

LegalEdge™

LIABILITY INSURANCE



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## preamble

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, warranties and endorsements, the Company (as described in the Certificate attaching to this Policy) will indemnify the Insured as per the Sections contained within this Policy.

## insuring clauses

1. The Company will indemnify the Insured for all amounts which the Insured shall become legally liable to pay as compensation in respect of Personal Injury or Property Damage (including Personal Injury or Property Damage within the Completed Operations Hazard and Products Hazard) happening within the territory shown under Condition 11 during the Period of Insurance caused by an Occurrence and arising from the Business of the Insured.
2. In addition to the applicable Limit of Indemnity, in respect of any valid claim under this Section, the Company will:
  - (a) defend the Insured against any suit for damages, including meeting the costs of any investigations or negotiations as the Company deems necessary, provided that the Limit of Indemnity under this Section has not previously been exhausted;
  - (b) pay all defence costs incurred by the Company, or by the Insured with the prior written consent of the Company, including costs, taxes and judgment interest incurred in any suit until the Company has paid the amount of any judgment not exceeding the Limit of Indemnity of the Section;
  - (c) pay the Insured's expenses for first aid to others.

## 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 in respect of any one Occurrence shall not exceed the Limit of Indemnity stated in the Certificate.
3. The total aggregate liability of the Company 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 Certificate.
4. In respect of each claim made against the Insured the amount of the Excess specified in the Certificate 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.

## exclusions

This Section does not apply to:

- (a) 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;
- (b) claims for payment under any Accident Compensation Act, Workers or Workmens Compensation legislation by any person in the service of any contractor or subcontractor to the Insured or any dependant of such person;
- (c) Property Damage to property which is in the Insured's care, custody or control, provided that this Exclusion shall not apply to:
  - (i) premises which are leased, rented, tenanted or hired by or to the Insured; provided that the Insured shall bear the first \$100 in respect of such Property Damage caused other than by fire or explosion;
  - (ii) 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;

- (iii) goods, equipment, merchandise and property, other than real property, subject to a sub-limit stated in the Certificate, provided the Insured bears the Excess shown in the Certificate;
- (d) Property Damage to the Insured's Products arising out of such products or any part of such products;
- (e) loss of use of tangible property which has not been physically injured or destroyed resulting from:
  - (i) a delay in or lack of performance by or on behalf of the Insured of any contract or agreement;
  - (ii) 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;
- (f) damages 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 withdrawn from the market or from use because of any known or suspected defect or deficiency;
- (g) 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:
  - (i) any aircraft;
  - (ii) any watercraft exceeding 8 metres in length;
  - (iii) any Motor Vehicle which is required by law to be registered for road use.  

But this exclusion shall not apply in respect of liability arising out of loading or unloading by the Insured or his employees;
- (h) 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;
- (i) for Products Hazard only, liability assumed by the Insured under any agreement, other than written contracts designated in the Certificate. 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;
- (j) 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 premises of the Insured;
- (k) 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;

- (l) 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;

## conditions

### 1. Claims

(a) 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.

(b) 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 him or his representative.

(c) 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 Section, and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

(d) 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.

(e) If the Insured shall refuse to consent to any settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled (less the Excess specified in the Certificate), plus the costs and expenses incurred up to the date of such refusal.

### 2. 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.

### 3. Declarations

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

### 4. Fraud

If any claim under this Section 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 Section, all benefits under this Section shall be forfeited.

5. Inspection and Audit

The Company shall be permitted, but not obligated, to inspect the Insured's 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.

The Company may examine and audit the Insured's books and records at any time during the Period of Insurance including any extensions and within three years after the final termination of this insurance, as far as they relate to the subject matter of this insurance.

6. Interpretation

This Section and the Certificate 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 Section or the Certificate shall bear such meaning wherever it shall appear.

7. Joint Assureds

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.

8. Other Insurance

If, at the time of an Occurrence under this Section, there is, or would be but for the existence of this Section, any other policy applicable to such Occurrence and effected in favour of the Insured, this Section shall be insurance in excess of the amount of liability covered under such other policy and the Limit of Indemnity under this Section 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.

9. Premium

If the first or renewal premium for this Section, 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.

10. 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 his 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 his own expense take reasonable action to trace, recall or modify any of the Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.

#### 11. Territory and Jurisdiction

The insurance afforded by this Section shall apply:

(a) with respect to the premises and operations of the Insured anywhere in the world except United States of America, Canada or their protectorates.

(b) with respect to the Products Hazard anywhere in the world except United States of America, Canada or their protectorates.

(c) with respect to incidental travel anywhere in the world.

Provided that this insurance does not apply to any claim, judgement, award or settlement made within United States of America, Canada or their protectorates or to any order made within those countries to enforce such claim judgement award or settlement either in whole or in part.

#### 12. Compliance

Compliance by or for the Insured with the obligations in conditions 1, 3, 4 & 10 shall be a condition precedent to the Company's liability in respect of any claim.

## definitions

1. "Completed Operations Hazard" includes 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" include materials, parts or equipment furnished in connection with them. Operations shall be deemed completed at the earliest of the following times:

- (i) when all Operations to be performed by or on behalf of the Insured under the contract have been completed;
- (ii) when all Operations to be performed by or on behalf of the Insured at the site of the Operations have been completed;
- (iii) 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:

- (i) 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;
- (ii) the existence of tools, uninstalled equipment or abandoned or unused materials.

2. "Insured" means:  
The Named Insured, and:
  - (a) any subsidiary company (including its subsidiaries) of the Named Insured, and any other organisation under the control of the Named 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 Section, 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 Section;
  - (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 Section.
3. The "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).
4. "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.
5. "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.
6. "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.
7. "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 occurs during the Period of Insurance, which has not been physically injured or destroyed, provided such loss of use is caused by an Occurrence.
8. "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).

## extensions

### **Punitive and Exemplary Damages**

This Punitive and Exemplary Damages extension is not subject to any of the terms and conditions of the policy to which it is endorsed.

This Punitive and Exemplary Damages extension is subject only to the terms and conditions and exclusions of the extension.

1. Indemnity for punitive or exemplary damages for personal injury

The Company will indemnify the Insured against claims for punitive damages or exemplary damages made by, or on behalf of, a person who has suffered a Personal Injury resulting from an event in connection with the business of the Insured, or the Insured's ownership, occupancy or tenancy of a building, structure or land. The claims must be both:

- (a) Made against the Insured during the Period of Insurance; and
- (b) Notified to the Company during the same Period of Insurance.

The Company will also indemnify the Insured against such claims for punitive damages or exemplary damages made against the Insured after the end of the Period of Insurance. However, the claims must arise from facts or circumstances that the Insured has notified to the Company during the Period of Insurance.

In this extension Personal Injury means bodily injury, sickness, disability or disease. It includes death resulting from bodily injury, sickness, disability or disease. It also includes mental disability, mental shock, mental anguish and mental injury.

2. Indemnity for legal and other costs

The Company will indemnify the Insured against legal and other related costs incurred by the Insured, with the Company's prior written consent, in relation to investigating, settling or defending a claim indemnified under clause 1 of this extension.

3. Limit of indemnity

The Company will only indemnify the Insured up to the sub-limit stated in the Certificate in respect of all claims (including legal and other related costs) in any one Period of Insurance.

4. Insured must pay Excess in relation to each claim

The Insured must pay the Excess stated in the Certificate in respect of each claim indemnified by this extension. If a claim involves more than one Personal Injury the Insured must pay the Excess in respect of each of them.

The Excess stated in the Certificate includes the Company's legal and related costs.

### EXCLUSIONS

The Company will not indemnify the Insured against the following claims:

1. Claims made, threatened, or in any way intimated against the Insured before the Period of Insurance commences.
2. Claims arising from a circumstance that at the time the Period of Insurance commences, the Insured realises, or should have realised, may give rise to a claim against the Insured.
3. Claims or circumstances which are disclosed on a proposal or which have been notified to any previous insurer (including the Company).
4. Claims arising from Personal Injury or an event that caused Personal Injury where such Personal Injury or event occurred prior to the Retroactive date specified in the Certificate.

5. Claims arising from Personal Injury to any employee in or arising from the employment of the Insured.
6. Claims in respect of asbestosis and/or related diseases.
7. (a) Claims against the Insured brought outside New Zealand or any settlement or compromise of a claim entered into outside New Zealand.  
(b) Claims arising out of the enforcement of a judgement, order or award obtained outside New Zealand.  
(c) Claims arising out of any statement, action or omission of the Insured made, done or omitted outside New Zealand.  
(d) Claims as a result of any judgement entered in any court, other than a New Zealand Court applying the law of New Zealand, or any debt incurred by the Insured as the result of such a judgement.
8. Claims arising out of liability assumed by a contract entered into by the Insured unless the Insured would still have had the same liability despite the contract.
9. Claims arising directly or indirectly from wilful or malicious conduct of the Insured.
10. Claims arising directly or indirectly from the dishonesty or fraud of the Insured.
11. Claims for fines and penalties imposed on the Insured. In this extension this exclusion does not apply to awards for punitive or exemplary damages.
12. Claims arising directly or indirectly from a breach of any duty owed in a professional capacity by the Insured or by persons for whose breach of duty the Insured may be legally liable.
13. Claims directly or indirectly resulting from:
  - (a) Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
  - (b) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component of it.

#### INSURED'S DUTIES DURING THE PERIOD OF COVER

1. The Insured must do everything practicable to avoid or minimise any claim or Personal Injury.
2. The Insured must do everything practicable to comply with all statutory obligations.
3. The Insured must:
  - (a) Give the Company all information and assistance the Company may reasonably ask for;
  - (b) Do everything practicable to preserve anything that may be useful as evidence in connection with a claim;
  - (c) Allow the Company, at all reasonable times, to inspect the property, buildings, plant, works and appliances owned or used by the Insured.

#### CLAIMS

1. As a condition precedent to the Insured's right to be indemnified under this extension, the Insured must notify the Company as soon as possible in writing if:
  - (a) A claim is made against the Insured; or
  - (b) Someone gives the Insured notice that he or she intends to hold the Insured responsible for something the Insured has done, or has not done,

which may give rise to a claim under this extension; or

- (c) The Insured becomes aware of any facts or circumstances which may give rise to a claim under this extension.

This applies even if the claim is likely to be less than the Excess stated in the Certificate.

2. The Insured must not:
  - (a) Admit liability; or
  - (b) Incur any costs (other than first aid costs); or
  - (c) Settle or compromise a claim against the Insured without the Company's prior written consent.
3. The Company is entitled to take over from the Insured the defence of a claim and to settle it (and any counter claim).
4. If the Insured objects to a settlement recommended by the Company, and wishes to continue to defend an action against the Insured, the Company is entitled to relinquish conduct of the Insured's defence and will not be liable if the Insured had agreed to the settlement.
5. The Company may avoid this extension from its inception if the Insured, or anyone acting on the Insured's behalf, makes a fraudulent claim under this extension.
6. If the Company pays the Insured's claim under this extension, the Company shall be subrogated to any rights of recovery the Insured may have against anyone else. The Insured must give the Company all assistance the Company reasonably requires in exercising those rights. The Insured must do everything necessary to preserve any rights the Insured may have against someone else.

#### MORE THAN ONE INSURED

1. Where more than one party is included as the Insured, indemnity applies as though individual policies have been issued to each party. However, the Limit of Indemnity for the Insured collectively remains as stated in the Certificate.
2. The proposal for this extension will be construed as a separate application for coverage by each of the Insured (if more than one). No declaration or statement in the proposal for this insurance, or knowledge possessed by any Insured, will be imputed to any other Insured for the purposes of deciding the availability of coverage with respect to claims made against any Insured.

#### PREMIUM

The Insured must pay the Company the premium stated in the Certificate within the agreed period. Until the Insured has paid the premium to the Company, the Company does not have to indemnify the Insured for any claim under this extension. If the Insured does not pay the premium to the Company within the agreed period, the Company may avoid this extension from its inception.

#### MISCELLANEOUS

1. If at the time of any claim under this extension, there is any other valid and collectable insurance covering all or part of the same claim, this extension will apply only to the amount of the claim over that recoverable under the other insurance, subject to the Excess stated in the Certificate.
2. Except as provided at law, nothing in this extension can be varied, waived, discharged or released without the Company's prior written consent.

3. Any interest in this extension, can only be assigned by the Insured with the Company's prior written consent.
4. This extension is issued in New Zealand. The laws of New Zealand apply to it. Any arbitration or court proceedings that arise in relation to this extension must be brought and heard in New Zealand.

#### **Forest and Rural Fires Act**

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

- (1) Costs (but excluding levies for expenditure under Sections 44 and 45 and fines and penalties) incurred and apportioned by any Fire Authority under the Forest and Rural Fires Act 1977 or any amendment or replacing Act, and
  - (2) Costs claimed by any other party in order to protect their property from fire.
- All arising in connection with the Business of the Insured.

PROVIDED THAT:

- (a) The Liability of the Company under this endorsement shall not exceed the sub-limit stated in the Certificate;
- (b) The Insured shall bear the Excess shown in the Certificate in the aggregate 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.

This Extension shall also apply:

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

#### **Product Recall Expenses**

INSURING AGREEMENT

Notwithstanding Exclusion (f) of this Section the Company will indemnify the Insured for loss, in excess of the Excess stated in the Certificate, which the Insured shall have paid as Product Recall Expense to which this policy applies, caused by an occurrence, as the result of a claim first made against the Insured and reported to the Company during the Period of Insurance. This insurance does not apply to occurrences before the retroactive date shown on the Certificate or occurrences after the Period of Insurance. A claim shall be deemed to have been made only when written notice of such claim is received by the Company.

INSURED'S EXCESS / THE COMPANY'S LIMIT OF LIABILITY

Regardless of the number of:

- (a) Insureds under this Extension; or
- (b) persons or organisations who sustain expenses; or
- (c) types, classes or models of products simultaneously recalled,

the Company's liability is limited to the ultimate net loss in excess of the Insured's Excess; and then for an amount not exceeding ninety percent (90%) of the ultimate net loss as finally determined. The remaining ten percent (10%) is warranted by the Insured to be retained for the Insured's account and uninsured.

Subject to the foregoing provisions the limit of the Company's liability as the result of any one occurrence shall be as stated in the Certificate.

For the purpose of determining the limit of the Company's liability, all Products Recall Expense incurred in the simultaneous recall of any types, classes or models of the same product shall be considered as arising out of one occurrence.

There is no limit to the number of payments resulting from one or more occurrences which may be made during the Period of Insurance, except that the liability of the Company because of all amounts paid or payable hereunder during the Period of Insurance shall not exceed the sub-limit stated in the Certificate.

#### TERRITORY

This Extension applies only to Product Recall Expense incurred in the Territory shown in Condition 11 of this Section during the Period of Insurance for the recall of the Insured's products which were manufactured, sold, handled or distributed no earlier than twelve (12) months prior to the inception of this Extension.

#### DEFINITIONS

When used in this Extension:

"Product Recall Expense" means the reasonable and necessary costs incurred by the Insured for:

- (a) communications including radio and television announcements and printed advertisements;
- (b) the cost of shipping the Insured's Products from any purchaser, distributor or user to the place or places designated by the Insured;
- (c) the cost of hire of necessary, additional persons other than the regular employees of the Insured;
- (d) remuneration paid to regular, hourly employees (other than salaried employees) to the Insured at basic rates for necessary straight time or overtime, if required;
- (e) expenses incurred by employees for transportation and accommodation where necessary;
- (f) the extra cost for rent or hire of additional warehouse or storage space but only when such costs are incurred exclusively for the purpose of recalling the Insured's Products.

"Occurrence" means in this Extension the ascertainment that the use or consumption of the Insured's Products has resulted or may result in bodily injury, sickness, disease or death of any person or physical injury to or destruction of tangible property which results in the necessity of recovering possession or control of the Insured's Products from any purchaser, distributor or user, or the destruction of such products, but only because of:

- (a) the accidental omission of a substance in the manufacture of the Insured's Products, or
- (b) the accidental introduction or the accidental substitution of a deleterious substance in the manufacture of the Insured's Products, or
- (c) error or deficiency in the manufacture, design, blending, mixing, compounding or labelling of the Insured's Products, but only if such error or deficiency is known or recognised as such in the industry at the time of processing or packaging.

It is specifically agreed that recall by ruling of a federal, state, or other regulatory body or official is also included in the definition of Occurrence but the reason for which ruling must meet the requisites of (a), (b) or (c) under "Occurrence" above.

"Ultimate Net Loss" means the sum actually paid or payable in cash in the settlement or satisfaction of Product Recall Expense incurred by the Insured for the recall of a product after making proper deduction for all recoveries and salvages collectable.

#### EXCLUSIONS

This policy does not apply to expenses incurred by the Insured for the recall of product by reason of:

1. (a) their being kindred products of the Insured, or;  
(b) their being of the same trade or brand name but of different batches than that which has been determined to possible or likely become a cause of loss under this policy if the Insured has represented at time of application for this policy that the products are identifiable by batch, code, or other means, or;
2. Failure of the Insured's Products to accomplish their intended purpose, including any breach of warranty of fitness, quality, efficacy or efficiency, or;
3. Inherent deterioration, decomposition or transformation of the Insured's Product changes, or;
4. Loss of customer faith, or approbation, or any costs incurred to regain customer approval, or other consequential loss, or;
5. Redistribution or replacement of the recalled products by like products, or substitution therefore, or;
6. Changes in quality of the product, or any part thereof after packaging, or;
7. Prior knowledge of the Insured at the inception of this Section of any pre-existing condition of the products likely or possible becoming a cause of loss under this Section, or prior knowledge of any Insured defined herein as respect its participation in such recall of any pre-existing condition of the products likely or possibly becoming a cause of loss under this Section, or;
8. Circumstances that are a result of an arbitrary and capricious act by the Insured or by any regulatory official, or;
9. Misleading through use of existing label inventories, which are placed on containers or packages after the final date of a reasonable "use interval" authorised by an agency of government of promulgating modified labelling regulation, or;
10. Disposal of withdrawn products, or;
11. Withdrawal of product without knowledge that use or consumption of the product will result in either a bodily injury or a damage to tangible property, or;
12. A decrease in sales due to changes in population, customer tastes, economic conditions, seasonal sales variation, competitive environment, or removal of the Insured's Product for reasons unrelated to a product defect, or;
13. Continued use of materials by the Insured that have been banned or declared unsafe by any authorised government entity, or;
14. Acts, errors or omissions of any of the Insured's employees with the prior knowledge of any of the Insured's officers or directors.

#### Service and Repair

Notwithstanding the provisions of Exclusions (c) or (g) of the Policy it is agreed that the Policy shall indemnify the Insured against legal liability for:

1. Property Damage to any motor vehicle, watercraft (not exceeding 8 metres in length) or other property caused by service or repair to such vehicle,

watercraft or other property but excluding liability for the cost of rectifying defective or faulty workmanship in respect of the actual part or parts worked upon. Subject to the sub-limit and the Excess shown in the Certificate per occurrence.

2. Personal Injury or Property Damage (other than to the motor vehicle, watercraft or other property serviced or repaired) arising from service or repair to any motor vehicle, watercraft (not exceeding 8 metres in length) or other property. Subject to the Excess shown in the Certificate per occurrence.

#### **Underground Services**

It is hereby noted and agreed that in respect of any claims arising out of Property Damage to any underground services, the Company's liability shall not exceed the sub-limit stated in the Certificate per occurrence and the Excess shall be as stated in the Certificate per occurrence. But this sub-limit shall not apply to any consequential loss arising from such Property Damage to any underground services.

#### **Vibration, Removal of Support**

It is hereby noted and agreed that in respect of any claims made for Personal Injury or Property Damage arising out of any vibration, underpinning, weakening or removal of support the Company's liability shall not exceed the sub-limit stated in the Certificate per occurrence and the Excess shall be as stated in the Certificate per occurrence.

#### **USA/Canada Coverage (Products Hazard Only)**

Where this Extension is shown as INCLUDED in the Certificate, then the Territory in respect of Products Hazard shown under Condition 11 of this Section shall be amended to read Worldwide and the following 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 Section shall only apply in respect of Products exported into the United States of America and/or Canada and/or their protectorates.

Provided that this Section 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 policy.
- (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 their products.

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

1. the Limit of Indemnity is inclusive of costs.
2. should any dispute arise between the Insured and the Company over the application of this Policy, such dispute shall be determined in accordance with New Zealand law and practice and by a court of competent jurisdiction in New Zealand.
3. the Excess as stated in the Certificate is inclusive of costs.

## insuring clause

The Company will indemnify the Insured against all claims for Damages, and all Defence Costs, which the Insured shall become legally liable to pay as a result of any employee (including any temporary or part-time employee) of the Insured sustaining Personal Injury arising out of or in the course of their employment and which is notified to the Company during the Period of Insurance stated in the Certificate or within 30 days after its expiry, or, if exercised, the Extended Reporting Period.

Provided that:

- (a) the Personal Injury has taken place on or after the Retroactive Date;
- (b) the maximum amount payable by the Company for Damages and Defence Costs for all claims under this Section shall not exceed the Limit of Indemnity stated in the Certificate.

## limit of indemnity and excess

1. All claims for Damages and Defence Costs arising out of any one Personal Injury or inter-related Personal Injuries are deemed to be one claim. Any claim arising from inter-related Personal Injuries is deemed to have originated in the earliest period of insurance in which any of the Personal Injuries is first notified to the Company.
2. The Company's liability under this Section applies only to that part of such claims exceeding the Excess stated in the Certificate.
3. Subject to the Goods and Services Tax extension of this Section, the Company's aggregate liability under this Section in respect of claims arising out of Personal Injuries will not exceed the Limit of Indemnity stated in the Certificate.

## exclusions

1. The Company shall not indemnify the Insured:
  - (a) for any costs or compensation for which cover to any extent is provided by the Injury Prevention, Rehabilitation and Compensation Act 2001 or any other Workers Compensation legislation;
  - (b) for any Personal Injury which has resulted from any breach or contravention of any provisions of the Health and Safety in Employment Act 1992 or any Regulations or other subordinate legislation made under the Act;
  - (c) for any judgment entered in any Court other than a New Zealand Court, or any debt incurred by the Insured as the result of such a judgment;
  - (d) for Personal Injury directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof;
  - (e) for any fine or penalty levied against the Insured, provided that this exclusion shall not apply to any punitive or exemplary damages;
  - (f) in respect of any claim which is or should properly be brought in the Employment Authority or Employment Court, or for any personal grievance;
  - (g) in respect of any claim made, threatened or in any way intimated against the Insured and not notified to the Company prior to the commencement of the Period of Insurance or, if this Section is renewed, prior to the effective date of renewal;
  - (h) for any circumstance or Personal Injury of which, at the commencement of the Period of Insurance or, if this Section is renewed, the effective date

of renewal, the Insured is aware or ought reasonably to be aware and may give rise to a claim against the Insured;

- (i) for any Personal Injury which has taken place or allegedly taken place prior to the Retroactive Date stated in the Certificate.
2. In respect of the exclusions no fact pertaining to, knowledge possessed by, nor Personal Injury committed by any Insured, shall be imputed to any other Insured for the purpose of determining the availability of cover.

## conditions

1. Assignment  
No assignment of interest under this Section shall bind the Company unless its written consent is endorsed on this Section.
2. Authorisation  
By acceptance of this Policy, the Insured agrees to act on behalf of any Subsidiary Company with respect to giving or receiving any notice of claim or termination, payment of premiums and receiving any return premiums that may become due under this Section, acceptance of endorsements, and giving or receiving of any other notice provided for in this Section, and each Subsidiary Company agrees that the Insured shall act on its behalf.
3. Claims
  - (a) The Insured shall as a condition precedent to its right to be indemnified under this Section give the Company notice in writing as soon as practicable of:
    - (i) any claim made against them or any of them;
    - (ii) the receipt of notice from any person or party of any intention to hold the Insured responsible for any Personal Injury for which this Section provides cover;
    - (iii) any circumstance which the Insured shall become aware which may give rise to a claim or claims under this Section;irrespective of whether the claim is considered justified and/or the quantum is likely to be within the Excess stated in the Certificate.
  - (b) The insurance provided by this Section ceases absolutely at the expiry of the Period of Insurance. However, provided that the notice referred to in 3(a) has been given to the Company prior to the expiration of the Period of Insurance, within 30 days after its expiry or, if exercised, during the Extended Reporting Period, any claim arising from the notified circumstances, which is subsequently made after the expiration of the Period of Insurance, shall be deemed to have been made during the subsistence of this Section.
  - (c) The Insured shall give to the Company or its authorised representatives all such information and assistance as they may reasonably require. The Company may assume control and conduct of any claim, and any counterclaim (which shall be a condition precedent to the Insured's right to be covered under this Policy).
  - (d) The Insured shall not in relation to any claim under this Section:
    - (i) make any admission of liability;
    - (ii) incur any expense;
    - (iii) make any payment or settlement of liability;without the prior written consent of the Company. Such consent shall not be unreasonably withheld. The Company is not liable for any admissions, expenses, payments or settlements made without its prior written consent.

(e) 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 (over and above the Excess stated in the Certificate), including Defence Costs incurred up to the date of such refusal.

(f) The Insured shall not be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Company) shall advise such proceedings should be contested by the Insured.

#### 4. Consolidation or Merger

If the Insured acquires by merger, consolidates with, is merged into or acquired by any other entity after the inception of the Period of Insurance, written notice shall be given to the Company as soon as practicable together with such information as the Company may require. The Company shall be paid any reasonable premium that may be required.

#### 5. Fraud

If any claim is in any respect fraudulent, if any false declaration is made or used in support of any claim, or if any fraudulent means or devices are used by the Insured or any one acting on its behalf to obtain any benefit under this Section, all benefits will be forfeited.

#### 6. Other Insurance

If, at the time of any claim arising under this Section, there is any other valid and collectable insurance covering all or part of the same Personal Injury, this Section will apply to the amount in excess of that recoverable or in fact recovered under the other insurance, whether such insurance is stated to be primary or excess, unless such other insurance is written only as specific excess insurance over the Limit of Indemnity under this Section.

#### 7. Subrogation

(a) The Company shall be entitled to use the name of the Insured in any proceedings to enforce, for the benefit of the Company, any order made for costs or otherwise, and shall have the right of subrogation in respect of all rights which the Insured may have against any person or entity who may be responsible to the Insured in respect of any claim for any Personal Injury covered by this Section, and the Insured shall do everything necessary to secure and preserve such rights including executing any necessary documents for the purpose of vesting such rights in the Company. Any monies recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of the Company to the extent of the amount paid by it in respect of that claim (including related costs and expenses), and the remaining monies shall become the property of the Insured.

(b) If no recovery is made as a result of proceedings conducted solely by the Company, then it shall bear the expenses.

Provided that the Company waives all rights of subrogation against any Officer, unless the right of subrogation arises from the dishonest or intentional criminal conduct of the Officer.

#### 8. Territory

This Section only provides cover for Damages and Defence Costs arising both out of Personal Injuries suffered in New Zealand and from proceedings brought in New Zealand courts.

## definitions

Words or phrases given special meaning in the Certificate attaching to this Section have the same meaning wherever they appear in the Section. In addition:

1. "Damages" means the total amount which the Insured becomes legally obligated to pay on account of all claims, investigations, inquiries, administrative or regulatory proceedings, suits, legal actions, summons, writs, examinations made or commenced against them (including any written demands communicated to the Insured alleging a Personal Injury by whatever means) for any Personal Injury to which cover under this Section applies, including but not limited to damages, judgments, settlements, interest, claimant costs and claimant expenses, but not including Defence Costs.
2. "Defence Costs" means:
  - (a) the costs and expenses (including defence witness costs and expenses and defence expert costs and expenses) of being represented at any hearing, prosecution, inquiry, investigation, proceeding, settlement negotiation or review, relating to any Personal Injury;
  - (b) the costs of applying to set aside a Court order or conviction, or conducting an appeal of any action or proceeding, relating to any Personal Injury;
  - (c) the costs of applying to a Court to determine whether an employee's claim for Personal Injury is properly covered by the Injury Prevention, Rehabilitation and Compensation Act 2001 or any amendment to or re-enactment of that Act.
3. "Insured" means the company or other entity named in the Certificate and any Subsidiary Company.
4. "Officer" means any person who holds the position of director, officer, trustee, manager or secretary of the Insured, trust or other organisation, or who performs the duties of director, officer, manager or secretary under any other name, or who holds any other position as an employee (whether full time, part-time or temporary) of the Insured, trust or other organisation, and includes any such person who has subsequently relinquished that position.
5. "Period of Insurance" means the period stated in the Certificate.
6. "Personal Injury" means bodily injury, sickness, disease or infection, including resulting death, and disability, shock, fright or mental anguish or injury. For the purposes of this insurance, disease shall be sustained when the employee is first exposed to conditions in New Zealand out of which the disease the subject of the claim arose.
7. "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;
  - (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).

## extensions

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

### Goods and Services Tax

- (a) Where the Insured is liable to pay tax under the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the Act) on receiving

any payment under this Section, the Company will cover the Insured for the cost of that tax.

- (b) The amount payable under this extension is payable by the Company in addition to the stated Limit of Indemnity.

#### **Newly Created or Acquired Subsidiary Company**

If any Subsidiary Company is created or acquired by the Insured after the inception of this Section such Subsidiary Company shall be included as an Insured provided that:

- (a) written notice of such creation or acquisition is given to the Company together with appropriate underwriting information and the payment of any additional premium required at the next renewal date;
- (b) in respect of acquisitions, cover granted under this Section shall only apply to Personal Injuries both discovered by the Insured after the date of such acquisition and suffered after the Retroactive Date, and that the Insured has agreed to cover any such Subsidiary Company.

#### **Subsidiary Company Change of Ownership**

- (a) In the event that an entity ceases to be a Subsidiary Company prior to or during the Period of Insurance, cover under this Section with respect to such Subsidiary Company and the Insured shall continue until the expiry date of the Period of Insurance, provided that such cover shall only apply in respect of a Personal Injury suffered after the Retroactive Date or the date of creation or acquisition by the Insured (whichever is the later), and until the date such entity ceased to be a Subsidiary Company.
- (b) Where the entity has ceased to be a Subsidiary Company because it is acquired by a third party, then this extension shall only apply where the Insured has agreed to retain a continuing obligation to indemnify the third party for claims for Damages and Defence Costs against the Insured arising out of any Personal Injury that has been suffered whilst it is a Subsidiary Company.

#### **Extended Reporting Period**

- (a) If the Company terminates or refuses to renew this Section, the Insured is entitled to an extension of the cover granted under this Section for a further period of 12 months immediately following termination or non-renewal of the Section, but only in respect of any personal injury taking place both before the effective date of termination or non-renewal and after the Retroactive Date. If this right is exercised, then this further period shall be part of the last Period of Insurance and not an additional period.
- (b) The entitlement to this extension must be exercised by written notice to the Company prior to the effective date of termination or within 30 days following the effective date of non-renewal.
- (c) The premium for this extended reporting period will be not more than 50% of the annual premium applicable to this Section.

## insuring clauses

The Company agrees to pay on behalf of:

- (a) the Insured, its Defence Costs and Penalties;
- (b) the Insured, Defence Costs and Penalties for which it grants indemnity to any Officer as permitted or required by law;
- (c) any Officer, Defence Costs and Penalties for which he/she does not receive an indemnity from the Insured;

arising out of any Occurrence which is connected with the business or affairs of the Insured and notified to the Company during the Period of Insurance stated in the Certificate or within 30 days after its expiry, or if exercised, during the Extended Reporting Period.

Provided that the:

- (i) Occurrence has taken place on or after the Retroactive Date;
- (ii) maximum amount payable by the Company for Defence Costs and Penalties for all claims under this Section shall not exceed the Limit of Indemnity stated in the Certificate.

## limit of indemnity and excess

1. All Defence Costs and Penalties arising out of any one Occurrence or inter-related Occurrences are deemed to be one claim. Any claim arising from inter-related Occurrences is deemed to have originated in the earliest period of insurance in which any of the Occurrences is first notified to the Company.
2. The Company's liability under this Section applies only to that part of Defence Costs and Penalties exceeding the Excess stated in the Certificate. However the Excess shall be reduced to \$Nil in respect of Insuring Clause (c) above.
3. Subject to the Goods and Services Tax extension of this Section, the Company's aggregate liability under this Section in respect of Defence Costs and Penalties arising out of Occurrences will not exceed the Limit of Indemnity stated in the Certificate.
4. Where the Defence Costs and Penalties exceed the Limit of Indemnity, then it shall be applied in the following priority:
  - (i) to the Insured, in respect of its own Defence Costs and Penalties;
  - (ii) to the Insured, in respect of Defence Costs and Penalties for which the Insured grants indemnity to any Officer;
  - (iii) to the Insured's Officers, in respect of Defence Costs and Penalties;
 or as stated in the Certificate.

## exclusions

1. This Section shall not indemnify the Insured or the Officers for Defence Costs or Penalties arising out of:
  - (a) the engagement by the Insured of any contractor to dispose of or handle materials, unless the Insured has taken reasonable steps to ensure that the materials will be disposed of or handled in a lawful manner;
  - (b) any Occurrence which has resulted from any deliberate:
    - (i) breach or contravention of any provisions of the Acts or any Regulations or other subordinate legislation made under the Acts;
    - (ii) failure to comply with any lawful order, demand, notice, requirement or determination made by any statutory authority or enforcement agency under any of the Acts;
  - (c) any judgment entered in any Court other than a New Zealand Court, or any debt incurred by the Insured as the result of such a judgment;

- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof;
  - (e) any Occurrence in connection with the Commerce Act 1986 but this exclusion shall only apply to Insuring Clause (a);
  - (f) any application brought by the Commerce Commission under sections 81, 84 or 87 of the Commerce Act 1986;
  - (g) the 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;
  - (h) the investigation of and defence of any action, proceeding, inquiry, investigation or prosecution taken against the Insured by the New Zealand Police. However this exclusion does not apply to the Sale of Liquor Act;
  - (i) the investigation and defence of any action, proceeding, inquiry, investigation or prosecution taken against the Insured by the Inland Revenue Department or any other revenue-collecting statutory authority;
  - (j) any contract of service, or any intended contract of service, with any current, former or prospective employee. But nothing in this exclusion shall apply to any investigation, inquiry or prosecution by the Department of Labour pursuant to the Health & Safety in Employment Act;
  - (k) any allegation of breach or contravention of an Act made, threatened or in any way intimated against the Insured or any Officer, and not notified to the Company, prior to the commencement of the Period of Insurance stated in the Certificate;
  - (l) any circumstance or Occurrence of which, at the commencement of the Period of Insurance stated in the Certificate, the Insured or any Officer is aware or ought reasonably to be aware may result in an allegation of breach or contravention of an Act against the Insured or any Officer;
  - (m) any Occurrence which has taken place or allegedly taken place prior to the Retroactive Date stated in the Certificate.
2. In respect of the exclusions no fact pertaining to, knowledge possessed by, nor any Occurrence by any Officer shall be imputed to any other Officer for the purpose of determining the availability of cover.

## conditions

1. Assignment  
No assignment of interest under this Section shall bind the Company unless its written consent is endorsed on this Section.
2. Authorisation  
By acceptance of this Policy, the Officer who signs the proposal (or his/her replacement) agrees to act on behalf of all Officers and the Insured with respect to giving or receiving notice of claim or termination, payment of premiums and receiving any return premiums that may become due under this Section, and acceptance of endorsements and any other notice provided for in this Section, and the Officers and the Insured agree that the Officer so nominated shall act on their behalf. Provided always that the above authorisation is in addition to and not in derogation of the rights, powers and obligations of each of the Officers and the Insured under this Section and the authorisation conferred imposes no additional obligation

upon the Officer so nominated with respect to any of the matters set out whether towards the Company or the Officers or any of them.

### 3. Cessation of Insurance

By acceptance of this Section, the Insured agrees to act on behalf of any Subsidiary Company with respect to giving or receiving notices of claim or termination, payment of premiums and receiving of any return premiums that may become due under this Section, acceptance of endorsements, and giving or receiving of any other notice provided for in this Section, and each Subsidiary Company agrees that the Insured shall act on its behalf.

### 4. Claims

(a) The Insured and the Officers shall as a condition precedent to their right to be covered under this Section give to the Company notice in writing as soon as practicable of:

- (i) any allegation of breach or contravention of an Act made against them or any of them;
  - (ii) the receipt of notice from any person or party of any intention to hold the Insured or any Officer responsible for the results of an alleged Occurrence;
  - (iii) any circumstance which the Insured or any Officer shall become aware which may give rise to a claim or claims under this Section;
- irrespective of whether the claim is considered justified and/or the quantum is likely to be within the Excess stated in the Certificate.

(b) The insurance provided by this Section ceases absolutely at the expiry of the Period of Insurance. However, provided that notice referred to in condition 4(a) above has been given to the Company prior to the expiration of the Period of Insurance or within 30 days after its expiry or if exercised, during the Extended Reporting Period, any claim arising from the circumstances notified, which is subsequently made after the expiration of the Period of Insurance, shall be deemed to have been made during the subsistence of this Section.

(c) The Insured and the Officers shall give to the Company or its authorised representatives all such information and assistance as they may reasonably require. The Company may assume control and conduct of any claim, and any counterclaim (which shall be a condition precedent to the Insured's right to be covered under this Policy).

(d) Neither the Insured nor the Officer shall in relation to any claim under this Section:

- (i) make any admission of liability or guilt; nor
- (ii) incur any expense; nor
- (iii) make any payment or settlement of liability;

without the prior written consent of the Company. Such consent shall not be unreasonably withheld. The Company is not liable for any admissions, expenses, payments or settlements made without its written consent.

(e) If the Insured or any Officer shall refuse to consent to any guilty plea or 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 (over and above the Excess stated in the Certificate), including Defence Costs incurred up to the date of such refusal.

(f) Neither the Insured nor any Officer shall be required to contest any legal proceedings unless a Queen's Counsel (mutually agreed upon by the

Insured, the particular Officer and the Company) shall advise such proceedings should be contested by the Insured or Officer.

5. Consolidation or Merger

If the Insured acquires by merger, consolidates with, is merged into or acquired by any other entity after the inception of the Period of Insurance, written notice shall be given to the Company as soon as practicable together with such information as the Company may require. The Company shall be paid any reasonable premium that may be required.

6. Fraud

(a) If any claim is in any respect fraudulent, if any false declaration is made or used in support of any claim, or if any fraudulent means or devices are used by the Insured, or by any of the Officers or anyone acting on behalf of any of them, to obtain any benefit under this Section, all benefits will be forfeited.

(b) For the purpose of this condition, the Insured and each Officer will be treated as having been issued with a separate policy.

7. Other Insurance

If, at the time of any claim arising under this Section, there is any other valid and collectable insurance covering all or part of the same Occurrence, this Section will apply to the amount in excess of that recoverable or in fact recovered under the other insurance, whether such insurance is stated to be primary or excess, unless such other insurance is written only as specific excess insurance over the Limit of Indemnity under this Section.

8. Severability

(a) In granting cover under this Section to the Insured and any Officer, the Company has relied upon the declarations and statements contained within and attached to the proposal. All such declarations and statements are the basis of such cover and shall be considered as incorporated in and constituting part of this Section.

(b) The proposal shall be construed as a separate application for cover by each Insured and each Officer. With respect to the declarations and statements contained within or attached to the proposal for cover, no statement in the proposal or knowledge possessed by any Insured or any Officer shall be imputed to any other Insured or other Officer for the purposes of determining the availability of cover with respect to claims made against any Insured or Officer.

(c) The terms of this Section apply to the Insured and to each Officer, provided that the failure by any Insured or any Officer to observe and fulfil the terms of this Section will not prejudice this insurance in relation to any other Insured or other Officer.

9. Subrogation

(a) The Company shall be entitled to use the name of the Insured and any Officer in any proceedings to enforce, for the benefit of the Company, any order made for costs or otherwise and shall have the right of subrogation in respect of all rights which the Insured and any Officer may have against any person or entity who may be responsible to the Insured or any Officer in respect of any claim for any Occurrence covered by this Section, and the Insured and any Officer shall do everything necessary to secure and preserve such rights including executing any necessary documents for the purpose of vesting such rights in the Company. Any assets recovered pursuant to the exercise of such rights shall be applied

firstly for the benefit of the Company to the extent of the amount paid by it in respect of that claim (including related costs and expenses), and the remaining assets shall become the property of the Insured.

(b) If no recovery is made as a result of proceedings conducted solely by the Company, then it shall bear the expenses.

Provided that the Company waives all rights of subrogation against any Officer and the Insured, unless the right of subrogation arises from the dishonest or intentional criminal conduct of the Officer or the Insured.

#### 10. Territory

This Section only provides cover for Defence Costs and Penalties arising out of Occurrences which take place in New Zealand.

## definitions

Words or phrases given special meaning in the Certificate attaching to this Section have the same meaning wherever they appear in the Section. In addition:

1. "Act" means, as the context requires, any Act of the New Zealand Parliament or any amendment to or re-enactment of any of those Acts, and any Code or Regulations or other subordinate legislation made under those Acts.
2. "Defence Costs" means:
  - (a) the costs and expenses (including witness and expert costs and expenses) of being represented at any investigation, inquiry, prosecution, proceeding, hearing, settlement negotiation, review or appeal, arising out of an Occurrence;
  - (b) the costs of applying to set aside a Court order or conviction arising out of an Occurrence.
3. "Insured" means the company or other entity named in the Certificate and any Subsidiary Company.
4. "Occurrence" means any event, act, omission or circumstance, neither expected nor intended, which may result in an allegation of breach or contravention of the Act or which results in an investigation, inquiry, prosecution, proceeding, hearing, settlement negotiation, review or appeal in respect of such allegation.

In relation to the Consumer Guarantees Act 1993, Occurrence shall also mean any purported contracting out of any of the provisions of the Act (other than in accordance with section 43(2) of the Act) where that purported contracting out may result in an allegation of breach of the Fair Trading Act 1986.

5. "Officer" means any person who, at the time of an offence or alleged offence under the Act, holds the position of director, officer, trustee, manager or secretary of the Insured, or who performs the duties of director, officer, manager or secretary under any other name, or who holds any other position as an employee (whether full time, part-time or temporary) of the Insured, and includes any such person who has subsequently relinquished that position. "Officers" shall have the same meaning.
6. "Penalties" means any fine or other cash penalty (including court costs) payable by the Insured upon conviction of an offence under the Act in connection with an Occurrence, including prosecution witness costs and expenses and prosecution solicitors' costs.

Provided that Penalties shall not include:

(a) the cost or payment of any enforcement order, remedial order or compliance order.

- (b) any tax (including any fine or penalty resulting from the failure to pay any tax), rate, duty, or interest on such tax, rate, or duty, except as provided in the Goods and Services Tax Extension.
  - (c) any damage, restitution, compensation or reparation imposed by a tribunal or court of competent jurisdiction, except a reparation order imposed by the Court on the Insured upon conviction for an offence under the Health and Safety In Employment Act 1992;
  - (d) the value of any property subject to confiscation or forfeiture;
  - (e) any fine or infringement fee imposed by the Court on the Insured upon conviction for an offence under the Health and Safety In Employment Act 1992 arising from an Occurrence on or after 5 May 2003;
  - (f) any other monetary payment, penalty or fine for which the Company may not lawfully indemnify the Insured.
7. "Period of Insurance" means the period stated in the Certificate.
8. "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).

## extensions

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

### Goods and Services Tax

- (a) Where the Insured or any Officer is liable to pay tax under the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the Act) on receiving any payment under this Section, the Company will cover the Insured or the Officer for the cost of that tax.
- (b) The amount payable under this extension is payable by the Company in addition to the stated Limit of Indemnity.

### Newly Created or Acquired Subsidiary Company

If any Subsidiary Company is created or acquired by the Insured after the inception of this Section such Subsidiary Company shall be included as an Insured provided that:

- (a) written notice of such creation or acquisition is given to the Company together with appropriate underwriting information and the payment of any additional premium required at the next renewal date;
- (b) in respect of acquisitions, cover granted under this Section shall only apply to any Occurrence both discovered by the Insured after the date of such acquisition and which took place after the Retroactive Date, and that the Insured has agreed to indemnify any such Subsidiary Company.

### Subsidiary Company Change of Ownership

- (a) In the event that an entity ceases to be a Subsidiary Company prior to or during the Period of Insurance, cover under this Section with respect to such Subsidiary Company, the Insured and each Officer shall continue until the expiry date of the Period of Insurance, provided that such cover shall only apply in respect of an Occurrence committed after the Retroactive Date or the date of creation or acquisition by the Insured (whichever is the later) and until the date such entity ceased to be a Subsidiary Company.

- (b) Where the entity has ceased to be a Subsidiary Company because it is acquired by a third party, then this extension shall only apply where the Insured has agreed to retain a continuing obligation to indemnify the third party for Defence Costs and Penalties arising out of any Occurrence that has taken place whilst it is a Subsidiary Company.

**Extended Reporting Period**

- (a) If the Company terminates or refuses to renew this Section, the Insured will have the right to an extension of the cover granted under this Section for a further period of 12 months immediately following the effective date of termination or the date of refusal, but only in respect of any Occurrence taking place both before that termination or refusal date and after the Retroactive Date. If this right is exercised then this further period shall be part of the last Period of Insurance and not an additional period.
- (b) The right to this extension must be exercised by written notice to the Company prior to the effective date of termination or within 30 days following the date of refusal.
- (c) The premium for this extended reporting period will be not more than 50% of the annual premium applicable to this Section.

## insuring clause

The Company will indemnify the Insured for all claims for any loss of money or other property belonging to the Insured, which the Insured shall, during the Period of Insurance stated in the Certificate, discover that they have sustained in consequence of any dishonest or fraudulent act or omission amounting to a criminal offence of any person at any time employed by the Insured.

## limit of indemnity and excess

1. The Company's liability under this Section shall not exceed in the aggregate the Limit of Indemnity stated in the Certificate.
2. The Excess stated in the Certificate will apply to each and every individual act of dishonesty, but in no case more than twice in respect of any person's dishonesty.

## exclusions

The Company shall not indemnify the Insured for any loss sustained;  
(a) outside New Zealand; or

(b) prior to the Retroactive Date stated in the Certificate

## conditions

1. Condition Precedent  
As a condition precedent to the Company's liability to indemnify the Insured, the Insured must notify the police, and a criminal action must be successfully concluded by conviction registered against the person or persons responsible for any indemnifiable loss sustained under this Section.
2. Costs  
All costs incurred by the Insured to substantiate its loss are to be borne by the Insured.
3. Subrogation  
If any payment is made under this Section, the Company is subrogated to all the Insured's rights of recovery. The Insured shall give all such assistance in the exercise of rights of recovery as the Company may reasonably require.

## insuring clauses

1. The Company will indemnify each of the Insured Person(s), or the Insured Organisation if the Insured Person(s) is/are entitled to receive an indemnity from it, for all amounts which they shall become legally liable to pay on account of any claims alleging a Wrongful Act first made against the Insured Person(s), individually or otherwise, during the Period of Insurance stated in the Certificate and notified to the Company during the same period.
2. The Company will also pay all expenses incurred by the Company, Insured Person(s) or Insured Organisation with the prior written consent of the Company in the defence, investigation and/or settlement of any claim payable under this Section, other than regular or overtime wages, salaries or fees of any Insured Person(s) or of any employee of the Insured Organisation.

## limit of indemnity and excess

1. The limit of the Company's liability in respect of any one claim, including costs incurred pursuant to the Insuring Clause, or the total of all claims for any interrelated Wrongful Acts including costs incurred pursuant to the Insuring Clause, shall not exceed the Limit of Indemnity stated in the Certificate.
2. The Insured Organisation shall be liable for the amount of the Excess stated in the Certificate, inclusive of all costs and expenses, in respect of each claim for a Wrongful Act made against them.

## exclusions

1. This Section does not apply to claims in respect of:
  - (a) Personal Injury or Property Damage;
  - (b) seepage, pollution or contamination or the breach of any statute, regulation, by-law or ordinance prohibiting or controlling emissions or effluents of any kind or from any enforcement action or proceeding brought under or pursuant to any statute, regulation, by-law or ordinance;
  - (c) 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 or from the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component;
  - (d) liability assumed by the Insured Person(s) under any agreement, other than written agreements stated in the Certificate;
  - (e) dishonest, fraudulent, criminal or malicious act or omission by or on behalf of any Insured Person(s), if a judgment or other final adjudication adverse to such Insured Person(s) establishes that acts of active and deliberate dishonesty were committed or attempted by such Insured Person(s) with actual dishonest purpose and intent and were material to the cause of action so adjudicated;
  - (f) liability for the return by any Insured Person(s) of any remuneration to which such Insured Person(s) is not legally entitled;
  - (g) insider trading in terms of the Securities Amendment Act 1988, or any similar statute or regulation;
  - (h) based upon or attributable to any Insured Person(s) having gained a personal profit or advantage to which she/he was not legally entitled;
  - (i) liability for any fine or penalty;
  - (j) liability arising out of any Outside Directorship;
  - (k) any Wrongful Act prior to the retroactive date stated in the Certificate.
  - (l) any failure or omission to effect or maintain insurance;

- (m) any breach of duty owed in the Insured Person(s)' professional capacity other than as a Professional Director;
  - (n) (i) any public or private issue of shares, preference shares (redeemable or otherwise), debentures of whatever kind, promissory notes or any other form of negotiable or non negotiable security for the raising of capital by equity, debt or any other means;
  - (ii) the issue of any prospectus or similar document or the making of any written or oral representation, in connection with (i) above.
2. This Section does not apply to claims or allegations made against the Insured by:
    - (a) any Insured Person(s), the Insured Organisation or the Parent Organisation, except a claim made on behalf of the Insured Organisation or Parent Organisation by any claimant(s) who is/are not Insured Persons or by any receiver or liquidator;
    - (b) any spouse, dependant or relative of any Insured Person(s) or any of their employees, directors or principals, or any entity operated or controlled by or on behalf of any of them, or in which they have a direct or indirect interest collectively or individually.
  3. This Section does not apply to any claim made, threatened, or in any way intimated against any Insured Person(s), prior to the commencement of the Period of Insurance stated in the Certificate, or in respect of any circumstance or occurrence which any Insured Person(s) is aware or ought reasonably to have been aware at the commencement of the Period of Insurance may give rise to a claim against any Insured Person(s), whether notified under any other insurance or not.
  4. This Section does not apply to any claims, suits, actions or demands brought in Courts of Law outside New Zealand or heard in accordance with or subject to the law outside New Zealand.

## conditions

1. Agency
 

All persons and organisations entitled to any benefit under this Section irrevocably appoint the Insured Organisation as their agent for all purposes in relation to this insurance.
2. Claims
  - (a) The Insured Person(s) and/or the Insured Organisation shall give immediate, or as soon as reasonably practicable, notice in writing to the Company of any:
    - (i) circumstance of which the Insured Person(s) first becomes aware during the Period of Insurance stated in the Certificate that might give rise to a claim;
    - (ii) notice of any intimation by any person or organisation of possible intention to make a claim against the Insured Person(s);
    - (iii) demand, threat or claim against the Insured Person(s);
    - (iv) legal proceeding or process alleging a loss and/or liability for which there might be indemnity under this Section.
  - (b) The Insured Person(s), the Insured Organisation or anyone acting on their behalf, shall not admit liability for, or offer to pay or compromise any claim, or incur any costs or expenses, without the prior written consent of the Company.
  - (c) The Company is entitled at any time to take over and conduct in the

name of the Insured Person(s) and/or the Insured Organisation the defence or settlement of any claim and any counterclaim (which shall be a condition precedent to the Insured Person(s) and/or the Insured Organisation's right to be covered under this Section), provided that no legal proceeding shall be defended unless a Queen's Counsel (to be mutually agreed) advises that the proceeding should be defended.

- (d) If the Company agrees or is found liable to indemnify the Insured Person(s) and/or the Insured Organisation, the Company shall be subrogated to all their rights.
- (e) The Insured Person(s) and the Insured Organisation shall give to the Company or its authorised representatives all information, assistance and co-operation as it may reasonably require in considering, accepting or defending any claim under this Section or any proceeding relating to it, including the execution of whatever documents may be necessary to enable the Company to effectively exercise any subrogation or other rights granted by this Section, and shall upon the Company's request assist in making settlements, the conduct of suits and enforcing any right of contribution or indemnity against any person or organisation who may be liable, and shall attend mediations, hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- (f) If the Insured Person(s) and/or the Insured Organisation refuses to consent to or co-operate in any settlement recommended by the Company, the Company may relinquish conduct of the claim, including any legal proceedings, and the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled, including costs and expenses incurred up to the date of such refusal, subject to the Excess stated in the Certificate.

### 3. Cessation of Insurance

The insurance provided by this Section ceases absolutely at the time and date stated in the Certificate. However, provided notice referred to in Condition 2(a) has been given to the Company prior to the expiry date stated in the Certificate, any claim or loss arising from the notified circumstances, which is subsequently made after the expiry date stated in the Certificate, shall be deemed to have been made during the Period of Insurance stated in the Certificate.

### 4. Merger

If after the commencement of this Section the Insured Organisation creates, acquires, consolidates or amalgamates with, is merged into or acquired by, any other organisation, the Insured Person(s) and/or the Insured Organisation shall give to the Company:

- (i) written notice immediately, or as soon as practicable, but in any case within 30 days;
- (ii) any further information that the Company may require;
- (iii) any additional premium that the Company may require.

### 5. Other Insurance

If, at the time of a claim first made against any Insured Person(s), there is any other applicable policy, this Section shall only provide insurance in excess of such other policy and the Limit of Indemnity under this Section shall be reduced to the extent of the indemnity afforded under such other policy, even if that other policy has a condition to the same or similar effect as above.

## definitions

1. "Insured Organisation" means the entity so designated in the Certificate and includes any Subsidiary Company(ies).
2. "Insured Person(s)" means any Officer(s) of the Insured Organisation, including those named in the Certificate and those who have retired or relinquished their positions. For the purpose of this Definition, "Officer":
  - (a) means any natural person occupying at the relevant time the position of director (by whatever name called) including employees who may be deemed to be directors pursuant to s. 126(1)(a) Companies Act 1993;
  - (b) excludes any person referred to in s. 126(1)(b)-(d), (2) & (3) Companies Act 1993 or s. 180(1)(b)-(d) Companies Act 1955, other than employees referred to in paragraph (a) above;
  - (c) excludes any external auditor, external professional adviser or shareholder.Each insured person(s) or organisation is insured jointly.
3. "Outside Directorship" means an executive position held by an Insured Person at the specific request of the Insured Organisation in any other corporation, joint venture, trust or other enterprise, other than the Insured Organisation.
4. "Parent Organisation" means any organisation which holds directly or indirectly more than 50% of the voting shares of the Insured Organisation.
5. "Period of Insurance" means the period in the current Certificate.
6. "Personal Injury" means
  - (a) bodily injury, sickness, disability or disease, including death whenever resulting;
  - (b) nervous shock, mental anguish, mental injury and humiliation;
  - (c) false or wrongful arrest, imprisonment, detention or eviction.
7. "Property Damage" means physical injury to or destruction of tangible property, including the loss of use of any tangible property at any time resulting from physical injury or destruction.
8. "Subsidiary Company" means any organisation controlled by the Insured Organisation through ownership, whether direct or indirect, of more than 50% of the voting shares.
9. "Policy" means the proposal, any declaration, this wording including any endorsements, and the current Certificate, being the Certificate issued at inception or the renewal Certificate (whichever presently applies). Collectively they constitute a separate contract of insurance.
10. "Wrongful Act" means any error, misstatement or misleading statement, act or omission, or neglect or breach of duty allegedly made or committed within New Zealand by any Insured Person, individually or otherwise, in the course of her/his duties to the Insured Organisation, including anything claimed against her/him solely by reason of her/him serving the Insured Organisation. All causally connected errors, statements, acts, omissions, neglects, breaches of duty or other things claimed against one or more Insured Person(s) will be treated as interrelated.

"Wrongful Act" does not mean any act, error or omission involving conflict between any entities within the definitions of Insured Organisation or Parent Organisation, or preferring the interests of any such entity over those of any other such entity.

## insuring clauses

1. The Company will reimburse the Insured (as defined in this Section) for the Legal Expenses of defending Legal Action arising in the course of the Insured's employment.
2. The Company will pay the Insured up to the Limit of Indemnity as contained in the Certificate for all Legal Action(s) commenced against the Insured during the Period of Insurance.

## coverage

1. Any alleged offence under any statute arising in the course of the Insured's employment. But:
  - (a) The Insured must not have been charged with any similar offence in the 7 years before the Insured obtained cover under this Section; and
  - (b) The Insured must be intending to plead not guilty; and
  - (c) The Insured's plea of not guilty must be reasonable, based on the evidence and the law; and
  - (d) The Insured must not have cover under any other policy, or otherwise be entitled to indemnity from any other source; and
  - (e) In relation to any prosecution which arises out of or is in connection with the driving of a motor vehicle or offence or infringement under the Land Transport Act 1998, or Transport Act 1962, or their amendments:
    - (i) The Insured must have been charged with an alleged offence or infringement under the Land Transport Act 1998, or Transport Act 1962, or their amendments;
    - (ii) The Insured must not have been charged with any of the following types of offences; alcohol/drug-related, log book, overloading, insecure load, road user charges, or speeding including dangerous or excessive speed;
    - (iii) The Insured must be liable to be disqualified from driving;
    - (iv) If the Insured is under 24 years old at the date of the alleged offence, the Insured must be at risk of being imprisoned for more than 3 months.
2. Any other action against the Insured, which at the Company's sole option and in the Company's absolute discretion, the Company elects to treat as covered by this Section.

## exclusions

The Company will not be liable in relation to:

1. Legal Action arising from anything which, as at the date on which the Insured first bought continuous LawSafe insurance from the Company, had already happened or is alleged to have already happened and/or was still happening or is alleged to have still been happening.
2. Legal Action arising from any:
  - (a) Alleged breach of professional duty, or duty as a director, trustee, or power of attorney;
  - (b) Agreement under which the Insured has agreed to accept a liability which the Insured would not have otherwise have had;
  - (c) Dispute concerning a will, bequest, devise, contract to leave assets in a will, probate, Testamentary Promises claim, Family Protection claim, inheritance or gift.
  - (d) Employment disputes.
3. Legal Action:
  - (a) Between the Insured and the Insured's spouse, ex-spouse, domestic

partner or ex-domestic partner:

- (b) By way of criminal prosecution in which a spouse, ex-spouse, domestic partner or ex-domestic partner, or any relative of them or of the Insured, is a complainant/victim
  - (c) In relation to dissolution, maintenance, custody, access or property disputes.
  - (d) In which more than one person within the definition of the Insured:
    - (i) Is involved; and
    - (ii) Have conflicting positions and interests.
  - (e) By or on behalf of any state agency involving any state-funded grant, income, revenue collecting, income-support, aid, subsidy, surcharge or assistance, including liable parent contributions.
4. Legal Action which the Insured have intentionally encouraged.
  5. Legal Expenses for which the Insured did not first get the Company's written consent.
  6. Fines, penalties, damages of any type or any other form of compensation payment, and interest.
  7. Any offence alleged to have been committed:
    - (a) whilst in breach of any order made under the Domestic Violence Act 1995 or its amendments;
    - (b) Under Fisheries legislation.

## conditions

1. The Insured must take all reasonable care and precautions to avoid any circumstances which might give rise to a claim under this Section.
2. The Insured must give the Company immediate notice in writing of any:
  - (a) Circumstances which might give rise to a claim under this Section, as soon as the Insured becomes aware of them. It does not matter whether or not the Insured believes that:
    - (i) A claim is justified; or
    - (ii) Legal Action is likely
  - (b) Notice of any indication that someone intends or may intend to make a claim against the Insured which might result in Legal Action. It does not matter whether or not the Insured believes that:
    - (i) A claim is justified; or
    - (ii) Legal Action is likely.
  - (c) Claim against the Insured which might result in Legal Action. It does not matter whether of not the Insured believes that:
    - (i) A claim is justified; or
    - (ii) Legal Action is likely.
  - (d) Document served on the Insured in relation to Legal Action.
3. The Insured must not appoint a Solicitor to defend any Legal Action without first getting the Company's written consent. The Company can:
  - (a) Withhold or withdraw the Company's consent to any Solicitor whom the Insured proposes to appoint or have appointed;
  - (b) Require the Insured to appoint a Solicitor from the Company's preferred panel.
4. In relation to any Legal Action, the Insured must:
  - (a) Give the Company all information and documents which the Company

- asks for;
- (b) Keep the Company fully and continually informed of all significant developments;
  - (c) Advise the Company immediately of any offers of compromise proposals, or recommendations to make any offers of compromise proposals;
  - (d) Authorise and instruct the Insured's Solicitor to do (a) to (c) above on the Insured's behalf.
5. If cover has been confirmed in writing then the Company may advance the Insured's Legal Expenses as and when they are incurred.
  6. The Company can immediately stop reimbursing the Insured's Legal Expenses if:
    - (a) The Insured unreasonably refuses to follow the Insured's Solicitor's advice about how the Legal Action should be conducted, including advice about making or accepting any offer, compromise or payment, or discontinuing the Legal Action or any step in it; or
    - (b) The Insured does not give the Company or the Insured's Solicitor full co-operation and assistance; or
    - (c) A barrister of at least 15 years experience advises the Company that the Insured's defence to the Legal Action has no reasonable prospect of being actually or economically successful (including, if the likely Legal Expenses are out of reasonable proportion to the likely outcome) and the Insured declines to accept the Company's written instructions on how to resolve or terminate the Legal Action.
  7. The Company will not be liable for Legal Expenses in relation to any appeal unless the Company:
    - (a) Receives written notice of the Insured's intention to appeal at least 5 clear days before any time limit for bringing the appeal expires; and
    - (b) Has given the Company's prior written consent to the appeal.
  8. If the Company instructs the Insured in writing to so do, the Insured must direct the Insured's Solicitor to have any account or fee referred to any appropriate officer, authority or body to be taxed, assessed or audited.
  9. The Insured must:
    - (a) Let the Company have any amounts which the Insured recovers on account of Legal Expenses; and
    - (b) Co-operate with and assist the Company in any steps which the Company wants to take at the Company's own cost to recover these amounts.
  10. If the Insured puts forward a claim which is any way intentionally exaggerated or fraudulent, or if the Insured uses any fraudulent means or devices to obtain a benefit under this Section, the Insured will lose the entire benefit of this Section.
  11. Unless the Insured notifies the Company and the Company agrees in writing to continue the Insured's cover under this Section, the Insured immediately stops being insured under this Section if the Insured:
    - (a) Commit any act of bankruptcy; or
    - (b) Are made bankrupt; or
    - (c) Make any arrangement with creditors, including a composition or assignment.
  12. If the Insured is charged with one or more offences arising out of the same

general circumstances and are convicted of at least one such offence, and the Company has reimbursed/paid any Legal Expenses relating to the offences, the Company has the right to claim all the Legal Expenses from the Insured.

13. The Insured appoints the person who signed the proposal for this Section as the Insured's agent for the purpose of receiving any Certificate, paying the premium, and receiving or giving notices under this Section, including any notice of cancellation or endorsement. The Company may deal with him/her as if the Company was dealing with the Insured personally, unless the Insured gives the Company written notice, including full contact details, appointing someone else in his/her place.
14. If at the date on which the Legal Action commenced, the Insured had Legal Expenses cover under another policy, or the Insured is otherwise entitled to indemnity from any other source, (even if an excess applies) the Company does not have to reimburse the Insured's Legal Expenses, even if the other policy has a condition to the same or similar effect, but the Company will provide cover to the Insured until the availability of such other insurance or indemnity is determined provided the Insured co-operates with the Company in reviewing other insurance or indemnity entitlements.

## definitions

1. "Legal Action" means any legal proceedings, including appeals in any court, authority or tribunal in New Zealand. But:
  - (a) The alleged conduct must have taken place in New Zealand; and
  - (b) The Insured must have been first threatened with the Legal Action during the Period of Insurance; and
  - (c) The Insured must also have notified the Company of the Legal Action during the Period of Insurance or within 28 days of its expiry.
2. "Legal Expenses" means the amount(s) which the Insured had to spend and which it was reasonable for the Insured to spend on Legal Action in relation to Solicitors' fees, expenses and disbursements;
3. "Period of Insurance" means the period in the Certificate.
4. "Solicitor" means any solicitor, firm of solicitors, barrister or Queens Counsel appointed to act for the Insured in relation to any Legal Action.
5. "The Insured" means individual directors, executives managers or employees of the entity named in the Certificate whilst undertaking duties for such entity.

This Policy shall not apply to any claim arising out of:

(a) death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (i) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or
- (ii) any act of terrorism.

Definition: "act of terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic, or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i) and/or (ii) above;

(b) any 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) 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;

- (d) any liability for, or any liability to fulfil any obligation in respect of Personal Injury or Property Damage, Defence Costs or Penalties, claim, cost or expense which is directly or indirectly caused or contributed to or arises from:
- (i) moisture or water or the penetration of external moisture or water; or
  - (ii) the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms; or
  - (iii) 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 anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or similar or like forms.

With respect to the Public and Products Liability Section of this Policy, this exclusion shall not exclude any indemnity for Personal Injury or Property Damage that is caused by or arises out of leakage of internal water pipes or cisterns;

- (e) any litigation in existence at the commencement of the Period of Insurance.

1. 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.

2. Cancellation

This policy may be cancelled by the Insured by surrender to the Company or any of its authorised agents, or 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 time of surrender, or 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. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective. But payment or tender of unearned premium is not a condition of cancellation.

3. Policy Jurisdiction

This Policy shall be governed by the law of New Zealand, the courts of which shall have exclusive jurisdiction.

# LegalEdge<sup>TM</sup>

LIABILITY INSURANCE



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