

**Policy** Wording

# Professional Indemnity



# Contents

<b>Insuring Clause.....</b>	<b>2</b>	<b>Optional Extended Coverage .....</b>	<b>4</b>
<b>Excess .....</b>	<b>2</b>	1. Defamation.....	4
<b>Retroactive Exclusion Clause .....</b>	<b>2</b>	2. Past Liabilities.....	4
<b>Exclusions .....</b>	<b>2</b>	3. Loss of Documents.....	4
(a) Defamation.....	2	4. Amendment of Dishonesty Exclusion.....	5
(b) Dishonesty.....	2	5. Fidelity .....	5
(c) Bodily Injury.....	2	6. Automatic Reinstatement .....	5
(d) Territory.....	2		
(e) Loss of Documents .....	2		
(f) Watercraft .....	2		
(g) Contractual Liability .....	2		
(h) Other Insurance .....	2		
(i) Radiation .....	2		
(j) War, Terrorism.....	2		
(k) Insolvency.....	3		
(l) Joint Ventures .....	3		
(m) Copyright .....	3		
(n) Prior Litigation .....	3		
2. Insured vs Insured .....	3		
3. Prior Circumstances.....	3		
4. Year 2000.....	3		
5. "Leaky Buildings" – Moisture or Water Penetration, Building Defects.....	3		
6. Asbestos .....	3		
<b>Conditions .....</b>	<b>3</b>		
1. Claims.....	3		
2. Reporting and Notice .....	3		
3. Termination of Policy.....	3		
4. Due Diligence .....	3		
5. Statutory Registration.....	4		
6. Records .....	4		
7. Jurisdiction .....	4		
8. Fraud .....	4		
9. Subrogation .....	4		
10. Cancellation.....	4		
11. Authorisation.....	4		
12. Waiver of Privilege .....	4		



## Insuring Clause

1. In consideration of the payment of the premium, in reliance on the written proposal and declaration (which shall be deemed to be the basis of this policy), and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("the Company") will indemnify the Insured against all claims for compensation (including claimants' costs and expenses) which the Insured shall become legally liable to pay as damages, up to the Limit of Indemnity stated in the Schedule in the aggregate in any one Period of Insurance, and which are first made against the Insured during the Period of Insurance stated in the Schedule and notified to the Company during the same period, and which arise by reason of any negligent act, error or omission on the part of:
  - (i) the Insured or their specified predecessors in business;
  - (ii) any person now or previously employed by the Insured or their specified predecessors in business;
  - (iii) any other person(s), partnership, company or firm acting for or on behalf of the Insured;
 in the conduct of the Insured's business or occupation stated in the Schedule.
2. The Company will pay costs and expenses incurred with its prior written consent in the defence or settlement of any indemnifiable claim. Provided that the payment of such costs and expenses shall form part of and not be in addition to the Limit of Indemnity specified in the Schedule.

## Excess

1. In respect of each claim made against the Insured the Excess stated in the Schedule shall be borne by the Insured at their own risk and the Company shall only be liable to indemnify the Insured in excess of such amount.
2. Should any claim made against the Insured involve more than one negligent act, error or omission then the Excess stated in the Schedule shall apply to each such negligent act, error or omission separately.
3. When the Excess stated in the Schedule is shown as including costs and expenses, then all defence costs in respect of each such negligent act, error or omission up to that amount shall be borne by the Insured.

## Retroactive Exclusion Clause

Notwithstanding anything contained in this policy to the contrary, no liability shall attach under this policy in respect of any negligent act, error or omission committed or alleged to have been committed prior to the Retroactive Date stated in the Schedule.

## Exclusions

1. This policy shall not indemnify the Insured in respect of any claim against them, alleging, involving, arising from (directly or indirectly):
  - (a) **Defamation**  
any defamation;
  - (b) **Dishonesty**  
brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Insured, which shall include any director, principal or any person or company which has a beneficial interest in the Insured or their specified predecessors in business, or any person at any time employed by the Insured or their specified predecessors in business;
  - (c) **Bodily Injury**  
death or bodily injury occasioned by the Insured;

## (d) Territory

any legal liability of whatsoever nature, directly or indirectly, arising out of any negligent act, error or omission committed outside the Territorial Limits stated in the Schedule. Provided that the indemnity granted by this Policy shall only extend to claims, suits, actions or demands brought in the Courts of Law within the Jurisdiction Limits stated in the Schedule and heard in accordance with and subject to the law within those Jurisdiction Limits;

## (e) Loss of Documents

brought about or contributed to by loss or damage to documents;

## (f) Watercraft

the ownership possession or use by or on behalf of the Insured of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;

## (g) Contractual Liability

any liability of the Insured under a specific contract which would not have existed in the absence of such specific contract;

## (h) Other Insurance

any conduct or circumstances in respect of which the Insured is entitled to indemnity under any other insurance, except in respect of any excess beyond the amount which is payable or would have been payable under such other insurance had this insurance not been effected;

## (i) Radiation

resulting from;

- (i) (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
- (b) any legal liability of whatsoever nature; directly or indirectly caused by or contributed to or arising from ionising radiations 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 or any explosive nuclear assembly or nuclear component thereof;

## (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) Insolvency**

the insolvency, bankruptcy or liquidation (as the case may be) of the Insured;

**(l) Joint Ventures**

any activities in which the Insured is engaged as a joint venture or as a partner, unless the joint venture or partnership is described in the Schedule as the Insured;

**(m) Copyright**

any breach of copyright, design, trademark, confidential information or patent.

**(n) Prior Litigation**

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

**2. Insured vs Insured**

This policy shall not indemnify the Insured in respect of any claim against them by:

- (a) any person, firm, company or organisation named in this policy as an Insured;
- (b) any company operated or controlled by an Insured or by any employees, nominees or trustees of an Insured and in which the Insured or the Insured's spouse or child has a direct or indirect financial interest;
- (c) any person, firm, company or organisation advised or induced by the Insured or employees of the Insured to invest in or loan money to any company being a company referred to in (b) above, or to any person, firm, company or organisation named as an Insured under this policy;
- (d) the Insured's spouse or child.

**3. Prior Circumstances**

This policy shall not indemnify the Insured in respect of any claim made, threatened or in any way intimated against them prior to the commencement of the Period of Insurance stated in the Schedule, or in respect of any circumstance or occurrence of which the Insured are aware or ought reasonably to be aware at the inception of this insurance and which may give rise to a claim against them, whether notified under any other insurance or not.

**4. Year 2000**

Year 2000 exclusion removed as no longer applicable.

**5. "Leaky Buildings" - Moisture or Water Penetration, Building Defects**

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 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.

**6. 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.

**Conditions**

**1. 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 Policy) 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 King's, Queen's or Senior Counsel (to be mutually agreed upon by the Insured and the Company) shall advise that such proceedings should be contested.

**2. Reporting and Notice**

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 specified in the 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 policy 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 Policy;

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

**3. Termination of Policy**

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

**4. Due Diligence**

The Insured shall use due diligence, and do and concur in doing all things reasonably practicable, to avoid or diminish any claim and, on request, give to the Company or its authorised representatives all such information and assistance as they may reasonably require.

**5. Statutory Registration**

The Insured shall give immediate notice in writing to the Company should the statutory registration of an insured person be suspended, cancelled or terminated.

**6. Records**

If the premium for this policy has been calculated on any estimates furnished by the Insured, the Insured shall keep an accurate record containing all relevant particulars, and shall at all times allow the Company to inspect such records. The Insured shall within one month from the expiry of the Period of Insurance furnish to the Company such particulars and information as the Company may require. The premium for such period shall then be adjusted and the difference paid by or allowed to the Insured, as the case may be, subject to a minimum premium which, unless otherwise stated, will be seventy-five percent (75%) of the Initial Premium.

**7. Jurisdiction**

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

**8. Fraud**

If any claim under this policy shall be in any respect fraudulent, or if any fraudulent means or devices are used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this policy, all benefits under the policy shall be forfeited.

**9. Subrogation**

If any payment is made under this policy in respect of a claim, the Company is subrogated to all the Insured's rights of recovery. 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. The Insured shall give all such assistance in the exercise of rights of recovery as the Company may reasonably require.

**10. Cancellation**

This policy, or any extension stated in the Schedule as included, may be cancelled by the Company at any time by sending written notice to the last known address of the Insured. Such cancellation shall be effective from 4 pm on the 14th day after posting of such written notice. After such cancellation the Company will refund a pro rata premium for the unexpired Period of Insurance.

The Insured may cancel this policy, or any extension stated in the Schedule as included, at any time by notice to the Company, and the Company shall refund premium for the unexpired Period of Insurance calculated pro rata from the date of receipt of such notice less 10%, subject always to the Company's minimum premium.

Notwithstanding the cancellation of the policy, or any extension, the Insured shall furnish to the Company such particulars as the Company may require for the adjustment of the premium.

**11. Authorisation**

To be valid this policy must have attached the Schedule signed by an authorised officer of the Company.

**12. 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.

**Optional Extended Coverage****1. Defamation**

If this extension is specified in the Schedule as INCLUDED, then Exclusion 1(a) is deleted and this policy is extended to indemnify the Insured against claims alleging, involving, arising from (directly or indirectly) defamation, provided that such claims arise from the conduct of the Insured's business or occupation specified in the Schedule.

**2. Past Liabilities**

If this extension is specified in the Schedule as INCLUDED, then this policy shall have effect as if:

INCOMING (a) after the words "in the conduct of the Insured's business or occupation as specified in the Schedule" in the insuring clause there were inserted the words "or in the conduct of any business or occupation conducted by any of the Insureds' whose names are stated in the proposal form as requiring indemnity under this extension in their professional capacity before they joined the Insured".

OUTGOING (b) the expression "the Insured" includes any former partners, principals or persons who are named in the Proposal.

Subject otherwise to the terms, conditions and limitations of the policy.

**3. Loss of Documents**

If this extension is specified in the Schedule as INCLUDED, then Exclusion 1(e) is deleted. If, during the Period of Insurance, the Insured shall discover and, within seven days of the date of discovery, give written notice to the Company, that any Documents the property of or entrusted to the Insured have been destroyed, damaged, lost or mislaid, and after diligent search cannot be found, this policy shall indemnify the Insured for:

- (i) any consequent legal liability of whatsoever nature; and
- (ii) all costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring such Documents.

Provided always that:

1. The amount of any such claim for costs, charges and expenses as above shall be supported by bills and/or accounts which shall be subject to approval by some competent person to be nominated by the Company with the approval of the Insured;
2. No liability shall attach for any loss brought about or contributed to by the dishonesty of any of the Insured's partners, principals, persons or employees. Provided that if Extension 4 is included the indemnity provided by this Endorsement shall extend to include claims occasioned by the dishonesty of employees of the Insured;
3. No liability shall attach for any loss brought about by wear or tear, or any other gradually operating cause;
4. On payment of any loss under this extension, the Insured shall subrogate to the Company all its rights of recovery;
5. This extension is subject to the Limit of Indemnity stated in the Schedule.

**Definition**

In this extension "Documents" means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any other method (but excluding bearer bonds, coupons, banknotes, currency notes, un-presented or unpaid



cheques or negotiable instruments) and magnetic tape or other like means of recording information for use with any computer recording system.

#### 4. Amendment of Dishonesty Exclusion

If this extension is specified in the Schedule as INCLUDED, then this policy shall have effect as if the words "or any person at any time employed by the Insured or their specified predecessors in business" in Exclusion 1(b) - which applies to any claim against the Insured brought about or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of the specified persons - were deleted. Provided that:

- (a) The Company's liability under this extension shall not exceed in the aggregate the sub-limit stated in the Schedule and that sub-limit shall form part of and not be in addition to the Limit of Indemnity stated in the Schedule;
- (b) If the claim against the Insured is in respect of loss of money or any other property whatsoever, for which the Insured is legally liable:
  - (i) As a condition precedent to the Company's liability to indemnify the Insured, the Insured must notify the police, and a criminal action must be successfully concluded by conviction registered against the person or persons responsible for any indemnifiable loss sustained under this extension;
  - (ii) All costs incurred by the Insured to substantiate its loss are to be borne by the Insured;
  - (iii) The Excess as stated in the Schedule will apply to each and every individual act of dishonesty.

#### 5. Fidelity

If this extension is specified in the Schedule as INCLUDED, the Company will indemnify the Insured for all claims up to but not exceeding in the aggregate the sub-limit stated in the Schedule (and that sub-limit shall form part of and not be in addition to the Limit of Indemnity stated in the Schedule) against any loss of money or other property whatsoever belonging to the Insured, which the Insured shall, during the Period of Insurance stated in the Schedule, discover that they have sustained in consequence of any dishonest or fraudulent act or omission amounting to a criminal offence of any person at any time employed by the Insured or their specified predecessors in business in their professional capacity as stated in the Schedule.

Provided that:

- (a) As a condition precedent to the Company's liability to indemnify the Insured, the Insured must notify the police, and a criminal action must be successfully concluded by conviction registered against the person or persons responsible for any indemnifiable loss sustained under this extension;
- (b) All costs incurred by the Insured to substantiate its loss are to be borne by the Insured;
- (c) The Excess as stated in the Schedule will apply to each and every individual act of dishonesty.

#### 6. Automatic Reinstatement

If this extension is specified in the Schedule as INCLUDED, then this policy shall be deemed to be reinstated for such amount, if any, as may ultimately be paid by the Company in respect of such claim or claims, provided that such reinstatement shall be always subject to all terms, exclusions and conditions of this policy and to the following provisions:

- (a) in the event that the Insured has additional coverage in excess of this policy, then this extension shall only operate when such coverage is exhausted;
- (b) the policy shall only be reinstated, and to the extent provided for, for the purposes of giving indemnity in respect of claims relating to negligent acts, errors or omissions which are not the same or substantially the same negligent acts, errors or omissions in relation to claims previously notified;
- (c) the liability of the Company under this policy shall not in any event exceed twice the Limit of Indemnity specified in the Schedule;
- (d) this policy shall not be deemed to be reinstated in relation to claims involving or concerning in any way any employee whose negligent acts, errors or omissions are referred to in claims previously notified under extensions 4 or 5 of this policy;
- (e) the Company shall pay the costs and expenses incurred in the defence or settlement of any claim in the terms of this policy, up to the Limit of Indemnity specified in the Schedule as reinstated from time to time, provided that the payment of such costs and expenses shall form part of and not be in addition to the Limit of Indemnity specified in the Schedule.