

Employee Disputes Policy

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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.

Section 1: Coverage

In consideration of the payment of the premium to Us and in reliance on the written proposal and any other underwriting information provided, which will be deemed to be incorporated into and to be the basis of this Policy, We will indemnify You, subject to the Policy terms, as follows.

1.1 Your Liability

We will indemnify You for any Loss arising from a Valid Claim that You become legally liable to pay.

1.2 Costs and Expenses

We will pay the Costs and Expenses arising out of any Valid Claim covered by this Policy.

1.3 Limit of Liability

- (a) Our liability in respect of any one Claim, inclusive of Costs and Expenses, shall not exceed the Limit of Indemnity.
- (b) Our total aggregate liability during any one Period of Insurance for all Claims and Costs and Expenses shall not exceed the Limit of Indemnity.

1.4 Excess

- (a) In respect of each and every Claim the Excess must be paid by You. The Excess is inclusive of Costs and Expenses.
- (b) All Claims brought by the same Employee arising out of Interrelated Wrongful Acts shall be deemed to be one Claim, and only one Excess shall be payable.
- (c) Claims brought by more than one Employee arising out of Interrelated Wrongful Acts shall be deemed to be separate Claims, and a separate Excess is payable in respect of each Employee's Claim.

Section 2: Definitions

2.1 Claim means:

Any written or verbal communication (including notice of any proceedings, investigations or raised personal grievance) to You which alleges a Wrongful Act.

2.2 Conduct of the Claim means:

The investigation, defence, compromise or handling of the **Claim** in any manner whatsoever on **Your** behalf.

2.3 Costs and Expenses means:

That part of **Loss** consisting of reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred in the defence or investigation of **Claims** and any amount required to be paid as security for costs. **Costs and Expenses** do not include charges for time spent by **You**, **Your** directors or **Employees** or reimbursement of any form of remuneration for such people.

2.4 Employee means:

Any person who is or was (or who alleges that but for the **Wrongful Act** would have been) **Your** employee (as defined in the Employment Relations Act 2000). **Employee** does not mean any person who is or was a director, principal or partner of **Yours** or any person providing **You** with services for labour only under contract for services.

2.5 Excess means:

The excess specified in the **Schedule**.

2.6 Interrelated Wrongful Acts means:

All **Wrongful Acts** that have a common nexus of any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

2.7 Limit of Indemnity means:

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

2.8 Loss means:

Any amount **You** become legally obligated to pay an **Employee** on account of any **Claim** made during the **Period of Insurance**. Such **Claim** must be made against **You** for **Wrongful Acts** for which cover applies, including, but not limited to, damages, judgments, settlements and **Costs and Expenses**.

Loss does not include:

- (a) any amount for which **You** are absolved from payment;
- (b) taxes, fines or penalties imposed by law;
- (c) the multiple portion of any multiplied damage award or any punitive or exemplary damages;
- (d) any other amount which is uninsurable under the law of New Zealand;
- (e) any private mediator's or arbitrator's costs that may arise out of a contractual alternative dispute resolution provision.

2.9 Period of Insurance means:

The period specified in the **Schedule**.

2.10 Policy means:

This document, the **Schedule** and any endorsements issued by **Us**.

2.11 Retroactive Date means:

The date specified in the **Schedule**.

2.12 Schedule means:

The current schedule issued by **Us**.

2.13 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.

2.14 **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) arising out of **Wrongful Act** 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**.

2.15 **We or Us or Our** means:

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

2.16 **Wrongful Act** means:

Actual or alleged conduct of the following kind against an **Employee** by **You**, or by another **Employee** in the course of that other **Employee's** employment with **You**:

- (a) unjustifiable disadvantage, unlawful discrimination, wrongful unjustifiable demotion, or unjustifiable failure or refusal to promote;
- (b) actual or constructive termination of an employment agreement, in breach of the law;
- (c) misrepresentation or defamation;
- (d) the infliction of emotional distress;
- (e) harassment (sexual or racial or otherwise);
- (f) failure or refusal to hire a potential employee;
- (g) invasion or breach of the right of privacy as provided in the Privacy Act 1993.

2.17 **You or Your** means:

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

Section 3: Exclusions

We will not be liable for **Loss** on account of any **Claim** alleging or in respect of any claim under this **Policy** arising from:

3.1 **Bodily Injury**

Death or physical injury to the body, or any illness attributable to direct physical injury to the body.

3.2 **Defamation**

The publication of material known by **You** to be false or misleading or defamatory. This exclusion will not apply if **You** did not know (or could not reasonably be expected to have known) that the material was false or misleading or defamatory.

3.3 **Deliberate Act**

You deliberately committing a **Wrongful Act**.

3.4 **Employee Entitlements**

Liability for payment to any **Employee** of any amount which **You** are obligated (whether under any statute or any express or implied term of any employment agreement or otherwise) to pay prior to the **Wrongful Act** being committed.

3.5 **Employee Remuneration**

Liability for the payment of any remuneration or benefit to any **Employee** who has been reinstated to their former position after a **Wrongful Act**.

3.6 Fines and Penalties

Liability for the payment of fines or penalties (whether criminal, civil or pecuniary) imposed by law or for punitive or aggravated or exemplary or multiple damages or matters uninsurable under the laws of New Zealand.

3.7 Industrial Action

A **Wrongful Act** committed during any lockout, strike, picket, stand-down or suspension, or other industrial dispute.

3.8 Known Claims and Circumstances

- (a) Any **Claim** or circumstances made against or intimated to **You** prior to the commencement of the **Period of Insurance**;
- (b) Any **Claim** or circumstances notified under any previous **Policy**;
- (c) Any **Claim** or circumstances 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 against **You**.
- (d) Any **Claim** or circumstances arising from any litigation or inquiry that was either in progress or pending prior to the **Period of Insurance**.

3.9 Modifications to Workplace

Liability for the cost of physical modifications to **Your** workplace, or the cost of changes to workplace procedures.

3.10 Non-compliance

Non-compliance with any judgment, award, determination or demand against **You** issued or published by the Employment Relations Authority, Employment Court, Court of Appeal, Supreme Court, Human Rights Commission, Complaints Review Tribunal, Privacy Commission, or Labour Inspector employed by the Ministry of Business, Innovation and Employment or any other statutory body.

3.11 Nuclear

- (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;

3.12 Property Damage

Loss of or damage to tangible or intangible property.

3.13 Redundancy Compensation

Failure by **You** to pay adequate redundancy compensation or benefit to any **Employee** dismissed by reason of redundancy that the **Employee** was entitled to receive.

3.14 Retroactive Date

Your activities carried out 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**.

3.15 Statutory Liability

Any statute relating to workers compensation, accident compensation or occupational health and safety.

3.16 Territorial Limits

A **Wrongful Act** committed wholly outside New Zealand or to which the laws of New Zealand do not apply.

3.17 Terrorism

- (a) Death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with, any **Terrorism** regardless of any contributing cause or event.

- (b) 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 this exclusion.

3.18 War

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

Section 4: Conditions

4.1 Allocation of Costs

If **Costs and Expenses** are incurred both in respect of a **Claim** insured under this **Policy** and a matter which is not insured under this **Policy** then **We** shall be liable to pay only a fair proportion of such **Costs and Expenses**. In the event that **You** and **We** are unable to agree as to a fair proportion, then legal counsel, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion.

4.2 Breach of Policy

Where **Your** breach of any term 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.

4.3 Cancellation

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.

We may cancel this **Policy** after sending at least 30 days' notice to **You** in accordance with Conditions 4.10(b) and 4.10(c) (Notices by Us). **We** will refund on a pro rata basis the amount of any unexpired premium already paid.

4.4 Conduct of Claims

You must not make any admission or any decision that affects the **Conduct of the Claim**, or incur any **Costs and Expenses** in connection with without **Our** prior written consent.

We are entitled at any time to nominate a solicitor to act as **Your** solicitor and shall have total discretion as to the **Conduct of the Claim**, in **Your** name. 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 the solicitor retained by **Us** to act on **Your** behalf, in respect of such information.

If **We** believe that the **Claim** will not exceed the **Excess**, **We** may instruct **You** to assume responsibility for the **Conduct of the Claim** at **Your** expense. Should the **Claim** subsequently exceed the **Excess**, **We** agree to reimburse the reasonable **Costs and Expenses** incurred by **You** that exceed the **Excess**. **You** must advise **Us** as soon as the total costs of the **Claim** exceed the **Excess** or it becomes apparent that they are likely to do so.

4.5 Constructive Notice/No Waiver

- (a) Except as provided by statute, notice to any agent or broker or knowledge possessed by any agent, broker or other person will not constitute notice to **Us**.
- (b) The terms of this **Policy** will not be waived or changed, except by written agreement with **Us**.

4.6 Defence of Legal Proceedings

- (a) **We** will not require **You** to defend any legal proceedings against **You**, nor will **You** require **Us** to defend, on **Your** behalf, any legal proceedings unless a legal counsel (to be mutually agreed upon by **You** and **Us**) advises that such proceedings should be defended.
- (b) In formulating such advice, appointed 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 and Expenses** to be incurred in the defence and the prospects of **You** successfully defending the action. The cost of counsel's opinion will be treated as part of the **Costs and Expenses** of any **Claim**.

- (c) In the event that counsel advises that, having regard to all the circumstances, the matter 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.

4.7 Fraud

If any answers or statements in respect of any **Claim**, or in any information provided to obtain, amend or renew this insurance, are false in any way, **We** will not provide any indemnity to **You** under this **Policy**.

4.8 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**.

4.9 Material change

You will give immediate notice to **Us** of any material change to any of the facts or circumstances existing at the commencement of the **Period of Insurance**. **We** will be entitled to vary the **Policy** terms and/or charge an additional premium.

4.10 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**, will be deemed to be notice to each insured.
- (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, 3 business days after the date of posting.

4.11 Other Insurance

Upon giving notice of any **Claim**, **You** will 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.

4.12 Payment of Limit of Liability

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 **Our** proportion of **Costs and Expenses** incurred prior to the date of payment.

4.13 Policy disputes

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

4.14 Reasonable Precautions

You will take all reasonable precautions to:

- (a) avoid or prevent the happening of any circumstances that may give rise to a **Claim**; and
- (b) comply, and ensure that **Employees**, servants and agents comply, with all statutory obligations, by-laws or regulations imposed by a public authority for the safety of persons or property.

4.15 Reporting of Claims

Irrespective of the quantum, **You** must 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 make a **Claim** against **You**; or
- (c) any circumstances that a reasonable insured in **Your** position would have considered may give rise to a **Claim**. Where such notice is given to **Us** by **You**, any **Claim** that may subsequently be made against **You** shall be deemed to be a **Claim** made during the **Period of Insurance** in which the circumstances were first reported to **Us**.

Provided that in order to qualify as a **Claim** capable of being covered by this **Policy**, **Your** notice in writing must relate to a **Valid Claim** and be given during the **Period of Insurance** or within 28 days after its expiry.

4.16 Subrogation

- (a) **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 **Your** actual loss) and **You** will do everything necessary to secure and preserve such rights. This will include but not be limited to the execution of documents necessary to allow **Us** to take any legal action in **Your** name.
- (b) However, **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**.
- (c) 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 **Us** and **You** respectively. Any balance shall be paid to **You** in respect of the **Excess**.

4.17 Words

Certain words in this **Policy** have a specific meaning. These words appear in bold and **You** will find the meaning listed in Section 2 '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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