

## preamble

Whereas the Insured named in the Schedule hereto (hereinafter called the Employer) of the Address and following the Business or Occupation stated in the said Schedule employs or intends to employ the persons referred to as the Employed in the said Schedule (each of which persons is hereinafter called Employee) and has made to Vero Liability Insurance Limited (hereinafter called the Company) a written Statement and Declaration dated as shown in the said Schedule, which Statement and Declaration are the basis of this contract, and are hereby declared to be incorporated herein.

**Now This Policy Witnesseth** that in consideration of the payment to the Company of the premium stated in the said Schedule and otherwise payable under this Policy if, during the Period of Insurance stated in the Schedule or before 4 o'clock in the afternoon of the last day of any subsequent period in respect of which the Company shall agree to accept the premium required for the renewal of this Policy, any such Employee shall commit any fraudulent or dishonest act or acts acting alone or in collusion with others.

**Then** after satisfactory proof of pecuniary loss to the Employer directly resulting from such fraudulent or dishonest act or acts has been given to the Company, the Company will make good and reimburse to the Employer the amount or value of such pecuniary loss but not exceeding in any case the amount of guarantee stated in the said Schedule.

Provided that any such Employee shall have committed the fraudulent or dishonest act or acts with the manifest intent to:

- (a) Cause the Employer to sustain such loss; and
- (b) Obtain an equivalent pecuniary benefit for the Employee, or for any other person or organisation intended by the employee to receive such benefit, other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or any other Employee benefits earned in the normal course of employment.

## definitions

- (a) "**Loss**" means the amount by which the Insured is out of pocket directly resulting from any fraudulent or dishonest act or acts.
- (b) "**Claim**" means any set of acts which give rise to a separate loss for which there is a right to indemnity under this Policy.

## exclusions

The Company shall not be liable under this Policy in respect of or in relation to any Employee, acting alone or in collusion with others:

- (a) For more than the amount of guarantee stated in the said Schedule notwithstanding that such fraudulent or dishonest act or acts were committed by such employee during more than one period of insurance of any Policy or Policies written by the Company;
- (b) For any loss, or for that part of any loss, as the case may be, the proof of which, whether as to its factual existence or as to its amount, is deduced from any inventory computation or a profit and loss computation;
- (c) For any loss arising from any fraudulent or dishonest act or acts unless discovered within twelve months of the termination cancellation or expiry of this Policy;
- (d) For any loss committed more than 12 months prior to discovery of the loss;
- (e) For any loss arising from any fraudulent or dishonest act or acts committed by such Employee after any superior of the Employee shall have knowledge or information of any act of fraud or dishonesty on the part of such Employee;
- (f) For any loss arising from the complete or partial non-payment of, or default upon any loan, extension of credit or transaction in the nature of, or amounting to, a loan, obtained from or made by the Employer or by any of the Employees whether authorised or unauthorised;
- (g) For any loss arising out of such a change or variation in the method of conducting the Employer's business as to make the actual facts differ in some material degree from those or any of them set out in the written Statement and Declaration.
- (h) For any loss committed outside New Zealand.

The Company shall not be liable under this Policy:

- (a) For any litigation in existence at the commencement of the Period of Insurance.
- (b) For liability arising directly or indirectly from, or is in any way connected with, the fact that the performance or functionality of any Computer Equipment has been or may be affected because that Computer Equipment does not meet Year 2000 Conformity.

For the purpose of this exclusion the following additional Definitions apply:

1. "Computer Equipment" includes but is not limited to any or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated.
2. "Year 2000 Conformity" means that neither performance nor functionality is affected by dates prior to, during, or after the Year 2000 and, in particular but without limitation, that:
  - 2.1 No value for current date will cause any interruption in operation;
  - 2.2 Date-based functionality must behave consistently for dates prior to, during and after Year 2000;
  - 2.3 In all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithm, or inferencing rules;

2.4 Year 2000 must be recognised as a leap year in terms of handling both 29 February and day 366;  
 2.5 9 September 1999 must be recognised as that date.

The above definition of "Year 2000 Conformity" is based on a definition contained in a document published by Standards Australia and Standards New Zealand under reference no SAA/SNZ MP77:1998 and shall be interpreted in accordance with that document.

- (c) For 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.
- (d) For 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.

**Provided Always** that the insurance hereby made is and shall be subject to the conditions and to the Memorandum, if any, endorsed hereon or attached hereto in like manner as if the same were respectively repeated and incorporated herein; and compliance by the Employer to sue or recover hereunder except so far as they relate to anything which is not capable of being performed until after payment by the Company.

## conditions

- 1) Every notice or communication to the Company shall be in writing and sent to the office of the Company at which this Policy is issued, and notice or knowledge of anything relating to this Policy or any claim hereunder, or with reference to the risk insured hereunder, shall not be deemed to be notice to or within the knowledge of the Company unless so given, Any agent or Officer of the Company who may on behalf of the Employer write any statement which the Employer signs, or authorises to be signed, shall for the Purposes thereof, be deemed to be the Agent of the Employer and not of the Company.
- 2) This Policy shall be void if the within-mentioned Statement and Declaration of the Employer be untrue in any respect, or if any material fact affecting the risk be incorrectly stated therein or omitted therefrom, or if this Policy or any renewal thereof shall have been obtained through any misstatement, misrepresentation or suppression on the part of the Employer, or if any claim made shall be fraudulent or exaggerated or if any false declaration or statement shall be made in support thereof.
- 3) Upon the discovery of any circumstances giving rise or likely to give rise to a claim under this Policy the Employer shall:
  - (i) As soon as practical give notice thereof to the Company explaining fully all such circumstances;
  - (ii) Deliver a detailed proof of loss, duly sworn, to the Company within four months after the discovery of the Loss;
  - (iii) At all reasonable times permit the Company or its Agents to enquire into, investigate and examine the circumstances of the alleged loss by the Employer, and the claim in respect thereof, and the Employer shall at his own expense, upon being required to do so by the Company or its agents, produce all books, vouchers, correspondence, documents, receipts and all entries relating to the alleged loss in his possession or control, and shall furnish copies of such of them otherwise give all possible assistance as may in any way enable the Company or its Agents to ascertain the correctness thereof or the liability of the Company under this Policy.
- 4) The Company shall be liable only for that part of any loss which is in excess of the amount recoverable or recorded from any other insurance or indemnity which is available to the Employer covering such loss.
- 5) If the Employer shall sustain any loss covered by this Policy which exceeds the amount of Guarantee stated in the said schedule, the Employer shall be entitled to all recoveries (except from surety ship, insurance, reinsurance, security or indemnity taken by or for the benefit of the Company) by whom so ever made, on account of such loss under this Policy until fully reimbursed and any remainder shall be applied to the reimbursement of the Company.
- 6) If the Employer shall sustain any loss covered by this Policy but is unable to designate the specific Employee or Employees committing such fraudulent or dishonest act or acts the Employer shall nevertheless still have the benefit of this Policy provided that:
  - (i) This Policy affords coverage in respect of all Employees of the Employer;
  - (ii) The proof of loss delivered to the Company reasonably proves that the loss was in fact due to the fraud or dishonesty of one or more Employees.
- 7) The Company shall have the right to subrogation in respect of all rights or remedies which the Employer may have against any employee or any other party or parties and the Employer shall at the expense of the Company do and take, and permit to be done and taken in his name; all such acts, things and proceedings as the Company may consider necessary or require for the purpose of enforcing or exercising all or any such rights, whether such acts, things or proceedings shall be considered necessary or required before or after any loss has been paid or made good.
- 8) If the coverage of the Policy is substituted for any prior Policy of Insurance carried by the Employer which prior Policy is terminated, cancelled or allowed to expire as of the time of such substitution, the Company agrees that this Policy shall apply to any loss which is discovered, within the time limitations provided by this Policy, which loss would have been recoverable by the Employer under the prior Policy except for the fact that the time within which to discover any loss had expired, provided:
  - (i) The coverage provided hereunder shall form part of and shall not be in addition to, the amount of guarantee stated in the said Schedule;
  - (ii) Such loss would have been covered under this Policy had this Policy with its agreements, limitations and conditions as of the time of such substitution been in force which the acts or defaults causing such loss were committed; and

- (iii) Recovery under this Policy on account of such loss shall not exceed the amount which would have been recoverable under this policy in the amount for which it is as of the time of such substitution, had this Policy been in force when such acts or default were committed or the amount which would have been recoverable under such prior Policy had such prior Policy continued in force until the discovery of such loss, if the latter amount be smaller.
- 9) The Company will reimburse the Employer to any amount not exceeding \$10,000, or five percent of any claim paid under this Policy, whichever is the lesser amount, for the fees payable by the Employer to its external auditors and which are reasonably and necessarily incurred to support a valid claim which is subsequently collectable by the Employer under this Policy provided that the total liability of the Company under this Policy shall not exceed the amount of guarantee stated in the said Schedule.
- 10) This Policy may be terminated at any time at the request of the Employer in which case the Company will retain the Company's short-period rate for the time the policy has been in force. The Company may cancel this Policy at any time by giving written notice to the Employer stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. Such notice may be delivered personally or mailed to the Employer at the address last notified to the Company. The mailing of notice as aforesaid shall be sufficient proof of notice. After cancellation by the Company as aforesaid the Company will refund to the Employer the proportionate part of any premium received in respect of the unexpired period of this Policy.
- 11) No Provision or requirement of this Policy requiring any matter or thing to be done or to be written or endorsed hereon, shall be deemed waived by reason of any alleged notice or waiver which has not been expressly written or endorsed hereon; nor shall the Company be deemed to have waived any Provision or condition of this Policy unless such Provision or Condition be expressly stated in writing to be waived by the Company upon the happening of any loss or alleged loss which may be or is claimed to be covered by this Policy the Company may (at any time thereafter until the liability or non-liability of the Company is determined) without hereby admitting or incurring any liability, exercise all or any of the rights, powers and privileges conferred upon it by any of the Provision or Conditions of this Policy, and nothing done by the Company in the exercise or any such right, power or privilege shall be placed or operated by way of estoppel against the Company so as to prevent the Company subsequent to the exercise of any such right, power or privilege, from relying upon each and every provision and Condition of the Policy in reciting any claim wholly or in part.
- 12) 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.

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