

**Policy** Wording

# Public & Products Liability



### Insuring Clauses

1. 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 all amounts which the Insured shall become legally liable to pay as Compensation in respect of:
  - (a) Personal Injury; or
  - (b) Property Damage; or
  - (c) Completed Operations Hazards; or
  - (d) Products Hazards,
 happening within the Policy Territory during the Period of Insurance caused by an Occurrence in connection with the Business of the Insured.
2. In addition to the applicable Limit of Indemnity, in respect of any valid claim under this Policy, the Company will:
  - (a) pay all defence costs, the costs of any investigations or negotiations incurred by the Company or by the Insured with the prior written consent of the Company provided that the Limit of Indemnity under the Policy or any Sub-Limit has not previously been exhausted;
  - (b) pay the Insured's expenses for first aid to others in respect of Personal Injury.

### Limit of Indemnity and Excess

1. For the purpose of determining the limit of the Company's liability, all Personal Injury and Property Damage arising out of continued or repeated exposure to substantially the same general conditions shall be considered as arising out of one Occurrence.
2. The limit of the Company's liability under Insuring Clause 1 in respect of any one Occurrence shall not exceed the Limit of Indemnity stated in the Schedule.
3. The total aggregate liability of the Company under Insuring Clause 1 during any one Period of Insurance for all claims arising out of the Completed Operations Hazard and/or Products Hazard as defined shall not exceed the Limit of Indemnity stated in the Schedule.
4. In respect of all claims made against the Insured arising from any one Occurrence the amount of the Excess stated in the Schedule or in any memorandum 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.

### Memoranda Sub-Limits and Excesses

These memoranda are subject to the terms, conditions and exclusions of the Policy, unless otherwise stated.

Any Sub-Limit of Indemnity applying to a memorandum shall form part of and not be additional to the Limit of Indemnity stated in the Policy Schedule.

Any Excess applying to a memorandum shall apply in lieu of the Public & Products Liability Excess stated in the Schedule.

#### 1. Advertising Liability

Notwithstanding Exclusion 5 – Defamation, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of claims for:

- (a) unintentional defamation; and/or
- (b) unintentional infringement of copyright, infringement of title, infringement of slogan; and/or

- (c) unfair competition, misappropriation of advertising ideas, misappropriation of style of doing business; and/or

- (d) invasion of privacy committed or alleged to have been committed in any advertisement and arising out of any advertising activities conducted by the Insured or on the Insured's behalf,

all happening during the Period of Insurance in connection with the Business of the Insured.

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

- (a) statements made by the Insured or at the Insured's direction with knowledge that such statements are false;
- (b) the failure of performance of contract. However this limitation will not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
- (c) incorrect description of the Insured's Products or services;
- (d) mistakes in advertised price of the Insured's Products or services;
- (e) the failure of the Insured's Products or services to conform with advertised performance, quality, fitness or durability;
- (f) any liability incurred by the Insured if the Business of the Insured includes advertising, broadcasting, publishing or telecasting.

The Sub-Limit of Indemnity is as stated in the Schedule for any one claim under this memorandum and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

#### 2. Contractors or Sub-contractors

The definition of Insured is extended to include 'labour only' contractors or 'labour only' sub-contractors employed by the Insured named in the Schedule or its subsidiaries.

Provided that this memorandum only applies while such contractors or sub-contractors are undertaking work for the Insured in the course of the Business of the Insured and:

- (a) such contractors or sub-contractors are not otherwise insured under any other policy;
- (b) such contractors or sub-contractors are excluded from the indemnity provided by the provisions of Condition 5 – Cross Liability.

#### 3. Defective Workmanship

Notwithstanding Exclusion 8 – Insured's Products or paragraph (c) of Exclusion 9 – 'Leaky Buildings' – Moisture or Water Penetration, Building Defects, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation for the costs in respect of physical injury to or destruction of the Insured's Products, where that physical injury or destruction:

- (a) arises out of the Insured's Defective Workmanship, and
- (b) is neither expected nor intended from the standpoint of the Insured, and
- (c) happens during the Period of Insurance in connection with the Business of the Insured.

Provided that this memorandum will not indemnify the Insured in respect of liability:

- (a) for the costs resulting from or remedying a defect in manufacture or in any design, plan or specification;
- (b) indemnified under the Service and Repair memorandum.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

For the purposes of this memorandum 'Defective Workmanship' means:

defective construction work, defective erection work, defective installation work, defective repair work, defective service work, defective treatment work or defective alteration work performed by the Insured on the Insured's Products.

For the avoidance of doubt this memorandum is otherwise subject to Exclusion 9 – "Leaky Buildings" – Moisture or Water Penetration, Building Defects.

#### 4. Forest and Rural Fires Act

The Company will indemnify the Insured for all sums that the Insured shall become legally liable to pay for:

- (a) costs incurred and levied by any Fire Authority under Sections 43, 46 and 46A of the Forest and Rural Fires Act 1977 but excluding any fines and penalties; and
- (b) costs claimed by any other party in order to protect their property from fire,

all arising during the Period of Insurance and in connection with the Business of the Insured.

This memorandum applies:

- (a) whether or not Property Damage has occurred;
- (b) to machinery, plant, trailers or mechanically propelled vehicles (in so far as liability covered under this memorandum is not otherwise insured).

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence and in the aggregate during any one Period of Insurance for all costs incurred and/or for all sums payable to any claimant or any number of claimants in respect of or arising out of any Occurrence or in respect of or arising out of all Occurrences of a series consequent on or attributed to one source or original cause.

The Excess is as stated in the Schedule.

#### 5. Goods on Hook

Notwithstanding Exclusion 4 – Care, Custody or Control, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation for Property Damage to property which is damaged whilst it is slung on or on the hook of any crane or similar apparatus which is being utilised by and under the control of the Insured and arising in connection with the Business of the Insured.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence.

The Excess is as stated in the Schedule.

#### 6. Hazardous Substances Emergency – Fire Services Act

The Company will indemnify the Insured in respect of any charge imposed upon the Insured under Section 47C(2)(a) of the Fire Services Act 1975 in respect of any attendance at any hazardous substances emergency incident arising during the Period of Insurance and in connection with the Business of the Insured at any of the Insured's premises or any work site under the Insured's control.

The Sub-Limit of Indemnity is as stated in the Schedule for any one incident and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

#### 7. Innkeeper's Liability

Notwithstanding Exclusion 4 – Care, Custody or Control, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation under the Innkeepers Act 1962 for loss of or damage to property

happening during the Period of Insurance and in connection with the Business of the Insured.

The Excess is as stated in the Schedule.

#### 8. Keys and Locks

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay for the reasonable cost of re-cutting keys and/or the replacement of locks, where keys, locks or security codes have been lost by or stolen from the Insured during the Period of Insurance in the course of the Business of the Insured.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

#### 9. Product Recall

Notwithstanding Exclusion 13 – Product Recall, the Company will indemnify the Insured for an amount not exceeding 90% of costs and expenses above the Excess reasonably incurred with the Company's consent in the recall or withdrawal from sale or use of any of the Insured's Products happening during the Period of Insurance within the Policy Territory.

Provided that the Insured's Products:

- (a) are defective or alleged to be defective; and
- (b) may cause Personal Injury or Property Damage which may result in a valid claim under the Policy and it is reasonably foreseeable that such Personal Injury or Property Damage is/are likely to arise if no such recall or withdrawal is undertaken.

The Sub-Limit of Indemnity is as stated in the Schedule for any one recall or withdrawal and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

#### 10. Property in Care, Custody or Control

Notwithstanding Exclusion 4 – Care Custody or Control, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Property Damage to property including employees' property whilst such property is in its care, custody or control in connection with the Business of the Insured.

In respect of this memorandum 'property' does not include Vehicles.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence.

The Excess is as stated in the Schedule.

This memorandum does not apply to real property, property owned by or premises leased or rented to or by the Insured.

#### 11. Property Owner's Liability

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Personal Injury or Property Damage happening during the Period of Insurance in connection with the Business of the Insured arising out of or in connection with the Insured's legal ownership, but not physical occupation of any premises.

#### 12. Punitive or Exemplary Damages

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay as punitive or exemplary damages awarded by a court in New Zealand for claims for Personal Injury arising out of an Occurrence and in connection with the Business of the Insured during the Period of Insurance within New Zealand.

Provided that any such claim or the Occurrence giving rise to the claim are notified to the Company within the Period of Insurance or within 60 days of its expiry.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

### 13. Service and Repair

Notwithstanding Exclusion 2 – Aircraft, Watercraft and Vehicles, Exclusion 4 – Care, Custody or Control and Exclusion 8 – Insured's Products, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Property Damage happening during the Period of Insurance in connection with the Business of the Insured and arising from the service or repair by the Insured or whilst in the care custody or control of the Insured for the purposes of service or repair of any:

- (a) Vehicle; or
- (b) watercraft not exceeding ten (10) metres in length including its engine, motor, machinery, accessories or fittings or equipment; or
- (c) machinery or equipment.

Provided that this memorandum does not apply to:

- (a) any Vehicle or watercraft, machinery or equipment owned, hired, leased or rented by the Insured;
- (b) the cost of rectifying, repairing or remedying defective workmanship in respect of the actual part or parts worked on but resultant Property Damage arising from defective materials or workmanship is not excluded;
- (c) liability indemnified under Memorandum 3 – Defective Workmanship.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence.

The Excess is as stated in the Schedule.

For the avoidance of doubt, the Company will indemnify the Insured under Products Hazard for all sums that the Insured is legally liable to pay in respect of Property Damage to any property (other than to the Vehicle or watercraft, equipment or machinery serviced or repaired) or Personal Injury arising from or in connection with any service or repair.

### 14. Tenant's Liability

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Property Damage happening during the Period of Insurance in connection with the Business of the Insured to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the Insured always subject to the Property Law Act 2007.

### 15. Trade Advice or Services

Notwithstanding Exclusion 14 – Professional Liability, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of claims for Personal Injury or Property Damage happening during the Period of Insurance in connection with the Business of the Insured and arising out of an error or omission in:

- (a) advice or services;
- (b) product training and/or demonstrations, rendered by the Insured without charge.

For the avoidance of doubt this memorandum is subject to Exclusion 9 – "Leaky Buildings" – Moisture or Water Penetration, Building Defects.

### 16. Underground Services

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Property Damage to existing underground services, reticulation or property happening during the

Period of Insurance in connection with the Business of the Insured provided that:

- (a) prior to the commencement of any excavation work the Insured has obtained plans or other appropriate information on the existence and location of such services from the owner of the underground services, or any relevant authority, or corporation or company; and
- (b) the Insured took all reasonable precautions to prevent Property Damage.

### 17. Unmanned Aerial Vehicles

Notwithstanding Exclusion 2 – Aircraft, Watercraft and Vehicles, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect Personal Injury or Property Damage happening during the Period of Insurance in connection with the Business of the Insured arising out of the ownership, operation or use of any unmanned aerial vehicle (UAV), remotely piloted aerial systems (RPAS) or drone, (howsoever called) any of which has a gross take-off weight not exceeding 15 kilograms.

The Sub-Limit of Indemnity is as stated in the Schedule for any one Occurrence.

The Excess is as stated in the Schedule.

### 18. USA/Canada Coverage (Products only)

Where Products Territory is stated in the Policy Schedule as Worldwide then the following limitation shall apply:

In respect of any judgment, award or settlement made within the legal jurisdiction of the United States of America and/or Canada and/or their protectorates, this extension shall only apply in respect of the Insured's Products exported into the United States of America and/or Canada and/or their protectorates.

Provided that this memorandum shall not apply to claims in respect of:

- (a) punitive and/or exemplary damages;
- (b) contamination or pollution by the harmful nature of any substance discharged, dispersed, released or escaping into or upon land, the atmosphere or any watercourse or body of water. It is further agreed that expenses for the prevention and clean up of such contamination or pollution shall also form part of this exception and shall not be recoverable under this Extension.
- (c) the operation by the Insured or any agents of them within the United States of America, and/or Canada of any premises or plant for the manufacturing, processing, treating, distribution and/or storage of the Insured's Products.

In respect of all claims which fall under the terms of this memorandum:

- (i) the Limit of Indemnity is inclusive of costs.
- (ii) should any dispute arise between the Insured and the Company over the application of this memorandum, such dispute shall be determined in accordance with New Zealand law and practice and by a court of competent jurisdiction in New Zealand.
- (iii) the Excess as stated in the Policy Schedule is inclusive of costs.

### 19. USA/Canada Visits

Notwithstanding Condition 18 – Territory and Jurisdiction, the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation for Personal Injury or Property Damage happening during the Period of Insurance arising out of any Occurrence in the United States of America and Canada and territories under their legal jurisdiction (USA/Canada) resulting from the actions of any non-resident Insured temporarily

visiting USA/Canada in the course of the Business of the Insured.

Provided that:

- (a) in respect of this memorandum cover granted under Memorandum 12 - Punitive or Exemplary Damages, does not apply;
- (b) the Insured has no subsidiary operation, branch or premises in USA/Canada;
- (c) any work performed in, on, or in connection with the Insured's Products is excluded;
- (d) the ownership, possession, control or maintenance or use of any Vehicle or watercraft is excluded.

Notwithstanding Insuring Clause 2 the Limit of Indemnity in respect of this memorandum is inclusive of costs and expenses and applies in the aggregate in any one Period of Insurance.

## 20. Vehicles – Additional Provisions

Notwithstanding Exclusion 2 - Aircraft, Watercraft and Vehicles and Exclusion 4 - Care, Custody or Control the Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Personal Injury or Property Damage happening during the Period of Insurance in connection with the Business of the Insured:

1. Vehicles - Loading & Unloading  
arising from loading or unloading any Vehicle used by or on behalf of the Insured but not in its care, custody or control;
2. Vehicles - "Tool of Trade" Functions  
arising from any Vehicle while it is being operated for its specialised function or purpose, and not as a Vehicle;
3. Vehicles in Insured's Car Parks  
in respect of Vehicles, other than Vehicles owned or used by or on behalf of the Insured, in the care, custody or control of the Insured, only whilst such Vehicles are in a car park owned or operated by the Insured, other than for income or reward as a car park operator;
4. Vehicles' Weight/Vibration Damage  
to any bridge, viaduct, weigh bridge, road or anything beneath the Vehicle caused by vibration or by the weight of any Vehicle and/or its load provided that such Vehicle was not being driven or operated in breach of any regulatory weight restrictions.

## 21. Vehicle Inspection Certification

The Company will indemnify the Insured against all claims made within the Period of Insurance for which the Insured is legally liable to pay as Compensation and which arise by reason of any negligent act, error or omission on the part of the Insured in the conduct of the Business of the Insured which, for the purposes of this memorandum, is deemed to be:

"The inspection and certification of Vehicles for the purpose of issuing warrants of fitness or certificates of fitness as may be required under any road transport legislation, rules or regulations",

provided that the Insured and/or its employees are duly authorised to issue such inspection certificates.

The Sub-Limit of Indemnity is as stated in the Schedule and in the aggregate during any one Period of Insurance.

The Excess is as stated in the Schedule.

This memorandum does not apply to the valuation or pre-purchase appraisal of any Vehicle, motorcycle, watercraft and/or any other property whatsoever.

## 22. Vibration or Removal of Support

The Company will indemnify the Insured for all sums that the Insured is legally liable to pay as Compensation in respect of Personal Injury or Property Damage happening during the Period of Insurance in connection with the Business of the Insured and arising from vibration of, underpinning of, removal of, weakening of, or interfering with the support of land or buildings.

## Exclusions

This Policy does not apply to:

### 1. Accident Compensation

claims for payment under any Accident Compensation Act, Workers or Workmen's Compensation legislation in any country by any person in the service of any contractor or sub-contractor to the Insured or any dependant of such person.

### 2. Aircraft, Watercraft and Vehicles

Personal Injury or Property Damage arising out of ownership, maintenance, operation, use, loading or unloading by the Insured, or by any person in the course of his/her employment by any Insured, of:

- (a) any aircraft;
- (b) any watercraft exceeding ten (10) metres in length;
- (c) any Motor Vehicle which is required by law to be registered for road use.

### 3. Asbestos

any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses, including defence costs and expenses, directly or indirectly arising out of, resulting from or in consequence of, asbestos in whatever form or quantity.

### 4. Care, Custody or Control

Property Damage to property which is in the Insured's care, custody or control.

### 5. Defamation

liability resulting from a defamatory statement published at the Insured's direction knowing its falsity; or resulting from publishing, advertising, broadcasting or television activities of or on behalf of the Insured.

### 6. Employees Personal Injury

claims in respect of Personal Injury to any person arising out of or in the course of employment of such person in the service of the Insured. But this Exclusion does not apply with respect to liability of others assumed by the Insured under written contract.

### 7. Fines Penalties etc

liability for any fines, penalties, performance warranty or liquidated damages.

### 8. Insured's Products

Property Damage to the Insured's Products arising out of such products or any part of such products.

### 9. "Leaky Buildings" - Moisture or Water Penetration, Building Defects

any liability for, or to fulfil any obligation in respect of Personal Injury or Property Damage which is directly or indirectly caused or contributed to or arises from:

- (a) moisture or water or the penetration of external moisture or water; or
- (b) the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms; or
- (c) the failure of any building or structure to comply with or perform to the requirements of any building



code or to meet the level of performance, quality, fitness or durability of its intended purpose.

In addition, the Company shall not be liable for any costs or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in any way responding to or assessing the effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or similar or like forms.

This exclusion shall not apply to any claim for Personal Injury or Property Damage that is caused by or arises out of leakage from internal water pipes or cisterns.

#### 10. Loss of Use

loss of use of tangible property which has not been physically injured or destroyed resulting from:

- (a) a delay in or lack of performance by or on behalf of the Insured of any contract or agreement;
- (b) the failure of the Insured's Products or work performed by or on behalf of the Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Insured.

But this exclusion does not apply to loss of use of other tangible property resulting from sudden and accidental physical injury to or destruction of the Insured's Products or work performed by or on behalf of the Insured after such products or work have been put to use by any person or organisation, other than an Insured.

#### 11. Pollution

Personal Injury or Property Damage arising out of discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water. But this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental but also takes place in its entirety at a specific time and place.

#### 12. Products Contractual Liability

for Products Hazard only, liability assumed by the Insured under any agreement, other than written contracts approved by the Company. But this exclusion does not apply to a warranty of fitness or quality of the Insured's Product, or a warranty that work performed by or on behalf of the Insured will be done in a workmanlike manner.

#### 13. Product Recall

Compensation claimed for the withdrawal, inspection, repair, replacement or loss of use of the Insured's Products, or work completed by or for the Insured, or of any property of which such products or work form a part, if such products, work or property are recalled or withdrawn from the market or from use because of any known or suspected defect or deficiency.

#### 14. Professional Liability

breach of a duty owed in a professional capacity by the Insured and/or persons for whose breaches of such duty the Insured may be legally liable. But this exclusion does not apply to the provision of or failure to provide, professional medical treatment and/or advice by medical practitioners, nurses, dentists and first aid attendants employed by the Insured to provide services on the Insured's premises.

#### 15. Radioactivity

Personal Injury or Property Damage directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

#### 16. 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:

- (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 Insured by sending to the Company written notice stating the date on which the cancellation shall be effective. This Policy may be cancelled by the Company, by sending to the Insured at the address shown in this Policy written notice stating the date on which, being not less than thirty (30) days, the cancellation shall be effective. The effective date and time of cancellation, stated in the notice shall become the end of the Period of Insurance.

If the Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Any applicable premium adjustment may be made either at the time cancellation is effected or as soon as practicable thereafter. Refund of unearned premium is not a condition of cancellation.

#### 3. Claims

In the event of an Occurrence, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances, and the names and addresses of the Insured and of available witnesses, shall be given by or for the Insured to the Company or any of its authorised agents as soon as practicable.

If a claim is made or suit is brought against the Insured the Insured shall immediately forward to the Company every demand, notice, summons or other process received by it or its representative.

The Insured shall co-operate with the Company and, upon the Company's request, assist in making settlements in the conduct of suits and in enforcing any right of contribution

or indemnity against any person or organisation, who may be liable to the Insured because of injury or damage with respect to which insurance is afforded under this Policy, and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The Insured shall not admit liability for or settle any claim, or incur any costs or expenses in connection with a claim, 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, and 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) 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 Schedule), plus the costs and expenses incurred up to the date of such refusal.

#### 4. Compliance

Compliance by or for the Insured with the obligations in Conditions 3, 6, & 16 shall be a condition precedent to the Company's liability in respect of any claim.

#### 5. Cross Liability

Where the Insured is comprised of more than one entity the words "the Insured" shall be considered as applying to each such entity, other than partners in a partnership, in the same manner as if that entity was the only named Insured.

#### 6. Declarations

By acceptance of this Policy, the Insured agrees that the statements in the declarations are its agreements and representations, that this Policy is issued in reliance upon the accuracy of such representations and that this Policy embodies all agreements existing between itself and the Company or any of its authorised agents relating to this insurance.

#### 7. 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 this Policy shall be forfeited.

#### 8. Goods and Services Tax

If on receipt of any payment for indemnity under this Policy the Insured is liable to pay tax under Section 5(13) of the Goods and Services Tax Act 1985 or its equivalent, re-enactment or substitution the Company will indemnify the Insured for the cost of that tax over and above the Limit of Indemnity otherwise stated in the Policy.

#### 9. Inspection and Audit

The Company shall be permitted, but not obligated, to inspect the Insured's records, property and operations at any time. Neither the Company's rights of inspection, actual inspections, nor any report following inspection shall constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe, healthful or in compliance with any law, rule or regulation.

#### 10. Interpretation

This Policy and the Schedule shall be read together as one contract, and any word or expression to which a specific meaning has been attached in any part of this Policy or

the Schedule shall bear such meaning wherever it shall appear.

The paragraph headings in this Policy are included for illustrative purposes only and do not form part of the Policy for the purposes of construction or interpretation. Defined terms are capitalised.

#### 11. Joint Insureds

Where the Insured is comprised of more than one entity, the proposal for this insurance shall be deemed to have been furnished by and on behalf of all such entities, and any information supplied to the Company, or any omission or non-disclosure in relation to any renewal or extension, shall also be deemed to have been furnished, omitted or withheld (as the case may be) on behalf of all such entities.

#### 12. Other Insurance

If, at the time of an Occurrence under this Policy, there is, or would be but for the existence of this Policy, any other policy applicable to such Occurrence and effected in favour of the Insured, this Policy shall be insurance in excess of the amount of liability covered under such other policy and the Limit of Indemnity under this Policy shall be reduced by the amount of the limit of indemnity afforded under such other policy. This condition applies, even if the other policy has a condition to similar effect.

#### 13. Policy Jurisdiction

This Policy shall be governed by the laws of New Zealand whose courts shall have exclusive jurisdiction.

#### 14. Premium

If the first or renewal premium for this Policy, or any part of it, shall have been calculated on estimates furnished by the Insured, then the Insured shall keep an accurate record containing all relevant particulars, and shall at all times allow the Company to inspect such a record. The Insured shall within thirty (30) days after the expiry of each Period of Insurance furnish to the Company such particulars and information as the Company may require. The premium for such Period of Insurance shall then be adjusted, and any difference shall be paid by or allowed to the Insured, as the case may be, subject to receipt and retention of the minimum premium charged by the Company.

#### 15. Priority of Clauses and Memoranda

Where the Insured may be indemnified under:

- (a) more than one insuring clause, then cover will be provided under the insuring clause that provides for an aggregate liability of the Company in accordance with paragraph 3 of Limit of Indemnity and Excess clause;
- (b) more than one memorandum then the memorandum most favourable to the Insured will apply;
- (c) one or more of the memoranda and one or more of the insuring clauses then cover will be provided under the memorandum most favourable to the insured and not under the insuring clause(s).

#### 16. Reasonable Care

The Insured shall:

- (a) exercise reasonable care that only competent employees be employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- (b) take all reasonable precautions to:
  - (i) prevent Personal Injury and Property Damage;
  - (ii) prevent the manufacture, sale or supply of defective products;

- (iii) comply and ensure that the Insured's employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority, including for the safety of persons or property;
- (c) at the Insured's own expense take reasonable action to trace, recall or modify any of the Insured's Products containing any defect or deficiency which the Insured has knowledge of or has reason to suspect.

#### 17. Subrogation

The Company, in agreeing to indemnify the Insured in respect of any claim, shall be subrogated to all of the Insured's rights of recovery against any person or entity and shall be entitled to pursue and enforce such rights in the name of the Insured.

The Insured shall:

- (a) provide the Company with all reasonable assistance and co-operation including executing and delivering instruments or papers and take any necessary steps to secure such rights of recovery; and
- (b) shall in no way prejudice such rights of recovery.

Any monies recovered shall be applied for the benefit of the Company to the extent of the amount paid by it including costs and expenses and any remaining shall be the property of the Insured.

#### 18. Territory and Jurisdiction

The Insurance afforded by this Policy shall apply:

- (a) with respect to the premises and operations of the Insured within the Territory stated in the Schedule;
- (b) with respect to the Products Hazard and Products Recall within the Products Territory stated in the Schedule;
- (c) with respect to incidental travel anywhere in the world.

Provided that this insurance does not apply to any claim, judgment, award or settlement made outside the Jurisdiction stated in the Schedule or to any order made outside those Jurisdictions to enforce such claim judgment award or settlement either in whole or in part.

#### 19. 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. Business of the Insured

means the business conducted by the Insured described in the Schedule but including the following related ancillary activities:

- (a) staff room facilities, social, sports, welfare and similar activities;
- (b) fire & disaster response; first aid and medical services;
- (c) exhibitions, trade fairs, conferences;
- (d) sponsorships, charitable or fundraising activities;
- (e) property owners, lessors, lessees and tenants;
- (f) any other activity undertaken by the Insured for which prior written approval has been given by the Company.

#### 2. Compensation

means any amount payable as compensation and includes damages, interest, claimant's costs and disbursements.

#### 3. Completed Operations Hazard

means Personal Injury and Property Damage arising out of Operations, or reliance upon a representation or warranty made at any time with respect to Operations, but only if the Personal Injury or Property Damage occurs after such Operations have been completed or abandoned and occurs away from premises owned by or rented to the Insured.

"Operations" means the task(s), job(s) or contract to be performed by the Insured and includes materials, parts or equipment furnished in connection with them.

Operations shall be deemed completed at the earliest of the following times:

- (a) when all Operations to be performed by or on behalf of the Insured under the contract have been completed;
- (b) when all Operations to be performed by or on behalf of the Insured at the site of the Operations have been completed;
- (c) when the portion of work out of which the injury or damage arises has been put to its intended use by any person or organisation, other than another contractor or subcontractor engaged in performing Operations for a principal as a part of the same project.

The Completed Operations Hazard does not include Personal Injury or Property Damage arising out of:

- (a) Operations in connection with the transportation of property, unless the Personal Injury or Property Damage arises out of a condition in or on a Vehicle created by its loading or unloading;
- (b) the existence of tools, uninstalled equipment or abandoned or unused materials.

#### 4. Excess

means the amount stated in the Schedule and as described in paragraph 4 of Limit of Indemnity and Excess clause.

#### 5. Insured

means the Insured stated in the Schedule, and:

- (a) any Subsidiary Company (including its subsidiaries) of the Insured, and any other organisation under the control of the Insured and over which it is exercising active management;
- (b) any director, employee, partner or shareholder of the Insured, but only whilst acting within the scope of their duties in such capacity;
- (c) any person, principal, organisation, trustee or estate to whom or to which the Insured is obligated by virtue of a written contract to provide insurance as is afforded by this Policy, but only to the extent required by such contract and, in any event, only for such coverage and limit of indemnity as provided in this Policy;
- (d) any social and/or sporting club formed with the consent of the Insured, including any office bearer or member in their capacity as such;
- (e) any new organisation acquired by the Insured during the Period of Insurance through consolidation, merger, purchase of the assets of or assumption of control and active management, provided such acquisition or assumption is reported to the Company within ninety (90) days after it is effected and provided further that such acquisition is endorsed on this Policy.



**6. Insured's Products**

means any thing (after it has ceased to be in the possession or under the control of the Insured) manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured (including any container, other than a vehicle).

**7. Limit of Indemnity**

means the amount of the Limit of Indemnity stated in the Schedule.

**8. Occurrence**

means an event, including a continuous or repeated exposure to conditions, which results in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured.

**9. Period of Insurance**

means the period stated in the Schedule unless terminated earlier under Condition 2 - Cancellation.

**10. Personal Injury**

means:

- (a) bodily injury, sickness or disease including death resulting at any time; disability, shock, mental anguish or injury and humiliation;
- (b) false or wrongful arrest, imprisonment, detention or eviction;
- (c) defamation;
- (d) invasion of privacy;
- (e) assault or battery not committed by or at the direction of the Insured,

occurring during the Period of Insurance.

**11. Policy**

means this document, its Schedule and any endorsements subsequently issued.

**12. Products Hazard**

means Personal Injury or Property Damage arising out of the Insured's Products, or reliance upon a representation or warranty made at any time with respect to such Products, but only if the Personal Injury or Property Damage occurs away from premises owned by or leased or rented to the Insured and after physical possession of such products has been relinquished to others.

**13. Property Damage**

means:

- (a) physical injury to or destruction of tangible property which occurs during the Period of Insurance including resulting loss of use at any time;
- (b) loss of use of tangible property, which has not been physically injured or destroyed, which occurs during the Period of Insurance, provided such loss of use is caused by an event including a continuous or repeated exposure to conditions neither expected or intended by the Insured.

**14. Schedule**

means the current Schedule attaching to this Policy duly signed by an authorised officer of the Company.

**15. Sub-Limit of Indemnity**

means the sub-limit of indemnity stated in the Schedule.

**16. 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).

**17. Vehicle or Motor Vehicle**

means any type of machine as defined under the Land Transport Act 1998 and its amendments, or under the laws of the country in which the machine is operated (as the case may be).