

insuring clause

1. In consideration of payment of the premium, in reliance on the proposal and declarations (which shall be deemed to be the basis of this policy) and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("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 schedule 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 policy shall not exceed the Limit of Indemnity stated in the Schedule.

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 policy applies only to that part of Defence Costs and Penalties exceeding the Excess stated in the Schedule.
3. Subject to the Goods and Services Tax extension of this policy, the Company's aggregate liability under this policy in respect of Defence Costs and Penalties arising out of Occurrences will not exceed the Limit of Indemnity stated in the Schedule.
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 Schedule.

extended reporting period

1. If the Company terminates this policy or refuses to grant a new policy, the Insured will have the right to an extension of the cover granted under this policy 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.
2. 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.

exclusions

1. This policy 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) death, injury, illness, loss, damage, any 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;

- (e) 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;
- (f) any Occurrence in connection with the Commerce Act 1986 but this exclusion shall only apply to Insuring Clause (a);
- (g) any application brought by the Commerce Commission under sections 81, 84 or 87 Commerce Act 1986;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) 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 Schedule;
- (m) any circumstance or Occurrence of which, at the commencement of the Period of Insurance stated in the Schedule, 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;
- (n) any Occurrence which has taken place or allegedly taken place prior to the Retroactive Date stated in the Schedule.
- (o) 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.

- (p) 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.
- (q) any liability arising out of any litigation in existence at the commencement of the Period of Insurance.
- (r) any liability for, or to fulfil any obligation in respect of any claim, Defence Costs or Penalties, which are directly or indirectly caused by or contributed to, or arises directly or indirectly out of:
 - (i) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or
 - (ii) any cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or similar or like forms, in any building or structure; or
 - (iii) the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:

- (a) external water or moisture; or
 - (b) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.
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 policy shall bind the Company unless its written consent is endorsed on this policy.

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 policy, and acceptance of endorsements and any other notice provided for in this policy, 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 policy 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. Cancellation

(a) This policy may be cancelled by the Company at any time by sending written notice to the Insured at its last known address. Such cancellation shall be effective from 4pm on the 30th day after posting or delivery of such written notice. After such cancellation the Company will refund the premium for the unexpired Period of Insurance, calculated on a pro rata basis from the effective date of such cancellation.

(b) This policy may be cancelled by the Insured by giving written notice to the Company. After such cancellation, the Company shall refund premium for the unexpired Period of Insurance, calculated on a pro rata basis from the effective date of such cancellation.

4. Cessation of Insurance

By acceptance of this policy, 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 policy, acceptance of endorsements, and giving or receiving of any other notice provided for in this policy, and each Subsidiary Company agrees that the Insured shall act on its behalf.

5. Claims

(a) The Insured and the Officers shall as a condition precedent to their right to be covered under this policy 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 policy;
- irrespective of whether the claim is considered justified and/or the quantum is likely to be within the Excess stated in the Schedule.

(b) The insurance provided by this policy ceases absolutely at the expiry of the Period of Insurance. However, provided that notice referred to in condition 5(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 policy.

(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 policy:

- (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 Schedule), 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.

6. 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.

7. 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 policy, 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.

8. Jurisdiction

This policy shall be governed by the law of New Zealand, the Courts of which shall have exclusive jurisdiction over any dispute.

9. Other Insurance

If, at the time of any claim arising under this policy, there is any other valid and collectable insurance covering all or part of the same Occurrence, this policy 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 policy.

10. Severability

(a) In granting cover under this policy 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 policy.

(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 policy 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 policy will not prejudice this insurance in relation to any other Insured or other Officer.

11. 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 policy, 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.

12. Territory

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

13. 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.

extensions

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

EXTENSION 1 - 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 policy, 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.

EXTENSION 2 - Newly Created or Acquired Subsidiary Company

If any Subsidiary Company is created or acquired by the Insured after the inception of this policy 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 policy 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.

EXTENSION 3 - 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 policy 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.

definitions

Words or phrases given special meaning in the Schedule attaching to this policy have the same meaning wherever they appear in the policy. 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, trust or other entity named in the Schedule.
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 Extension 1.
 - (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 Schedule.
 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).

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