

Professional Indemnity Policy Construction Contractors

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Introduction

We are committed to complying with the Fair Insurance Code as published by the Insurance Council of New Zealand.

This means We will:

- (a) provide insurance contracts which are understandable and show the legal rights and obligations of both Us and the policyholder;
- (b) explain the meaning of legal or technical words or phrases;
- (c) explain the special meanings of particular words or phrases as they apply in the Policy;
- (d) manage claims quickly, fairly and transparently;
- (e) clearly explain the reason(s) why a claim has been declined;
- (f) provide policyholders with a written summary of Our complaints procedure as soon as disputes arise and advise them how to lodge a complaint and tell them about the Insurance and Financial Services Ombudsman Scheme.

Claims Made

This is a claims made Policy and no Claim can be made after expiry of the Period of Insurance specified in the Schedule. The Policy does not cover acts or omissions prior to the Retroactive Date.

Section 1: Coverage

In consideration of payment of the premium, We agree to indemnify You for Valid Claims in accordance with, and subject to, all of the terms of this Policy as follows.

1.1 Civil Liability

We shall indemnify You for Civil Liability incurred in Your conduct of the Professional Business.

1.2 Costs and Expenses

In addition, We shall pay the Costs and Expenses incurred with Our prior written consent of in the defence or settlement of any Claim covered by Section 1.1 (Civil Liability) of this Policy.

Section 2: Automatic Coverage Clauses

The following Coverage Clauses to the Policy are included automatically, provided always that each Coverage Clause is subject to the terms of this Policy (unless otherwise stated). This Policy extends to cover Valid Claims as follows:

2.1 Acquisitions and Creations

- (a) We shall indemnify any Subsidiary acquired during the Period of Insurance for a period of up to 30 days from the date of acquisition but only in respect of activities carried out after the date of acquisition.
- (b) We shall indemnify any Subsidiary created during the Period of Insurance from the date of creation in respect of activities carried out after the date of creation, subject to the provisions of General Condition 5.1 (Alteration to Risk).

2.2 Automatic Reinstatement

On payment under this Policy in respect of a Claim, the Limit of Indemnity will be reinstated automatically, without additional premium, to the extent of the amount paid in respect of that Claim, provided always that:

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- (a) the total amount payable by **Us** for any one **Claim** shall not exceed the **Limit of Indemnity**;
 - (b) in respect of all **Claims** the total amount reinstated shall not exceed an amount equal to the **Limit of Indemnity**; and
 - (c) if **You** have any additional cover in excess of this **Policy**, then any reinstatement of the **Limit of Indemnity** shall only be made upon exhaustion of such additional cover.

2.3 Consultants and Sub-contractors

Arising out of the actions of any consultants, contractors, sub-contractors or agents however the cover provided under this Automatic Coverage Clause does not extend indemnity to any consultant, contractor, sub-contractor or agent unless **You** have nominated that person or entity in the **Schedule**.

2.4 Contractual Liability

Notwithstanding Exclusion 4.4 (Contractual Liability), **We** will indemnify **You** for **Civil Liability and Costs and Expenses** resulting from any **Valid Claim** for any contractual liability or obligation arising from the following warranties or guarantees made by **You** that:

- (a) **You** will use reasonable care and skill in the performance of **Professional Business**; or
- (b) **Professional Business** will not infringe upon any **Intellectual Property Rights**; or
- (c) **Professional Business** will substantially conform to all material, written specifications.

2.5 Continuous Cover Clause

That would be covered under this **Policy** but are excluded by Exclusion 4.14 (Known Claims and Circumstances), subject to the following additional conditions:

- (a) **We** were **Your** professional indemnity insurer at the primary level under a policy ('Former Policy') at the time when **You** first became aware of the circumstances that subsequently gave rise to the **Valid Claim**;
- (b) **We** continued without interruption as **Your** professional indemnity insurer at the primary level from the time when **You** first became aware of the circumstances up until such time as the **Valid Claim** was made against **You** and notified to **Us**;
- (c) **Our** liability is limited to the amount for which **We** would have been liable at the time referred to in 2.5 (a) in accordance with the terms and conditions of the Former Policy; and
- (d) **Our** liability will be reduced by the amount that in **Our** opinion represents the extent to which liability for the **Claim** could have been reduced had the circumstances been duly reported under the Former Policy.

2.6 Costs of Representation at Disciplinary Proceedings

We will pay all reasonable **Costs and Expenses** incurred in the investigation and defence of a complaint (which may form the basis of a **Claim** against **You** which is covered by this **Policy**) lodged against **You** with a statutory registration board or similar regulatory authority, or insofar as any statutory or professional body claims jurisdiction to enquire into or adjudicate any such matter provided always that:

- (a) any **Costs and Expenses** incurred must be with **Our** prior written consent; and
- (b) **We** shall be entitled to appoint a solicitor or counsel to represent **You**.

2.7 Court Attendance Costs

- (a) **We** will pay up to \$250 per day for an individual who is or was an **Employee** and \$500 per day for any person who is or was a principal, partner or director of **Yours** for court attendance costs incurred by **You**, if the **Employee**, principal, partner or director is legally compelled to attend a civil proceeding as a witness in a **Claim** covered by this **Policy**.
- (b) **Our** total aggregate liability during the **Period of Insurance** for all court attendances shall not exceed \$50,000, and shall be part of and not in addition to the **Limit of Indemnity**.

2.8 Defamation

For unintentional defamation by reason of words written or spoken by **You**.

2.9 Dishonesty of Employees

Brought about or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of or on behalf of any **Employee** provided always that:

- (a) such indemnity shall not be provided to any person committing or condoning any act, omission or breach excluded by reason of Exclusion 4.6 (Dishonesty);

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- (b) in respect of **Claims** involving theft or misappropriation of funds for which **You** are legally liable to account to another, **Our** liability is conditional upon:
 - (i) **You** maintaining a separate trust account for such funds that shall be subject to the receipt of an unqualified audit by a chartered accountant at least annually; and
 - (ii) all cheques drawn by **Employees** on such trust account being signed by two authorised persons; and
 - (iii) all electronic banking carried out by **Employees** on such trust account being first authorised by a secret password entered by a duly authorised person.

2.10 Extended Notification Period

In the event that this insurance is not renewed or is cancelled for any reason other than non-payment of premium then **You** have until such time that **You** effect another professional indemnity insurance policy either with **Us** or any other insurer for a period of 60 days commencing on the day immediately following expiry of this **Policy**, whichever is the lesser period, during which to notify **Us** of any **Claim** first made against **You** in writing within such 60 day or lesser period (as the case may be) provided always that it is understood and agreed that:

- (a) **We** will treat that **Claim** as if it had been made against **You** and notified to **Us** during the immediately preceding **Period of Insurance**; and
- (b) coverage afforded thereunder does not reinstate or increase the **Limit of Indemnity** or the Aggregate **Limit of Indemnity** or extend the **Period of Insurance**; and
- (c) coverage afforded thereunder will only apply to acts, errors or omissions committed or alleged to have been committed by **You** before the end of the **Period of Insurance** or the cancellation date of this **Policy** where this **Policy** has been cancelled and not before the **Retroactive Date**.

2.11 Fair Trading Act 1986

Under the terms of the Fair Trading Act 1986 (sections 9 to 14) or any similar legislation.

2.12 Fidelity

We agree to indemnify **You** against the direct loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to **You** or for which **You** are legally liable, where such loss results directly from the dishonest or fraudulent act or omission of any principal, partner, director or **Employee**.

The following terms apply to this coverage:

- (a) the loss must be first discovered by **You** during the **Period of Insurance**;
- (b) the loss must be notified to **Us** within 30 days of discovery and within the **Period of Insurance**;
- (c) there is no coverage for any further loss occurring after the date of first discovery by **You** of such conduct on the part of the principal, partner, director or **Employee** or after **You** had reasonable grounds for suspicion of such conduct by such person, where the further loss is connected with any additional, new or further such conduct on the part of such person following that first discovery;
- (d) loss under this coverage does not include indirect or consequential losses of any nature;
- (e) including but not limited to liability to third parties, damages of any kind, interest, investigation costs, trading losses or any other head that is not the direct loss of the property referred to;
- (f) **You** shall, at **Your** own cost, bear the burden of substantiating to **Our** satisfaction, any loss covered by this Automatic Coverage Clause;
- (g) **Our** liability under this coverage is net of any recovery made by **You** from applying moneys otherwise owing or payable by it to the principal, partner, director or **Employee**;
- (h) the **Limit of Indemnity** for this Automatic Coverage Clause is the sub-limit specified in the **Schedule** and is the total limit of **Our** liability under or in connection with this coverage for all losses. All loss in any way connected with dishonest or fraudulent conduct of the principal, partner, director or **Employee** shall be deemed to be one loss for the purpose of the sub-limit. The sub-limit is part of and not in addition to the **Limit of Indemnity**;
- (i) each and every individual dishonest or fraudulent act or omission, shall have a separate **Excess** applied to it. If no **Excess** is shown in the **Schedule** as applicable to this cover, then the **Excess** shall be that otherwise specified in the **Schedule**.

2.13 Fiduciary duty

Arising out of a breach of fiduciary duty by **You**.

2.14 Intellectual Property

Arising out of any unintentional infringement of copyright, trademarks, registered designs or plagiarism or any unintended breach of confidentiality.

2.15 Joint Venture Liability

We will indemnify You for that proportion of legal liability which may attach to You for civil liability in Your conduct of the Professional Business by reason of any Civil Liability as a partner in any joint venture specified in the Schedule, provided:

- a. a Claim is first made against You and notified in writing to Us during the Period of Insurance;
- b. the joint venture partner(s) shall not be indemnified;
- c. such joint venture was disclosed to and accepted by Us as subject to this coverage;
- d. such Claim is made by an independent third party.

2.16 Loss Mitigation and Fee Recovery

- (a) Where We require You to waive all or part of any outstanding fee, properly due to You, to assist in settlement of any Claim then the amount of such waived fee shall be deducted from any Excess payable by You. If the amount of the waived fee is greater than the applicable Excess, then 75% of the difference will be payable by Us to You.
- (b) Our total aggregate liability during any one Period of Insurance shall not exceed \$100,000, and shall be part of and not in addition to the Limit of Indemnity.

2.17 Loss of Documents

Arising out of the loss of, damage to or destruction of any Documents that were in Your custody or control, or any other person to whom You had delegated custody, or had entrusted, lodged or deposited such Documents in the ordinary course of business.

2.18 Outgoing principals, partners, directors and employees

We shall indemnify You for Valid Claims in respect of Your liability arising from any Claim made against any of Your former principals, partners, directors or Employee.

2.19 Previous Subsidiaries

The definition of You will include any entity that ceased to be a Subsidiary before or during the Period of Insurance, but We will not indemnify You in respect of any Claim arising out of activities occurring after it ceased to be a Subsidiary, nor will We indemnify You in respect of any Claim arising out of activities occurring before it became a Subsidiary.

2.20 Public Relations Expenses

Where You retain the services of a public relations consultant for the sole purpose of protecting Your reputation that has been brought to question as a direct result of a Valid Claim, We agree to pay any reasonable costs and expenses of such public relations consultant. However:

- (a) You must notify Us within 30 days of first becoming aware of Your reputation being brought into question and provide full written details outlining the circumstances surrounding the event; and
- (b) We must have given prior written consent to retain the services of such public relations consultants; and
- (c) Our total aggregate liability during any one Period of Insurance for all public relations expenses shall not exceed \$50,000 and shall be part of and not in addition to the Limit of Indemnity.

2.21 Run off Cover

We shall indemnify, until the expiry of the Period of Insurance, any entity which You sold, ceased trading, merged or wound up during the Period of Insurance in respect Your activities prior to the sale, cessation of trade, merger or winding up.

2.22 Severability

Notwithstanding Exclusion 4.6 (Dishonesty), where You fail to comply with Your duty of disclosure, make a misrepresentation or are in breach of a Policy term, We will not deny indemnity to You on these grounds if You were unaware of the matter not disclosed or the fact of the misrepresentation or did not intentionally

breach the **Policy** term. This Automatic Coverage Clause shall not apply in the case of an application for indemnity made by any **You** knowing that such application is false or fraudulent.

Section 3: Definitions

3.1 **Civil Liability** means:

Legal liability arising from any **Claim** for compensation arising out of the **Professional Business**.

3.2 **Claim** means:

- (a) Legal proceedings instituted and served upon **You**; or
- (b) Any threat or intimation that legal proceedings will be issued against **You**.

3.3 **Costs and Expenses** means:

- (a) Any legal costs, disbursements, witnesses' costs, assessors' costs or experts' costs incurred by **Us** in investigating, defending or settling any **Claim** made against **You** in respect of which **You** are entitled to be indemnified by **Us** in terms of the indemnity granted by this **Policy**;
- (b) All reasonable expenses (other than loss of earnings or profits) that are incurred by **You** with **Our** prior written consent in assisting **Us** or **Our** solicitors in the investigation, defence or settlement of any **Claim**.

3.4 **Documents** means:

Deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank currency notes or other negotiable instruments.

3.5 **Employee** means:

Any person employed by **You** under a contract of service or apprenticeship during or prior to the commencement of the **Period of Insurance** or any labour only contractors or sub-contractors employed by **You** provided such labour only contractors or sub-contractors are carrying out work for **Your Professional Business** and are not otherwise insured.

3.6 **Excess** means:

The excess specified in the **Schedule**.

3.7 **Family Member** means:

- (a) **Your** spouse or de facto partner;
- (b) **Your** parent, or parent of **Your** spouse or de facto partner;
- (c) **Your** sibling or child.

3.8 **Intellectual Property Rights** means:

Any intellectual property right of a third-party, except any patents and trade secrets.

3.9 **Limit of Indemnity** means:

The limit of indemnity specified in the **Schedule**.

3.10 **Period of Insurance** means:

The period specified in the **Schedule**.

3.11 **Policy** means:

This policy wording including the **Schedule**, any additional endorsements issued by **Us**.

3.12 **Professional Business** means:

The business conducted by **You** as specified in the **Schedule**.

3.13 **Proposal** means:

The written proposal provided by **You** to **Us** and any other underwriting information provided to **Us** prior to the **Period of Insurance**.

3.14 **Retroactive Date** means:

The date specified in the **Schedule**.

3.15 **Schedule** means:

The current schedule issued by **Us**.

3.16 **Subsidiary** means:

Any organisation in which **You** hold more than 50% of the voting rights of that organisation or have the ability to control decisions made by the board of directors (whether directly or indirectly).

3.17 **Valid Claim** means:

Any **Claim** that is:

- (a) first made against **You** during the **Period of Insurance**; and
- (b) notified in writing to **Us** by **You** during the **Period of Insurance** or within 28 days after its expiry; and
- (c) alleging **Civil Liability** by any act, error, omission in connection with the **Professional Business** that occurred subsequent to the **Retroactive Date**.

Claims that do not accord with all of (a), (b) and (c) of this definition shall not be covered under this **Policy**.

3.18 **We or Us or Our** means:

Ando Insurance Group Limited on behalf of Underwriters as noted in the **Schedule**.

3.19 **You or Yours** means:

- (a) The person, persons, partnership, company, corporation or other entity specified as the insured in the **Schedule** including any predecessors in business and **Subsidiaries**; and
- (b) Any person who is or becomes, during the **Period of Insurance**, a principal, partner, director or employee of **Yours**; and
- (c) Any former principal, partner, director or employee of the insured named in the **Schedule**; and
- (d) The estate, heirs, legal representatives or assigns of any of the insured named in the **Schedule** in the event of **Your** death or incapacity but only if such persons observe and are subject to the terms of this **Policy**.

Section 4: Exclusions

We shall not be liable to indemnify **You** in respect of any liability arising out of or in respect of any **Claim** under the **Policy**:

4.1 **Asbestos**

Whatsoever, directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

4.2 **Associated Entities**

Brought or maintained by or on behalf of any person, firm, company or entity or any **Subsidiary**:

- (a) who is entitled to benefit under this **Policy**; or
- (b) who, at the time of the act, error or omission giving rise to the **Claim**, is a **Family Member**; or
- (c) operated or controlled by **You**; or
- (d) operated or controlled by any **Employee**, partner, nominee or trustee of **Yours**; or
- (e) in which **You** have a direct or indirect financial interest (a shareholding of less than 5% in a publicly listed company shall not constitute a financial interest); or
- (f) advised or induced by **You** to invest in or lend money to any person, firm, company or entity referred to in any of (a) – (e) above or to **You**.

For the purposes of this exclusion, the term '**You**' or '**Yours**' shall include **Family Member**.

4.3 Building Surveys

Based upon or arising from any feasibility study, design specification, technical information calculation, survey or inspections, which is not carried out under the direct supervision of a properly qualified engineer, architect, surveyor or quantity surveyor, unless otherwise agreed in writing by **Us**

4.4 Contractual Liability

Arising out of or connected with any contractual liability, warranty or guarantee assumed or provided by **You** unless **You** would have been liable in the absence of the contractual liability, warranty or guarantee.

4.5 Director's Liability

Arising solely from **Your** duties as a director or legal officer of any company.

4.6 Dishonesty

- (a) Arising out of or connected with any actual or alleged dishonest, fraudulent, criminal or malicious act or omission of any of **You** or **Your** consultants, sub-contractors, or agents; or
- (b) Arising out of or connected with a willful breach of any statute, contract or duty, or any act or omission committed or omitted or alleged to have been committed or omitted with a reckless disregard for the consequences by **You** or **Your** consultants, contractors, sub-contractors or agents.

4.7 Financial Condition

Arising as a result of **Your** insolvency, bankruptcy, receivership, statutory management, administration or liquidation.

4.8 Financial Estimates

Based upon or arising out of any financial estimates of probable construction costs (other than cost advice and cost planning services normally provided by a Quantity Surveyor), cost estimates of profit or return on capital not being achieved.

4.9 Financial Failure & Trading Debts

directly or indirectly caused by, arising out of, or in any way connected with:

- (a) **Your** insolvency, bankruptcy or liquidation; or
- (b) any alleged or actual failure by **You** to pay any trading or personal debt; or
- (c) any guarantee or other undertaking or obligation given by **You** for a debt; or
- (d) any failure to procure and maintain financing for payment of contract work or any services in connection therewith.

4.10 Fines and Penalties

For punitive, aggravated, liquidated, multiple or exemplary damages, or fines or penalties imposed by law.

4.11 Fungi Moulds

Arising directly or indirectly from:

- (a) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind;
- (b) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins;
- (c) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins

4.12 Insurance & Finance

Arising on **Your** part or connected with;

- (a) The effecting of, or failure to effect or maintain any insurance,
- (b) The provision of, application for, or any related representations relating to investment or finance activities

4.13 Jurisdiction

- (a) In respect of legal action or litigation first brought in a court outside the jurisdiction of the countries stated in the **Schedule**;
- (b) In respect of any legal action or litigation brought in a court within the jurisdiction of the countries stated in the **Schedule** to enforce a judgment handed down in a court outside the jurisdiction of the countries stated in the **Schedule** whether by way of a reciprocal agreement or otherwise; or
- (c) In respect of any legal action in which the proper law to be applied to the issue or any of them in that action is that of a country other than the jurisdiction stated in the **Schedule**.

4.14 Known Claims and Circumstances

- (a) Made against or intimated to **You** prior to the commencement of the **Period of Insurance**;
- (b) Notified under any previous **Policy**; or
- (c) Arising out of or connected with any facts or circumstances which:
 - (i) **You** were aware of prior to commencement of the **Period of Insurance**; and
 - (ii) a reasonable person in **Your** position would have considered may give rise to a **Claim**.

4.15 Nuclear

Arising out of or connected with:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive assembly or its nuclear components.

4.16 Obligations to Employees

- (a) Arising out of or alleging breach of any obligation owed by **You** as an employer; or
- (b) Arising out of or alleging sexual harassment or sexual or racial discrimination.

4.17 Occupier's Liability

Arising directly or indirectly from the ownership, possession or use by **You** or on **Your** behalf of any land, buildings, aircraft, watercraft or mechanically propelled vehicle.

4.18 Pollution

Attributable to seepage, pollution or contamination howsoever occurring.

4.19 Products and Workmanship

directly or indirectly caused by, arising out of, or in any way connected with:

- (a) the failure of any product or good supplied, sold, installed, repaired or maintained by **You** to meet the manufacturer's specification;
- (b) any cost or expense incurred in withdrawing any product or good from sale or recalling any product or good; or
- (c) any repairs or maintenance; or
- (d) the failure to complete drawings, specifications or schedules of specifications on time, or the failure to act upon shop drawings on time, or the failure to comply with time limits set for the completion of part or all of the works; or
- (e) the costs of revising or redesigning drawings, plans, specifications or schedules of specifications.

4.20 Refund of Fees

For a refund, by way of damages or otherwise, of professional fees or in respect of any **Claim** that **You** are not entitled to professional fees.

4.21 Retroactive Date

Arising out of or connected with any act, error or omission prior to the **Retroactive Date**, provided that nothing contained within this exclusion is interpreted as releasing **You** from Your obligation to disclose as a material fact all details of **Claims** made or outstanding or events likely to give rise to a **Claim**.

4.22 Sanctions

To the extent that the provision of such cover, payment of such claim or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

4.23 Supply of Goods

Arising from **Your** sale, supply, installation or manufacture of goods.

4.24 Territorial Limits

Arising from any act, error or omission that occurred outside the territorial limits specified in the **Schedule**.

4.25 Terrorism

Arising from or in any way related to death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with, any act of Terrorism regardless of any contributing cause or event.

For the purpose of this exclusion, 'Terrorism' means an act, including but not limited to the use or threat of force or violence, by any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, which from its nature or context is committed for or in connection with political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.

This **Policy** also excludes death, injury, illness, loss, damage, liability, cost or expense of any 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 the above exclusions.

4.26 Jurisdictions of United States of America and Canada

Arising out of or connected with:

- (a) any work carried out within, or for persons in, the United States of America or the Dominion of Canada and their Territories, Dependencies or Protectorates;
- (b) Claims or actions brought within the United States of America or the Dominion of Canada and their Territories, Dependencies or Protectorates;
- (c) the enforcement of any award, order or judgment arising from any **Claim** or action described in subparagraph (b) above.

4.27 War

Arising out of or connected with war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or arising out of or connected with confiscation, nationalisation or damage to property by or under the order of any government or public or local authority.

Conditions

5.1 Alteration to Risk

You must give Us notice in writing as soon as practicable of any material change to the risk. A material change to the risk includes without limitation:

- (a) activities that are materially different from those declared in the **Proposal** or that are outside the normal activities of the **Professional Business** specified in the **Schedule**; or
- (b) a material change to the **Professional Business** specified in the **Schedule**; or
- (c) the cancellation, suspension or termination of Your statutory registration.

5.2 Breach of Conditions

Where Your breach of any condition of this **Policy** has resulted in prejudice to the handling and/or settlement of any **Claim**, which in all other respects qualifies to be indemnified under this **Policy**, the indemnity afforded by this **Policy** in respect of such **Claim** shall be reduced to such sum as would have been payable by Us in the absence of such prejudice.

5.3 Cancellation

- (a) You may cancel this **Policy** at any time by giving notice to Us. We will refund to You on a pro rata basis the amount of the unexpired premium already paid subject to any applicable minimum premium.
- (b) We may cancel this **Policy** after sending at least 30 days' notice to You in accordance with Condition 5.12(b) and 5.12(c) (Notices by Us). We will refund on a pro rata basis the amount of any unexpired premium already paid.

5.4 Claim in Excess of the Limit

- (a) If any payment, settlement or judgment in excess of the **Limit of Indemnity** has to be made to settle or dispose of any **Claim**, Our liability for **Costs and Expenses** is limited to such proportion as the **Limit of Indemnity** bears to the amount payable to dispose of the **Claim**.
- (b) Where We have paid or incurred **Costs and Expenses** in excess of its proportionate liability, You shall upon demand from Us pay to Us the amount of that excess. We may set off against any amount payable by Us to or on behalf of You, any amount that is payable by You to Us pursuant to this Condition.

5.5 Claims Co-Operation

- (a) You agree to use Your best endeavors to avoid or diminish liability for any **Claim** and will provide at Your own cost all information and assistance We require to determine liability under the **Policy** and investigate, defend and settle any **Claim**.
- (b) Upon receipt of notice from You of any request for indemnity under this **Policy**, We may take whatever action We consider appropriate to protect Your position in respect of the **Claim** against You. Such action by Us shall not be regarded in any way as prejudicing Our position under the **Policy** and shall not be an admission of Your entitlement to indemnity under the **Policy**.
- (c) You shall not admit liability for or settle any **Claim** or incur any **Costs and Expenses** in connection therewith without Our prior written consent.
- (d) We are entitled at any time to conduct in Your name, the investigation, defence or settlement of any **Claim**. We may appoint and instruct solicitors to act in the investigation, defence or settlement if any such **Claim**.
- (e) The solicitor shall at all times be at liberty to disclose to Us any information obtained in the course of so acting, whether from You or howsoever. You hereby waive all claims to legal professional privilege that might otherwise have existed as between You and solicitor retained by Us to act on Your behalf, in respect of such information.

5.6 Complaints

If You are dissatisfied with Our service in any way, contact Us by writing to:

The Complaints Manager
Ando Insurance Group Limited
PO Box 6649,
Wellesley Street,
Auckland 1141, New Zealand
or telephoning Us on (09) 3771432
or emailing Us at complaints@ando.co.nz

5.7 Excess

- (a) In respect of each and every **Claim** against **You** the **Excess** must be paid by **You**. Where a **Claim** does not exceed the **Excess** **You** must also pay the **Costs and Expenses** incurred in investigating, defending and settling that **Claim**.
- (b) The **Excess** in (a) above does not apply to any **Costs and Expenses** incurred by **Us** to determine indemnity under this **Policy**.
- (c) Where more than one **Claim** arises out of the same act, error or omission or casually connected or interrelated acts or omissions, or the same originating cause, or where a series of **Claims** have a common source or cause, all of those **Claims** will together constitute one **Claim** for the purposes of this policy and determining the **Excess** and Our **Limit of Indemnity**.

5.8 Fraudulent Claims

If **You** or any person who is entitled to indemnity under this **Policy** makes any application for indemnity under this **Policy**, knowing that such application for indemnity is false or fraudulent in any way, this **Policy** shall be void ab initio and no indemnity shall be available to **You** under this **Policy**.

5.9 GST

Where, on receiving any indemnity payment under this **Policy**, **You** are liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985(or any re-enactment or substitute), **We** will indemnify **You** for the cost of that tax. The indemnity under this clause is in addition to the applicable **Limit of Indemnity**.

5.10 Legal Counsel

- (a) **We** shall not require **You** to defend any legal proceedings in respect of any **Claim** against **You**, nor shall **You** require **Us** to defend, on **Your** behalf, any legal proceedings in respect of any such **Claim** unless a legal counsel (to be mutually agreed upon by **You** and **Us**) shall advise that such proceedings should be defended.
- (b) In formulating such advice, counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of **You** successfully defending the action. The cost of counsel's opinion shall be regarded as part of the **Costs and Expenses**.
- (c) In the event that counsel advises that, having regard to all the circumstances, the matter should not be defended but should be settled, provided that settlement can be achieved within certain limits which, in counsel's opinion, are reasonable, then **You** shall co-operate with **Us** to effect such settlement in accordance with this **Policy**.

5.11 Limit of Liability

- (a) Our total liability under this **Policy** shall not exceed the **Limit of Indemnity** for any one **Claim**. Our aggregate liability in respect of all **Claims** shall not exceed twice the **Limit of Indemnity**.
- (b) If **You** have additional cover in excess of this **Policy**, then any reinstatement of the **Limit of Indemnity** will only be made upon exhaustion of such additional cover.
- (c) Our total liability in respect of **Costs and Expenses** under Coverage Clause 1.2 (Costs and Expenses) and Automatic Coverage Clause 2.2 (Automatic Reinstatement) shall not exceed the **Limit of Indemnity** in the aggregate.

5.12 Notices by Us

- (a) Any notice given in writing by **Us** to the first named insured in the **Schedule**, or to the broker through which **You** arranged this **Policy** with **Us**, will be deemed to be notice to each insured under the **Policy**.
- (b) Any notices by **Us** may be effected by sending an email or letter to the last known contact address.
- (c) Any such notice will be deemed to have been received, if sent by email, at the time of transmission, and if sent by post, three business days after the date of posting.

5.13 Notification of Circumstances

If, during the **Period of Insurance**, **You** become aware of any circumstances that may (in the opinion of a reasonable practitioner of the **Professional Business**) give rise to a **Claim** and give written notice to **Us** of such circumstances during the **Period of Insurance**, then any **Claim** subsequently arising from such circumstances is deemed to have been made during the **Period of Insurance** in which the circumstances were first reported to **Us**.

5.14 Other insurance

Upon giving notice of any **Claim**, **You** shall provide **Us** with written details of any other insurance that may cover or partially cover that **Claim**.

In the event that **You** hold other insurance cover with another insurer in respect of any **Claim** then the indemnity under this **Policy** shall not be available until the limit of indemnity under any other policy has been exhausted.

5.15 Payment of the Limit of Indemnity

We may at any time pay the **Limit of Indemnity** applying to any one **Claim** or series of **Claims** (after deduction of sums already paid) or any lesser amount for which such **Claims** can be settled and shall then be under no further liability in connection with such **Claims** except for its proportion of **Costs and Expenses** incurred prior to the date of payment.

5.16 Policy Disputes

This **Policy** shall be governed by the laws of New Zealand whose courts shall have exclusive jurisdiction in any dispute arising herein.

5.17 Subrogation

- (a) In the event of payment under the **Policy**, **We** are entitled to all of **Your** rights of recovery (before a **Claim** has been paid and whether or not **You** have been fully compensated for its actual loss) and **You** will do everything necessary to secure and preserve such rights.
- (b) This will include but not be limited to the execution of documents necessary to allow **Us** to take any legal action in **Your** name.
- (c) **We** shall not exercise any subrogated rights of recovery against any **Employee** unless the **Claim** has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the **Employee**.
- (d) In the event that a recovery is made, the amount recovered shall be applied first to the costs of effecting the recovery, then the balance shall be paid to **Us** and **You** pro rata in proportion to the insured and the uninsured losses (excluding the **Excess**) of **Our** and **Yours** respectively. Any balance shall be paid to **You** in respect of the **Excess**.

5.18 Reporting of Claims

Irrespective of the quantum, **You** shall give **Us** immediate notice in writing of:

- (a) any **Claim** made against **You**; or
- (b) the receipt of notice from, or information as to any intention by any party to claim against **You**.

5.19 Your Right to Contest Claims

- (a) Provided always that if **You** do not agree with a decision by **Us** to settle a **Claim**, **You** can elect to contest the **Claim** at **Your** own expense. **Our** liability however will not exceed the amount for which the **Claim** could have been settled in the opinion of counsel appointed under General Condition 5.10 (Legal Counsel).
- (b) **We** shall pay all **Costs and Expenses** incurred up to the date **You** notify **Us** in writing of **Your** election under this clause, and shall pay **You** (subject to the **Excess**) the amount for which the **Claim** could have been so settled. **You** expressly agree **Our** liability in respect of such **Claim** shall then be at an end.
- (c) If **We** believe that the **Claim** will not exceed the **Excess**, **We** may instruct **You** to conduct the investigation, defence and settlement at **Your** expense. Should the **Claim** subsequently exceed the **Excess**, **We** agree to reimburse the reasonable **Costs and Expenses** incurred by **You** or pay on **Your** behalf any **Costs and Expenses above the Excess**.

5.20 Your Warranty

It is agreed between **You** and **Us** that the written **Proposal** provided by **You** forms the basis of this **Policy** and **You** warrant the truth of all statements made therein.

5.21 Words

Certain words in this **Policy** have a specific meaning. These words appear in bold and **You** will find the meaning

listed in Section 3 'Definitions' of this **Policy**. Words importing persons will include companies and other legal entities. The singular includes reference to the plural and vice versa, and reference to any gender includes all other genders.

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