



Policy Wording

Internet Liability



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Insuring Clause

In consideration of the payment of the premium, in reliance on the written proposal and declaration and any other underwriting information provided (which shall be deemed to be the basis of this Policy), and subject to its terms, conditions, exclusions, memoranda and endorsements, Vero Liability Insurance Limited ("the Company") will indemnify the Insured for legal liability arising from any claim made against the Insured, and notified to the Company during the Period of Insurance stated in the Policy Schedule, in respect of any act, error or omission committed or omitted by the Insured while using the internet, electronic email, intranet or worldwide web or providing internet services for the purpose of the conduct of the Insured's Business as described in the Policy Schedule for:

- (a) infringement or unauthorised use of intellectual property rights or alleged intellectual property rights; or
- (b) defamation; or
- (c) unauthorised use of names (including domain names), trade names, trade address, service marks, service names, titles, slogans, formats, characters, character names, characterisations, plots, musical compositions, performances, logos, artwork, graphics, photographs or programme materials; or
- (d) passing off; or
- (e) breach of confidence or infringement of any right to privacy, including alleged breach of the terms of the Privacy Act 1993; or
- (f) misuse of information which is either confidential or subject to statutory restrictions on use; or
- (g) transmission of any computer virus or programme or code that causes loss or damage to any computer system and/or prevents or impairs any computer system from performing and/or functioning accurately and/or properly; or
- (h) any act that belittles the product or work (whether completed or not) of others; or
- (i) unauthorised taking for use of any advertising idea, material, slogan, style or title of others not otherwise insured under the Section.

Limit of Indemnity and Excess

The Company's total liability including costs and expenses under this Section shall not exceed the Limit of Indemnity stated in the Policy Schedule for any one claim and in the aggregate during the Period of Insurance.

The Insured shall bear the amount of the Excess stated in the Policy Schedule in respect of each and every claim including costs and expenses.

Where more than one claim arises out of the same act or omission or causally connected or interrelated acts or omissions, all of those claims will together constitute one claim for the purposes of determining the Excess.

Exclusions

The Company will not indemnify the Insured in respect of any claim arising out of or connected with:

1. **Asbestos**
resulting from or in consequence of, asbestos in whatever form or quantity.
2. **Breach of Patent**
any alleged breach of Patent.
3. **Chatrooms**
any chat rooms, electronic bulletin boards or the Insured's obligations to its employees;

4. Fraud

- (a) any actual or alleged dishonest, fraudulent, criminal or malicious act by the Insured; or
- (b) any wilful breach of duty including any breach of statute, contract or duty, or act committed or alleged to have been committed deliberately or with a reckless disregard for the consequences by the Insured or their consultants, contractors, sub-contractors or agents; or
- (c) any application for indemnity which is false or fraudulent;

5. Fines, Penalties

punitive, aggravated, liquidated, multiple or exemplary damages, or fines or penalties imposed by law;

6. Known Circumstances

claims or circumstances:

- (a) made against, or intimated to the Insured prior to the commencement of the Period of Insurance; or
- (b) notified under any previous Internet Liability policy; or
- (c) arising out of or connected with any facts or circumstances which:
 - (i) the Insured was aware of prior to commencement of the Period of Insurance, and
 - (ii) a reasonable person would have considered might give rise to a Claim against the Insured;

7. Obscene Matter

relating to obscene matter of any kind;

8. Personal Injury

Personal Injury;

9. Professional Services

brought by or on behalf of any client or customer of the Insured in connection with professional services provided by the Insured;

10. Property Damage

Property Damage not covered under Insuring Clause (g)

11. Radioactivity

ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof.

12. Retroactive Date

any act, error or omission which occurred prior to the Retroactive Date stated in the Policy Schedule;

13. War, Terrorism

death, injury, illness, loss, damage, any 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:

- (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 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 (a) and/or (b) above.

Conditions

1. Assignment

No assignment of interest under this policy shall bind the Company unless its written consent is endorsed on this policy.

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. Cancellation will be effective at 4.00pm on the 30th 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 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

The Insured shall not admit liability for or settle any claim, or incur any costs or expenses, without the prior written consent of the Company which shall be entitled to take over and to conduct in the name of the Insured (which shall be a condition precedent to the Insured's right to be covered under this Section) the defence or settlement of any claim, including to compromise any counterclaim. Nevertheless neither the Insured nor the Company shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Company) shall advise that such proceedings should be contested.

If the Insured shall refuse to consent to any settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled (less the excess stated in the Policy Schedule), plus the costs and expenses incurred up to the date of such refusal.

The Insured shall as a condition precedent to its right to be covered under this Section give to the Company immediate notice in writing of:

- (a) any claim made against the Insured;
- (b) the receipt of notice from any person of any intention to hold the Insured responsible for the results of an alleged negligent act, error or omission;
- (c) any circumstance which the Insured shall become aware which may give rise to a claim or claims under this Section;

irrespective of whether the claim is considered justified and/or the quantum is likely to be within the Excess stated in the Policy Schedule.

4. Policy Jurisdiction

This policy shall be governed by the law of New Zealand, the Courts of which shall have exclusive jurisdiction over any dispute.

5. 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.

Definitions

1. Insured

means the person, company or other entity named in the Policy Schedule and any Subsidiary Company.

2. 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).