured did not know nor could reasonably have been expected to know as of the date of the written notice to the Company that an Insured Event affecting the new product had occurred; and
  - (iii) the Company has given written acceptance of such new product. Such acceptance will not

be unreasonably withheld and will be given or refused within thirty (30) days of receipt of written notice. Such acceptance by the Company may be accompanied by changes in one or more of the terms, conditions or premium of the Policy, at the Company's option.

#### E. Impairment

shall mean any defect in the manufacture of the Insured Product, but shall not include defects or shortcomings of any sort in the design or formulation of that product or in the research and development leading up to it.

#### F. Mislabelling

refers only to the affixing or despatching of the wrong label, tag, printed packaging or other related documentation, including but not limited to brochures and product information inserts, to or with the Insured Product. It does not include errors or omissions in the text or format of any such material or any other literature, or any misleading or deceptive conduct in connection with the Insured Product.

#### G. Loss of Gross Profit

shall be the Insured's GROSS PROFIT MARGIN before taxes on the Affected Product, multiplied by the lost sales solely attributable to an Insured Event during the 12 month period beginning from the date of the first such reduction in sales; Less

- (a) any reduction in fixed costs and fixed expenses which may result from the Insured Event; and
- (b) any offset due to increased sales of the Affected Product or another Insured Product or product line during that 12 month period, as a result of an Insured Event.

#### H. Gross Profit Margin

shall be the amount left, per dollar of sale, after subtracting all variable costs and expenses attributable to the Affected Product.

#### I. Recall Costs

are any reasonable and necessary costs incurred by the Insured to inspect, withdraw, destroy and replace such recalled Affected Product. Recall Costs also include, but are not limited to:

1. The cost of newspaper, magazine, or any printed advertising, radio and television announcements or commercials, as well as the cost of correspondence necessary to effect the recall of the Affected Product.
2. Essential transportation and accommodation costs directly attributable to the recall of the Affected Product.
3. The cost to hire additional person(s), other than regular employees of the Insured devoted exclusively to effect the recall of the Affected Product.
4. Remuneration paid to regular employees of the Insured for overtime devoted exclusively to the purpose of recalling of such Affected Product.
5. The necessary out of pocket expenses of personnel under paragraphs (3) and (4) above, including transportation, incurred exclusively for the purpose of such recall.
6. Expense to rent or hire additional warehouse or storage space for the recall of the Affected Product for a maximum period of twelve months.
7. Expense incurred to properly dispose of the unused packaging and point of purchase marketing material of recalled Affected Product if it cannot be used or reused.

8. Inspection costs including the costs of chemical analysis or other such efforts to identify the cause(s) or potential effect of contamination.
9. The actual cost to redistribute any recalled or restored Affected Product.
10. Retail slotting fees and cancellation fees for any advertising and/or promotion programs, which were scheduled but were unable to be executed solely because of an Insured Event.
11. In the event that the Insured Product becomes an ingredient or component part in a product manufactured, distributed or handled by a customer of the Insured, coverage shall apply to Recall Expenses 1-9 enumerated above in this Policy Definition I. for such products only if the Insured is contractually obligated to reimburse the customer for such recall costs. The amount the Company will pay the Insured for a customer's expenses as described above will not exceed the expenses the Insured would have incurred in recalling the aforementioned customer's products. Coverage under this Item I.-11 is subject to the Sublimit stated in Item 6. of the Schedule.
12. The actual cost to restore the Affected Product to merchantable quality or replace any recalled Affected Product that has been destroyed, is unsellable or is unfit for its original use, with product of similar value.

#### J. Extra Expense

means the excess of the total cost of conducting business activities during the period of time necessary to clean or repair the location (owned or operated by the Insured), where the incident occurred for the sole purpose of reducing the Loss. This Policy only covers those extra expenses which are over and above the cost of such activities during the same period of time had no incident occurred. This may include but is not limited to the following:

- (a) The extra expense necessary to clean the machinery or location involved in the contamination or handling of the contaminated product in order to recreate an environment in which safe products can be manufactured or handled.
- (b) The extra expense that may be required to maintain the salaries of the workforce as required by state laws, union or other work contract for a maximum period of six months.
- (c) The cost to maintain a minimum work force at a minimal percentage of salary in order to be able to open the plant without delay as soon as possible after a shutdown imposed by a governmental authority.
- (d) The increased cost of subcontracting some or all of the manufacturing process to a contract manufacturer for a period of time necessary to restore the Insured's facilities to a state in which products can be manufactured or handled safely.

#### K. Extortion Costs

shall mean:-

- (a) Ransom Monies paid by the Insured as a direct result of a Product Extortion discovered during the Policy Period.
- (b) In Transit/Delivery Loss, being any loss due to destruction, disappearance, confiscation or wrongful appropriation of Ransom Monies while being handled or conveyed by anyone who is authorised by the Insured to have custody thereof, provided, however, that the Product Extortion which gave rise to the delivery is insured hereunder.
- (c) Extortion Expenses, which include any reasonable and necessary expenses incurred and paid by the

Insured solely as a direct result of a Product Extortion provided that such Product Extortion is insured hereunder, including but not limited to:

- (i) the amount paid by the Insured as a Reward to an Informant for information relevant to the Product Extortion;
- (ii) interest costs for a loan from a financial institution made to the Insured for the purpose of paying Ransom Monies;
- (iii) reasonable costs of travel and accommodations incurred by or on behalf of the Insured while attempting to negotiate a Product Extortion;
- (iv) reasonable and necessary medical services and hospitalisation costs incurred by any person(s) directly involved in the handling or negotiating of a Product Extortion and/or the handling of Ransom Monies, and paid by the Insured as the direct result of a Product Extortion within thirty six (36) months following the last credible Product Extortion threat discovered during the Policy Period, including but not limited to any costs for treatment by a neurologist or psychiatrist, costs for cosmetic surgery, and expense of confinement for such treatment.
- (v) reasonable and necessary fees and expenses of independent forensic analysts engaged by the Insured with the prior approval of the Company;
- (vi) reasonable and necessary fees and expenses of a qualified interpreter assisting the Insured in connection with a Product Extortion
- (vii) increased costs of security due to a Product Extortion including but not limited to hiring of security guards, hiring of armoured vehicles and overtime pay to existing security staff for a period of up to 90 days, provided however that Pinkerton (Hong Kong) Ltd or other specialist consultant has specifically recommended such security measures.

#### L. Informant

means any person, other than a director, executive officer or employee of the Insured, providing information not otherwise obtainable, in return for a Reward offered by the Insured.

#### M. Ransom Monies

means any monies which the Insured has paid in transit or lost under circumstances described in Insured Event C. The term 'Monies' as used herein includes cash, monetary instruments, bullion, or the fair market value of any securities, property or services.

#### N. Reward

means monies offered for information in an effort to mitigate the loss.

### Territory

This Policy applies to an Insured Event anywhere in the world unless specifically limited by the Company through endorsement.

### Exclusions

This Policy does not provide an indemnity against any Loss arising directly or indirectly out of:

#### A. Economic Conditions

Population changes, changes in customer tastes, economic conditions, seasonal sales variations, competitive environment or removal of an Insured Product scheduled for withdrawal for reasons unrelated to an Insured Event.

#### B. Contamination

Any actual or alleged contamination or alteration of a similar competitive product.

#### C. Illegal Act

Any illegal act or omission brought about or contributed to by any of the Insured's directors, executive officers, administrators, trustees or assigns.

For the purpose of this exclusion "executive officer" shall mean any person, by whatever name called and whether or not he/she is a director of the Insured, who is concerned, or takes part, in the management of the Insured's operations.

#### D. Use of Insured Product

Any claim made by any person arising out of or in connection with the use or consumption of an Insured product. This includes any defence costs related to a third party lawsuit.

#### E. Banned Substances

Violation by the Insured of any governmental or quasi-governmental regulation or law in connection with the manufacture, handling, sale, content or distribution of any Insured Product or from the use of materials or substances in the manufacturing process which have been banned or declared unsafe by any governmental or quasi-governmental entity; or involving any costs and expenses or damages whatsoever of any litigation whatsoever or any proceedings before any litigation or any proceedings conducted prior to the commencement of such litigation before any governmental or quasi-governmental entity or constituting fines, penalties or damages imposed by any governmental or quasi-governmental entity as a result of an Insured Event or otherwise.

#### F. Deterioration

Deterioration, decomposition or transformation of the Insured Product unless it is a result of an Accidental Contamination or a Product Tampering.

#### G. Radiation

Nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled, or resulting from any act or condition incident to any of the foregoing, whether such Loss be direct or indirect, proximate or remote, or be in whole or in part caused by contributed to, or aggravated by an otherwise Insured Event or not.

#### H. War

Any consequence, whether direct or indirect, of war, invasion, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion, or military or usurped power.

#### I. Storage

Failure to adhere to procedures stated by the Insured regarding the storage, consumption, or use of an Insured Product. This exclusion only applies to Insured Event A - Accidental Contamination.

#### J. Publicity

Adverse Publicity generated by any of the Insured's directors, executive officers, administrators, trustees or assigns.

#### K. GMO or Diseases

Any loss arising out of:

- (i) Bioengineering, genetic engineering or genetic modification of any Insured Product(s) or
- (ii) Hormone treatment of any Insured Product(s) or
- (iii) Irradiation of any Insured Product(s); or
- (iv) Transmissible Spongiform Encephalopathies (TSE)
- (v) Foot and Mouth Disease

**L. Carcinogens**

Carcinogenic contamination regardless of whether such carcinogens are shown to have other non carcinogenic effects.

**M. Defective Product**

Any Accidental Contamination that occurs after the Insured has knowledge of a defect or deviates the production, preparation or manufacture of Insureds Product(s), or circumstance(s) which have or are reasonably likely to result in such deviation or defect, and fails to take reasonable corrective action.

**N. Government Regulations**

Any loss arising out of a change in government regulations or public perceptions with respect safety of any Insured Product(s) or intended ingredients. This exclusion applies to Accidental Contamination only.

**O. Land and Crops**

Notwithstanding any provision in this policy, this policy does not insure against:

- (i) Loss to land (including on which property is located), water, growing crops or lawns or;
- (ii) Crop failure due to weather, pest or other cause

**P. Design Costs**

Any costs associated with the expense to design or redesign, engineer or re-engineer any product(s).

**Q. Known Circumstances**

Any event, series of events or circumstance(s) of which an employee, officer or director of the Insured had actual or constructive knowledge prior to the policy inception date.

**R. Terrorism**

Arising from 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.

**S. Year 2000**

Year 2000 exclusion removed as no longer applicable

**T. Asbestos**

Any actual 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.

**U. Prior Litigation**

Any liability arising out of any litigation in existence at the commencement of the Period of Insurance.

**V. Wet Buildings**

Any liability for, or fulfil any obligation in respect of any claim, Defence Costs or Penalties, which are directly or indirectly caused by or contributed to, or arises directly or indirectly out of:

- (i) 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

- (ii) 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

- (iii) 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:

- (a) external water or moisture; or
- (b) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.

**Policy Conditions****A. Amount payable**

Any amount payable for Loss under this Policy will be calculated as follows:-

First the Excess will be subtracted from Loss.

Second, the applicable Coinsurance will be applied to the balance.

**B. Confidentiality**

The Insured shall use all reasonable efforts not to disclose the existence of this Policy to any person unless required by law to do so. This condition shall also apply to any excess or other insurance.

**C. Coinsurance**

The Insured will bear the Coinsurance amount stated in Item 6. of the Schedule of each covered Loss in excess of and in addition to the Excess under Insured Event A - Accidental Contamination, uninsured at its sole risk. The Coinsurance amount will be calculated by multiplying the covered Loss in excess of the Excess by the Coinsurance amount. The Company will pay covered Loss in excess of the Excess subject to the Limit of Liability stated in Item 4. of the Schedule after deduction of the Coinsurance amount from the covered Loss.

**D. Excess**

The Excess stated in Item 5. of the Schedule will apply separately to each and every Loss. The Excess is to be borne by the Insured.

**E. Limit of Liability**

The Company's liability hereunder will be limited to the Limit of Liability stated in the Schedule.

**F. Notice of Loss**

It is a condition precedent to the operation of this Policy that the Insured shall give oral notice as soon as practicable to the Company of the occurrence of any Insured Event as soon as the Insured has knowledge of the occurrence of any Insured Event. Such immediate notice shall be given within the Policy Period or within fourteen (14) days from the expiry date of the Policy and shall be confirmed in writing within three (3) months of such first notice to the Company. Notice shall be sufficiently detailed to apprise the Company of the facts and circumstances known to the Insured. The Insured shall keep the Company informed of all activity on a contemporaneous basis. Except as otherwise provided with respect to Loss of Gross Profit, the time when a Loss shall be deemed to have occurred within the meaning of this Policy shall be the date on which the Insured first had knowledge or should have had knowledge of the occurrence of an Insured Event or circumstances which may give rise to the occurrence of an Insured Event.

If it appears to be in the best interest of the Insured or to be required by law, the Insured will make every reasonable effort to notify law enforcement authorities or any other governmental agencies having jurisdiction over the matter.

**G. Initial Statement of Loss**

The Insured shall, upon establishment of a Loss, submit an Initial Statement of Loss stating the full particulars of Loss and detailing its initial calculations and/or projections of the elements and composition of the Loss. Such Statement of Loss shall be submitted with reasonable promptness.

**H. Final Statement of Loss**

Irrespective of payments made in accordance with condition G., the Company shall require a Final Statement of Loss with respect to all items of Loss other than Loss of Gross Profit to be submitted to the Company in writing no later than twenty-four (24) months after the first knowledge of the occurrence of any Insured Event as set out in condition F. above. A Final Statement of Loss with respect to Loss of Gross Profit must be submitted no later than twenty four (24) months after the beginning of a reduction in sales of the Affected Product caused by an Insured Event.

**I. Valuation Clause**

In determining the amount of Gross Profit, charges and continuing or extra expenses and other compensable Losses, due consideration will be given to the profitability of the business of the Affected Product before the occurrence of the Insured Event and the probable profitability of the Affected Product thereafter, had the Insured Event not occurred. The level of sales and probable profit of the business of the Affected Product had the Loss not occurred, must be reasonably demonstrated with reasonable certainty by the Insured.

**J. Assistance and Co-operation of the Insured**

The Insured shall co-operate with the Company in all matters relating to this insurance. This may include, but is not limited to, attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements, and in conducting litigation, arbitration, or other proceedings.

The Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or to diminish any Loss hereunder, and shall immediately 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.

**K. Examination Under Oath**

The Insured, as often as may be reasonably be required, shall exhibit to any person designated by the Company all Affected Product(s), whether salvageable or otherwise, and shall submit to examinations under oath by any person named by the Company, and subscribe the same; and, as often as may be reasonably be required, shall produce for examination all books of account, vouchers, bills, invoices, schedules, accounting information, and any documentation relating to the Insured's calculation of its Loss, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representative, and shall permit extracts and copies thereof to be made.

**L. Inspection and Audit**

The Company may examine and audit the Insured's business documents at any reasonable time, relating to the subject matter of this insurance, until three (3) years after this Policy has expired or has been cancelled. Any premium due for exposures which exist but were not reported will be determined by Company audit.

**M. Contribution and Excess Insurance**

If at the time of any Loss indemnifiable under this Policy there is, or but for the existence of this Policy would be, any other policy of insurance in favour of or effected by or on behalf of the Insured applicable to such Loss, this Policy shall be excess insurance over and above the amount of liability covered under such other policy of insurance.

The Insured may purchase excess insurance over the Limit of Liability set forth in this Policy without prejudice to this Policy provided that the Company is notified in writing of the details of such other excess insurance at the time such other excess insurance is acquired.

**N. Subrogation**

In the event of any payment under this Policy, the Company shall be subrogated to the extent of such payment to all the Insured's rights of recovery in accordance with this paragraph. In such case the Insured shall execute all documents required and shall do everything necessary to secure and preserve such right including the execution of such documents necessary to enable the Company effectively to bring suit in the name of the Insured.

**O. Salvage**

Any salvage or other recovery, after expenses incurred in salvage or recovery are deducted, will accrue entirely to the benefit of the Company until the sum paid by the Company has been recovered. In case of damage to property bearing a brand or trademark, or which in any way carries or implies the guarantee or the responsibility of the Insured, the salvage value of such damaged property will be determined after removal in the customary manner of all such brands or trademarks or other identifying characteristics, the costs of which will be borne by the Insured. The goodwill and public image of the Insured will be considered in determining whether any Insured Product(s) should be involved in salvage recovery. The Company's right to salvage will not be unreasonably restricted by the Insured. The Insured will have full right to the possession of all goods involved in any Loss under this Policy and will retain control of all damaged goods. There can be no abandonment of any property to the Company.

**P. Suit against the Company**

No suit or action on this Policy for the recovery of any Loss shall be sustainable in any court arbitration or dispute resolution process of any type unless the Insured shall have fully complied with all requirements of this Policy and unless commenced within twenty-four (24) months after Final Statement of Loss has been submitted to the Company by the Insured.

**Q. Cancellation**

A Method of cancellation:

- (a) The Insured may cancel this Policy at any time by notifying the Company in writing.
- (b) The Company may cancel this Policy at any time by giving ninety (90) days notice in writing to the Insured of the date from which cancellation is to take effect. Such notification is to be delivered personally or posted by certified mail to the Insured at the address last notified to the Company. Proof of mailing is sufficient proof of notification.

B Adjustment of Premium:

- (a) After cancellation by the Insured, the Company will retain or be entitled to the premium for a period during which this Policy has been enforced based upon the Company's cancellation rates.
- (b) After cancellation by the Company, the Insured is entitled to a pro-rata refund of the premium.

**R. Non Payment of Premium**

Should the Insured not pay the total premium specified in the Schedule within such time as may be required by the Company, then no contract of insurance will have been effected and this Policy shall become void and the Insured's right to indemnity hereunder shall be forfeited in respect of all past, present and future claims.

**S. Non Assignment**

Assignment of interest under this Policy shall not bind the Company without the prior written approval, such consent shall not unreasonably be withheld, of an authorised representative of the Company.

**T. Consolidation-Merger**

If, through either (1) consolidation or merger with, (2) acquisition either directly or via any related person of a controlling shareholding of, or (3) acquisition either directly or by any related person, of the assets of some other entity, exposures are created which are covered by this Policy by reason of the description of the Insured, the Insured shall give the Company written notice of consolidation, merger, or acquisition within ninety (90) days of such consolidation, merger or acquisition and upon acceptance by the Company of such additional exposure, shall pay the Company an additional premium computed from the date of the consolidation, merger or acquisition to the end of the current premium period, otherwise coverage as may be provided in respect of such other entity shall be null and void ninety (90) days from the date of consolidation, merger or acquisition.

No claim arising out of the additional exposure will be covered unless the Insured, at the time it gave notice thereof to the Company, did not know nor could reasonably have been expected to know of the Insured Event giving rise to the claim.

**U. Non-Accumulation of Liability**

Regardless of the number of years this Policy shall continue in force, and the number of premiums which shall be payable or paid or regardless of any other circumstances whatsoever, the liability of the Company under this Policy with respect to any Loss or Losses shall not be cumulative from year to year or period to period. When there is more than one Insured, the aggregate Limit of Liability of the Company for Loss or Losses sustained by any or all of them as set out in the Schedule shall not exceed the amount for which the Company would be liable if all Losses were sustained by any one of them.

**V. Authorisation Clause**

By acceptance of this Policy, the first named Insured on the schedule agrees to act on behalf of all Insureds with respect to the giving and the receiving of any return premiums that may become due under this Policy, the acceptance of endorsements, and the giving or receiving of any other notice provided for in this Policy; and the Insureds agree that the first named Insured shall act on their behalf.

**W. Fraudulent Claim**

If the Insured shall make any application for indemnity under this Policy or submit any Initial or Final Statement of Loss knowing that such application or such Initial or Final Statement of Loss is false or fraudulent, the Company shall refuse to indemnify the Insured for any Loss relating to or consequent upon or established by such application or such Initial or Final Statement of Loss.

**X. Arbitration**

If the Insured and the Company shall fail to agree on the amount of Loss, then, on the written demand of either, made within sixty (60) days after rejection of the final statement of loss by the Company, shall select a competent and disinterested arbitrator and notify the other of the arbitrator selected within twenty (20) days of

such demand. The arbitrators shall first select a competent and disinterested umpire and failing for fifteen (15) days to agree on such umpire, then upon the request of the Insured or the Company such umpire shall be selected by a judge of a court of record in New Zealand. The Insured and the Company will submit their cases to the arbitrators and the umpire within thirty (30) days of the appointment of the umpire. An award in writing, so itemized, of any two will determine the amount of Loss. The Insured and the Company will each pay its chosen arbitrator and will bear equally the other expenses of the arbitration and umpire. The Company will not be held to have waived any of its rights by any act relating to arbitration.

**Y. Currency**

All premiums and claims (if any) are payable at the place and in the currency of the Country where the Policy was issued, unless otherwise agreed in writing by an authorised representative of the Company.

**Z. Proper Law of the Policy**

This insurance shall be governed by the law of the Country where the Policy was issued whose Court shall have jurisdiction in any dispute arising hereunder. For the purpose of this paragraph, the place of issue of the Policy by the Company shall be conclusive evidence.

**AA. Changes**

Notices to any representative of the Company or knowledge possessed by any representative or by any person will not effect a waiver or a change in any part of the Policy or estop the Company from asserting any right under the terms of this Policy, nor will the terms of this Policy be waived or changed, unless agreed to in writing by an authorised representative of the Company.

**BB. Notices**

Except as indicated to the contrary herein, all notices, applications, demands or requests provided for in this Policy will be in writing and will be given to or made upon either party at its address shown in the Schedule.

**CC. Severability, Construction and Conformance to Statute.**

- (i) If any provision contained in this Policy is, for any reason, held to be invalid, illegal or unenforceable in any respect, it is hereby deemed to be severed and to have no effect on any other valid, legal and enforceable provision of this Policy.
- (ii) If any provision contained in this Policy is for any reason held to be invalid, illegal or unenforceable, it will be construed by limiting it so as to be valid, legal and enforceable to the extent compatible with applicable law.
- (iii) Any provisions of this Policy which are in conflict with the statutes or regulations of the state or country wherein this Policy is issued are hereby amended to conform to such statutes or regulations.

**DD. Titles of Paragraphs**

Titles of paragraphs are inserted solely for the convenience of reference and will not limit, expand, or otherwise affect the provisions to which they relate.

**EE. 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.

This Policy together with the application executed by the Insured, is made and accepted subject to the foregoing stipulations and conditions which are hereby specially referred to and made a part of this Policy, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto.

IN WITNESS WHEREOF, this Policy has been signed on behalf of the Company, but it shall not be binding upon the Company unless countersigned on the Schedule by an authorised representative of the Company.

