

Policy

Wordings

Statutory Liability
Policy

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Contents

STATUTORY LIABILITY POLICY	3
INSURING CLAUSES.....	3
1. Cover	3
2. Limits of indemnity	3
3. Excess	3
AUTOMATIC EXTENSIONS	3
1. Consolidation or merger	3
2. Newly created or acquired subsidiary company	3
3. Extended reporting period	3
DEFINITIONS	4
EXCLUSIONS.....	5
1. Asbestos	5
2. Daily continuing offences / orders and costs	5
3. Deliberate disregard	5
4. Dishonest acts.....	5
5. Personal grievances.....	5
6. Private prosecutions.....	5
7. Radioactivity.....	6
8. Retroactive date.....	6
9. Terrorism.....	6
10. War	6
11. Cyber and Data Total Exclusion Endorsement – LMA5468	6
DEFINITIONS	6
12. Communicable Disease Exclusion – LMA5396.....	7
CONDITIONS.....	7
1. Apportionment of costs	7
2. Assignment	7
3. Cancellation	7
4. Claims notification and duties	7
5. Conduct of defence	8
6. Fraud	8
7. Goods and services tax.....	8
8. Inspection.....	8
9. Material change of risk.....	8
10. Other insurance	8
11. Policy disputes.....	8
12. Prejudice	8
13. Progress payment of legal expenses.....	8
14. Reasonable precautions.....	8
15. Severability and non-imputation	8
16. Subrogation	8

Statutory Liability Policy

In consideration of the payment of the premium to the Insurer and in reliance on the written proposal, declaration and any other underwriting information provided, which shall be deemed to be incorporated into and to be the basis of this Policy, the Insurer will indemnify the Insured as follows.

Insuring clauses

1. Cover

In consideration of payment of the agreed premium the Insurer will indemnify the Insured in accordance with the terms of this Policy in respect of:

- 1.1 any Fine payable by the Insured;
- 1.2 Defence Costs, except where it is alleged that the Insured has acted or omitted to act knowingly, willfully, or intentionally unless the Insured is subsequently Acquitted arising out of any Event and provided that the Event:
 - (a) happened on or after the Retroactive Date; and
 - (b) is first notified in writing to the Insurer by the Insured during the Period of Insurance, or within twenty-one (21) days after its expiry.

2. Limits of indemnity

- 2.1 The Insurer liability to indemnify the Insured for all claims under this Policy is limited in the aggregate to the amount specified in the Policy Schedule applicable for the Period of Insurance within which the Insured has or should have first notified the Insurer of the Event.
- 2.2 Where an Event is alleged to have taken place on, over or between a number of specified dates, which fall within more than one Period of Insurance, for the purposes of the applicable Limit of Indemnity and Excess the Event will be treated as if it occurred in the Period of Insurance in which the Insured has or should have first notified the Insurer of the Event.

3. Excess

The Excess specified in the Policy Schedule shall be borne by the Insured in respect of each and every Event.

Automatic extensions

The terms of this Policy apply to each extension to this Policy unless expressly stated otherwise. The terms of each extension apply only to that extension and not to the rest of the Policy unless expressly stated otherwise.

1. Consolidation or merger

If the Insured acquires by merger, consolidates with, is merged into or acquired by any other entity after the commencement of the Period of Insurance, the Insured shall give written notice to the Insurer as soon as practicable, together with such information as the Insurer may require, and the Insured shall pay the Insurer any required additional premium.

2. Newly created or acquired subsidiary company

If any subsidiary company is created or acquired by the Insured after the commencement of the Period of Insurance, such subsidiary company shall be included as an Insured provided that:

- 2.1 written notice of such creation or acquisition is given to the Insurer, together with appropriate underwriting information and payment of any required additional premium; and
- 2.2 in respect of acquisitions, cover granted under this Policy shall only apply to any Event discovered by the Insured after the date of such acquisition and which took place after the Retroactive Date, and if the Insured has agreed to indemnify the subsidiary company in respect of the Event.

3. Extended reporting period

If the Insurer refuses to renew this Policy, the Insured may, upon payment of an additional premium not exceeding 100% of the full annual premium payable for the expiring Period of Insurance, extend the cover under this Policy for a further twelve (12) months from the date of expiry

Provided that:

- 3.1 this option to extend the Policy must be notified in writing to the Insurer within thirty (30) days of the date of expiry;
- 3.2 the extension shall only apply in respect of an Event before the expiry date;

- 3.3 an offer by the Insurer of any renewal terms or premiums different from expiring terms or premiums shall not constitute a refusal to renew;
- 3.4 the Limit of Indemnity under this extension is part of and not in addition to the Limit of Indemnity specified in the Policy Schedule.

Definitions

In this Policy, including any endorsements, unless specifically stated to the contrary:

1. **“Acquitted” means:**
Dismissal of charges before or after a defended hearing, or entry of a not guilty verdict (but shall not include the disposition of a charge pursuant to a plea bargain where multiple information has been laid).
2. **“Act of Parliament” means:**
Any Act of New Zealand Parliament other than an Excluded Act (including any amendment to or re-enactment, and any code, rules, regulations, bylaws, or other subordinate legislation made under such Act).
3. **“Business” means:**
The Business specified in the Policy Schedule and any other commercial activity which the Insured now undertakes or may undertake provided that the Insured has given written notice to the Insurer and has obtained the Insurer’s acknowledgment.
4. **“Defence Costs” means:**
The legal costs and expenses, including witness costs and expenses, necessarily and reasonably incurred with the prior consent of the Insurer in relation to:
 - 4.1 investigating, defending, settling or appealing any action arising out of an Event;
 - 4.2 preparing for and attending an investigation
 - 4.3 proceedings before a Human Rights or Privacy Complaints Review Tribunal.
5. **“Event” means:**
Any act or omission occurring in the course of the Business that gives rise, or may give rise, to an action under an Act of Parliament.
6. **“Excluded Act” means the following:**
Arms Act 1983
Aviation Crimes Act 1972
Crimes Act 1961
Proceeds of Crime Act 1991
Real Estate Agents Act 2008
Summary Offences Act 1981
Transport Act 1962
Transport (Vehicle and Driver Registration and Licensing) Act 1986
and any other Act of Parliament specified in the Policy Schedule as an Excluded Act.
7. **“Fine” means:**
Any fine or monetary penalty or costs assessed by a court to be paid by the Insured upon being found guilty of an offence in connection with an Event for which the Insurer may legally indemnify the Insured. This does not include a Fine imposed pursuant to the Health and Safety in Employment Act 1992, but this definition is extended to include a sentence of reparation imposed following a conviction under that Act.
8. **“Inception Date” means:**
The commencement date of the Period of Insurance specified in the Policy Schedule.
9. **“Insurer”**
As named in the Policy Schedule.
10. **“Insured” means:**
The named Insured specified in the Policy Schedule, and includes any person who is, or was at the time of the Event, a trustee, director, officer, sole trader, partner, or employee of the Insured. If the named Insured is a company, the Insured also includes any company that is, or was at the time of the Event, a subsidiary of the named Insured for the purposes of the Companies Act 1993, subject to Automatic Extension 2 (Newly Created or Acquired Subsidiary Company).

11. "Investigation" means:
Any official inquiry, investigation, public examination, or commission into the affairs of the Business:
 - 11.1 which is investigated by a person or government authority that is legally empowered to conduct such an investigation or inquiry etc; and
 - 11.2 which an Insured is legally compelled to attend; and
 - 11.3 which alleges an Event by that Insured; and
 - 11.4 that is not of a general nature which affects the industry of the Business, as a whole.
12. "Period of Insurance" means:
The period of insurance specified in the Policy Schedule.
13. "Policy" means:
This document, the Policy Schedule and any endorsements issued by the Insurer.
14. "Policy Schedule" means:
The current schedule of insurance or any future schedule issued for renewal and any endorsements attached thereto.
15. "Retroactive Date" means:
The date specified in the Policy Schedule.

Exclusions

The Insurer shall not indemnify the Insured in respect of:

1. **Asbestos**
Any actual or alleged liability whatsoever for any claim or claims in respect of losses directly or indirectly arising out of, resulting from, or in consequence of, or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.
2. **Daily continuing offences / orders and costs**
 - 2.1 the cost or payment of any enforcement order, remedial order, or compliance order;
 - 2.2 any Fine imposed in relation to a daily continuing offence where the Fine is imposed in relation to a period of time after the Insured first received notice from the informant or his employing body of the intention to commence an action in relation to that offence;
 - 2.3 any pecuniary penalty, restitution, compensation, or order for payment pursuant to sections 78, 80, 83 or 89(3)(b) of the Commerce Act 1986;
 - 2.4 any order for payment of costs made under the Commissions of Inquiry Act 1908;
 - 2.5 any court order in the nature of damages or compensation, except a sentence of reparation following a Health and Safety in Employment Act prosecution;
 - 2.6 any action, proceeding, inquiry, investigation, or prosecution taken against the Insured by the Inland Revenue Department or any other revenue collecting authority.
3. **Deliberate disregard**
Any Defence Costs, unless the Insured is Acquitted, arising out of any Event which has allegedly resulted from the:
 - 3.1 deliberate disregard by the Insured of any of the provisions of any Act of Parliament which the Insured is alleged to have contravened;
 - 3.2 Insured instructing another person to discharge one or more of its obligations under any of the provisions of the Acts and failing to take all reasonable steps to ensure that the Insured's obligations were discharged as instructed;
 - 3.3 failure by the Insured to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building consent, Notice to Rectify, Compliance Schedule, Gazetted Notice, or order made by a Human Rights or Privacy Review Tribunal.
4. **Dishonest acts**
Any event actually or allegedly brought about or contributed to by any dishonest fraudulent or malicious act or omission by or on behalf of the Insured.
5. **Personal grievances**
Any contract of service or any intended contract of service with any current, former or prospective employee, including any personal grievance or like action by an employee, but this exclusion shall not apply to any investigation, inquiry or prosecution by the Department of Labour pursuant to the Health and Safety in Employment Act.
6. **Private prosecutions**
Any investigation of and defence of any action, proceeding, inquiry, investigation, or prosecution taken against the Insured by a person other than the statutory authority or enforcement agency given that responsibility under the Act.

7. Radioactivity

Ionising radiations, or contamination by radioactivity from any nuclear waste from the combustion of nuclear fuel or any self-sustaining process of nuclear fusion.

8. Retroactive date

Any Event after the Retroactive Date but before the Inception Date, if the Insured knew, or ought reasonably to have known, of the Event and failed to notify the Event to the Insurer before the Inception Date.

9. Terrorism

Any loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this exclusion an “Act of Terrorism” means an act, including but not limited to the use of force or violence and/or threat 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 Policy also excludes any loss, damage, death, injury, illness, 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 any Act of Terrorism.

10. War

Any consequence of war, invasion, act of foreign hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military, or usurped power.

11. Cyber and Data Total Exclusion Endorsement – LMA5468

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy does not apply to any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:

- 1.1 Cyber Act or Cyber Incident** including, but not limited to, any action taken in controlling, preventing, suppressing, or remediating any **Cyber Act or Cyber Incident**; or
- 1.2** loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss, or theft of any **Data**, including any amount pertaining to the value of such **Data**;
regardless of any other cause or event contributing concurrently or in any other sequence thereto.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

This endorsement supersedes any other wording in the Policy or any endorsement thereto having a bearing on a **Cyber Act, Cyber Incident or Data**, and, if in conflict with such wording, replaces it.

If the Underwriters allege that by reason of this endorsement that loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

Definitions

Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.

Cyber Incident means:

- 1. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or

2. any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.

Data means information, facts, concepts, code, or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted, or stored by a **Computer System**.

12. Communicable Disease Exclusion – LMA5396

Notwithstanding any provision to the contrary within this Policy, this Policy does not cover any actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.

As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
3. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare, or property damage.

Conditions

1. Apportionment of costs

- 1.1 If there are claims against the Insured which contain uninsured allegations or allegations against other parties then the Insured, and the Insurer, shall use their best efforts to agree upon fair and proper allocation of Defence Costs between insured and uninsured allegations.
- 1.2 If the Insured and Insurer disagree over the allocation of Defence Costs, then the Insurer shall advance such Defence Costs they believe to be covered under this policy, until a different allocation is negotiated, arbitrated, or judicially determined. In this case the Insurer will, if requested by the Insured, refer the dispute for determination of allocation to an expert mutually agreeable to all parties and such determination shall apply retrospectively to all Defence Costs incurred in the defence of that particular claim or Event.

2. Assignment

No assignment of interest under this Policy shall bind the Insurer unless the Insurer has endorsed its written consent on the Policy Schedule.

3. Cancellation

- 3.1 This Policy may be cancelled by the Insurer at any time by sending written notice to the Insured at its last known address. Such cancellation shall be effective from 4pm on the 30th day after sending of the notice. After cancellation, the Insurer will refund the premium for the unexpired Period of Insurance calculated on a pro rata basis from the effective date of cancellation.
- 3.2 This Policy may be cancelled by the Insured by giving written notice to the Insurer. After cancellation the Insurer shall refund premium for unexpired Period of Insurance calculated on a pro rata basis from the effective date of cancellation, subject to any minimum premium charge.

4. Claims notification and duties

As a condition precedent to the Insurer's liability, the Insured shall give the Insurer immediate notice in writing of any Event. At the same time, or as soon thereafter as possible, the Insured shall:

- 4.1 provide full details of any notice, circumstance, or event together with any documentation, information and details that are relevant to the claim;
- 4.2 use its best endeavours to preserve all property, products, appliances, plant, and other things which may assist the Insurer in the investigation or conduct of a claim. So far as may be reasonably practical no alterations or repair shall be effected until the Insurer has first had the opportunity of inspection;
- 4.3 co-operate with the Insurer or its authorised representatives in all aspects of the claim;
- 4.4 not make any admission of fact or liability, offer, promise or payment or settlement without the prior consent in writing of the Insurer;
- 4.5 if the offence alleged is a continuing one, immediately take, at its expense, all reasonable steps to prevent its continuation.

5. Conduct of defence

5.1 Upon acceptance by the Insurer of the Insured's claim to be indemnified, the Insurer shall have the right to nominate a solicitor to act as the Insured's solicitor and shall have the total discretion as to the conduct and control of the Insured's defence, including strategy, in respect of any prosecution, inquiry, settlement negotiation or proceedings against the Insured.

5.2 Where the Insured disagrees with the Insurer over the Insured's defence, including strategy, the Insurer shall provide the Insured in writing with its reasons and shall refer them to an independent barrister for a final determination as to their reasonableness. This independent determination shall be binding on both the Insured and the Insurer.

6. Fraud

If any answers or statements in support of any claim, or in any information provided to obtain, amend, or renew this insurance, are false in any way, the Insurer shall not provide any indemnity under this Policy.

7. Goods and services tax

Where, upon receiving any indemnity payment under this Policy, the Insured is liable to pay tax under section 5(13) of the Goods and Services Tax Act 1985 (or any amendment or re-enactment of the section or Act) the Insurer will indemnify the Insured for the cost of that tax. The indemnity under this clause is in addition to the Limit of Indemnity specified in the Policy Schedule.

8. Inspection

The Insurer shall be permitted, but not obligated, to inspect the Insured's property and operations at any reasonable time.

9. Material change of risk

The Insured shall give immediate notice to the Insurer of any material change to any of the facts or circumstances existing at the commencement of the Period of Insurance. The Insurer shall be entitled to charge an additional premium.

10. Other insurance

If the Insured shall be entitled to indemnity under any other policy of insurance, any benefit under this Policy shall be in excess of such other insurance.

11. Policy disputes

This Policy shall be governed by the laws of New Zealand whose courts shall have jurisdiction in relation to any dispute.

12. Prejudice

Where the Insured's breach or non-compliance with Conditions 4 (Claims Notifications and Duties) and 14 (Reasonable Precautions) of this Policy results in prejudice to the Insurer in relation to the handling of any claim the indemnity afforded by this policy in respect of such claim shall be reduced to such sum as would have been payable by the Insurer in the absence of such prejudice.

13. Progress payment of legal expenses

In the event of an Event for which the Insurer has agreed to indemnify the Insured, on production of acceptable evidence of expenditure prior to the final settlement of the claim, the Insurer shall pay Defence Costs necessarily and reasonably incurred by the Insured.

14. Reasonable precautions

As a condition precedent to the Insurer's liability, the Insured shall take all reasonable precautions to:

14.1 avoid, prevent or minimise any circumstances that may give rise to an Event;

14.2 comply with all relevant statutory obligations.

15. Severability and non-imputation

To the extent that this Policy insures more than one Insured, the application of any exclusion to any Insured, shall not prejudice the right of any other Insured to indemnity under this Policy

Provided that such remaining parties shall:

15.1 be entirely innocent of such fact or misstatement; and

15.2 the Insurer's total liability in the aggregate shall not exceed the Limit of Indemnity specified in the Policy Schedule.

16. Subrogation

In the event of a payment under this Policy to or on behalf of the Insured, the Insurer shall be subrogated to all the Insured's rights of recovery against all persons and organizations. The Insured shall do all that is necessary to assist the Insurer in the exercise of such rights, including prosecuting proceedings in the name of the Insured at the Insurer's expense.



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