

Employers Liability 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 against any Valid Claim that You become legally liable to pay as:

- (a) **Damages** as a result of the Employee sustaining Personal Injury in New Zealand that arose out of or in the course of such Employee's employment in Your Business and for which the Employee is not covered under the Accident Compensation Act 2001; or
- (b) **Punitive and Exemplary Damages** as a result of the Employee sustaining Personal Injury in New Zealand that arose out of or in the course of such Employee's employment in Your Business and for which the Employee is eligible for compensation under the Accident Compensation Act 2001.

1.2 Defence Costs

In addition to the applicable Limit of Indemnity, We will pay the Defence Costs for any Valid Claim covered by this Policy.

Provided that:

- (a) Our maximum liability in the aggregate in respect of all Defence Costs during the Period of Insurance shall not exceed the amount of the Limit of Indemnity;
- (b) Upon payment by Us of the Limit of Indemnity in respect of any Claim, judgment or settlement, Our liability in respect of any further Defence Costs in connection with that Claim shall cease;
- (c) If a payment exceeding the Limit of Indemnity has to be made to dispose of a Claim, Our liability to pay Defence Costs in connection with that Claim shall be limited to such proportion of the Defence Costs as the Limit of Indemnity bears to the amount paid to dispose of the Claim.

1.3 Limit of Liability

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

1.4 Excess

You must pay the **Excess** in respect of each and every **Claim** inclusive of **Defence Costs**.

Section 2: Automatic Coverage Clauses

To be read in conjunction with the Coverage Clauses above, and subject to the **Policy** terms. The following sub-limits and **Excesses** apply unless there is a different sub-limit or **Excess** shown in the **Schedule**. The sub-limits are included in, are not in addition to, and may be less than the **Limit of Indemnity**.

2.1 Continuous Cover Clause

We will indemnify You for any **Claim** that would be covered under this **Policy** but is excluded by exclusion 4.9(c) (Known Claims and Circumstances), subject to the following additional conditions:

- (a) We were Your Employers Liability Insurer at the primary level under a policy ('the former policy') at the time when You first became aware of the circumstances that subsequently gave rise to the **Claim**; and
- (b) We continued without interruption as Your Employers Liability Insurer at the primary level from the time when You first became aware of the circumstances up until such time as the **Claim** was made against You and notified to Us; and
- (c) Our liability is limited to the amount for which We would have been liable at the time referred to in 3.1(a) (Claim) in accordance with the terms and conditions of the former policy; and
- (d) Our liability will be reduced by the amount that fairly represents the extent to which liability for the **Claim** could have been reduced had the circumstances been duly reported under the former policy.

2.2 Mergers and Consolidations

If the company named as the Named Entity in the **Schedule**:

- (a) is merged, amalgamated, or consolidated with or becomes a subsidiary company of another company; or
- (b) sells all or substantially all of its assets to another company;

then this **Policy** will be extended to insure the new company, provided that:

- (i) the operations and activities of the merged, amalgamated or consolidated company are the same as those undertaken by You as described in the **Schedule**; and
- (ii) You give Us notice that You wish to extend cover to the new company, within 30 days of the merger, amalgamation consolidation or sale; and
- (iii) We shall be entitled to vary the **Policy** terms, and/or charge an additional premium.

If the provisions of subparagraphs (i), (ii) and (iii) are not met, then the only cover available for any **Claim** in connection with any **Personal Injury** that has occurred prior to the date of the merger, amalgamation or consolidation will be for the Named Entity in the **Schedule**.

2.3 New Subsidiary Companies

This **Policy** is extended to insure a subsidiary company created or acquired by You during the **Period of Insurance** provided that:

- (a) the operations and activities of the new subsidiary company are the same as those undertaken by You described in the **Schedule**; and
- (b) You give Us notice that You wish to extend cover to the new subsidiary within 30 days of the acquisition or creation of the new subsidiary company; and
- (c) We will be entitled to vary the **Policy** terms, and/or charge an additional premium.

There is no cover for any **Claim** in connection with any **Personal Injury** that occurred prior to the date of the acquisition or creation of the subsidiary company.

2.4 Previous Subsidiaries

The definition of You, if a company, will include any entity that ceased to be a subsidiary before or during the **Period of Insurance**, but We will not pay on Your behalf any **Claim** arising out of **Personal Injury** occurring after it ceased to be a subsidiary, nor will We pay on Your behalf any **Claim** arising out of **Personal Injury** occurring before it became a subsidiary.

Section 3: Definitions

3.1 **Claim** means:

- (a) legal proceedings instituted and served upon **You**;
- (b) any threat or intimation that legal proceeding will be issued against **You**;
- (c) any circumstance that a reasonable insured in **Your** position would have considered may give rise to a demand for **Damages**.

3.2 **Conduct of the Claim** means:

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

3.3 **Damages** means:

Monetary compensation ordered to be paid or agreed to be paid pursuant to a judgment or settlement of any action brought in a New Zealand court in respect of **Personal Injury** to an **Employee**, but does not include any such monies payable pursuant to any remedy, relief or penalty provided in any statute of New Zealand, whether by way of damages, fine, reparation or other order.

3.4 **Defence Costs** means:

Reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred with **Our** prior written consent that:

- (a) relate directly to the **Conduct of the Claim**; or
- (b) are associated with **You** making an application to the Court to determine whether a **Personal Injury** is properly the subject of cover under the Accident Compensation Act 2001; or
- (c) is an amount **You** are required to pay as security for costs in any legal proceeding.

Defence Costs does not include charges for time spent by **Your** directors, officers, partners or **Employees** or reimbursement of any remuneration for such people.

3.5 **Employee** means:

Any person who is employed by **You** in connection with **Your Business** and in respect of whose remuneration **You** deduct PAYE tax at source.

3.6 **Excess** means:

The excess specified in the **Schedule**.

3.7 **Limit of Indemnity** means:

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

3.8 **Period of Insurance** means:

The period specified in the **Schedule**.

3.9 **Personal Injury** means:

Bodily injury, sickness, disease or infection, including death resulting therefrom, and shall include disability, shock, fright, mental anguish or mental injury.

3.10 **Policy** means:

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

3.11 **Punitive and Exemplary Damages** means:

Monies ordered to be paid as punitive or exemplary damages pursuant to a judgment of a New Zealand court in respect of a common law action brought by an **Employee** against **You** in relation to **Personal Injury**.

3.12 **Retroactive Date** means:

The date specified in the **Schedule**.

3.13 Schedule means:

The current schedule issued by **Us**.

3.14 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.

3.15 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 the **Policy's** expiry; and
- (c) arising out of any act, error or omission or conduct in connection with **Your 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**.

3.16 We or Our or Us means:

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

3.17 You, Your or Yours means:

The entity specified in the **Schedule** and if **You** are a company it includes **Your** directors and any subsidiaries and their directors, officers or **Employees**, but only while the person is acting within the scope of their duties in such capacity and does not extend to include any person or **Employee** who is bringing a **Claim**.

3.18 Your Business means:

The business and undertakings, as defined in the **Schedule**.

Section 4: Exclusions

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

4.1 Accident Compensation Act 2001

For compensation that is available under the Accident Compensation Act 2001 or would have been available under that Act, except for **Your** status as an exempt employer under that Act.

4.2 Asbestos

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

4.3 Date Recognition

Arising directly or indirectly out of or in connection with the failure or inability of:

- (a) any electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device; or
 - (b) any similar device, or media or systems used in connection with any of them;
- whether **Your** property or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date including but without being limited to any failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:
- (i) anything referred to in 4.3(a) or 4.3(b) recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time; or
 - (ii) the operation of any command or logic that has been programmed or incorporated into anything referred to in 4.3(a) or 4.3(b) above.

4.4 Defamation

For liability based on or in any way arising out of a **Claim** based on defamation or injurious falsehood.

4.5 Dishonesty and Fraud

Alleging, resulting from or contributed to by any dishonest, fraudulent, criminal or malicious act, error or omission of **Yours**.

4.6 Employment Disputes

For liability in connection with:

- (a) an employment relationship problem or for an **Employee** or former **Employee** seeking compensation under the Employment Relations Act 2000;
- (b) unpaid wages or other benefits due to any **Employee**.

4.7 Health and Safety in Employment Act

As a result of an **Employee** sustaining **Personal Injury** which arose out of **Your** failure to comply with any improvement, prohibition or suspension notice issued to **You** or **Employees** under the Health and Safety in Employment Act 1992 or any amending or replacing legislation.

4.8 Intentional Torts

Alleging, based on or in any way arising out of intentional wrongdoing or conscious recklessness on **Your** part, including (but not limited to) intentional infliction of harm, trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse.

4.9 Known Claims and Circumstances

- (a) Made against, or intimated to, **You** prior to the commencement of the **Period of Insurance**; or
- (b) Or notified under any previous **Policy**; or
- (c) Arising out of or connected with any facts or circumstances that:
 - (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**.

4.10 Legal Jurisdiction

- (a) In respect of legal action or litigation first brought in a court outside New Zealand; or
- (b) In respect of any legal action or litigation brought in a court within New Zealand to enforce a judgment handed down in a court outside New Zealand 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 New Zealand.

4.11 Nuclear Fuel/Weapons

For **Personal Injury** directly or indirectly caused by or contributed to or arising from:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion combustion shall include any self-sustaining process of nuclear fission;
- (b) nuclear weapons material.

4.12 Other Activities

As a result of **You** directing an **Employee** to undertake activities otherwise than in the course of or in connection with the usual activities of **Your Business**.

4.13 Punitive and Exemplary Damages, Fines, Wages and Contractual Obligations

- (a) For **Punitive and Exemplary Damages** except by way of a **Claim for Punitive and Exemplary Damages** in respect of **Personal Injury** pursuant to clause 1.1 (b) (**Your Liability**) of this **Policy**; or
- (b) For fines, penalties, reparation, court costs, prosecution witness expenses or solicitors' costs ordered to be paid by **You**; or
- (c) For unpaid wages or other benefits due to any **Employee**; or
- (d) For any contractual obligation in the nature of a performance warranty or **Claim** for liquidated damages.

4.14 Retroactive Date

That arose out of any event, circumstances or accident that occurred prior to the **Retroactive Date**.

4.15 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.

This **Policy** also excludes **Personal Injury** 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 or suppressing **Terrorism** or in any way relating to the above exclusion.

4.16 War

For **Personal Injury** arising out of or in consequence of war, invasion, act of foreign enemy, 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 5: Conditions

5.1 Allocation of Costs

If **Defence Costs** 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 **Defence Costs**. 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.

5.2 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 Conditions 5.11 (b) and 5.11 (c) (Notices by Us). **We** will refund on a pro rata basis the amount of any unexpired premium already paid.

5.3 Conduct of Claims

- (a) **You** must not admit liability for or make any decision that affects the **Conduct of the Claim**, or incur any costs or expenses in connection therewith without **Our** prior written consent.
- (b) **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 solicitors retained by **Us** to act on **Your** behalf, in respect of such information.
- (c) 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 **Defence Costs** 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.

5.4 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**.

5.5 Cross Liability

- (a) If more than one legal entity is insured under this **Policy**, each entity is covered in the same manner as though **We** had issued them with a separate **Policy**.
- (b) Notwithstanding clause 5.5(a) where the insured named in the **Schedule** is a company with a single director the knowledge of the sole director shall be imputed to the insured named in the **Schedule**.
- (c) If there is a **Claim** against more than one entity in respect of the same **Claim**, only one **Excess** and one **Limit of Indemnity** will apply, regardless of the number of entities indemnified. Where the **Limit of Indemnity** is insufficient to fully indemnify all insured entities, it will apply in priority to the named insured.

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- (d) The coverage under this Condition does not apply to entities which are insured under this **Policy** by Definition 3.17 (You, Your or Yours).

5.6 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.

5.7 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**.

5.8 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 1985 (or any statutory amendment or re-enactment of the section or Act), **We** will indemnify **You** for the cost of that tax. The indemnity under this clause is in addition to the applicable **Limit of Indemnity**.

5.9 Legislation Changes

Any reference to any Act of Parliament or subordinate rules referred to in this **Policy** includes any amendments made or substitutions to that law.

5.10 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.

5.11 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.
- (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.

5.12 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.

5.13 Payment of Limit of Liability

At any time, **We** will be entitled to pay to **You** the balance of indemnity available up to the applicable **Limit of Indemnity**, or such lesser sum for which the claim can be settled. Upon such payment, **We** will have no further liability to **You** under this **Policy**, except for **Costs and Expenses** already incurred up until the time of payment.

5.14 Policy Disputes

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

5.15 Reasonable Precautions

You shall take all reasonable precautions to:

- (a) prevent **Personal Injury**; 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.

5.16 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 circumstance that a reasonable insured in **Your** position would have considered may give rise to a **Claim**. Where **You** have given **Us** such notice, any **Claim** that may subsequently be made shall be deemed to be a **Claim** made against **You** during the **Period of Insurance**.

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 30 days after its expiry.

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) However, **We** shall not exercise any subrogated rights of recovery against any of **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 **Us** and **You** respectively. Any balance shall be paid to **You** in respect of the **Excess**.

5.18 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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