



Sub-Contractors Payment Guarantee

Policy Wording

Underwritten by  CBLinsurance



Guarantees and insurance for the building industry

FINANCIAL STRENGTH RATING

CBL Insurance Limited has a financial strength rating of A- (Excellent) and an outlook of Stable provided by A.M. Best.

A.M. Best financial strength rating scale

Secure			Vulnerable				
Superior	Excellent	Good	Fair	Marginal	Weak	Poor	Regulatory Action
A++, A+	A, A-	B++, B+	B, B-	C++, C+	C, C-	D	E, F, S

SubbieCover Sub-Contractors Payment Guarantee

INTRODUCTION

In consideration of the Insured having made a written proposal to CBL Insurance Limited ('CBL') containing particulars and statements which are to be considered as incorporated in this policy, and paying the Premium stated in the schedule to this policy ('the Schedule'), CBL will indemnify the Insured in accordance with and subject to the limitations, terms, conditions and endorsements of this policy.

SECTION 1: INSURING CLAUSE

1.1 CBL agrees, subject to all limitations, terms and conditions and endorsements:

To indemnify the Insured for the Insured Percentage of the loss arising from the non-payment of any Insured Debt due to the Insolvency of a Head Contractor, subject to the Limit of Liability shown in the Schedule.

SECTION 2: EXCLUSIONS

2.1 This policy will not indemnify the Insured against any loss in respect of:

- 2.1.1 GST (Goods & Services Tax), sales tax, retention money, interest charges, consequential damages, penalties, government charges, levies and taxes;
- 2.1.2 goods recovered or recoverable from a Head Contractor (or any receiver, liquidator, court appointed manager, statutory manager, agent for a mortgagee in possession, or trustee or assignee in bankruptcy) upon or after the Insolvency of that Head Contractor, unless CBL agrees in writing that a loss has occurred and the loss can be quantified to the satisfaction of CBL. Where goods are recovered or recoverable from a Head Contractor, their value will be deemed to be the value at which they were originally sold to the Head Contractor;
- 2.1.3 further goods sold and Delivered or services rendered, whichever occurs earlier, after the Insured's knowledge of a Financially Adverse Event, unless first authorised in writing by CBL;
- 2.1.4 (i) any Insured Debt which remains unpaid due in any part to:
 - (ii) any laws or regulations in force which have an effect on the goods that are subject to the Insured Debt;
or
 - (iii) any other action by order of any government whether lawful or de facto, or any public authority;
- 2.1.5 any Insured Debt which remains unpaid due in any part due to any deficiency in the Insured's business records or systems;
- 2.1.6 any Insured Debt in respect of which an administrator, receiver or liquidator will not accept liability, or a court will not award judgment to the Insured or which is not otherwise legally recognised as due and owing to the Insured;
- 2.1.7 all goods sold or services rendered that are of a kind which is outside the scope of the Business Trade specified in the policy Schedule;
- 2.1.8 all goods sold or services rendered in respect of contracts which commenced prior to the Policy Period. In any event no liability will attach for any default occurring within the first 30 days of the Policy Period.

SECTION 3: AUTOMATIC EXTENSION

3.1 Automatic Reinstatement

The Insurer's liability under this policy shall not exceed the Limit of Liability, however:

(i) in the event of the partial or complete exhaustion of the Limit of Liability, by payment of a claim or series of claims which is/are attributable to or arise(s) out of the same cause or event, the Limit of Liability can be wholly or partially reinstated ONCE ONLY and only:

- (a) in respect of a claim or series of claims which is/are attributable to or arise(s) out of a different cause or event; and
- (b) insofar as the total amount for which CBL shall be liable in respect of all claims covered under this policy during the Policy Period shall not exceed twice the Limit of Liability shown in the Schedule;

(ii) a re-instatement premium equal to 100% of the exhausted premium is payable.

SECTION 4: DEFINITIONS

4.1 Business Trade

Business Trade means the type of goods sold or services rendered to which cover applies under this policy, as specified in the Schedule.

4.2 Insured Percentage

Insured Percentage means the indemnity percentage after deducting any Excess.

4.3 Limit of Liability

Limit of Liability, (where specified) is the maximum net liability of CBL in respect of Insured Debt arising during the Policy Period.

4.4 Premium

Premium is the amount specified as such in the Schedule.

4.5 Franchise

Franchise means the amount specified as such in the Schedule, under which no claim will be payable.

4.6 Financially Adverse Event

Financially Adverse Event means any of the following whenever occurring:

- 4.6.1 where the Insured has knowledge that or other reason to believe that the Head Contractor cannot pay its debts to any person or entity as and when they fall due for payment;
- 4.6.2 where the Insured has knowledge that or other reason to believe that the Head Contractor cannot honour its contractual obligations to any person or entity;
- 4.6.3 where a cheque from a Head Contractor has been dishonoured or requested to be presented again by a bank (irrespective of subsequent payment);
- 4.6.4 where the Head Contractor goes into a state of Insolvency
- 4.6.5 where any part of the Insured Debt owing to the Insured is outstanding in excess of the Maximum Credit Period.

4.7 Head Contractor

Head Contractor is any person or entity carrying on business with the Insured, and may be known as Principal or Main Contractor, but excluding:

- 4.7.1 where the Insured is a company, any related, associated and/or subsidiary companies of the Insured, as defined in the Companies Act 1993, or a relative of any (past or present) director or shareholder of the Insured;
- 4.7.2 where the Insured is a sole trader or partnership, a relative of the Insured or a present (or former) partner of the Insured or a relative of a present (or former) partner of the Insured;
- 4.7.3 government departments, public authorities and/or state owned enterprises.

4.8 Insolvency

Insolvency means that any of the following events or an equivalent event under New Zealand law has occurred in respect of a Head Contractor:

- 4.8.1 a receiver, court appointed manager, statutory manager, or an agent for a mortgagee in possession has been appointed over all of the assets and undertakings of the Head Contractor;
- 4.8.2 an effective resolution has been passed for the voluntary winding-up or liquidation of the Head Contractor;
- 4.8.3 the Head Contractor becomes voluntarily bankrupt;
- 4.8.4 a legally binding compromise, deed of assignment, composition or other scheme of arrangement has been entered into by the Head Contractor with, or for the benefit of, a majority of or all of its creditors;
- 4.8.5 a sequestration order has been made by a court against the estate of the Head Contractor;
- 4.8.6 a court orders the winding-up or liquidation or bankruptcy of the Head Contractor.

4.9 Insured

Insured is the person or entity specified as such in the Schedule to the policy.

4.10 Insured Debt

Insured Debt is an amount of debt arising from a written contract for the sale of goods or services during the Policy Period owing to the Insured by a Head Contractor under approved terms of payment.

4.11 Maximum Credit Period

Maximum Credit Period is the period of time beyond the date for payment during which an Insured may continue to supply goods or provide services to a Head Contractor while still continuing to be indemnified by CBL.

4.12 Policy Period

Policy Period is the contracted period of insurance stated in the Schedule to the policy.

4.13 Salvage

Salvage is any money (including dividends paid or payable out of the insolvent estate of the Head Contractor), securities, indemnities, rights of action, counter claim/ set off, or any other asset or advantage held, received by, or due to the Insured or otherwise available for the purpose of reducing the Insured Debt of the Head Contractor or any goods recovered or recoverable whether pursuant to a Retention of Title clause or otherwise following payment of any claim. Payment received from a Head Contractor after the occurrence of a Financially Adverse Event shall be deemed to be Salvage unless CBL agrees in writing that such payments may be treated as payment for goods supplied after the occurrence of a Financially Adverse Event.

SECTION 5: CONDITIONS

5.1 Precedent to liability

A condition precedent to the liability of CBL to indemnify the Insured is the compliance with all of the limitations, terms and conditions of the policy by the Insured.

5.2 Payment of premium

5.2.1 At the commencement of the Policy Period the Insured shall pay to CBL the Premium. Non payment of any premium or charge due to CBL shall result in cancellation or suspension of the policy from inception.

5.3 Credit control

5.3.1 The Insured shall not materially vary its standard credit control procedures (including collection of debts and assessment of buyers) during the Policy Period in respect of any Head Contractor without the written consent of CBL.

5.3.2 The Insured shall keep accurate records that clearly establish the existence and details of all Insured Debts.

5.3.3 If the Insured becomes aware of any material change in the beneficial share ownership of any Head Contractor, the Insured must notify CBL in writing within 14 days of becoming aware of the change.

5.3.4 The Insured shall inform CBL immediately upon becoming aware of any fact or information relating to a Financially Adverse Event or the solvency of any Head Contractor. The Insured must continue to notify CBL and take instructions from CBL in relation to credit management decisions, including any repayment plans proposed by the Head Contractor, until the Insured Debt is paid in full or until a claim is submitted to CBL.

5.3.5 The Insured shall exercise reasonable care and prudence at all times in the granting of credit to, and withholding credit from, a Head Contractor as if it were uninsured. This obligation shall continue regardless of notification to CBL under Condition 5.3.3 or irrespective of any current Permitted Limit in force. Where CBL receives notification under 5.3.3 it may or may not at CBL's sole discretion give instructions to the Insured relating to recovery or any other action.

5.3.6 Where the Insured receives a claim from the Liquidator of a Head Contractor for the repayment of monies allegedly paid preferentially by the Head Contractor to the Insured, the Insured shall consult with CBL as to the response to the claim and shall not admit liability for repayment without approval from CBL. CBL may at its sole discretion elect to admit the repayment being claimed as part of the claim by the Insured to CBL.

5.4 Assignment

The Insured cannot assign any benefits under this policy without the prior written consent of CBL.

5.5 Uninsured percentage

The Insured shall not insure any uninsured percentage of the direct loss or any Franchise or deductible with any other insurer.

5.6 Variation

CBL is entitled to reduce or withdraw the indemnity for Insured Debts in respect of any Head Contractor or vary any provision of the policy by giving notice in writing to the Insured or to the agent of the Insured. This variation will be effective on the giving of notice.

5.7 Claims

- 5.7.1 The Insured shall promptly submit a claim form to CBL, and in any event within 3 months, after the date of the Insolvency of a Head Contractor.
- 5.7.2 Provided all policy terms and conditions have been met, CBL shall calculate the amount payable in relation to the claim, less Salvage received prior to payment of the claim, multiplied by the Insured Percentage and taking into account any Limit of Liability.
- 5.7.3 On receipt of the appropriate confirmation that the Insured Debt has been admitted to rank against the insolvent estate of the Head Contractor, and that the relevant goods have not been recovered (and are not recoverable) by the Insured, then CBL shall pay the claim within 30 days of confirmation by CBL of indemnity under the policy.
- 5.7.4 Notwithstanding the payment of any sum by CBL under the policy the Insured shall initiate and continue legal action for recovery of the Insured Debt including the initiation of legal proceedings for all causes of loss unless CBL agrees in writing that legal action is not warranted.

5.8 Fraud

If any claim is dishonest or fraudulent in any way, CBL is entitled to:

- 5.8.1 decline the claim in whole or in part, and/or
- 5.8.2 cancel the Policy from the date of the dishonest or fraudulent act.
- 5.8.3 notify the Police.

5.9 Other Insurance

- 5.9.1 CBL must immediately be notified of any other insurance for any of the risks covered under this Policy.
- 5.9.2 CBL will only pay over and above the limit payable under that other insurance.

5.10 Cancellation

- 5.10.1 The Policy may be cancelled by the Insured at any time by giving notice to CBL.
- 5.10.2 CBL may cancel the Policy at any time by giving notice at the last known address of the Insured as held by CBL. Cancellation will take effect 30 days after the day CBL send or deliver the notice to the Insured.
- 5.10.3 If the Insured cancels the Policy, CBL will refund 90% of the unexpired portion of the premium;
- 5.10.4 If CBL cancel the Policy, CBL will refund the unexpired portion of the premium unless a claim has been made and CBL have paid the Maximum Sum Insured under the Policy, or in respect of condition 5.8, when CBL will not refund any unexpired premium.

5.11 Salvage

CBL's portion of all Salvage received by the Insured must be remitted directly to CBL within 14 days of receipt. Any Salvage or other recoveries obtained by the Insured or CBL in respect of the indebtedness of the Head Contractor shall be divided between CBL and the Insured following a recalculation of the claim under condition 5.7.2 of the policy, taking into account the Salvage received and the entitlement of the Insured to recover in the same proportion that the uninsured debt bears to the total indebtedness of the Head Contractor at the date of Insolvency.

5.12 Subrogation

- 5.12.1 If requested to do so by CBL, the Insured must hand over the conduct of any recovery proceedings to CBL before or after payment of any claim. For this purpose the Insured shall offer CBL the right to become its Power of Attorney and to exercise in its place or on its behalf all rights held by the Insured in respect of the Insured Debt whether wholly or partly insured.
- 5.12.2 The Insured shall not do anything which prejudices CBL's right to any Salvage or other recoveries.
- 5.12.3 After CBL has agreed to the payment of any indemnity to the Insured, CBL is entitled to require the Insured to assign its rights to CBL.

5.13 Minimising loss

The insured shall take all reasonable steps to minimise each direct loss arising from the non-payment of any Insured Debt, including but not limited to steps to recover any goods which are the subject of an Insured Debt which is unpaid due to the Insolvency of a Head Contractor, and the commencement and continuation of legal proceedings.

5.14 Disclosure

The Insured shall at all times make available to CBL and allow CBL to examine and take copies of any documentation in the possession or control of the Insured relating to this insurance. The Insured shall upon request by CBL take all reasonable steps to obtain for CBL any information in the possession of any third party relating or connected with this insurance policy or any loss.

5.15 Goods & Services Tax (GST)

All limits, amounts or franchises shown are GST inclusive.

5.16 Law

This policy shall be construed in accordance with and governed in all respects by New Zealand law. CBL and the Insured submit irrevocably to the jurisdiction of the courts of New Zealand. Any terms and conditions of this policy which do not conform to any statutes which have effect in the jurisdiction where the policy was issued are to be treated as having been amended or deleted to the extent necessary to comply with those statutes.

5.17 Agency agreement

Builtin New Zealand Limited is an agency contracted to provide underwriting services to CBL.

Documents issued or undertakings made by Built in New Zealand Limited are deemed to be issued on behalf of CBL Insurance Limited.

5.18 Notification

Every notice or communication to CBL shall be in writing and sent by mail or facsimile to the office of the Agent of CBL:



Built in New Zealand Ltd
104 Spring Street
P O Box 616
Tauranga 3140

Phone: (07) 579 6259
Fax: (07) 579 6258
Email: guarantee@builtin.co.nz

and shall not be deemed to be notice to or with the knowledge of CBL unless so given. If the address of CBL's agent above ceases to be its address, then such replacement address as is published by the Agent will be the new address for notification or communication to CBL.



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