

Policy

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General Liability
Policy

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General Liability Policy

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

Insuring Clauses

1. **Public and products liability**
Subject to the Policy terms, Insurers will indemnify the Insured for all sums that the Insured become legally liable to pay as Damages in respect of personal Injury or Property Damage happening during the Period of Insurance within the Policy Territory and caused by an Occurrence in connection with the business of the Insured.
2. **Limit of indemnity**
Insurer's maximum liability in respect of any claim, or any series of claims, arising out of one Occurrence, or in the aggregate during the Period of Insurance in respect of an Occurrence involving the Insured's Products, will not exceed the Limit of Indemnity stated in the Policy Schedule, or the sub-limit in any applicable Automatic Coverage Clause. All Personal Injury or Property Damage in respect of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence

Provided that:
 - 2.1 immediately that Insurers have paid the Limit of Indemnity or the sub-limit in any applicable Automatic Coverage Clause in respect of any judgement or settlement, Insurers liability in relation to Costs and Expenses will cease;
 - 2.2 if a payment exceeding the Limit of Indemnity has to be made to dispose of a claim, Insurers liability in relation to Costs and Expenses will be limited to the same proportion as the Limit of Indemnity bears to the amount required to dispose of the claim.
3. **Costs and expenses**
In addition to the applicable Limit of Indemnity or sub-limit in any applicable Automatic Coverage Clause, Insurers will pay Costs and Expenses necessarily and reasonably incurred in relation to a claim against the Insured for which there is cover under this Policy, irrespective of whether or not the Insured is found legally liable.
4. **Excess**
The amount shown in the Policy Schedule, or in any applicable Automatic Coverage Clause, as the Excess, will be borne by the Insured in respect of each and every claim, or series of claims arising out of one Occurrence.

A single Excess will apply where indemnity may be payable under the Insuring Clause or any applicable Automatic Coverage Clause, or an endorsement to the Policy, with the Excess to apply being the highest Excess of the sections of the Policy that are applicable.

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Definitions

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

1. “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.

2. “Advertising Injury” means:

Liability arising out of one or more of the following:

- 2.1 Defamation except arising out of defamatory statements or disparaging material made or produced prior to the inception date of this Policy.
- 2.2 Infringement of copyright, title or slogan.
- 2.3 Unfair competition, misappropriation of advertising ideas or style of doing business.
- 2.4 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, in the course of carrying out the Business of the Insured.

For the purposes of this Definition, “Advertisement” means any manner of communication given to the public including by way of any form of print media, publication, telecommunication, radio or television broadcast, electronic mail, internet, world wide web or exhibit.

3. “Aircraft” means:

Any machine, craft or thing made or intended to fly or move in or through the atmosphere or space.

4. “Business of the Insured” means:

- 4.1 The business stated in the Policy Schedule, which will include:
 - 4.1.1 the provision and management of lunch room facilities, social, sports, welfare and similar organisations for the benefit of the Insured’s employees;
 - 4.1.2 Fire Brigade, first aid, medical and ambulance services;
 - 4.1.3 Property owners, lessors, lessees and tenants;
 - 4.1.4 Organisation of and participation in exhibitions, trade fairs, conferences and the like;
 - 4.1.5 the organisation of charitable events or similar fundraising activities;
 - 4.1.6 sponsorship of events, organisations, entities and individuals.
- 4.2 Any other activity that the Insured may undertake provided that the Insured gives prior written notice to the Insurers and obtains the Insurers written acknowledgement of coverage.

5. “Costs and Expenses” means:

- 5.1 Any legal costs, disbursements, witnesses’ costs, assessors’ or adjusters’ costs or experts’ costs incurred by the Insured with the Insurers prior written consent.
- 5.2 Any first aid expenses incurred by the Insured arising from a Personal Injury.

6. “Damages” means:

Any amount payable as compensation, including interest, legal costs, disbursements, witnesses’ costs, assessors’ or adjusters’ costs or experts’ costs.

7. “Insured” means:

- 7.1 The Insured(s) named in the Policy Schedule
- 7.2 All subsidiaries incorporated in New Zealand, and any other organisation under the sole control of a named Insured and which it actively manages:
 - 7.2.1 as at the commencement of the Period of Insurance
 - 7.2.2 Acquired or taken control of during the Period of Insurance, provided that a named Insured gives written notice to the Insurer and obtains the Insurers acknowledgement of coverage within sixty (60) days of acquisition or taking control.
- 7.3 Every director, officer, employee, partner or shareholder of an Insured designated in paragraphs 7.1 and 7.2 whilst acting within the scope of their duties as such, except in respect of any liability under the Companies Act.
- 7.4 Every principal, in respect of its vicarious liability arising solely out of the performance, by an Insured as defined under 7.1, 7.2 or 7.3, of any contract work for such principal, but always subject to the terms of this Policy.
- 7.5 Every office bearer or member of social and sporting clubs formed with the consent of the Insured (other than an Insured designated in paragraph 7.4 or 7.6) in respect of claims arising from the duties connected with the activities of any such club.
- 7.6 Each joint venture, co-venturer or joint lessee of a named Insured but only with respect to liability incurred as a joint venture, co-venturer or joint lessee, provided that a named Insured gives written notice to the Insurers and obtains the Insurers written acknowledgement of coverage for such joint venture, co-venture or joint lease.

8. “Insured’s Products” means:

Any goods, products, including labels, instructions for use and advice and property after they have ceased to be in the possession of 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).

9. “Insurer” means:

As named in the Policy Schedule.

10. “Medical Persons” means:

Any legally qualified medical practitioner, legally qualified registered nurse, dentist or first aid attendant.

11. “North American Countries” means:

The United States of American and Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.

12. “Occurrence” means:

An event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage that is neither expected nor intended from the standpoint of the Insured.

13. “Period of Insurance” means:

The Period of Insurance stated in the Policy Schedule.

14. “Personal Injury” means:

Bodily injury including resulting death, illness or care, disability, shock, fright, mental anguish or mental injury, including such injury arising from the following by the Insured:

- 13.1 false arrest, wrongful detention, false imprisonment or malicious prosecution or humiliation;
- 13.2 wrongful entry or eviction or other invasion of the right of privacy;

- 13.3 assault and battery, provided that this was not committed by or at the direction of the Insured except for the purpose of preventing or eliminating danger to persons or property;
- 13.4 trespass to the person.

15. “Policy” means:

This document, the Policy Schedule and any endorsements issued by the Insurer.

16. “Policy Schedule” means:

The current schedule issued by the Insurer.

17. “Policy Territory” means:

Worldwide, unless otherwise stated in the Policy Schedule, and subject to Exclusions 12 (North American Countries) and 13 (North American Exports), and the limitations to New Zealand only in Automatic Coverage Clauses 11 (Product Withdrawal Costs), 13 (Punitive or Exemplary Damages), 15 (Underground Services), 16 (Vehicle or Watercraft, Equipment or Machinery Service or Repair) and 17 (Vibration or Removal of Support).

18. “Pollutants” means:

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

19. “Property Damage” means:

- 18.1 physical injury to or destruction or loss of tangible property including resulting loss of use; or
- 18.2 loss of use of tangible property which has not been physically injured or destroyed.

20. “Vehicle” means:

Any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine, and includes its accessories, tools, specialised equipment and spare parts.

21. “Watercraft” means:

Any vessel, craft or thing made or intended to float on or in or travel on or through water.

Automatic Coverage Clauses

To be read in conjunction with the Insuring Clauses above, and subject to the Policy terms. The following sub-limits and Excesses apply unless there is a different sub-limit or Excess shown in the Policy Schedule. The sub-limits are included in, are not in addition to, and may be less than, the Limit of Indemnity in the Policy Schedule.

1. Advertising liability

Insurers will indemnify the Insured for all sums that the Insured will become legally liable to pay as Damages in respect of claims for Advertising Injury happening during the Period of Insurance in connection with the Business of the Insured

Provided that:

- 1.1 Insurers will not indemnify the Insured for any claim in respect of or alleging Advertising Injury arising out of:
 - 1.1.1 statements made at the Insured's direction with knowledge that such statements are false;
 - 1.1.2 the failure of performance of contract. Provided that this Exclusion will not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
 - 1.1.3 any incorrect description of the Insured's Products or services;
 - 1.1.4 any mistake in advertised price of the Insured's Products or services;
 - 1.1.5 the failure of the Insured's Products or services to conform with advertised performance, quality, fitness or durability;
 - 1.1.6 liability incurred by the Insured if the Business of the Insured is advertising, broadcasting, publishing or telecasting.
- 1.2 A limit of Indemnity of NZD1,000,000 any one Period of Insurance will apply
- 1.3 An Excess of NZD1,000 will apply

2. Business advice or service

Notwithstanding Exclusion 17 (Professional Liability), Insurers will indemnify the Insured for all sums that the Insured will become legally liable to pay as Damages in respect of Personal Injury or Property Damage arising out of an error or omission in:

- 2.1 advice or services rendered by the Insured without charge.
- 2.2 Product training and/or demonstrations rendered by the Insured without charge.
- 2.3 Professional medical advice by Medical Persons employed by the Insured to provide first aid and other medical services on the Insured's premises.

3. Contractors or sub-contractors additional Insureds

'Labour only' contractors or sub-contractors employed by an Insured designated in Definition 7.1 and 7.2 (Insured) of the Policy are treated as employees of the Insured under Definition 7.3 (Insured) of this Policy

Provided that:

- 3.1 this Automatic Coverage Clause only applies while such contractors or sub-contractors are carrying out work for the Business of the Insured;
- 3.2 such contractors or sub-contractors are not otherwise insured under any other policy;
- 3.3 the coverage provided under Condition 6 (Cross Liability/Joint Insureds) does not apply to contractors insured under the Policy by this Automatic Coverage Clause.

4. Defective workmanship

Notwithstanding Exclusion 7 (Defective Materials, Design & Workmanship), Exclusion 10 (Insured's Products) and Exclusion 22 (Vehicles), the Insurer will indemnify the Insured for all sums that the Insured will become legally liable to pay for the costs arising out of Defective Workmanship happening during the Period of Insurance within the Policy Territory

Provided that:

- 4.1 "Defective Workmanship" means the rectifying, remedying, removal, repair, alteration, treatment or replacement of the Insured's Products or part thereof which have proven to be defective, harmful or fail to perform the function for which they were sold, supplied, manufactured or installed;
- 4.2 A Limit of Indemnity of NZD100,000 will apply in respect of all Defective Workmanship claims during any one Period of Insurance;

- 4.3 An Excess of NZD1,000 will apply;
- 4.4 The Insurer will not provide indemnity in respect of:
 - 4.4.1 any liability arising out of professional advice or service provided by the Insured or any error or omission connected therewith;
 - 4.4.2 Any liability for the costs of remedying any defect in design, plan, or specification.

5. Forest and rural fires act

The Insurer will indemnify the Insured in respect of liability under the Forest and Rural Fires Act 1977 for:

- 5.1 costs and losses incurred during the Period of Insurance recoverable from the Insured under section 43;
- 5.2 levies imposed by a Fire Authority and apportioned to the Insured during the Period of Insurance under section 46.

This clause applies:

- 5.3 regardless of whether or not Property Damage has occurred;
- 5.4 to Vehicles, notwithstanding Exclusion 22 (Vehicles)

Provided that:

- 5.5 a Limit of Indemnity of NZD500,000 any one Period of Insurance will apply;
- 5.6 an Excess of NZD500 will apply.

6. Innkeepers liability

The Insurer will indemnify the Insured for all sums which the Insured will become legally liable to pay as compensation (including interest) as provided for under the Innkeepers Act 1962

Provided that:

- 6.1 a Limit of Indemnity of NZD250,000 for any one Period of Insurance will apply;
- 6.2 an Excess of NZD1,000 will apply.

7. Landlords liability

The Insurer will indemnify the Insured for all sums that the Insured will become legally liable to pay as Damages in respect of Personal Injury or Property Damage arising from the Insured's legal ownership, but not physical occupation, of any premises.

8. Lost or stolen keys

The Insurer will indemnify the Insured for costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations where keys or combinations giving access to properties, for which the Insured is responsible but doesn't own, hire, lease or rent, are lost, stolen or believed on reasonable grounds to have been duplicated without proper authority

Provided that:

- 8.1 a Limit of Indemnity of NZD50,000 any one Period of Insurance will apply;
- 8.2 an Excess of NZD1,000 will apply.

9. Mechanical plant liability and car park liability

Notwithstanding Exclusion 22 (Vehicles), the Insurer will indemnify the Insured in respect of Personal Injury or Property Damage:

- 9.1 arising from loading or unloading any Vehicle used by or on behalf of the Insured but not in the Insured's care, custody or control;
- 9.2 arising from any Vehicle while it is being operated for its specialised function or purpose, and not as a Vehicle;
- 9.3 relating to the operation or ownership of a car park including the parking of Vehicles by the Insured so as to cause damage to Vehicles within it (other than to Vehicles belonging to, or used by or on behalf of the Insured);
- 9.4 relating 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 any designated weight restrictions were not exceeded.

10. Product withdrawal costs

Notwithstanding Exclusion 24 (Withdrawal or Repair of Products), the Insurer will indemnify the Insured for up to 80% of those costs reasonably incurred in the withdrawal or recall from use in the Policy Territory of the Insured's Products which have the same defect as a product that has already given rise to a claim in respect of which the Insured is entitled to indemnify under Insuring Clause 1 (Public and Products Liability) or any Automatic Coverage Clause

Provided that:

- 10.1 a Limit of Indemnity of NZD100,000 will apply in respect of all such withdrawals or recalls during any one Period of Insurance
- 10.2 an Excess of NZD2,500, inclusive of Costs and Expenses, will apply to each such withdrawal or recall.

11. Property in care, custody or control

Notwithstanding Exclusion 18 (Property Owned), but subject to Exclusion 7 (Defective Materials, Design & Workmanship), the Insurer will indemnify the Insured in respect of Property Damage to property, including employee's property, where the liability arises while the property is in the care, custody or control of the Insured

Provided that:

- 11.1 real property, property owned by or premises leased or rented to or by the Insured is excluded;
- 11.2 a Limit of Indemnity of NZD250,000 any one Period of Insurance will apply;
- 11.3 an Excess of NZD1,000 will apply.

12. Punitive or exemplary damages

Notwithstanding Exclusion 9 (Fines, Penalties etc.) and Definition 6 (Damages), the Insurer will indemnify the Insured in respect of punitive or exemplary damages awarded for Personal Injury in New Zealand

Provided that:

- 12.1 any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- 12.2 any award of punitive or exemplary damages by any Court outside New Zealand is excluded;
- 12.3 a Limit of Indemnity of NZD1,000,000 any one Period of Insurance will apply;
- 12.4 an excess of NZD500 will apply.

13. Tenants liability

Notwithstanding Exclusion 18 (Property Owned), the Insurer will indemnify the Insured for all sums that the Insured will become legally liable to pay as Damages in respect of Property Damages to premises (including landlord's fixtures and fittings) leased or rented, but now owned, by the Insured.

14. Underground services

The Insurer will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand to existing underground services, cables, pipes or equipment

Provided that:

- 14.1 prior to the commencement of any work, the Insured inquired of the relevant authority, corporation or company as to the location of such services;
- 14.2 the Insured took all reasonable precautions to prevent Personal Injury or Property Damage;
- 14.3 a Limit of Indemnity of NZD500,000 any one Period of Insurance will apply;
- 14.4 an Excess of NZD5,000 will apply.

15. Vehicle or watercraft, equipment or machinery service or repair

Notwithstanding Exclusions 1 (Aircraft and Watercraft), 7 (Defective Materials, Design & Workmanship), 10 (Insured's Products), 18 (Property Owned) and 22 (Vehicles), the Insurer will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand arising from the service or repair by the Insured of any:

- 15.1 Vehicle or Watercraft not exceeding ten (10) metres in length, and/or its internal combustion engine, accessories or fittings (Watercraft being measured in length overall being stem to stern excluding any fixed or moveable projections extending beyond these points); or
- 15.2 equipment or machinery

Provided that:

- 15.1 the Vehicle or Watercraft, equipment or machinery is not owned, hired, leased or rented by the Insured, and is or was in the care, custody or control of the Insured for the purpose of the service or repair;

- 15.2 the cost of rectifying, repairing or replacing defective materials or remedying defective workmanship in respect of the actual part or parts worked on is excluded but resultant Property Damage arising from defective materials or workmanship is not excluded;
- 15.3 a Limit of Indemnity of NZD250,000 any one Period of Insurance will apply in result of Property Damage to the Vehicle or Watercraft, equipment or machinery which is or has been in the care, custody or control of the Insured for service or repair;
- 15.4 an Excess of NZD1,000 will apply to Property Damage to the Vehicle or Watercraft which is or has been in the care, custody or control of the Insured for service or repair;
- 15.5 an Excess of NZD 2,500 will apply to Property Damage to equipment or machinery which is or has been in the care, custody or control of the Insured for service or repair.

16. Vibration or removal of support

The Insurer will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand arising from vibration, or removing, weakening or interfering with, the support of land or buildings

Provided that:

- 16.1 the land or buildings are not owned or occupied by the Insured;
- 16.2 the Personal Injury or Property Damage arises from the actions of the Insured;
- 16.3 a Limit of Indemnity of NZD500,000 any one Period of Insurance will apply;
- 16.4 an Excess of NZD5,000 will apply.

17. Visits to the north American countries

Notwithstanding Exclusions 12 (North American Countries) and 13 (North American Exports), the Insurer will indemnify the Insured in respect of Personal Injury or Property Damage in the North American Countries arising solely out of the actions of non resident directors, executives and salespersons temporarily visiting the North American Countries in the course of the Business of the Insured

Provided that:

- 17.1 the Insured has no premises, branch or subsidiary operation in the North American Countries;
- 17.2 any work performed in, on, or in connection with, the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of the Insured's Products is excluded;
- 17.3 the ownership, possession, control, or maintenance or use of any Vehicle or Watercraft is excluded;
- 17.4 notwithstanding Insuring Clause 3 (Costs and Expenses), the Limit of Indemnity, inclusive of Costs and Expenses, any one Period of Insurance will be the Limit of Indemnity in the Policy Schedule.

18. Warrant of fitness

Notwithstanding Exclusion 17 (Professional Liability), the Insurer will indemnify the Insured for all sums that the Insured will become legally liable to pay as Damages in respect of claims made against the Insured during the Period of Insurance and arising out of a negligent act, error or omission, in connection with the Business

Provided that:

- 18.1 for the purpose of this Automatic Coverage Clause, the "Business" means:
 - 18.1.1 the inspection and certification of Vehicles for the issuing of a warrant of fitness or other inspection certificate as may be required by law; and
 - 18.1.2 'pre-purchase' or Vehicle appraisal services;
- 18.2 a Limit of Indemnity of NZD100,000 any one Period of Insurance will apply;
- 18.3 an Excess of NZD2,500 will apply;
- 18.4 the coverage under this Automatic Coverage Clause does not extend to include the valuation of any Vehicle, motorcycle, Watercraft, motor and/or accessory of any type whatsoever;
- 18.5 the Insured is licensed and qualified to issue a warrant of fitness or other inspection certificates as may be required by law.

Exclusions

The Insurer will not indemnify the Insured for any claim in respect of or alleging:

1. Aircraft and watercraft

Personal Injury or Property Damage arising out of the ownership, possession, control, operation, use, maintenance, service or repair, loading or unloading by the Insured of any;

1. Aircraft or hovercraft;
2. Watercraft exceeding ten (10) metres in length. (Watercraft being measured in length overall being stem to stern excluding any fixed or moveable projections extending beyond these points).

2. Aircraft products

Personal Injury or Property Damage arising out of any of the Insured's Products which, with the Insured's knowledge were, or were intended to be, incorporated into the hull, structure, machinery or controls of any Aircraft or aerial device.

3. Asbestos

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, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

4. Building defects

Personal Injury or Property Damage arising out of:

1. the failure or alleged failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code contained in the First Schedule of the Building Regulations 1992 or any applicable New Zealand Standard (or amended or substituted Regulation or Standard) in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system; or
2. mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

5. Contractual liability

Liability assumed by the Insured under any contract or agreement except to the extent that the Insured would have been liable even if there had been no contract in existence. But this Exclusion will not apply to liability pursuant to any:

1. lease or hire of real or personal property;
2. representation or warranty of fitness or quality in respect of the Insured's Products, or a representation or warranty that work performed by or on behalf of the Insured will be done in a workmanlike manner;
3. contracts or agreements noted in the Policy Schedule.

6. Defamation

Liability arising out of libel or slander where any statement is made at the Insured's direction with knowledge that such statement is false.

7. Defective materials, design & workmanship

Liability for the cost of:

1. rectifying, repairing or replacing defective materials;
2. remedying any defect in any design, plan or specification;
3. remedying defective workmanship or correcting or improving any work undertaken by the Insured.

However, subject to the Policy terms, the Insurer will indemnify the Insured for resultant Property Damage arising from defective materials, design or workmanship.

8. E-commerce

1. Personal Injury or Property Damage arising, directly or indirectly, out of, or in any way involving the Insured's Internet Operations.

This Exclusion does not apply to Personal Injury or Property Damage arising out of any materials which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its web site.

For the purposes of this Exclusion "Internet Operations" means the following:

- 8.1.1 use of electronic mail systems by the Insured or the Insured's employees, including part-time and temporary staff, contractors and others within the Insured's organisation;
- 8.1.2 access through the Insured's network to the world wide web or a public internet site by the Insured's employees, including part-time and temporary staff, contractors and others within the Insured's organisation;
- 8.1.3 access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for customers of the Insured or others outside the Insured's organisation; and
- 8.1.4 the operation and maintenance of the Insured's web site.

Nothing in this Exclusion will be constructed to extend coverage under this Policy to any liability which would not have been covered in the absence of this Exclusion.

- 2. Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
 - 8.2.1 the use of any computer hardware or software;
 - 8.2.2 the provision of computer or telecommunication services by the Insured or on the Insured's behalf;
 - 8.2.3 the use of computer hardware or software belonging to any third party, whether authorised or unauthorised, including damage caused by any computer virus.

9. Fines, penalties, etc.

Liability arising for any fines, penalty, performance warranty or liquidated damages, punitive and/or exemplary damages.

10. Insured's products

Property Damage to the Insured's Products.

11. Loss of use

Loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- 1. a delay in or lack of performance by or on behalf of the Insured of any contract or agreement, or
- 2. the failure of the Insured's Products to meet the level of performance, quality, fitness or durability that has been warranted or represented expressly or impliedly by the Insured.

12. North American countries

Personal Injury or Property Damage happening in the North American Countries or proceedings issued in respect of any Personal Injury or Property Damage in North American Countries, including any liability from or based on a settlement or arbitration in, or a judgment or order of a court in the North American Countries.

13. North American exports

Liability arising from any of the Insured's Products knowingly exported by the Insured (or exported by the Insured's agents or distributors with the Insured's knowledge) to the North American Countries, including any liability arising from or based on a settlement or arbitration in, or a judgment or order of a court in the North American Countries.

14. Offshore gas or oil platforms

Liability arising from work performed on or about any offshore gas or oil platform.

15. Personal injury to employees

- 1. Personal Injury arising directly or indirectly out of or in the course of employment with the Insured,
- 2. An obligation on the Insured under any accident or workers compensation legislation or any industrial award, employment contract, agreement or determination.

16. Pollution

Personal Injury or Property Damage, including Costs and Expenses incurred in the prevention, removing, nullifying or clean up, arising out of the discharge, dispersal, release or escape of Pollutants into or on land, the atmosphere, or any watercourse or body of water, unless the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended from the standpoint of the Insured and takes place in its entirety at a specific time and place.

17. Professional liability

An error or omission in professional advice or service.

18. Property owned

Property Damage to any property owned by, or in the care, custody or control of the Insured.

19. Radioactivity

Any actual or alleged liability whatsoever for any claim or claims directly or indirectly caused by, contributed to or arising from:

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

20. Sanctions

Liability arising where the provision of such cover, payment of such claim or provision of such indemnity would expose the Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.

21. Terrorism

1. any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
2. any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

22. Vehicles

Personal Injury or Property Damage arising out of the ownership, possession, control, operation, use, maintenance, service or repair by or on behalf of the Insured of any Vehicle which is:

1. required by legislation to be registered and/or licensed and/or insured;
2. being operated while in an unsafe condition;
3. being operated by any person who is under the influence of any liquor, substance or drug. However, subject to the Policy terms the Insurer will indemnify the Insured provided that:
 - 22.3.1 this extension does not extend to indemnify the driver or operator of the Vehicle causing the Occurrence;
 - 22.3.2 the driving or operation of the Vehicle was without the knowledge or consent of the Insured or any director, officer, manager or supervisor of the Insured;
 - 22.3.3 the Insured has not waived any rights of recovery against the driver or operator causing the Occurrence;
4. insured, or in respect of which the Insured is insured under any other policy, even if the other insurance is not collectable because of a breach of Condition or applicable Exclusion.

23. War

Liability arising out of war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, military rising, rebellion, revolution, insurrection, military or usurped power, martial law or looting or pillaging in connection therewith, strike, lock-out, riot, civil commotion, mutiny, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority or any act or condition incidental to any of the above.

24. Withdrawal or repair of products

The recall, including making any refund on the price paid, repair, withdrawal, inspection, removal, altering, treating, modification, replacement or loss of use of the Insured's Products or any property of which such products form a part, or of work undertaken by or for the Insured, if such products, property or work are withdrawn from the market or from use, because of any defect or deficiency which the Insured knew or has reason to suspect or because of any Government or statutory ban order or notice.

25. 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. **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
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**.

26. Virus, Disease and Pandemic Exclusion

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto it is agreed that the Policy does not insure loss, destruction or damage, or any costs or expenses of whatsoever nature directly or indirectly occasioned by, arising from, caused by, happening through, or in consequence of, or otherwise attributable to any one or more of the following:

1. Coronaviruses;
2. Coronavirus disease (COVID-19);
3. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
4. Any mutation of or any variation of or evolution of 1), 2) or 3) above;
5. Any infectious or contagious disease that is declared, categorized, or otherwise referred to as a pandemic by either(i) the World Health Organization, or (ii) any governmental public health agency of a country directly affected by the disease, regardless of when the declaration occurred;
6. Any fear or act in anticipation, whether rational or unfounded, of 1), 2), 3), 4) or 5) above.

Except as otherwise provided in this Exclusion, all terms, provisions and conditions of the policy shall have full force and effect.

27. Communicable Disease Exclusion – LMA 5396

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. Cancellation

- 1.1 The Insured may cancel this Policy at any time by giving notice to the Insurer. The Insurer will refund to the Insured the amount of the unexpired premium already paid on a pro rata basis, subject to any minimum premium applicable.
- 1.2 The Insurer may cancel this Policy by sending at least thirty (30) days notice to the Insured in accordance with Condition 13 (Notices by the Insured) paragraph 13.2 and 13.3. The Insured will refund the amount of any unexpired premium already paid on a pro-rata basis.

2. Claims

- 2.1 The Insured will not (without the prior consent in writing of the Insured) make any admission, offer, promise or payment in connection with any Occurrence or claim. The Insured will be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim, and the prosecution of any available counterclaim. The Insurer will have full discretion in the conduct of any proceedings in connection with any claim or available counterclaim.
- 2.2 The Insured will use its best endeavours to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair will be effected without the written consent of the Insurer until the Insurer will have had an opportunity of inspection and authorised such repairs.
- 2.3 In the event of an Occurrence, or the likelihood of an Occurrence, the Insured will promptly take at its own expense all reasonable steps to prevent Personal Injury or Property Damage from, arising or continuing out of the same or similar conditions, but such expense will not be recoverable from the Insured.
- 2.4 The Insured will give all information, co-operation and assistance as the Insurer may require in the prosecution, defence or settlement of any claim, including any available counterclaim.

3. Claims notification

The Insured will advise in writing as soon as practicable and provide all information to the Insurer of any:

- 3.1 Occurrence or circumstances, which might give rise to a claim under this Policy;
 - 3.2 notice of claim, writ, summons, proceedings, impending prosecution or inquest which might give rise to a claim under this Policy
- regardless of whether the Insured believes that:
- 3.2.1 a claim will not in fact proceed;
 - 3.2.2 any claim which, should it proceed, would fall below the applicable Excess;
 - 3.2.3 any claim which, should it proceed, would be groundless.

4. Conditions precedent

Conditions 2 (Claims), 3 (Claims Notification), 8 (Fraud), 10 (Hot Work), 12 (Material Change) and 16 (Reasonable Care) are conditions precedent to the Insurer's acceptance of indemnity under this Policy and the Insurer shall be entitled to avoid this Policy or reduce liability to the maximum extent permitted by law in the event of any breach of these conditions precedent.

5. Constructive notice/no waiver

- 5.1 Except as provided by statute, notice to any agent or broker or knowledge possessed by any agent, broker or other person will not constitute notice to the Insurer.
- 5.2 The terms of this Policy will not be waived or changed, except by written agreement with the Insurer.

6. Cross liability/joint insureds

If more than one legal entity is insured under this Policy, each entity is covered in the same matter as though the Insurer had issued them with a separate policy.

If there is a claim against more than one entity in respect of the same Occurrence, only one Excess and one Limit of Indemnity will apply, regardless of the number of entities indemnified. Where the Limit of Indemnity is insufficient to fully indemnify all insured entities, it will apply in priority to the named Insured.

The coverage under this Condition does not apply to entities which are insured under this Policy by Definition 7.6 (Insured).

7. Discharge of liabilities

At any time, the Insurer will be entitled to pay to the Insured the balance of indemnity available up to the applicable Limit of Indemnity, or such lesser sum for which the claim can be settled. Upon such payment, the Insurer will be under no further liability to the Insured under this Policy, except for Costs and Expenses already incurred up until the time of payment.

8. 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 will not provide any indemnity to the Insured under this Policy.

9. Goods and services tax

Where, on 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 re-enactment or substitute), the Insurer will indemnify the Insured for the cost of that tax. The indemnity under this clause is in addition to the applicable Limit of Indemnity.

10. Hot work

Where the Insured carries out any welding and/or cutting work it is warranted that the Insured will comply with the New Zealand Standard 4781:1973 Code of Practice for Safety in Welding and Cutting (or any substitute).

11. Inspection of property

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

12. Material change

The Insured will 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 will be entitled to charge an additional premium.

13. Notices by the Insurer

- 13.1 Any notice given in writing by the Insurer to the first named Insured in the Policy Schedule, or to the broker through which the Insured arranged this Policy with the Insured, will be deemed to be notice to each Insured.
- 13.2 Any notices by the Insured may be effected by sending an email or letter to the last known address.
- 13.3 Any such notice will be deemed to have been received, if sent by email, at the time of transmission, and if sent by post, three (3) business days after the date of posting.

14. Other insurance

If the Insured is entitled to indemnity under any other insurance, this Policy will operate in excess of such other insurance, even if the other insurance policy has an insurance condition to similar effect.

15. Policy disputes

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

16. Reasonable care

The Insured will take all reasonable steps to avoid the happening of any Occurrence and, in particular, will ensure that:

- 16.1 all employees are properly trained and supervised;
- 16.2 every employee complies with all statutory obligations;
- 16.3 there are proper safety systems, equipment practices and procedures in place, and that all employees use and comply with them at all times;
- 16.4 all plant is kept properly maintained.

17. Subrogation

- 17.1 If the Insurer makes any payment under this Policy to or on behalf of the Insured, whether in respect of any judgment, settlement, Damages or Costs and Expenses, the Insurer will be subrogated to all the Insured's rights of recovery.
- 17.2 The Insured will execute all papers and do all that is necessary to assist the Insurer in the full exercise of such rights, including prosecuting proceedings in the name of the Insured at the Insurer's expense.
- 17.3 If the Insured effect any recovery in respect of the claim, it will account to the Insurer for the full amount received.

18. Words

Words importing persons will include companies and other legal entities. The singular includes reference to the plural and vice versa, and reference to any gender includes all other genders.



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