

# INDUSTRIAL SPECIAL PLANT (ISP)

New Zealand Policy Wording



» Experts in  
**MOBILE PLANT INSURANCE** »

**UANZ**

# INDEX

## PART 1

### GENERAL SECTION

A. Important Notices	03
B. General Definitions	04
C. General Exclusions for Sections 1 to 6	06
D. Exclusions for Sections 1 to 5	07
E. General Conditions for Sections 1 to 7	08

### SECTION 1 - DAMAGE

A. The Cover	12
B. The Indemnity	12
C. Additional Benefits	12

### SECTION 2 - HIRED-IN PLANT (LIABILITY TO OWNER)

A. The Cover	13
B. The Indemnity	13
C. Additional Benefits	13
1. On-Hire on Dry Hire Terms	13
2. Legal Costs	13
D. Definitions for Section 2	13

### SECTION 3 - ADDITIONAL BENEFITS

#### Additional Benefits applying to Sections 1 and 2 automatically

1. Damage to lifted goods	14
2. Multiple Crane Operation	14
3. Expediting Costs	14
4. Recovery costs (no Damage)	14
5. Recovery costs (Damage)	14
6. Employees' property damage	15
7. Indemnity to hirer – Wet Hire	15
8. Appreciation in value	15
9. Extra costs of reinstatement	15

#### Additional Benefit applying to Section 1 automatically and to Section 2 only if shown in the Schedule

10. Additions/deletions of machines	15
-------------------------------------	----

#### Additional Benefits applying to Sections 1 or 2 only if shown in the Schedule

11. Agreed Value	16
12. Market Value Plus	16
13. Owner's protection – excluding Dry Hire	16

14. Owner's protection plus – including Dry Hire and Wet Hire	16
15. Hired-out plant – damage waivers	17

### SECTION 4 - FINANCIAL PROTECTION

A. The Cover	17
B. The Indemnity (Cover Options 1 - 5)	17
C. Definitions for Section 4	18

### SECTION 5 - BREAKDOWN

A. The Cover	18
B. The Indemnity	18

### SECTION 6 - ROAD RISK

A. The Cover	19
B. Limits of Indemnity	19
C. Additional Benefits	19
1. Defence Costs	19
2. Extended Road Risk cover for drivers and passengers	19
3. Extended Road Risk cover for substitute vehicles	19
4. Extended Road Risk cover for vehicle additions and deletions	19
5. Extended Road Risk cover for conditionally/temporarily registered vehicles	20
6. Cover for principals	20
7. Cover as principal	20
8. Hired-out Road Vehicles – damage waivers	20
D. Exclusions	20

### SECTION 7 - COMBINED LIABILITY

#### Sub-Section 1

A. The Cover	22
B. Limits of Indemnity	22
C. Automatic Additional Benefits	23
D. Definitions	25
E. Exclusions	27
F. Conditions	29

#### Sub-Section 2

A. The Cover	30
B. Limits of Indemnity	31
C. Automatic Additional Benefits	31
D. Definitions	31
E. Exclusions	32
F. Conditions	33

**Sub-Section 3**

A. The Cover	35
1. Cover A	35
2. Cover B	35
B. The Indemnity	35
C. Definitions	35
D. Exclusions	36
E. Conditions	37

## GENERAL SECTION

In consideration of the Insured's payment of the Premium to the Insurer and in reliance on the proposal and declarations and any other underwriting information provided by the Insured, which are incorporated in and are the basis of the Policy, the Insurer agrees to indemnify the Insured in accordance with the terms of the Policy.

### A. IMPORTANT NOTICES

#### 1. The Policy: Contents and Structure

- (a) The terms of the contract of insurance between the Insurer and the Insured are recorded in the Policy, which is made up of:
- (1) the Schedule;
  - (2) the parts of the General Section and other Sections in this document indicated by the Schedule as being included in the contract of insurance;
  - (3) the Endorsements; and
  - (4) the Important Notices in the Proposal.
- (b) Sections 1, 2, 4, 5, 6 each contain at least two sub-sections:
- (1) The Cover - which defines what things and events are insured; and
  - (2) The Indemnity or Limits of Indemnity - which explains what and how much the Insurer will pay.
- (c) Section 7 contains three Sub-Sections, 7.1 General Liability, 7.2 Statutory Liability and 7.3 Employers' Liability (Claims Made), each of which contains five sub-sections:
- (1) The Cover;
  - (2) Limits of Indemnity;
  - (3) Definitions;
  - (4) Exclusions; and
  - (5) Conditions.
- (d) Section 3 contains Additional Benefits relevant to Sections 1 and 2.
- (e) The Insurer shall not be liable to indemnify the Insured under Section 4 (Consequential Loss) unless the Insured concurrently holds Damage cover under Section 1, Breakdown Damage cover under Section 5 or another contract of insurance providing cover equivalent to Section 1 or Section 5.
- (f) The Insurer shall not be liable to indemnify the Insured under a Section that the Schedule does not show is included in the Policy.

#### 2. The Insured's Duty of Disclosure

- (a) When applying for this insurance, each person proposing to be the Insured under the contract of insurance has a duty to disclose and provide to the Insurer before entering into the contract of insurance

all information that would influence the judgment of a prudent insurer:

- (1) in determining whether or not to accept or continue the risk upon substantially the same terms as; and/or
  - (2) in fixing the premium for or any excess under; the contract of insurance.
- (b) The duty of disclosure continues after the contract of insurance has been entered into: the Insured must disclose to the Insurer during the Period of Insurance and at each renewal of the insurance any material change or alteration of risk in the Insured, the Business or the Machines.
- (c) If the Insured or its representative is not sure whether or not a matter is required to be disclosed, it is the Insured's or its representative's responsibility to seek clarification from the Insurer.
- (d) The Insurer may avoid the contract of insurance from the date of commencement (i.e. treat the contract of insurance as if it had never existed and is of no effect) if the Insured:
- (1) did not disclose; or
  - (2) provided substantially incorrect;

information of the kind described in (a) that was material to the Insurer when applying for the insurance or its renewal or at any time during the Period of Insurance.

#### 3. Time limits in calculation of entitlements in Sections 2 and 4

Before there is any entitlement to indemnity for Hiring Charges in Section 2 (Hired-In Plant) and for Consequential Loss in Section 4 (Financial Protection) the period of days of continuous prevention of or interference with normal use of the Machine shown in the Schedule must elapse following the Damage or Breakdown Damage.

#### 4. Safety Precautions and Procedures

- (a) This Policy concerns machinery whose operation is hazardous. General Conditions E.2, E.3 impose obligations on the Insured, its Employees and agents that are conditions precedent to the Insurer's acceptance of liability to indemnify under this Policy, including an obligation to comply strictly with:
- (1) manufacturers' and distributors' recommendations and guidelines; and
  - (2) systems and procedures imposed or recommended by law, international standards, New Zealand Standards and industry standards;
- for servicing, maintaining, using and operating Machines.
- (b) If Damage results from a failure to comply with the obligations referred to in General Condition E.2, the Insurer may be entitled to refuse to pay the indemnity against that Damage.

- (c) Some Exclusions do not apply if the Insured satisfies the Insurer that the Insured has complied with the recommendations, guidelines, systems and procedures and taken steps to avoid Damage occurring.

## 5. Interests of Third Parties

The interests of third parties (e.g. financiers, lessors, etc.) in Machines are not covered by the Policy (except hirers, under Additional Benefits 7 and 15 in Section 3). However, if in the Proposal the Insured has identified third party interests to be covered and they are noted as such in the Schedule, they may have rights under Sections 1 to 5.

## 6. Dispute resolution

The Insurer and UAA pride themselves on being reputable organisations and strive for excellence in their service standards to their customers. Occasionally there may be an aspect of the Insurer's or UAA's service or a decision by them about which an Insured may wish to raise a complaint. Any such complaints may be addressed to:

The Complaints Officer

QBE Insurance (Australia) Limited

PO Box 44

Auckland 1140

The Insurer operates an internal and external dispute resolution process. A brochure on the dispute resolution process may be found on the Insurer's website:

<http://www.qbe.co.nz/Claims/Dispute-Handling-Process/Insurance.html>

The Insurer's external dispute resolution provider is Financial Services Complaints Limited (FSCL).

## B. GENERAL DEFINITIONS FOR SECTIONS 1 TO 6

**Breakdown Damage** means the sudden and unexpected breaking, distortion, seizing, failure or breakdown of a mechanical, electrical or electronic part of a Machine:

1. occurring while the Machine is in operation in the course of the Business;
2. caused directly and solely by a defect of the part; and
3. preventing normal use of the Machine.

**Business** means the business of the Insured as shown in the Schedule.

**Capacity** in relation to a Machine is determined by factors including:

1. recognised standards;
2. legislation and regulations;
3. manufacturers' recommendations;
4. load charts;

5. Configuration of the Machine.

**Company** means any legal entity other than a natural person.

**Configuration** of a Machine is determined by a combination of factors including:

1. the length and angle of any jib or boom;
2. the weight of the load;
3. the distance between the load and the Machine;
4. the nature and incline of the surface on which the Machine is standing or resting;
5. the placement and extension of outriggers;
6. the weather conditions;
7. the speed of lifting, lowering, luffing or slewing;
8. counterweighting.

**Damage** means:

1. sudden and unexpected physical loss, damage or destruction of a Machine, but excludes breaking, distortion, seizing, failure or breakdown of a part of a Machine caused by a defect of the part (whether Breakdown Damage or otherwise); or
2. permanent loss by theft.

**Dangerous goods** means any substance

1. with one or more of the following intrinsic properties:
  - (a) explosiveness,
  - (b) flammability,
  - (c) a capacity to oxidise,
  - (d) corrosiveness,
  - (e) toxicity (including chronic toxicity),
  - (f) eco toxicity, with or without bioaccumulation; or
2. which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph 1.

**Defence Costs** means in Section 6 the reasonable and properly incurred legal costs and expenses of defending against a claim against the Insured for Legal Liability.

**Dry Hire** means the hire of a Machine where the person or Company hiring out the Machine does not provide any person involved in the operation of the Machine.

**Employee** means a person who, during the Period of Insurance and in the ordinary course of the Business, is:

1. employed by an Insured under a contract of service;
2. apprenticed to an Insured;
3. labour hire personnel engaged by an Insured;
4. deemed to be an employee or worker of an Insured under workers' compensation or similar legislation; or
5. a director or partner of an Insured while performing employee duties.

**Endorsement** means any endorsement shown in the Schedule under the heading 'Clauses'.

**Excess** means the amount stated in the Schedule for a Machine, a Section or an Additional Benefit that:

1. the indemnity shall exceed before the Insurer shall be liable to pay the indemnity; and
2. shall:
  - (a) for Sections 1 to 5, be deducted from the indemnity payable by the Insurer;
  - (b) for Section 6:
    - (1) be paid to the Insurer by the Insured.

**Insured** means those named in the Schedule as the Insured.

**Insurer** means QBE Insurance (Australia) Limited. ABN 78 003 191 035.

**Internet Operations** means:

1. use of electronic mail or messaging systems by an Insured or an Employee, including part-time and temporary staff and others within an Insured's Business or others communicating with an Insured's Business by electronic mail or messaging;
2. access through an Insured's network to the world wide web or a public internet site by an Insured or an Employee, including part-time and temporary staff, contractors and others within an Insured's Business;
3. access to an Insured's intranet (internal company information and computing resources) which is made available through the world wide web for an Insured's customers or others outside an Insured's Business; and
4. operation and maintenance of an Insured's web site.

**Legal Costs** means in Section 2:

1. the Insured's reasonable and properly incurred legal costs and expenses of defending against a claim of Liability to Owner; and
2. the legal costs and expenses of a claim for Liability to Owner against the Insured incurred by a person or Company other than:
  - (a) the Insured; or
  - (b) an Employee or a director or partner of the Insured;

that the Insured is liable to pay.

**Legal Liability** means an Insured's liability at law to pay compensation and legal costs to a person or Company other than an Insured.

**Limit Any One Loss** means the amount stated in the Schedule as 'Limit Any One Loss' for a Section.

**Machine** means an item of machinery identified in the Schedule for the purposes of one or more of Sections 1 to 5 only, including any attachment acquired by the Insured with or for the Machine that:

1. is identified in the Schedule;

2. is permanently attached to the Machine; or
3. has a Market Value at the commencement of the Period of Insurance (or at the date on which, during the Period of Insurance, the Machine was added to the Schedule) no greater than NZD 10,000 or 10% of the Sum Insured, whichever is the lesser.

**Market Value** means the market value in the Insured's local area taking into account, among other things, depreciation and wear and tear, but excludes stamp duty on transfers, registration and dealer warranty costs and charges.

**Motor Vehicle** means:

1. a motor vehicle intended to be propelled on wheels or self-laid tracks by means other than human or animal power; and
2. a trailer or vehicle being towed or becoming detached while being towed by a motor vehicle;

but excludes rail and tram rolling stock.

[**Note:** a Machine can also be a Motor Vehicle.]

**North America** means:

1. the United States of America or Canada; and
2. any state or territory incorporated in or administered by or from the United States of America or Canada.

**Occurrence** means:

1. a single event;
2. a series of events attributable to the same single source or cause; or
3. continual or repeated exposure to substantially the same general conditions.

**Overloading** means:

1. in relation to a Machine being a crane or being engaged in a lifting operation:
  - (a) lifting, carrying, moving or lowering; or
  - (b) attempting to lift, carry, move or lower;
 

a load that is or becomes greater than the Machine's Capacity at any time during the lifting operation, having regard to the Machine's Configuration;
2. in relation to all Machines:
 

placing on the Machine a load heavier or larger than allowed by law or the Machine's specifications.

**Period of Insurance** means the period of cover of the contract of insurance as shown in the Schedule.

**Personal Injury** means:

1. bodily injury death, sickness, disease, illness, physical disablement, shock, fright, mental anguish or mental injury;
2. false arrest, false imprisonment, wrongful detention or malicious prosecution;
3. wrongful entry or wrongful eviction;

4. publication or utterance of a libel, slander or other defamatory or disparaging material; or
5. assault or battery not committed by or at the direction of an Insured, except if reasonably committed for the purpose of preventing or eliminating danger to persons or property;

in each case both unintended and unforeseen by the Insured.

**Policy** means:

1. the Schedule;
2. the parts of the General Section and other Sections of this document that the Schedule shows are included in the contract of insurance;
3. the Endorsements; and
4. the Important Notices in the Proposal.

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste materials. Waste includes material to be recycled, reconditioned or reclaimed.

**Premium** means the amount that the Insurer shall charge for insurance under this Policy including any amounts for GST.

**Property Damage** means:

1. physical damage, loss or destruction of tangible property, including resultant loss of use of that property; or
2. loss of use of tangible property that has not been physically damaged, lost or destroyed;

that is both unintended and unforeseen by the Insured.

**Proposal** means the proposal for this contract of insurance.

**Road Vehicle** means:

1. a Motor Vehicle that is both:
  - (a) registered for use as a motor vehicle as required by law; and
  - (b) identified in the Schedule; or
2. a trailer, that is both:
  - (a) being towed or becomes detached while being towed by a Motor Vehicle registered for use as a motor vehicle and identified in the Schedule; and
  - (b) itself registered for use as a vehicle as required by law.

**Schedule** means the schedule for this contract of insurance.

**Sum Insured** means the maximum amount payable for indemnity, being:

1. for Sections 1, 2, 3 and 5: the amount stated in the Schedule for a Machine;
2. for Section 4: the amount stated in the Schedule for a Cover Option;

3. for Section 6: the amount stated in the Schedule for the Section;
4. for an Additional Benefit: the amount for the Additional Benefit stated in the Schedule or in the Additional Benefit itself.

**Territorial Limits** means New Zealand.

**Tool of Trade** means, in relation to the use or operation of a Road Vehicle or Motor Vehicle, any function for which it is designed other than road transport or use or operation primarily as a Road Vehicle or Motor Vehicle. (Such Tool of Trade functions include but are not limited to lifting, lowering, carrying other than road transport, grading, levelling, scraping, digging, shovelling, bulldozing, pumping, spraying, discharging, tipping, crushing, chipping, mulching and mixing other than mixing during road transport.)

**UAA** means the Insurer's agent: ***Underwriting Agencies of New Zealand Limited***.

**Watercraft** means a thing intended to float, submerge or move in, on or under water.

**Wet Hire** means the hire of a Machine where the person or Company hiring out the Machine provides a person to operate the Machine.

## **C. GENERAL EXCLUSIONS FOR SECTIONS 1 TO 6**

1. The Insurer shall not indemnify the Insured against any loss, Damage or liability caused directly or indirectly by, arising from or in connection with:
  - (a) sonic pressure waves in connection with aircraft and other aerial devices;
  - (b) radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component;
  - (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel (such combustion including any self-sustaining process of nuclear fission and/or fusion);
  - (d) nuclear weapons material;
  - (e) war, invasion, acts of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power;
  - (f) expropriation including lawful seizure, resumption, confiscation, nationalisation, destruction or damage to property by or under the order of any government or public or local authority;
  - (g) looting, sacking or pillaging following any events stated in (e) or (f) above;
  - (h) any business activities other than the Business;
  - (i) any:
    - (1) act, including the use of force or violence (or threat of force or violence), by any person or

group of people acting alone or on behalf of or in connection with any organisation or government that is done for political, religious, ideological or ethnic reasons with the intention to influence any government or put the public or any section of the public in fear; or

- (2) any action in controlling, preventing, suppressing, retaliating against or responding to any act referred to in (1) above.
2. The Insurer shall not indemnify the Insured against anything in respect of which the Insured is entitled to indemnity under another contract of insurance that is required to be effected by or under a law in New Zealand.
3. The Insurer shall not indemnify the Insured against damages, penalties or interest for delay or detention.

#### **D. GENERAL EXCLUSIONS FOR SECTIONS 1 TO 5**

1. The Insurer shall not indemnify the Insured against:
  - (a) any loss, damage, liability or costs caused directly or indirectly by, arising from or in connection with:
    - (1) use of a Machine for an unlawful purpose, unless the Insured proves that the Insured was unaware and could not reasonably have been aware of such use;
    - (2) operation of a Machine by any person:
      - (A) not qualified, suitably licensed or experienced;
      - (B) not licensed, holding an improperly obtained licence or not complying with licence conditions; or
      - (C) suffering from a physical or mental impairment of ability to operate the Machine, unless the Insured proves that the Insured:
      - (D) did not consent to the Machine being operated by that person; or
      - (E) did not breach General Condition E.2(d) and was unaware and could not reasonably have been aware of the matters in (A), (B) and (C) above;
    - (3) operation of a Machine by any person:
      - (A) under the influence of or affected by drugs or alcohol; or
      - (B) with a level of drugs or alcohol in the breath, blood or urine in excess of that permitted by law to operate a Machine or drive a motor vehicle;

unless the Insured proves that the Insured:

    - (C) did not consent to the Machine being operated by that person; or

- (D) did not breach General Condition E.2(d) and was unaware and could not reasonably have been aware of the matters in (A) and (B) above;
- (4) deliberate or reckless Overloading of a Machine, whether or not with an Insured's knowledge;
- (5) deliberately or recklessly incorrect loading of a Machine, whether or not with an Insured's knowledge;
- (6) operation of a Machine while its load-measuring instruments or limiters are defective, inoperative or turned off, whether or not with an Insured's knowledge;
- (7) failure of:
  - (A) an Insured;
  - (B) a director or partner of an Insured or an Employee; or
  - (C) a person engaged in the operation of the Machine;
 

to service, maintain, use or operate the Machine strictly in compliance with systems and procedures imposed or recommended by law, International Standards, New Zealand Standards, industry standards and manufacturers' and distributors' recommendations or guidelines, whether or not with an Insured's knowledge;
- (8) acts or omissions of:
  - (A) an Insured;
  - (B) a director or partner of an Insured or an Employee; or
  - (C) a person engaged in the operation of the Machine;
 

with the intention of causing, or with reckless disregard of the risk of causing, injury or damage to person or property, whether or not with an Insured's knowledge;
- (9) lack of, inadequate or incorrect lubricant, coolant, oil or other dry or liquid substance, unless caused by Damage to a Machine, whether or not with an Insured's knowledge;
- (10) tests or experiments imposing abnormal operating conditions on a Machine, whether or not with an Insured's knowledge;
- (11) defects in design that were already known to the Insured at the time when the Damage occurred;
- (12) use of a Machine that:
  - (A) has not been commissioned as a commercially operating machine;
  - (B) is a prototype or experimental machine; or



- (C) is being developed or is still in the course of development;
- (b) physical Damage or destruction of:
- (1) a safety or protective device caused by the operation of such safety or protective device;
  - (2) tyres caused by the application of brakes or wearing, bursting, cutting or puncturing, but not puncturing by a static object lying on or protruding from the ground;
  - (3) batteries caused by a defect in the batteries, unless the defect was caused by Damage to a Machine;
  - (4) foundations or masonry;
  - (5) tools, cutting edges, drill bits, moulds, patterns, non-metallic linings, pulverising, hammering or crushing surfaces, flexible pipes, trailing cables, driving belts or bands, and any parts requiring regular periodic replacement;
- (c) physical Damage or destruction of, or any loss from or liability or costs for physical damage or destruction of, any part of a Machine caused by:
- (1) the application of a tool or process to the part during inspection, maintenance, servicing, modification or repair;
  - (2) scratching or chipping of painted or polished surfaces;
- (d) loss of a Machine or any part thereof caused by or arising from the exercise by another of a right or purported right to ownership or possession of the Machine or any part thereof;
- (e) any loss, Damage, liability or costs in respect of which an Insured has released or waived any Insured's right to recovery, indemnity or contribution from another except to the extent that Additional Benefit 7 (Indemnity to hirer – Wet Hire) or Additional Benefit 15 (Hired-out plant – damage waivers) in Section 3 applies to such release or waiver;
- (f) any legal liability of whatsoever nature other than as provided in Section 2 and Additional Benefit 7 (Indemnity to hirer – Wet Hire) or Additional Benefit 15 (Hired-out plant – damage waivers) in Section 3.
2. In the event of physical Damage or destruction of a part of a Machine caused by:
- (a) wear and tear, corrosion, rusting, erosion, fatigue or gradual deterioration of the part;
  - (b) breaking, distortion, seizing, burning, failure or breakdown of the part; or
  - (c) Breakdown Damage of the part; the Insurer shall not indemnify the Insured against:
  - (d) the physical damage or destruction of the part;
  - (e) any loss, Damage, liability or costs caused directly or indirectly by or arising from or in connection with physical Damage or destruction caused by the physical Damage or destruction of the part to any other part of the Machine, unless the Insured proves that:
    - (1) no Employee or person who was engaged in the operation, maintenance or servicing of the Machine nor any Insured was aware and could reasonably have been aware of such cause;
    - (2) the Insured took reasonable steps to avoid, prevent, detect and discover such cause;
    - (3) the Machine was being operated by a suitably licensed, qualified and experienced operator at the time when the Damage or destruction occurred; and
    - (4) such cause was not reasonably capable of being discovered or revealed by or in the course of inspection, maintenance or servicing of the Machine that was carried out or should have been carried out according to:
      - (A) manufacturer's and distributor's recommendations or guidelines; and
      - (B) systems and procedures imposed or recommended by law, International Standards, New Zealand Standards and Industry Standards.
3. Other than as provided in Additional Benefits 1 (Damage to lifted goods), 6 (Employees' property damage), 7 (Indemnity to hirer – Wet Hire) and 15 (Hired-out plant – damage waivers) in Section 3:
- (a) the Insurer shall not indemnify any person or Company other than an Insured having an interest in a Machine unless the person or Company is named in the Schedule as an interested party; and
  - (b) as against any interested party making a claim, the Insurer, without limiting any other defence, shall be entitled to rely on any defence that the Insurer has against an Insured.

## **E. GENERAL CONDITIONS FOR SECTIONS 1 TO 7**

### **1. Conditions precedent**

General Conditions E.2, 3, 12, 13 and 14 are conditions precedent to the Insurer's acceptance of liability to indemnify under this Policy and, in the event of non-compliance, the Insurer shall be entitled to avoid this Policy or reduce its liability to the maximum extent permitted by law.

## 2. Compliance with recommendations, guidelines, standards and legislation

The Insured shall at all times:

- (a) service, maintain, use and operate the Machines and any vehicles strictly in accordance with:
  - (1) manufacturers' and distributors' recommendations and guidelines; and
  - (2) systems and procedures imposed or recommended by law, International Standards, New Zealand Standards and industry standards;
- (b) ensure that anyone servicing, maintaining, using, or engaging in the operation of the Machines and any vehicles complies strictly with:
  - (1) manufacturers' and distributors' recommendations and guidelines; and
  - (2) systems and procedures imposed or recommended by law, International Standards, New Zealand Standards and industry standards;
- (c) not permit unqualified or inadequately experienced persons to engage in the operation or use of the Machines and any vehicles;
- (d) ensure that anyone operating or using a Machine, Road Vehicle or Motor Vehicle is:
  - (1) qualified and adequately experienced to operate or use it;
  - (2) provided with suitable training in its operation or use before operating or using it; and
  - (3) not suffering from a physical or mental impairment of ability to operate or use it.

## 3. Reasonable Precautions

The Insured shall at all times take all reasonable precautions to prevent loss, damage, injury or liability.

## 4. Claims procedure

- (a) As soon as an Insured becomes aware of anything that gives rise to or could give rise to a claim under the Policy, the Insured shall:
  - (1) immediately notify UAA by telephone;
  - (2) take all precautions to prevent or reduce Damage, Breakdown Damage, Property Damage, Personal Injury, Consequential Loss, Liability to Owner or Legal Liability (including carrying out necessary minor repairs without first obtaining the approval of the Insurer);
  - (3) retain any damaged Machine or vehicle or parts thereof; and
  - (4) provide to UAA full details of the claim in writing within three days.
- (b) Any notice, process or summons to be served by the Insured on the Insurer may be served on UAA, which is authorised to enter an appearance on the Insurer's behalf.

## 5. Co-operation in claims

The Insured shall:

- (a) notify UAA as soon as possible after the occurrence of Damage, Breakdown Damage, Property Damage or Personal Injury that might give rise to a claim under the Policy;
- (b) at its own expense provide to UAA and its agents (including assessors, investigators and legal representatives) all cooperation and assistance required by UAA, including but not limited to providing or making available:
  - (1) all information and documents:
    - (A) to establish title, ownership and right to possession of property, including but not limited to Machines and Motor Vehicles;
    - (B) to establish the cause of the Damage, Breakdown Damage, Consequential Loss, Property Damage or Personal Injury;
    - (C) relating to the Insured's claim for or entitlement to indemnity, including but not limited to quantification of the indemnity;
    - (D) as to the servicing, maintenance and operation of any equipment, including but not limited to Machines and motor vehicles;
    - (E) constituting any contract or arrangement entered into by or on behalf of an Insured, including but not limited to contracts of hire;
    - (F) to defend against any claim of Liability to Owner or Legal Liability made against the Insured; and
  - (2) all relevant persons for interviews, statements, assistance and the provision of documents and information;
- (c) at its own expense preserve and protect against Damage or loss all property, documents and records relevant to a potential or actual claim under the Policy.

## 6. Fraud / Utmost good faith

- (a) The Insured shall at all times comply with the Insured's duty of utmost good faith and shall not provide false or misleading information to the Insurer or UAA.
- (b) The Insured shall answer truthfully, honestly and with due diligence any requests for information by the Insurer or UAA.

## 7. Defence of claims against the Insured

- (a) If a claim for Liability to Owner under Section 2 or for Legal Liability under Section 6 is made against the Insured, the Insurer shall have the right but not the obligation to:
  - (1) investigate the claim;
  - (2) instruct lawyers to advise on the claim;

- (3) instruct lawyers to represent the Insured;
  - (4) instruct lawyers to conduct the Insured's defence;
  - (5) negotiate settlement of the claim; and
  - (6) direct settlement of the claim.
- (b) An Insured shall not make any offer, payment, admission or settlement, resolve, assume any obligation, consent to any order, or incur any costs or expenses in relation to a claim against an Insured without the Insurer's prior written consent.

## 8. Basis of the Sum Insured

(See also General Condition F.9 (Premium Adjustment)).

The Sum Insured for Sections 1, 2 and 5 shall be the Market Value at the commencement of the Period of Insurance, which the Insured shall declare to the Insurer at that time.

## 9. Premium adjustment

- (a) If Section 2 applies, the Premium for Section 2 is calculated at the commencement of the Period of Insurance as a minimum deposit premium, based on the Insured's estimate of total hiring charges for Machines to be hired in by the Insured during the Period of Insurance.
- (b) If the total hiring charges paid by the Insured during the Period of Insurance for Machines hired in by the Insured is different from the estimate provided at the commencement of the Period of Insurance, the Premium shall be adjusted and the Insured shall pay or receive the difference between the adjusted Premium and the minimum deposit premium.

## 10. Right of inspection

- (a) The Insurer shall have the right but not the obligation to inspect or examine any property or records relating to the Insured's Business, including but not limited to Machines, at any time during the Period of Insurance.
- (b) The Insured shall at its own expense assist in inspections or examinations of the Machines.

## 11. Notification of changes materially affecting the insurance

- (a) The Insured shall notify the Insurer in writing as soon as possible of any change materially varying any facts or circumstances existing at the commencement of the Period of Insurance, including but not limited to, changes in the information contained in the Proposal.
- (b) The Insurer shall not indemnify against the risks arising from the material changes unless, before Damage, Breakdown Damage, Property Damage or Personal Injury in connection with those risks occurs, the Insurer has agreed in writing to extend the Policy.

- (c) Following the Insured's notification to the Insurer of such material changes the Insurer shall have the right to vary the Sums Insured, Excess, Premiums or the terms of the Policy.

## 12. Use of Machines underground

For the purposes of Sections 1 to 5:

- (a) the Insured shall not use or operate a Machine underground unless, prior to such use or operation:
  - (1) the Insured has notified the Insurer in writing that such use or operation is intended; and
  - (2) the Insurer has agreed in writing to extend the Policy to cover such use or operation;
- (b) the Policy shall not cover Damage to or Breakdown Damage in a Machine while used or operated underground unless the Insurer has agreed in writing to extend the Policy to cover such use or operation.

## 13. Use of Machines in connection with drilling or wells

For the purposes of Sections 1 to 5:

- (a) the Insured shall not use or operate a Machine for or in connection with oil, gas or geothermal drilling or wells unless, prior to doing so:
  - (1) the Insured has notified the Insurer; and
  - (2) the Insurer has agreed in writing to extend the Policy to cover such use or operation;
- (b) the Policy shall not cover Damage to or Breakdown Damage in a Machine occurring while being used or operated in connection with oil, gas or geothermal drilling or wells unless, prior to such use or operation the Insurer has agreed in writing to extend the Policy to cover such use or operation.

## 14. Placement of Machines on Watercraft

For the purposes of Sections 1 to 5:

- (a) the Insured shall not place a Machine on a Watercraft unless, prior to doing so:
  - (1) the Insured has notified the Insurer; and
  - (2) the Insurer has agreed in writing to extend the Policy to cover the Machine while on the Watercraft;
- (b) the Policy shall not cover Damage to or Breakdown Damage in a Machine while on a Watercraft unless, prior to such placement, the Insurer has agreed in writing to extend the Policy to cover such placement.
- (c) This exclusion will not apply to transit of insured Machines on commercially recognised Watercraft and ferries between the North and South Islands of New Zealand.

### 15. Subrogation

Upon an event giving rise to a claim under the Policy:

- (a) the Insurer shall be entitled immediately to pursue;
- (b) the Insured shall consent to the Insurer's pursuing; and
- (c) the Insured shall at its own expense co-operate with and assist the Insurer in pursuing;

the Insured's legal rights to recover from others.

### 16. Salvage

In the event of the destruction of a Machine or part of a Machine against which the Insurer has agreed to indemnify the Insured, the ownership of the Machine or part shall pass immediately to the Insurer, unless the Insurer notifies the Insured in writing otherwise.

### 17. Jurisdiction

The Policy shall be interpreted by the courts of and according to the laws of New Zealand whose courts shall have jurisdiction in relation to any dispute.

### 18. Cancellation of the Policy

- (a) The Insured may cancel the whole or any Section of the Policy at any time by notice in writing delivered, posted, faxed or e-mailed to UAA.
- (b) If the Insured cancels, the Insurer shall refund to the Insured the portion of the Premium that represents the unexpired part of the Period of Insurance for the cancelled part of the Policy on a pro rata basis, less any cancellation fee charged by the Insurer.
- (c) The Insurer may cancel the whole or any Section of the Policy at any time by notice in writing to the Insured at the Insured's last known address, fax number or e-mail in the Insurer's or UAA's records, in which case:
  - (1) the Insured shall be deemed to receive any notice of cancellation from the Insurer three business days after the notice was delivered, posted or transmitted; and
  - (2) cancellation shall take place at 4 p.m. on the thirtieth (30th) day after the notice was delivered, posted or transmitted.
- (d) If the Insurer cancels, the Insurer shall refund a portion of the Premium to the Insured in accordance with (b) above, but without charging any cancellation fee.

### 19. Notices to the Insurer

- (a) Any notice that the Policy requires the Insured to give to the Insurer shall be given by delivery, post, fax or e-mail solely to the Insurer or its agent, UAA.
- (b) Except as provided by legislation, notice to or knowledge of an agent or broker or another person or Company shall not constitute notice

to the Insurer or its agent, UAA.

### 20. Two or more named as the Insured (cross-liability)

If the Schedule names two or more Insureds:

- (a) for Sections 1 to 5:
  - (1) each one is both individually and collectively responsible for the Insured's compliance with the conditions of the Policy; and
  - (2) as against each Insured the Insurer shall be entitled to rely on any defence available against any other Insured;
- (b) for Sections 6 and 7, each Insured shall be treated as if a separate policy had been issued to that Insured, but this Condition shall not operate to increase the Insurer's liability beyond:
  - (1) the limits of liability in the Policy; and
  - (2) the liability of the Insurer had this Condition not been included in the Policy.

### 21. Indemnity for those not named as Insured

If the terms of the Policy entitle a person or Company not named as an Insured in the Schedule to be indemnified under the Policy:

- (a) the person's or Company's entitlement is subject to that person or Company complying with the terms of the Policy as if the person or Company were an Insured; and
- (b) as against such person or Company the Insurer shall be entitled to rely on any defence available against an Insured as if the person or Company were an Insured.

### 22. Payment of Excess

- (a) The Insured shall pay the Excess within 14 days after being requested to do so by the Insurer.
- (b) If, at the time when the Insurer pays an amount to or on behalf of the Insured by way of indemnity, the Insured has not paid the Excess to the Insurer, the amount of that indemnity shall be reduced by the amount of the Excess.

### 23. Non-aggregation of Excess

If one event or Occurrence gives rise to loss, Damage or liability against which the Insurer is liable to indemnify an Insured under more than one Section, the single highest Excess applicable shall apply once in respect of the indemnity payable under all of those Sections.

### 24. Goods and Services Tax (GST)

- (a) If, on receiving any payment of indemnity under this Policy, the Insured is liable to pay tax ("GST") under section 5(13) of the Goods and Services Tax Act 1985 or any statutory amendment or re-enactment of that Act, the Insurer shall also indemnify the Insured against the amount of that GST.

- (b) The indemnity against GST shall not be limited by any limit or sub-limit of indemnity under a Section or any Limit Any One Loss.

## 25. Other insurance

- (a) In the event of a claim by the Insured under the Policy, the Insured shall notify the Insurer of and provide the Insurer with a copy of any other insurance policy, whether issued to the Insured or another and whether or not the Insured is a contracting party to that other insurance policy, that extends or may extend cover to the Insured in respect of the subjectmatter of the Insured's claim under the Policy.
- (b) If the Insured is, or but for the existence of the Policy would be, entitled to indemnity under any other insurance, the indemnity under the Policy shall be limited to the excess over the indemnity paid or payable under such other insurance, even if the other insurance policy has a condition to the same or similar effect as this General Condition.

## 26. Interpretation

Nothing in an Exclusion shall be construed to extend the liability of the Insurer beyond its liability in the absence of the Exclusion.

# SECTION 1 – DAMAGE

## A. THE COVER

The Insurer shall indemnify the Insured against Damage to a Machine that occurs:

1. within the Territorial Limits; and
2. during the Period of Insurance.

## B. THE INDEMNITY

1. The indemnity under this Section against Damage to a Machine shall not exceed the least of:
  - (a) in the case of physical damage, the reasonable cost of:
    - (1) repairing the Machine; and
    - (2) re-commissioning, re-erecting and re-installing the Machine;
 to restore it to a condition equal to its condition immediately prior to the Damage;
  - (b) the Market Value of the Machine immediately prior to the Damage;
  - (c) an amount that indemnifies the Insured against the Damage to the Machine;
  - (d) the Sum Insured.

2. The indemnity under B.1 above shall not include any costs of the kind referred to in Additional Benefit 5 in Section 3.
3. The aggregate of all indemnity payable under this Section and any Additional Benefit under Section 3 applying to this Section in connection with Damage to two or more Machines caused by the one event shall not exceed the aggregate of the Limits Any One Loss shown in the Schedule for this Section and Section 3.
4. The Insurer shall, at its option, indemnify the Insured in accordance with B.1 by:
  - (a) repairing the Machine to a condition equal to its condition immediately prior to the Damage; or
  - (b) paying the indemnity to the Insured.
5. The Excess shall apply to each Machine for each event of Damage, but if one event causes Damage to two or more Machines simultaneously, the highest Excess applicable to any of those Machines shall apply once in respect of all those Machines under this Section.

## C. ADDITIONAL BENEFITS

### Substitute Machines

1. The Insurer shall indemnify the Insured in accordance with the terms of this Section against Damage to a Substitute Machine as if the Substitute Machine were identified in the Schedule for this Section.
2. **Substitute Machine** means, for the purpose of this Additional Benefit only a machine:
  - (a) being used by an Insured as a temporary replacement for a Machine while the Machine is undergoing repair, maintenance or servicing;
  - (b) equivalent in size, function and market value to the Machine for which it is a substitute; and
  - (c) only until the Machine is returned to the Insured following repair, maintenance or servicing.

### Hoists and Hydraulic Lifting Equipment

Notwithstanding anything to the contrary in this Policy, the Insurer will indemnify the Insured for accidental mechanical breakdown or mechanical failure of hoists and hydraulic lifting equipment permanently attached to a Machine provided that such breakdown or failure is not caused by or due to wear and tear.

The maximum amount the Insurer will indemnify the Insured for under this benefit is NZD 5,000 unless a different amount is specified in the policy schedule.

Indemnity under this Benefit is subject to the relevant Excess set out in the Schedule.

## SECTION 2 – HIRED-IN PLANT (LIABILITY TO OWNER)

### A. THE COVER

1. The Insurer shall indemnify the Insured against Liability to Owner arising from Damage to a Machine hired in by the Insured that occurs:
  - (a) within the Territorial Limits;
  - (b) during the Period of Insurance;
  - (c) during the period of hire; and
  - (d) while the Machine is in the physical possession and control of the Insured.

### B. THE INDEMNITY

1. The indemnity under this Section against Liability to Owner for the cost of repair or replacement of a Machine shall not exceed the least of:
  - (a) in the case of physical Damage, the reasonable cost of:
    - (1) repairing the Machine; and
    - (2) re-commissioning, re-erecting and re-installing the Machine;
 to restore it to a condition equal to the condition immediately prior to the Damage;
  - (b) the Market Value of the Machine immediately prior to the Damage;
  - (c) an amount that indemnifies the person or Company from whom the Insured hired the Machine against the Damage to the Machine;
  - (d) the Insured's liability for repair or replacement of the Machine under the hire contract.
2. The indemnity under B.1 above shall not include any costs of the kind referred to in Additional Benefit 5 in Section 3.
3. The indemnity against Liability to Owner for hiring charges for the Machine shall be the lesser of:
  - (a) the amount shown for 'Hiring Charges' in the Schedule less the aggregate of all amounts already paid by the Insurer under this Section during the Period of Insurance for hiring charges in respect of the Machine;
  - (b) the amount of hiring charges for the Machine payable by the Insured under the hire contract for the duration of the Indemnity Period.

**[Note:** The Insured's obligation to mitigate its loss under General Condition E. 4(a)(2) includes exercising any right under the hire contract to minimise the Insured's liability to the owner.]

4. The aggregate of all indemnity payable under this Section and any Additional Benefit under Section 3 applying to this Section in connection with Damage to two or more Machines arising from the one event shall not exceed the aggregate of the Limits Any One Loss shown in the Schedule for this Section and Section 3.
5. The Excess shall apply to each Machine for each event of Damage, but if one event causes Damage to two or more Machines simultaneously, the highest Excess applicable to any of those Machines shall apply once in respect of all those Machines under this Section.

### C. ADDITIONAL BENEFITS

#### 1. On-Hire on Dry Hire terms (optional Additional Benefit)

- (a) If the Schedule shows both that this Additional Benefit applies and that the Business includes the hire of machines to others, A.1(d) of this Section shall not apply and the Insurer shall indemnify the Insured against Liability to Owner arising from Damage to a Machine hired in by the Insured on Dry Hire terms if the Damage occurs:
  - (1) during the Period of Insurance;
  - (2) during the period of hire; and
  - (3) while the Machine is on-hired to another person or Company on Dry Hire terms.
- (b) The Sum Insured for this Additional Benefit shall be the amount shown in the Schedule for this Additional Benefit.

#### 2. Legal Costs

- (a) If a claim for Liability to Owner is made against an Insured, the Insurer shall also pay:
  - (1) the Legal Costs in relation to that claim to which the Insurer has agreed in writing before the Legal Costs are incurred; and
  - (2) the legal costs and expenses of a claim for Liability to Owner against the Insured incurred by a person or Company other than an Insured or a director or partner of an Insured that the Insured is liable to pay.
- (b) The indemnity for Legal Costs shall not exceed the balance of NZD 50,000 after deducting the aggregate of all amounts for Legal Costs and costs under (a) above already paid by the Insurer under this Section during the Period of Insurance.

### D. DEFINITIONS FOR SECTION 2

**Indemnity Period** means the period of continuous Interruption:

1. commencing at the end of the Initial Period; and
2. ending at the earlier of:

- (a) repair or replacement of the Machine;
- (b) the end of the number of weeks of the 'Indemnity Period' shown in the Schedule.

**Initial Period** means the period ending 14 days after the Insured gives notice of the Interruption to the Insurer.

**Interruption** means prevention of or interference with the normal use or operation of the Machine to perform the functions for which it was designed in the course of the Business caused by and commencing upon its Damage.

**Liability to Owner** means the Insured's liability under the express or implied terms of the hire contract for a Machine to pay, in the event of Damage to the Machine:

- (a) the cost of repair or replacement of the Machine; and
- (b) hiring charges for the Machine while it is unable to be used in consequence of the Damage;
- (c) but does not include liability for demurrage or any other direct or consequential loss of the person or Company from whom the Insured hired the Machine.

## SECTION 3 – ADDITIONAL BENEFITS

### ADDITIONAL BENEFITS APPLYING TO SECTIONS 1 AND 2 AUTOMATICALLY

#### 1. Damage to lifted goods

- (a) The Insurer shall indemnify:
  - (1) the Insured; or
  - (2) an owner of goods who is not an Insured as if such owner was an Insured;
 against sudden and unexpected physical damage or destruction of the goods occurring while the goods are both:
  - (3) in the possession and control of the Insured; and
  - (4) suspended from a Machine designed to lift them.
- (b) There shall be no indemnity under this Additional Benefit against:
  - (1) damage or destruction of the goods caused directly or indirectly by or arising from a defect in or the fragility of the goods or their container; or
  - (2) any legal liability of whatsoever nature.
- (c) The Sum Insured and Excess for this Additional Benefit shall be the amounts shown in the Schedule for 'Damage to Lifted Goods' and the limits of indemnity under B. in the relevant Section shall otherwise apply as if the goods were a Machine.

#### 2. Multiple Crane Operation

- (a) The Insurer shall indemnify the Insured against Damage to a Machine occurring while it is being used in a Multiple Crane Operation during the Period of Insurance.
- (b) **Multiple Crane Operation** means the use of two or more lifting machines together, as described in the New Zealand Industry Standard version, if any, equivalent to the Australian Standard AS2550.1 current at the time of operation.
- (c) The Insured or any person or Company engaged in the Multiple Crane Operation must comply with the procedures and requirements set out by the Crane Association of New Zealand recommendations or its equivalent as described in the edition of Australian Standard AS2550.1 or there shall be no indemnity under this Additional Benefit.

#### 3. Expediting Costs

- (a) If the Insurer is liable to indemnify the Insured under the relevant Section against Damage to a Machine, the Insurer shall also indemnify the Insured against the Expediting Costs.
- (b) **Expediting Costs** means the reasonable additional costs necessary to effect immediate temporary repairs or to expedite permanent repairs to the Machine.
- (c) The Sum Insured for this Additional Benefit shall be the lesser of NZD 10,000 or 20% of the indemnity payable against the Damage to the Machine under the relevant Section.
- (d) If the Insured has not obtained the consent of the Insurer prior to incurring the Expediting Costs, there shall be no indemnity under this Additional Benefit.

#### 4. Recovery costs – no Damage

- (a) If a Machine becomes immobilised or inaccessible and unable to be used without physical damage or destruction and as a result of a sudden and unexpected event occurring during the Period of Insurance, the Insurer shall indemnify the Insured against the reasonable and necessary costs incurred with the Insurer's prior written consent of recovering or attempting to recover the Machine.
- (b) The indemnity under this Additional Benefit shall not exceed NZD 50,000 or, if an amount is stated in the Schedule for 'Recovery Costs', that amount.
- (c) The Excess shall apply to each event.

#### 5. Recovery costs – Damage

- (a) If the Insurer is liable to indemnify the Insured under the relevant Section against Damage being physical damage or destruction of a Machine, the Insurer shall also indemnify the

Insured against the reasonable and necessary costs, incurred with the Insurer's prior written consent, of:

- (1) if the Machine is destroyed, disposing of the Machine;
  - (2) dismantling, recovering and transporting the Machine for the purpose of repairing the Damage;
  - (3) returning the Machine to where it is usually kept following the completion of the repair;
  - (4) protecting the Machine from further Damage pending repair;
  - (5) removing debris and fluids that have escaped from the Machine as a result of the Damage.
- (b) The indemnity under this Additional Benefit shall not exceed NZD 250,000 or, if an amount is stated in the Schedule for 'Recovery and Transport Costs', that amount.
- (c) The Excess shall apply to each Machine for each event of Damage.

#### 6. Employees' property damage

- (a) The Insurer shall indemnify an Employee against damage, destruction or loss by theft of the Employee's personal property caused by or arising from Damage to a Machine against which the Insurer is liable to indemnify the Insured.
- (b) The indemnity under this Additional Benefit shall not exceed the least of:
- (1) the reasonable cost of repair of the property;
  - (2) the Market Value of the property immediately prior to the Damage;
  - (3) an amount that indemnifies the Employee against the damage, destruction or loss of the property;
  - (4) NZD 5,000.

#### 7. Indemnity to hirer – Wet Hire

- (a) Where:
- (1) the Insured has hired out a Machine to a hirer on Wet Hire terms; and
  - (2) the hire agreement provides that:
    - (A) the Insured shall arrange insurance against Damage to the Machine for the hirer; or
    - (B) the Insured shall release the hirer from liability for Damage to the Machine;
 the Insurer shall indemnify the hirer according to the terms of the relevant Section against Damage to the Machine occurring while on hire to the hirer.
- (b) The indemnity under this Additional Benefit shall not exceed the lesser of:

- (1) the insurance or release that the hire agreement requires the Insured to provide to the hirer;
- (2) the Sum Insured.

#### 8. Appreciation in value

If:

- (a) Damage to a Machine occurs;
- (b) its Market Value was equal to or less than its Sum Insured at the commencement of the Period of Insurance or the date during the Period of Insurance when it was added to the Schedule; and
- (c) its Market Value immediately prior to the Damage exceeded the Sum Insured;

for the purpose of indemnity against the Damage the Sum Insured shall increase by the amount of the increase of the Market Value but by no more than 25% of the Sum Insured.

#### 9. Extra costs of reinstatement

If repair of a Machine would cause the Machine to be in a condition better than immediately prior to the Damage because either:

- (a) of a requirement to comply with legislation:
  - (1) with which the Insured is required to comply as a result of the Damage and to allow the Insured to recommence normal use of the Machine; and
  - (2) which was not a requirement with which the Insured would have been required to comply regardless whether or not the Damage had occurred;

or

- (b) repair requires a part that is no longer available; the Insurer shall pay for the repair, but the amount payable for such repair under this Additional Benefit in addition to the indemnity as limited under clause B. of the relevant Section shall not exceed the lesser of:
  - (c) 10% of the Sum Insured;
  - (d) NZD 50,000 or, if an amount is stated in the Schedule for 'Extra Costs of Reinstatement', that amount.

### **ADDITIONAL BENEFIT APPLYING TO SECTION 1 AUTOMATICALLY AND TO SECTION 2 ONLY IF SHOWN IN THE SCHEDULE**

#### 10. Additions/deletions of machines

- (a) The Insurer shall indemnify the Insured in accordance with the terms of the relevant Section if Damage to an Additional Machine occurs within 60 days after its acquisition by the Insured.



- (b) Additional Machine means, for the purpose of this Additional Benefit only, a Machine:
- (1) not identified in the Schedule;
  - (2) acquired by the Insured by purchase, lease or hire-purchase after the commencement of the Period of Insurance;
  - (3) having a Market Value at the time of its acquisition by the Insured no greater than the amount shown in the Schedule for 'Additional Machines'; and
  - (4) of a type similar to the Machines identified in the Schedule.
- (c) The Sum Insured for an Additional Machine under this Additional Benefit shall be the amount shown in the Schedule for 'Additional Machines'.
- (d) There shall be no indemnity under this Additional Benefit against Damage to an Additional Machine occurring more than 60 days after its acquisition by the Insured unless the Insured has:
- (1) provided to the Insurer a written declaration disclosing the acquisition of the Additional Machine and all matters relevant to its insurance under the Policy; and
  - (2) paid the additional Premium for insuring the Additional Machine.
- (e) If the Insured requests the Insurer in writing to delete a Machine from the Schedule as from a specified date, the Insurer shall refund to the Insured the Premium for the deleted Machine for the unexpired part of the Period of Insurance and General Condition F.18(b) shall not apply.

## **ADDITIONAL BENEFITS APPLYING TO SECTION 1 OR 2 ONLY IF SHOWN IN THE SCHEDULE**

### **11. Agreed value**

- (a) If the Schedule describes the Sum Insured for a Machine under the relevant Section as 'Agreed Value', the indemnity under the relevant Section shall not be limited by the Market Value of the Machine, but shall be the lesser of:
- (1) in the case of physical Damage, the reasonable cost of:
    - (A) repairing the Machine; and
    - (B) re-commissioning, re-erecting and re-installing the Machine;
 to restore it to a condition equal to its condition immediately prior to the Damage;
  - (2) the Sum Insured.
- (b) There shall be no indemnity under this Additional Benefit unless, before the commencement of the Period of Insurance:
- (1) the Insured provided to the Insurer; and

- (2) the Insurer agreed with;
  - a licensed valuer's written assessment of the Market Value of the Machine.

### **12. Market Value Plus**

- (a) If the Schedule describes the Sum Insured for a Machine under Section 1 as 'Market Value Plus', the indemnity against Damage being total physical loss or destruction of the Machine shall be:
- (1) the Sum Insured; or
  - (2) if the Market Value of the Machine immediately preceding such Damage is less than 85% of the Sum Insured, that Market Value plus 15%.
- (b) Under this Additional Benefit, the Insured is not obliged to provide a valuation certificate prior to the commencement of the Period of Insurance.

### **13. Owner's protection – excluding Dry Hire**

- (a) Exclusions D.1 (a)(2) to D.1(a)(7) and General Condition E.2(a) in the General Section shall not apply to the relevant Section if the Exclusion or General Condition would apply owing to conduct of an Employee.
- (b) There shall be no indemnity under this Additional Benefit if, at the time of the Damage:
- (1) the Employee was:
    - (A) an owner of the Machine;
    - (B) an Insured;
    - (C) a director or partner of an Insured; or
    - (D) acting with the knowledge of, or was influenced by, an owner of the Machine, an Insured, or a director or partner of an Insured;
- or
- (2) the Machine was hired out by the Insured on Dry Hire terms.

### **14. Owner's protection plus – including Dry Hire and Wet Hire**

- (a) This Additional Benefit applies to Machines operated by the Insured or hired out by the Insured on Dry Hire or Wet Hire terms.
- (b) Exclusions D.1(a)(3) to D.1(a)(7) and General Condition E.2(a) in the General Section shall not apply to the relevant Section if the Exclusion or General Condition would apply owing to the conduct of an Employee, the hirer, or any person engaged in the operation of the Machine.
- (c) There shall be no indemnity under this Additional Benefit if, at the time of the Damage, the Employee, the hirer, or the person engaged in the operation of the Machine was:
- (1) an owner of the Machine;
  - (2) an Insured;

- (3) a director or partner of an Insured; or
  - (4) acting with the knowledge of, or was influenced by, an owner of the Machine, an Insured, or a director or partner of an Insured.
- (d) Nothing in this Additional Benefit shall affect the Insurer's rights of subrogation, including against the hirer.

[Note: Additional Benefits 13 and 14 are available only as alternatives to each other and the applicable one shall be shown as applying in the Schedule.]

#### 15. Hired-out plant – damage waivers

- (a) Where:
  - (1) the Insured has hired out a Machine to a hirer on Dry Hire terms; and
  - (2) the hire agreement between the Insured and the hirer provides that:
    - (A) the Insured shall arrange for the hirer to be insured against Damage to the Machine; or
    - (B) the Insured shall release the hirer from liability for Damage to the Machine;
    - (C) the Insurer shall indemnify the Insured or the hirer according to the terms of the relevant Section against Damage to the Machine occurring while it is on hire to the hirer.
- (b) The indemnity under this Additional Benefit shall not exceed the insurance or release that the hire agreement requires the Insured to provide to the hirer.
- (c) There shall be no indemnity under this Additional Benefit if, at the time of the Damage, any person engaged in the operation of the Machine:
  - (1) was an Insured; or
  - (2) was a director or partner of an Insured.

## SECTION 4 – FINANCIAL PROTECTION

### A. THE COVER

1. The Insurer shall indemnify the Insured against Consequential Loss that occurs during the Indemnity Period if Damage to or Breakdown Damage in a Machine occurs:
  - (a) within the Territorial Limits; and
  - (b) during the Period of Insurance; and
  - (c) causes Interruption.
2. There shall be no indemnity under this Section unless:
  - (a) the Machine is insured against:

- (1) Damage under Section 1 or other insurance equivalent to Section 1; or
- (2) Breakdown Damage under Section 5 or other insurance equivalent to Section 5;

and

- (b) the Insurer or other insurers have agreed to indemnify the Insured against the Damage or Breakdown Damage that caused the Interruption.
3. If A.2(a)(2) of this Section applies, General Exclusion D.2(e) shall not apply to this Section.
  4. The Insured shall take all reasonable steps to reduce Consequential Loss, including using or hiring a Substitute Machine during the Indemnity Period.
  5. The Insurer shall have the right but not the obligation to arrange the hire by the Insured of a Substitute Machine during the Indemnity Period.
  6. There shall be no indemnity against any Consequential Loss that the Insured could have avoided by taking all reasonable steps to reduce Consequential Loss, including using or hiring a Substitute Machine during the Indemnity Period.

### B. THE INDEMNITY

1. The aggregate of all indemnity payable under this Section arising from the one event shall not exceed the aggregate of the Limit Any One Loss shown in the Schedule for this Section.
2. The Insurer shall indemnify the Insured against Consequential Loss in accordance with whichever of the following Cover Options the Schedule shows apply to this Section:

#### Cover Option 1 – Loss of Revenue and Increased Cost of Working

The Insured's financial loss resulting from the Interruption calculated as follows:

$$[(A - B) + C] - D$$

#### Cover Option 2 – Loss of Revenue

The Insured's financial loss resulting from the Interruption calculated as follows:

$$(A - B) - D$$

#### Cover Option 3 - Increased Cost of Working

The Insured's financial loss resulting from the Interruption calculated as follows:

$$C - D$$

#### Cover Option 4 - Lease Payments Protection

Each Lease Payment for the Machine that first becomes due and payable by the Insured during the Indemnity Period under a lease or hire-purchase agreement, calculated as 90% of:

- (a) the amount of the Lease Payment equivalent to the payment for one full month, if the Indemnity Period is less than one month; or

- (b) the amount of the Lease Payments calculated on a daily pro-rata basis, if the Indemnity Period exceeds one month.

#### Cover Option 5 - Lease Value Protection

The Lease Value for the Machine if, by reason of the Damage or Breakdown Damage:

- (a) the Machine is destroyed or permanently lost or, in the opinion of the Insurer, the Machine is uneconomic to repair; and
- (b) the Lease Value becomes due and payable by the Insured under the lease or hire-purchase agreement;

calculated as the amount by which the Lease Value exceeds the amount of the indemnity for the Damage or Breakdown Damage under Section 1 or 5 or the other equivalent insurance referred to in A.2 of this Section, but not exceeding 20% of the amount of that indemnity.

3. In Cover Options 1, 2 and 3:

A = the average weekly revenue directly to the Insured directly from use of the Machine in the course of the Business for the whole period of the Insured's possession or ownership of the Machine during the 12 months immediately preceding the Damage or Breakdown Damage, multiplied by the number of weeks of the Indemnity Period;

B = the revenue from use of the Machine or a Substitute Machine in the course of the Business during the Indemnity Period;

C = the increase in the cost of normal use of the Machine in the course of the Business reasonably and necessarily incurred by the Insured during the Indemnity Period to reduce loss of revenue, together with the cost of hire of a Substitute Machine during the Indemnity Period;

D = all savings during the Indemnity Period in the cost of use of the Machine resulting from the Damage or Breakdown Damage.

4. Under Cover Option 4, the Insurer shall not indemnify the Insured against any balloon payment or residual value payment for the Machine.
5. Under Cover Options 4 and 5, the Insurer shall not indemnify the Insured against:
- (a) any payment that first became due for payment before the occurrence of the Damage or Breakdown Damage; and
- (b) any interest on such payment.
6. The aggregate of indemnity against all Consequential Loss under a Cover Option during the Period of Insurance shall not exceed the Sum Insured for that Cover Option.
7. The indemnity for Consequential Loss arising from each event of Damage or Breakdown Damage shall not exceed the balance of the Sum Insured for the

relevant Cover Option, after deducting the aggregate of all amounts already paid by the Insurer under the Cover Option during the Period of Insurance.

### C. DEFINITIONS FOR SECTION 4

**Consequential Loss** means the financial loss of the Insured described in whichever Cover Option is shown in the Schedule to apply to this Section.

**Indemnity Period** means the period of continuous Interruption:

1. commencing at the end of the Initial Period; and
2. ending at the earlier of:
  - (a) repair or replacement of the Machine;
  - (b) the end of the number of weeks of the 'Indemnity Period' shown in the Schedule.

**Initial Period** means the period ending 14 days after the Insured gives notice of the Interruption to the Insurer.

**Interruption** means prevention of or interference with the normal use or operation of a Machine to perform the functions for which it was designed in the course of the Business caused by and commencing upon its Damage or Breakdown Damage.

**Lease Payment** means a periodic payment for the Machine under a lease or hire-purchase agreement relating to the Machine.

**Lease Value** means the total amount remaining to be paid and not already due and payable for the Machine under the terms of the lease or hire-purchase agreement relating to the Machine immediately preceding the Damage or Breakdown Damage.

**Substitute Machine** means one or more Machines used, or hired and used, by the Insured as a substitute for or alternative to the Machine by reason of the Interruption.

## SECTION 5 - BREAKDOWN

### A. THE COVER

1. The Insurer shall indemnify the Insured against Breakdown Damage that occurs in a Machine:
  - (a) within the Territorial Limits; and
  - (b) during the Period of Insurance.
2. General Exclusion D.2(d) shall not apply to this Section.

### B. THE INDEMNITY

1. The aggregate of all indemnity payable under this Section arising from the one event shall not exceed the aggregate of the Limit Any One Loss shown in the Schedule for this Section.
2. The indemnity against Breakdown Damage occurring

in a Machine under this Section shall not exceed the least of:

- (a) the reasonable cost of:
    - (1) dismantling and transporting the Machine if necessary for the purpose of repairing the part;
    - (2) repairing (including, if necessary, replacing) the part to a condition equal to its condition immediately prior to the Breakdown Damage; and
    - (3) re-commissioning, re-erecting and re-installing the Machine following the repair;
  - (b) the Market Value of the Machine immediately prior to the Breakdown Damage;
  - (c) an amount that indemnifies the Insured against the Breakdown Damage;
  - (d) the Sum Insured.
3. The indemnity for the replacement of a part that is no longer available shall not exceed the manufacturer's or supplier's last published price for that part.
  4. The Excess shall apply to each Machine for each event of Breakdown Damage.

## SECTION 6 – ROAD RISK

### A. THE COVER

The Insurer shall indemnify the Insured against Legal Liability for Personal Injury or Property Damage:

1. first occurring during the Period of Insurance; and
2. caused by an Occurrence within the Territorial Limits arising from using, operating or towing a Road Vehicle primarily as a vehicle in connection with the Business.

### B. LIMITS OF INDEMNITY

1. The indemnity for Legal Liability arising from the one Occurrence shall not exceed the Sum Insured and shall be further limited as follows:
  - (a) for Legal Liability arising from or in connection with Dangerous Goods, the balance of the sum of NZD 500,000 after deducting the aggregate of all amounts already paid under this Section during the Period of Insurance by the Insurer for Legal Liability of such kind.
2. If the Insured is more than one person or Company, the Sum Insured (including as limited in B.1(a) above) shall apply to the aggregate of all Legal Liability of all such persons and Companies arising directly or indirectly from the one Occurrence.
3. The Excess shall apply per Occurrence to all indemnity under this Section, inclusive of any indemnity under an Additional Benefit.

## C. ADDITIONAL BENEFITS

### 1. Defence Costs

- (a) The Insurer shall:
  - (1) have the right but not the obligation to conduct the defence against a claim against the Insured under this Section; and
  - (2) indemnify the Insured against the Defence Costs incurred by the Insured with the prior written consent of the Insurer in relation to a claim against the Insured for Legal Liability against which the Insurer is liable to indemnify the Insured under this Section.
- (b) The total amount payable by the Insurer for Defence Costs under C.1(a) above shall not be limited by the Sum Insured for this Section, but if the Legal Liability exceeds the indemnity as limited under B. above, the indemnity for the Defence Costs shall be reduced to that proportion of the Defence Costs as the indemnity as limited under B. above bears to the Legal Liability.

**[Note:** General Condition E.7(a) gives the Insurer the right to investigate, instruct lawyers to represent the Insured and conduct the Insured's defence, and negotiate and direct the settlement of a claim.]

### 2. Extended Road Risk cover for drivers and passengers

'Insured' shall include, in this Section only:

- (a) a person:
    - (1) using, operating or towing a Road Vehicle with the Insured's permission;
    - (2) holding a valid New Zealand driver's licence; and
    - (3) neither ineligible for nor previously refused motor vehicle insurance of any description;
- or
- (b) a passenger in, on, boarding or alighting from the Road Vehicle with the Insured's permission.

### 3. Extended Road Risk cover for substitute vehicles

'Road Vehicle' shall include a Motor Vehicle registered for use as a Motor Vehicle as required by law that is not owned by an Insured but is in an Insured's possession in substitution for a Road Vehicle while the Road Vehicle is undergoing repairs or servicing.

### 4. Extended Road Risk cover for vehicle additions and deletions

- (a) The Insurer shall indemnify the Insured against Legal Liability for Personal Injury or Property Damage first occurring during the Period of Insurance and caused by an Occurrence caused by or arising from using, operating or towing a Road Vehicle primarily as a Motor Vehicle in connection with the Business that:

- (1) is not identified in the Schedule; and
- (2) was first acquired by the Insured by purchase, lease or hire-purchase:
  - (A) after the commencement of the Period of Insurance; and
  - (B) no more than 60 days before the Occurrence.
- (b) There shall be no indemnity under this Additional Benefit in connection with an Occurrence more than 60 days after acquisition of the Motor Vehicle by the Insured unless the Insured has:
  - (1) provided to the Insurer a written declaration disclosing the acquisition of the Motor Vehicle and all matters relevant to its insurance under this Section; and
  - (2) paid the Premium charged by the Insurer for insuring the Motor Vehicle.
- (c) If the Insured requests the Insurer in writing to delete a Road Vehicle from the Schedule as from a specified date, the Insurer shall refund to the Insured the Premium for the deleted Road Vehicle for the unexpired part of the Period of Insurance and General Condition E.18(b) shall not apply.

#### **5. Extended Road Risk cover for conditionally or temporarily registered vehicles**

The definition of 'Road Vehicle' shall include a Motor Vehicle identified in the Schedule that is not registered as at the commencement of the Period of Insurance, but is fully or conditionally registered or is operating under a temporary road permit at the time of the Occurrence.

#### **6. Cover for principals**

The Insurer shall indemnify the principal in any contract with an Insured as if the principal were an Insured under this Section, but only against the principal's vicarious Legal Liability for Property Damage caused by or arising from the Insured using, operating or towing a Road Vehicle primarily as a Motor Vehicle for the principal under the contract with the principal in the course of the Business.

#### **7. Cover as principal**

In respect of a Motor Vehicle not owned or supplied by or hired to an Insured, the Insurer shall indemnify the Insured against Legal Liability for Property Damage caused by or arising from a person other than an Insured using, operating or towing the Motor Vehicle:

- (a) for or on behalf of the Insured;
- (b) with the authority of the Insured;
- (c) in connection with the Business; and
- (d) during the Period of Insurance.

#### **8. Hired out Road Vehicles – damage waivers**

- (a) Where:

- (1) the Insured has hired out a Road Vehicle to a hirer on Dry-Hire terms; and
- (2) the hire agreement between the Insured and the hirer provides:
  - (A) that the Insured shall arrange insurance for the hirer against legal liability of the kind provided by this Section; or
  - (B) that the Insured shall release the hirer from liability for legal liability incurred by the Insured arising from the hirer using, operating or towing the Road Vehicle;

the Insurer shall indemnify the hirer according to the terms of this Section as if the hirer were an Insured.

### **D. EXCLUSIONS FOR SECTION 6**

In addition to the Exclusions in the General Section, the Insurer shall not indemnify the Insured against Legal Liability:

#### **1. Use or operation of a Road Vehicle**

- (a) caused directly or indirectly by, arising from or in connection with using, operating or towing a Road Vehicle:
  - (1) in a race, speed trial or reliability trial;
  - (2) while in an unsafe or unroadworthy condition;
  - (3) to carry a larger number of passengers than allowed by law or by its specifications;
  - (4) to carry or tow a load heavier or larger than allowed by law or by its specifications;
  - (5) to carry, or otherwise in connection with, a substance classified as 'goods too dangerous to transport' or their equivalent in the Hazardous Substances and New Organisms Act or Land Transport Act;
  - (6) for an unlawful purpose, unless the Insured proves that the Insured was unaware and could not reasonably have become aware of such use;
  - (7) by a person:
    - (A) not properly qualified or suitably experienced to use, operate or tow the Road Vehicle;
    - (B) not licensed, or holding an improperly obtained licence, or not complying with licence conditions to use, operate or tow the Road Vehicle; or
    - (C) suffering from a physical or mental impairment of ability to use, operate or tow the Road Vehicle;
    - (D) under the influence of or affected by drugs or alcohol; or

- (E) with a level of drugs or alcohol in the breath, blood or urine in excess of that permitted by law to drive the Road Vehicle;

in each case in (A) to (E) above unless the Insured proves that it:

- (F) did not consent to the Road Vehicle being operated or driven by that person; and  
 (G) was unaware and could not reasonably have become aware of the matters in (A) to (E) above;

#### **(b) Loading and unloading**

caused directly or indirectly by, arising from or in connection with using or operating a Road Vehicle primarily designed for lifting, lowering, loading or unloading when performing one or more of such functions;

#### **(c) Road Vehicle as a Tool of Trade:**

caused directly or indirectly by, arising from or in connection with using or operating:

- (1) a Road Vehicle; or  
 (2) any machine, tool or apparatus attached to or forming part of a Road Vehicle;

as a Tool of Trade; or

#### **(d) Delivering or collecting loads**

caused directly or indirectly by, arising from or in connection with delivering or collecting a load to and from a Road Vehicle, but not the operation of loading or unloading a Road Vehicle.

### **2. Statutory schemes and insurance for personal injury**

caused directly or indirectly by, arising from or in connection with Personal Injury where, at the time and place of the Occurrence, the Road Vehicle was under a statutory scheme for, or was required by law to be insured against, liability for personal injury (whether limited or not), except to the extent that the scheme or insurance does not, by reason other than an Insured's breach of law, wholly or partially indemnify the Insured against that Legal Liability;

### **3. Employer's liability**

caused directly or indirectly by, arising from or in connection with Personal Injury to an Employee:

- (a) arising from any relationship described in the General Definition of 'Employee';  
 (b) imposed by any legislation or regulations made under any legislation;  
 (c) for which legislation requires the Insured to have insurance; or  
 (d) for which the Insured has the benefit of a statutory indemnity or insurance policy under any legislation or any regulations made under any legislation, including but not limited to the Accident Rehabilitation and Compensation Act

1992 and the Accident Insurance Act 1998 as amended;

### **4. Changes in compulsory insurance law**

of a kind to which a statutory indemnity scheme or insurance that the Insured was required to have by law (including accident, workers' compensation and motor vehicle legislation) applied at the commencement of the Period of Insurance, even if before the Occurrence the scheme has ceased to apply or the requirement to have such insurance has ceased;

### **5. Contractual liability**

- (a) assumed by an Insured under a contract or agreement, except to the extent that:

- (1) the liability would have been implied by law in the absence of such contract or agreement;  
 (2) the liability arises from a provision of a written contract for lease of real or personal property other than a provision that obliges the Insured to effect insurance or provide indemnity in respect of the subject-matter of the contract; or

- (3) the liability is assumed by the Insured under a warranty of fitness or quality of the Insured's products;

or

- (b) for which an Insured has released or waived all or part of the Insured's right to recover indemnity, contribution or damages from another;

### **6. Admissions of liability**

which an Insured has incurred solely by reason of an express, implied or constructive admission of liability;

### **7. Property in an Insured's physical possession or legal control**

for damage to or loss of:

- (a) any property (not including premises) while being used or operated by an Insured;  
 (b) any vehicle or trailer in a car park owned or operated by an Insured for reward;  
 (c) any part of any property on which an Insured is working where the damage is directly caused by such work; or  
 (d) any property in the physical possession or legal control of the driver of a vehicle unless the property is suspended from a Machine designed to lift that property;

### **8. Pollution**

- (a) for Personal Injury or Property Damage arising directly or indirectly out of or caused by, through or in connection with the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere, or any water, including any water course or body

of water, unless such discharge, dispersal, release, seepage, migration or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place outside North America;

- (b) for the cost of preventing, removing, nullifying or cleaning up any contamination or pollution as a consequence of the discharge, dispersal, release, seepage, migration or escape of any Pollutants, but this exclusion does not apply to removal or nullifying or cleaning up costs which are consequent upon a sudden, identifiable, unexpected and unintended happening which takes place in its entirety at a specific time and place outside North America; or
- (c) for Personal Injury or Property Damage arising directly or indirectly out of or caused by, through or in connection with the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others;

and the Insurer's aggregate liability under (a) and (b) above for all discharges, dispersals, releases, seepages, migration or escape of Pollutants during the Period of Insurance of this Policy shall not exceed the Sum Insured;

#### **9. Asbestos**

caused directly or indirectly by, arising from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity;

#### **10. Fines, penalties and exemplary, aggravated and punitive damages**

for:

- (1) fines or penalties;
- (2) exemplary, aggravated or punitive damages, excluding liquidated damages;
- (3) additional damages resulting from the multiplication of compensatory damages; or

(b) liquidated damages;

#### **11. Property owned by an Insured**

for damage to property owned by an Insured;

#### **12. Information technology and computer data, programmes and storage media**

- (a) for Personal Injury and Property Damage arising directly or indirectly from or in connection with:
  - (1) an Insured's Internet Operations;
  - (2) the provision of computer or telecommunication services by or on behalf of an Insured;
  - (3) the use of any computer equipment or programme, whether made or owned by an Insured or anyone else; or

- (4) any harmful computer programme including but not limited to a computer virus, worm, logic bomb or trojan horse;

but this Exclusion shall not apply to Personal Injury or Property Damage caused by or arising out of any documents prepared or published by anyone other than an Insured or an Employee in respect of use of or safety instructions or warnings for any computer equipment or programme.

#### **13. Interested parties**

subject to the cover provided in Additional Benefits C.2 (Extended road risk cover for drivers and passengers), C.6 (Cover for principals) and C.8 (Hired-out Road Vehicles) above, of a person or Company not named as an Insured even if the person's or Company's interest is noted in the Schedule.

## **SECTION 7 – COMBINED LIABILITY**

### **SUB-SECTION 7.1 – GENERAL LIABILITY**

#### **A. THE COVER**

##### **1. Public and Products Liability**

The Insurer shall indemnify the Insured against all sums that the Insured shall become legally liable to pay as Damages in respect of Personal Injury or Property Damage:

- (a) happening during the Period of Insurance within the Policy Territory; and
- (b) caused by an Occurrence in connection with the Business of the Insured.

##### **2. Costs and Expenses**

In addition to the applicable Limit of Indemnity or sub-limit, the Insurer shall pay Costs and Expenses necessarily and reasonably incurred in relation to a claim against the Insured for which there is cover under this Sub-Section 7.1 (irrespective of whether or not the Insured is found legally liable).

#### **B. LIMITS OF INDEMNITY**

- 1. All Personal Injury or Property Damage in respect of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one Occurrence.
- 2. The Insurer's maximum liability in respect of:
  - (a) any claim, or any series of claims, arising out of one Occurrence; or

(b) in the aggregate during the Period of Insurance in respect of an Occurrence involving the Insured's Products;

shall not exceed the Limit of Indemnity stated in the Policy Schedule, or the sublimit in any applicable Automatic Additional Benefit.

PROVIDED THAT:

3. Immediately that the Insurer has paid the Limit of Indemnity in respect of any judgement or settlement, its liability in relation to Costs and Expenses shall cease.
4. If a payment exceeding the Limit of Indemnity has to be made to dispose of a claim, the Insurer's liability in relation to Costs and Expenses shall be limited to the same proportion as the Limit of Indemnity bears to the amount required to dispose of the claim.

### 5. Excess

The amount shown in the Policy Schedule, or in any applicable Automatic Additional Benefit, as the Excess, shall be borne by the Insured in respect to each and every claim or series of claims arising out of one Occurrence.

A single Excess will apply to a claim where indemnity may be payable under the Insuring Clause or any applicable Automatic Additional Benefit, or an endorsement to the Policy, with the Excess to apply being the highest Excess to apply of the sections of the Policy that are applicable.

## C. AUTOMATIC ADDITIONAL BENEFITS FOR SUB-SECTION 7.1

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

### 1. Business Advice or Service

Notwithstanding Exclusion 18 (Professional Liability), the Insurer will indemnify the Insured in respect of Personal Injury or Property Damage arising out of an error or omission in:

- (a) advice or services rendered by the Insured without charge;
- (b) professional medical advice by Medical Persons employed by the Insured to provide first aid and other medical services on the Insured's premises.

### 2. Forest and Rural Fires Act

- (a) The Insurer shall indemnify the Insured in respect of liability under the Forest and Rural Fires Act 1977 for:

- (1) costs and losses incurred during the Period of Insurance recoverable under section 43;
- (2) levies imposed by a Fire Authority and apportioned to the Insured during the Period of Insurance under section 46.

(b) This clause applies:

- (1) regardless of whether or not Property Damage has occurred;
- (2) to Vehicles, notwithstanding Exclusion 23 (Vehicles);

PROVIDED THAT:

- (c) a Limit of Indemnity of NZD 1,000,000 any one Period of Insurance shall apply;
- (d) an Excess of NZD 500 shall apply.

### 3. Goods on Hook

The Insurer shall indemnify the Insured in respect of Property Damage to property in New Zealand being lifted or lowered or moved or carried by any crane(s) owned, hired, or otherwise the responsibility of the Insured.

PROVIDED THAT:

- (a) for the purposes of this clause, "Property Damage" shall mean physical injury to or destruction of tangible property which occurs during the Period of Insurance;
- (b) a Limit of Indemnity of NZD 250,000 any one Period of Insurance shall apply.

### 4. Landlord's Liability

The Insurer shall indemnify the Insured in respect of Personal Injury or Property Damage arising from the Insured's legal ownership of, but not physical occupation of, any premises.

### 5. Mechanical Plant Insurance

Notwithstanding Exclusion 23 (Vehicles), the Insurer will indemnify the Insured in respect of Personal Injury or Property Damage:

- (a) arising from loading or unloading any Vehicle used by or on behalf of the Insured but not in the Insured's care, custody or control;
- (b) arising from any Vehicle while it is being operated for its specialised function or purpose, and not as a Vehicle;
- (c) relating to the operation or ownership of a car-park so as to cause damage to Vehicles within it (other than to Vehicles belonging to, or used by or on behalf of the Insured);
- (d) relating to any bridge, viaduct, weigh bridge, road or anything beneath the Vehicle caused by vibration or by the weight of any Vehicle and/or its load.

PROVIDED THAT:

- (e) any designated weight restrictions were not exceeded;



- (f) an Excess of NZD 500 shall apply.

## 6. Product Withdrawal Costs

Notwithstanding Exclusion 25 (Withdrawal or Repair of Products), the Insurer will indemnify the Insured for up to 80% of those costs reasonably incurred in the withdrawal or recall from use in New Zealand of the Insured's Products which have the same defect as a product that has already given rise to a claim in respect of which the Insured is entitled to indemnity under clause A.1 above (Public and Products Liability).

PROVIDED THAT:

- (a) a Limit of Indemnity of NZD 100,000, inclusive of Costs and Expenses, shall apply in respect of all such withdrawals or recalls during any one Period of Insurance;
- (b) an Excess of NZD 2,500, inclusive of Costs and Expenses, shall apply to each such withdrawal or recall.

## 7. Property in Care, Custody or Control

Notwithstanding Exclusion 20 (Property Owned), but subject to Exclusions 7 (Defective Materials, Design & Workmanship) and 19 (Property Being Worked Upon), the Insurer will indemnify the Insured in respect of Property Damage to property, including employees' property, where the liability arises while the property is in the care, custody or control of the Insured.

PROVIDED THAT:

- (a) real property, or property owned by, hired, leased or rented to or by the Insured is excluded;
- (b) property held under a contract of bailment for reward is excluded;
- (c) a Limit of Indemnity of NZD 250,000 any one Period of Insurance shall apply;
- (d) an Excess of NZD 500 shall apply.

## 8. Punitive or Exemplary Damages

Notwithstanding Exclusion 10 (Fines, Penalties, etc.) and the definition of "Damages", the Insurer will indemnify the Insured in respect of punitive or exemplary damages awarded for Personal Injury in New Zealand,

PROVIDED THAT:

- (a) any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- (b) any award of punitive or exemplary damages by any Court outside New Zealand is excluded;
- (c) a Limit of Indemnity of NZD 1,000,000, inclusive of Costs and Expenses, any one Period of Insurance shall apply;
- (d) an Excess of NZD 500, inclusive of Costs and Expenses, shall apply.

## 9. Service and Repair

Notwithstanding Exclusions 7 (Defective Materials, Design & Workmanship), 19 (Property Being Worked Upon) and 20 (Property Owned), the Insurer will indemnify the Insured in respect of:

- (a) Property Damage in New Zealand to any property not owned by the Insured, caused by service or repair to such property but excluding liability for the cost of rectifying defective or faulty workmanship in respect of the actual part or parts worked upon.

PROVIDED THAT:

- (1) a Limit of Indemnity of NZD 250,000 any one Period of Insurance shall apply; and
- (2) an Excess of NZD 1,000 shall apply.
- (b) Personal Injury or Property Damage (other than to the property serviced or repaired) arising from service or repair to any property.

PROVIDED THAT:

- (1) the Limit of Indemnity in the Policy Schedule shall apply; and
- (2) an Excess of NZD 1,000 shall apply.

## 10. Tenant's Liability

- (a) Notwithstanding Exclusion 20 (Property Owned), the Insurer will indemnify the Insured in respect of Property Damage to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the Insured.

## 11. Underground Services

The Insurer will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand to existing underground services, cables, pipes or equipment.

PROVIDED THAT:

- (a) prior to the commencement of any work, the Insured inquired of the relevant authority, corporation or company as to the location of such services;
- (b) the Insured took all reasonable precautions to prevent Personal Injury or Property Damage;
- (c) an Excess of NZD 5,000 shall apply.

## 12. Vehicle and Watercraft Service/Repair Liability

Notwithstanding Exclusions 19 (Property Being Worked Upon), 20 (Property Owned) & 23 (Vehicles), the Insurer will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand arising from the service or repair by the Insured of any Vehicle or Watercraft not exceeding ten (10) metres in length, and its internal combustion engine, accessories or fittings.

PROVIDED THAT:

- (a) the Vehicle or Watercraft is not owned, hired, leased, or rented by the Insured, and is in the

care, custody or control of the Insured for the purposes of the service or repair;

- (b) the cost of rectifying defective workmanship in respect of the actual part or parts worked on is excluded;
- (c) a Limit of Indemnity of NZD 250,000 any one Period of Insurance shall apply;
- (d) an Excess of NZD 1,000 shall apply.

### 13. Vibration and Removal of Support

The Insurer will indemnify the Insured in respect of Personal Injury or Property Damage in New Zealand arising from vibration, or removing, weakening or interfering with, the support of land or buildings.

PROVIDED THAT:

- (a) the land or buildings are not owned or occupied by the Insured;
- (b) the Personal Injury or Property Damage arises from the actions of the Insured;
- (c) a Limit of Indemnity of NZD 500,000 any one Period of Insurance shall apply;
- (d) an Excess of NZD 5,000 shall apply.

### 14. Visits to North American Countries

Notwithstanding Exclusions 13 (North American Countries) and 14 (North American Exports), the Insurer will indemnify the Insured in respect of Personal Injury or Property Damage in the North American Countries arising solely out of the actions of non-resident directors, executives and salespersons temporarily visiting the North American Countries in the course of the Business of the Insured.

PROVIDED THAT:

- (a) the Insured has no premises, branch or subsidiary operation in the North American Countries;
- (b) any work performed in, on, or in connection with the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of the Insured's Products is excluded;
- (c) the ownership, possession, control, or maintenance or use of any Vehicle or Watercraft is excluded;
- (d) the Limit of Indemnity, inclusive of Costs and Expenses, any one Period of Insurance shall be the Limit of Indemnity in the Policy Schedule.

### 15. Defective Workmanship Extension

Notwithstanding Exclusion 7 (Defective Materials, Design & Workmanship), Exclusion 11 (Insured's Products) and Exclusion 23 (Vehicles).

The Insurer will indemnify the Insured for all sums that the Insured will become legally liable to pay for the costs arising out of Defective Workmanship

happening during the Period of Insurance within the Policy Territory,

PROVIDED THAT:

1. **"Defective Workmanship"** means:
  - The rectifying, remedying, removal, repair, alteration, treatment or replacement of the Insured's Products or part thereof which have proven to be defective, harmful or fail to perform the function for which they were sold, supplied, manufactured or installed.
2. a Limit of Indemnity of NZD 100,000 will apply in respect of all Defective Workmanship claims during any one Period of Insurance;
3. an Excess of NZD 1,000 will apply;
4. The Insurer will not provide indemnity in respect of:
  - (a) any liability arising out of professional advice or service provided by the Insured or any error or omission connected therewith;
  - (b) any liability for the costs of remedying any defect in design, plan or specification.

## D. DEFINITIONS FOR SUB-SECTION 7.1

In this Sub-Section 7.1, including any endorsements to Sub-Section 7.1, unless specifically stated to the contrary:

**Act of Terrorism** means, for the purpose Exclusion 22, an act, including but not limited to the use of force or violence and/or threat, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

**Aircraft** means any machine, craft or thing made or intended to fly or move in or through the atmosphere or space.

**Business of the Insured** means:

1. the business stated in the Policy Schedule, which shall include:
  - (a) the provision and management of lunch room facilities, social, sports, welfare and similar organisations for the benefit of the Insured's employees;
  - (b) fire brigade, first aid, medical and ambulance services;
2. any other activity that the Insured may undertake provided that the Insured gives prior written notice to the Insurer and obtains the Insurer's acknowledgement of coverage.

**Costs and Expenses** means:

1. any legal costs, disbursements, witnesses costs, assessors or adjusters costs or experts costs

incurred by the Insurer, or by the Insured with the Insurer's prior written consent;

2. any first aid expenses incurred by the Insured arising from a Personal Injury.
3. Damages means any amount payable as compensation, including interest.

**Insured** means:

1. the Insured(s) named in the Policy Schedule.
2. all subsidiaries incorporated in New Zealand, and any other organisation under the sole control of a named Insured and which it actively manages:
  - (a) as at the commencement of the Period of Insurance;
  - (b) acquired or taken control of during the Period of Insurance, provided that a named Insured gives written notice to the Insurer and obtains the Insurer's acknowledgement of coverage within sixty (60) days of acquisition or taking control;
3. every director, officer, employee, partner or shareholder of an Insured designated in paragraphs 1 & 2 above whilst acting within the scope of their duties as such, except in respect of any liability under the Companies Act;
4. every principal, in respect of its vicarious liability arising solely out of the performance, by an Insured as defined under 1, 2 or 3 above, of any contract of work for such principal, but always subject to the terms of this Policy;
5. every office bearer or member of social and sporting clubs formed with the consent of the Insured (other than an Insured designated in 4 above or 6 below) in respect of claims arising from the duties connected with the activities of any such club;
6. each joint venture, co-venture or joint lessee of a named Insured, but only with respect to liability incurred as a joint venture, co-venture or joint lessee, provided that a named Insured gives written notice to the Insurer and obtains the Insurer's written acknowledgement of coverage for such joint venture, co-venture or joint lease.

**Insured's Products** means any goods, products, including labels, instructions for use and advice and property after they have ceased to be in the possession of or under the control of the Insured, manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured (including any container, other than a Vehicle).

**Internet Operations** means, for the purposes of Exclusion 8 (E-Commerce):

1. use of electronic mail systems by the Insured or the Insured's employees, including part-time and temporary staff, contractors and others within the Insured's organisation;
2. access through the Insured's network to the world wide web or a public internet site by the Insured's employees, including part-time and temporary staff,

contractors and others within the Insured's organisation;

3. access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for customers of the Insured or others outside the Insured's organisation; and
4. the operation and maintenance of the Insured's web site.

**Limit of Indemnity** means the limit as stated in the Policy Schedule.

**Medical Persons** means any legally qualified medical practitioner, legally qualified registered nurse, dentist or first aid attendant.

**North American Countries** means the United States of America and Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.

**Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage that is neither expected nor intended from the standpoint of the Insured.

**Period of Insurance** means the Period of Insurance stated in the Policy Schedule.

**Personal Injury** means bodily injury (including resulting death, illness or care), disability, shock, fright, mental anguish or mental injury, including such injury arising from the following:

1. false arrest, wrongful detention, false imprisonment or malicious prosecution or humiliation;
2. wrongful entry or eviction or other invasion of the right of privacy;
3. assault and battery, provided that this was not committed by or at the direction of the Insured except for the purpose of preventing or eliminating danger to persons or property;
4. trespass to the person.

**Policy** means this document, the Policy Schedule and any endorsements issued by the Insurer.

**Policy Schedule** means the schedule issued by the Insurer or the Summary of Cover provided by the broker.

**Policy Territory** means:

1. Worldwide, unless otherwise stated in the Policy Schedule, and subject to Exclusions 13 (North American Countries) and 14 (North American Exports).
2. Limited to New Zealand only in Additional Benefits 3 (Goods on Hook), 6 (Product Withdrawal Costs), 8 (Punitive or Exemplary Damages), 9 (Service and Repair), 11 (Underground Services), 12 (Vehicle and Watercraft Service/Repair Liability) and 13 (Vibration and Removal of Support);

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to

smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

**Property Damage** means:

1. physical injury to or destruction or loss of tangible property including resulting loss of use; or
2. loss of use of tangible property which has not been physically injured or destroyed.

**Vehicle** means any type of:

1. machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power; and
2. any trailer or other attachment made or intended to be drawn by any such machine; and
3. any accessories, tools, specialised equipment and spare parts of any such machine.

**Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through water.

## E. EXCLUSIONS FOR SUB-SECTION 7.1

The Insurer shall not indemnify the Insured for any claim in respect of or alleging:

### 1. Aircraft and Watercraft

Personal Injury or Property Damage arising out of the ownership, possession, control, operation, use, service or repair, loading or unloading by the Insured of any:

- (a) Aircraft or hovercraft;
- (b) Watercraft exceeding ten (10) metres in length.

### 2. Aircraft Products

Personal Injury or Property Damage arising out of any of the Insured's Products which, with the Insured's knowledge were, or were intended to be, incorporated into the structure, machinery or controls of any Aircraft or aerial device.

### 3. Asbestos

Any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

### 4. Building Defects Exclusion

Personal Injury or Property Damage arising directly or indirectly out of:

- (a) the failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code contained in the First Schedule of the Building Regulations 1992 or any applicable New Zealand Standard (or amended or substituted regulation of standard) in relation to leaks, water penetration, weatherproofing,

moisture, or any effective water exit or control system;

- (b) mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

### 5. Contractual Liability

Liability assumed by the Insured under any contract or agreement except to the extent that the Insured would have been liable even if there had been no contract in existence; but this Exclusion shall not apply to:

- (a) liability pursuant to any lease or hire of real or personal property;
- (b) any representation or warranty of fitness or quality in respect of the Insured's Products, or a representation or warranty that work performed by or on behalf of the Insured will be done in a workmanlike manner;
- (c) contracts or agreements noted in the Policy Schedule.

### 6. Defamation

Libel or slander.

### 7. Defective Materials, Design & Workmanship

Liability for the cost of:

- (a) rectifying, repairing or replacing defective materials;
- (b) remedying any defect in any design, plan or specification;
- (c) remedying defective workmanship;
- (d) correcting or improving any work undertaken by the Insured.

### 8. E-Commerce

- (a) Personal Injury or Property Damage arising directly or indirectly out of or in any way involving the Insured's Internet Operations, but:

- (1) this exclusion does not apply to Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site;
- (2) nothing in this exclusion shall be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

- (b) Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:

- (1) the use of any computer hardware or software;

- (2) the provision of computer or telecommunication services by the Insured or on the Insured's behalf;
- (3) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised, including damage caused by any computer virus.

#### **9. Failure to Insure**

Any breach of an obligation to insure property.

#### **10. Fines, Penalties, etc.**

Liability arising for any fines, penalty, performance warranty or liquidated damages, punitive and/or exemplary damages.

#### **11. Insured's Products**

Property Damage to the Insured's Products.

#### **12. Loss of Use**

Loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- (a) a delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or
- (b) the failure of the Insured's Products to meet the level of performance, quality, fitness or durability that has been warranted or represented expressly or impliedly by the Insured.

#### **13. North American Countries**

Personal Injury or Property Damage happening in or instituted against the Insured in the North American Countries, including any liability from or based on a settlement or arbitration in, or a judgement or order of a court in the North American Countries.

#### **14. North American Exports**

Liability arising from any of the Insured's Products knowingly exported by the Insured (or exported by the Insured's agents or distributors with the Insured's knowledge) to the North American Countries, including any liability arising from or based on a settlement or arbitration in, or a judgement or order of a court in the North American Countries.

#### **15. Offshore Gas or Oil Platforms**

Liability arising from work performed on or about any offshore gas or oil platform.

#### **16. Personal Injury to Employees**

- (a) Personal Injury to any employee arising directly or indirectly out of or in the course of employment with the Insured.
- (b) An obligation on the Insured under any accident or workers' compensation legislation or any industrial award, employment contract, agreement or determination.

#### **17. Pollution**

Personal Injury or Property Damage, including Costs and Expenses incurred in the prevention, removing,

nullifying or clean-up, arising out of the discharge, dispersal, release or escape of Pollutants into or on land, the atmosphere, or any watercourse or body of water, unless the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended from the standpoint of the Insured and takes place in its entirety at a specific time and place.

#### **18. Professional Liability**

An error or omission in professional advice or service.

#### **19. Property Being Worked Upon**

Property Damage to property on which the Insured is or has been working, and which arises out of such work.

#### **20. Property Owned**

Property Damage to any property owned by, or in the care, custody or control of the Insured.

#### **21. Radioactivity**

Personal Injury or Property Damage directly or indirectly caused by, 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, including any self-sustaining process of nuclear fission;
- (b) nuclear weapons material.

#### **22. Terrorism**

Loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with:

- (a) any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

#### **23. Vehicles**

Personal Injury or Property Damage arising out of the ownership, possession, repair, operation, control, maintenance or use by or on behalf of the Insured of any Vehicle that is:

- (a) required by legislation to be registered and/or licensed and/or insured;
- (b) being operated while in an unsafe condition;
- (c) being operated by any person who is under the influence of any liquor, substance or drug;
- (d) insured, or in respect of which the Insured is insured, under any other policy, even if the other insurance is not collectable because of a breach of condition or applicable exclusion

#### **24. War**

Any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or

usurped power, or expropriation including lawful seizure, resumption, confiscation, nationalisation, destruction or Property Damage by or under the order of any Government or public or local authority.

## 25. Withdrawal or Repair of Products

The recall (including making any refund on the price paid), repair, withdrawal, inspection, removal, altering, treating, modification, replacement or loss of use of the Insured's Products or any property of which such products form a part, or of work undertaken by or for the Insured, if such products, property or work are withdrawn from the market or from use because of any defect or deficiency which the Insured knew or has reason to suspect or because of any Government or statutory ban, order or notice.

## F. CONDITIONS FOR SUB-SECTION 7.1

### 1. Cancellation

- (a) The Insured may cancel this Policy at any time by giving notice to the Insurer.
- (b) Upon cancellation by the Insured, the Insurer shall refund to the Insured the amount of the unexpired premium already paid on a pro rata basis, subject to any minimum premium applicable.
- (c) The Insurer may cancel this Policy by sending at least thirty (30) days' notice to the Insured in accordance with Conditions 13(a) and 13(b) (Notices by the Insurer).
- (d) Upon cancellation by the Insurer, the Insurer will refund to the Insured the amount of any unexpired premium already paid on a pro rata basis.

### 2. Claims

- (a) The Insured shall not (without the prior consent in writing of the Insurer) make any admission, offer, promise or payment in connection with any Occurrence or claim.
- (b) The Insurer shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim, and the prosecution of any available counter-claim.
- (c) The Insurer shall have full discretion in the conduct of any proceedings in connection with any claim or available counter-claim.
- (d) The Insured shall use its best endeavours to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without the written consent of the Insurer until the Insurer shall have had an opportunity of inspection and authorised such repairs.
- (e) In the event of an Occurrence, or the likelihood of an Occurrence, the Insured shall promptly

take at its own expense all reasonable steps to prevent Personal Injury or Property Damage from arising or continuing out of the same or similar conditions, but such expense shall not be recoverable from the Insurer.

- (f) The Insured shall give all information, co-operation and assistance as the Insurer may require in the prosecution, defence or settlement of any claim, including any available counterclaim.

### 3. Claim Notification

The Insured shall advise in writing as soon as practicable and provide all information to the Insurer of any:

- (a) Occurrence or circumstances, which might give rise to a claim under this Sub-Section 7.1; or
- (b) notice of claim, writ, summons, proceedings, impending prosecution or inquest which might give rise to a claim under this Sub-Section 7.1; whether or not the Insured believes that:
- (c) a claim will not in fact proceed;
- (d) the amount of the claim, should it proceed, would fall below the applicable Excess;
- (e) the claim, should it proceed, would be groundless.

### 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 shall not constitute notice to the Insurer.
- (b) The terms of this Sub-Section 7.1 shall not be waived or changed, except by written agreement with the Insurer.

### 5. Cross Liability/Joint Insureds

- (a) If more than one legal entity is insured under this Policy, each entity is covered in the same manner as though the Insurer had issued them with a separate policy.
- (b) If there is a claim against more than one entity in respect of the same Occurrence, only one Excess and one Limit of Indemnity shall apply, regardless of the number of entities indemnified.
- (c) Where the Limit of Indemnity is insufficient to fully indemnify all insured entities, it will apply in priority to the named Insured.
- (d) The coverage under this Condition does not apply to entities which are insured under this Policy by the Insured Definition 4 or 6.

### 6. Discharge of Liabilities

- (a) At any time, the Insurer shall be entitled to pay to the Insured the balance of indemnity available up to the applicable Limit of Indemnity [**note: not defined**] or such lesser sum for which the claim can be settled.

- (b) Upon such payment, the Insurer shall be under no further liability to the Insured under this Policy, except for Costs and Expenses already incurred up until the time of payment.

## 7. Due Diligence

The Insured shall take all reasonable steps to avoid the happening of any Occurrence and, in particular, shall ensure that:

- (a) all employees are properly trained and supervised;
- (b) every employee complies with all statutory obligations;
- (c) there are proper safety systems, equipment, practices and procedures in place, and that all employees use and comply with them at all times;
- (d) all plant is kept properly maintained.

## 8. Fraud

If any answers or statements in support of any claim, or in any information provided to obtain, amend or renew this insurance, are false in any way, the Insurer shall not provide any indemnity to the Insured under this Policy.

## 9. Goods and Services Tax

- (a) Where, on receiving any indemnity payment under this Policy, the Insured is liable to pay tax (“GST”) under section 5(13) of the Goods and Services Tax Act 1985 or any statutory amendment or re-enactment of that Act, the Insurer shall also indemnify the Insured against the amount of that GST.
- (b) The indemnity against GST shall not be limited by any limit or sub-limit of indemnity.

## 10. Hot Work

Where the Insured carries out any welding and/or cutting work it is warranted that the Insured shall comply with the New Zealand Standard 4781:1973 - Code of Practice for Safety in Welding and Cutting (or any substitute).

## 11. Inspection of Property

The Insurer shall be permitted, but have no obligation, to inspect the Insured’s property and operations at any reasonable time.

## 12. Material Change

- (a) The Insured shall give immediate notice to the Insurer of any material change to any of the facts or circumstances existing at the commencement of the Period of Insurance.
- (b) The Insurer shall be entitled to charge an additional premium.

## 13. Notices by the Insurer

- (a) Any notice given in writing by the Insurer to the first named Insured in the Policy Schedule, or to the broker through which the Insured arranged

this Policy with the Insurer, shall be deemed to be notice to each Insured.

- (b) Any notices by the Insurer may be effected by sending a fax, email or letter to the last known contact number or address.
- (c) Any such notice shall be deemed to have been received, if sent by fax or email, at the time of transmission, and if sent by post, three (3) business days after the date of posting.

## 14. Other Insurance

If the Insured is entitled to indemnity under any other insurance, this Policy shall operate in excess of such other insurance, even if the other insurance policy has another insurance condition to similar effect.

## 15. Policy Disputes

This Policy shall be governed by the laws of New Zealand whose courts shall have jurisdiction in relation to any dispute.

## 16. Sanctions

The Insured is not entitled to indemnity under this Policy where a claim payment breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of New Zealand, Australia, the European Union, United Kingdom or United States of America.

## 17. Subrogation

- (a) If the Insurer makes any payment under this Policy to or on behalf of the Insured, whether in respect of any judgment, settlement, Damages or Costs and Expenses, the Insurer shall be subrogated to all the Insured’s rights of recovery.
- (b) The Insured shall execute all papers and do all that is necessary to assist the Insurer in the full exercise of such rights, including prosecuting proceedings in the name of the Insured at the Insurer’s expense.
- (c) If the Insured effects any recovery in respect of the claim, it shall account to the Insurer for the full amount received.

## 18. Words

Words importing persons shall 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.

# SUB-SECTION 7.2 – STATUTORY LIABILITY

## A. THE COVER

The Insurer shall indemnify the Insured in accordance with the terms of this Sub-Section 7.2 in respect of:

1. any Fine payable by the Insured;
2. Defence Costs, except where it is alleged that the Insured has acted or omitted to act knowingly, wilfully or intentionally, unless the Insured is subsequently Acquitted;

arising out of an Event;

PROVIDED THAT the Event:

3. happened on or after the Retroactive Date; and
4. is first notified in writing to the Insurer by the Insured during the Period of Insurance, or within twenty-one (21) days after its expiry.

## B. LIMITS OF INDEMNITY

1. The Insurer's liability to indemnify the Insured for all claims under this Sub-Section 7.2 is limited in the aggregate to the amount specified in the Policy Schedule applicable for the Period of Insurance within which the Insured has or should have first notified the Insurer of the Event.
2. Where an Event is alleged to have taken place on, over or between a number of specified dates, which fall within more than one Period of Insurance, for the purposes of the applicable Limit of Indemnity and Excess the Event will be treated as if it occurred in the Period of Insurance in which the Insured has or should have first notified the Insurer of the Event.
3. In addition to 1 and 2, the Insurer shall pay Defence Costs, up to the Limit of Indemnity or NZD1,000,000, whichever is the lesser.

### 4. Excess

The Excess specified in the Policy Schedule shall be borne by the Insured in respect of each and every Event.

## C. AUTOMATIC ADDITIONAL BENEFITS FOR SUB-SECTION 7.2

- The terms of this Sub-Section 7.2 apply to each extension to this Policy unless expressly stated otherwise.
- The terms of each extension apply only to that extension and not to the rest of this Sub-Section 7.2 unless expressly stated otherwise.

### 1. Consolidation or Merger

If the Insured acquires by merger, consolidates with, is merged into or acquired by any other entity after the commencement of the Period of Insurance;

- (a) the Insured shall give written notice to the Insurer as soon as practicable, together with such information as the Insurer may require; and
- (b) the Insured shall pay the Insurer any required additional premium.

### 2. Newly Created or Acquired Subsidiary Company

If any subsidiary company is created or acquired by the Insured after the commencement of the Period of Insurance, such subsidiary company shall be included as an Insured provided that:

- (a) written notice of such creation or acquisition is given to the Insurer, together with appropriate underwriting information and payment of any required additional premium; and
- (b) in respect of acquisitions, cover granted under this Policy shall only apply:
  - (1) to any Event discovered by the Insured after the date of such acquisition and which took place after the Retroactive Date; and
  - (2) if the Insured has agreed to indemnify the subsidiary company in respect of the Event.

### 3. Extended Reporting Period

If the Insurer refuses to renew this Policy, the Insured may, upon payment of an additional premium not exceeding 100% of the full annual premium payable for the expiring Period of Insurance, extend the cover under this Policy for a further twelve (12) months from the date of expiry.

PROVIDED THAT:

- (a) this option to extend the Policy must be notified in writing to the Insurer within thirty (30) days of the date of expiry;
- (b) the extension shall only apply in respect of an Event before the expiry date;
- (c) an offer by the Insurer of any renewal terms or premiums different from expiring terms or premiums shall not constitute a refusal to renew;
- (d) the Limit of Indemnity under this extension is part of and not in addition to the Limit of Indemnity specified in the Policy Schedule.

## D. DEFINITIONS FOR SUB-SECTION 7.2

**Acquitted** means dismissal of charges before or after a defended hearing, or entry of a not guilty verdict (but shall not include the disposition of a charge pursuant to a plea bargain where multiple information's have been laid).

**Act of Parliament** means any Act of the New Zealand Parliament, other than an Excluded Act (including any amendment to or re-enactment, and any code, rules, regulations, bylaws or other subordinate legislation made under such Act).

**Act of Terrorism** means, for the purpose of Exclusion 9, an act, including but not limited to the use of force or violence and/or threat of any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to



influence any government and/or to put the public, or any section of the public, in fear.

**Business** means the Business specified in the Policy Schedule, and any other commercial activity which the Insured now undertakes or may undertake provided that the Insured has given written notice to the Insurer and has obtained the Insurer's acknowledgement.

**Defence Costs** means the legal costs and expenses, including witness costs and expenses, necessarily and reasonably incurred with the prior consent of the Insurer in relation to:

1. investigating, defending, settling or appealing any action arising out of an Event;
2. preparing for and attending an Investigation;
3. proceedings before a Human Rights or Privacy Complaints Review Tribunal.

**Event** means any act or omission occurring in the course of the Business that gives rise, or may give rise, to an action under an Act of Parliament.

**Excluded Act** means:

1. Arms Act 1983;
2. Aviation Crimes Act 1972;
3. Crimes Act 1961;
4. Proceeds of Crime Act 1991;
5. Real Estate Agents Act 2008;
6. Summary Offences Act 1981;
7. Transport Act 1962;
8. Transport (Vehicle and Driver Registration and Licensing ) Act 1986; and
9. any other Act of Parliament specified in the Policy Schedule as an Excluded Act.

**Fine** means:

1. any Fine or monetary penalty or costs assessed by a court to be paid by the Insured upon being found guilty of an offence in connection with an Event for which the Insurer may legally indemnify the Insured;
2. but not a Fine imposed pursuant to the Health and Safety in Employment Act 1992, but this definition is extended to include a sentence of reparation imposed following a conviction under that Act.

**Inception Date** means the commencement date of the Period of Insurance specified in the Policy Schedule.

**Insured** means:

1. The named Insured specified in the Policy Schedule;
2. any person who is, or was at the time of the Event, a trustee, director, officer, sole trader, partner or employee of the Insured;
3. if the named Insured is a company, any company that is, or was, at the time of the Event a subsidiary of the named Insured for the purposes of the Companies Act 1993 (subject to Automatic Extension 2 (Newly Created or Acquired Subsidiary Company)).

**Investigation** means any official inquiry, investigation, public examination or commission into the affairs of the Business:

1. that is instigated by a person or government authority that is legally empowered to conduct such an inquiry, investigation, examination or commission;
2. that an Insured is legally compelled to attend;
3. that alleges an Event by that Insured; and
4. that is not of a general nature which affects the industry of the Business, as a whole.

**Period of Insurance** means the Period of Insurance specified in the Policy Schedule.

**Policy** means this document, the Policy Schedule and any endorsements issued by the Insurer.

**Policy Schedule** means the schedule of insurance and any endorsements attached thereto.

**Retroactive Date** means the date specified in the Policy Schedule.

## E. EXCLUSIONS FOR SUB-SECTION 7.2

The Insurer shall not indemnify the Insured in respect of:

### 1. Asbestos

Any actual or alleged liability whatsoever for any claim or claims in respect of losses directly or indirectly arising out of, resulting from, or in consequence of, or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

### 2. Daily Continuing Offences / Orders and Costs

- (a) the cost or payment of any enforcement order, remedial order or compliance order;
- (b) any Fine imposed in relation to a daily continuing offence where the Fine is imposed in relation to a period of time after the Insured first received notice from the informant or his employing body of the intention to commence an action in relation to that offence;
- (c) any pecuniary penalty, restitution, compensation or order for payment pursuant to sections 78, 80, 83 or 89(3)(b) of the Commerce Act 1986;
- (d) any order for payment of costs made under the Commissions of Inquiry Act 1908;
- (e) any court order in the nature of damages or compensation, except a sentence of reparation following a Health and Safety in Employment Act prosecution;
- (f) any action, proceeding, inquiry, Investigation or prosecution taken against the Insured by the Inland Revenue Department or any other revenue collecting authority.

### 3. Deliberate Disregard

Any Defence Costs, unless the Insured is Acquitted, arising out of any Event which has allegedly resulted from the Insured's:

- (a) deliberate disregard of any of the provisions of any Act of Parliament which the Insured is alleged to have contravened;
- (b) instructing another person to discharge one or more of its obligations under any of the provisions of the Acts and failing to take all reasonable steps to ensure that the Insured's obligations were discharged as instructed; or
- (c) failure to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building consent, Notice to Rectify, Compliance Schedule, Gazetted Notice, or order made by a Human Rights or Privacy Review Tribunal.

### 4. Dishonest Acts

Any Event actually or allegedly brought about or contributed to by any dishonest, fraudulent or malicious act or omission by or on behalf of the Insured.

### 5. Personal Grievances

Any contract of service or any intended contract of service with any current, former or prospective employee, including any personal grievance or like action by an employee, but this exclusion shall not apply to any Investigation, inquiry or prosecution by the Department of Labour pursuant to the Health and Safety in Employment Act.

### 6. Private Prosecutions

Any investigation of and defence of any action, proceeding, inquiry, Investigation or prosecution taken against the Insured by a person other than the statutory authority or enforcement agency given that responsibility under the Act.

### 7. Radioactivity

Ionising radiations, or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or any self sustaining process of nuclear fusion.

### 8. Retroactive Date

Any Event after the Retroactive Date but before the Inception Date, if the Insured knew, or ought reasonably to have known, of the Event and failed to notify the Event to the Insurer before the Inception Date.

### 9. Terrorism

- (a) Any loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or Event contributing concurrently or in any other sequence to the loss.

- (b) Any loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

## 10. War

Any consequence of war, invasion, act of foreign hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.

## F. CONDITIONS applicable to Section 7.2

### 1. Apportionment of Costs

- (a) If there are claims against the Insured which contain uninsured allegations or allegations against other parties then the Insured and the Insurer shall use their best efforts to agree upon a fair and proper allocation of Defence Costs between insured and uninsured allegations.
- (b) If the Insured and the Insurer disagree over the allocation of Defence Costs, then the Insurer shall:
  - (1) advance such Defence Costs the Insurer believes to be covered under this Policy, until a different allocation is negotiated, arbitrated or judicially determined;
  - (2) if requested by the Insured, refer the dispute for determination of allocation to an expert mutually agreeable to all parties and such determination shall apply retrospectively to all Defence Costs incurred in the defence of that particular claim or Event.

### 2. Assignment

No assignment of interest under this Policy shall bind the Insurer unless the Insurer has endorsed its written consent on the Policy Schedule.

### 3. Cancellation

- (a) This Policy may be cancelled by the Insurer at any time by sending written notice to the Insured at its last known address.
- (b) Such cancellation shall be effective from 4pm on the thirtieth (30th) day after sending of the notice.
- (c) After cancellation, the Insurer will refund the premium for the unexpired Period of Insurance calculated on a pro rata basis from the effective date of cancellation.
- (d) This Policy may be cancelled by the Insured by giving written notice to the Insurer.
- (e) After cancellation the Insurer shall refund premium for the unexpired Period of Insurance calculated on a pro rata basis from the effective date of cancellation, subject to any minimum premium charge.

#### 4. Claims Notification and Duties

- (a) The Insured shall give the Insurer immediate notice in writing of any Event.
- (b) At the same time, or as soon thereafter as possible, the Insured shall:
  - (1) provide full details of any notice, circumstance or Event together with any documentation, information and details that are relevant to the claim;
  - (2) use its best endeavours to preserve all property, products, appliances, plant and other things which may assist the Insurer in the investigation or conduct of a claim. So far as may be reasonably practical no alteration or repair shall be effected until the Insurer has first had the opportunity of inspection;
  - (3) co-operate with the Insurer or its authorised representatives in all aspects of the claim;
  - (4) not make any admission of fact or liability, offer, promise or payment or settlement without the prior consent in writing of the Insurer;
  - (5) if the offence alleged is a continuing one, immediately take, at its expense, all reasonable steps to prevent its continuation.

#### 5. Conduct of Defence

- (a) Upon acceptance by the Insurer of the Insured's claim to be indemnified, the Insurer shall:
  - (1) have the right to nominate a solicitor to act as the Insured's solicitor; and
  - (2) have the total discretion as to the conduct and control of the Insured's defence, including strategy, in respect of any prosecution, inquiry, settlement negotiation or proceedings against the Insured.
- (b) Where the Insured disagrees with the Insurer over the Insured's defence, including strategy, the Insurer shall provide the Insured in writing with its reasons and shall refer the Insured to an independent barrister for a final determination as to their reasonableness, which determination shall be binding on both the Insured and the Insurer.

#### 6. Fraud

If any answers or statements in support of any claim, or in any information provided to obtain, amend or renew this insurance, are false in any way, the Insurer shall not provide any indemnity under this Policy.

#### 7. Goods and Services Tax

- (a) Where, upon receiving any indemnity payment under this Policy, the Insured is liable to pay tax ("GST") under section 5(13) of the Goods and Services Tax Act 1985 or any statutory amendment or re-enactment of that Act,

the Insurer shall also indemnify the Insured against the amount of that GST.

- (b) The indemnity against GST shall not be limited by any limit or sub-limit of indemnity.

#### 8. Inspection

The Insurer shall be permitted, but not obligated, to inspect the Insured's property and operations at any reasonable time.

#### 9. Material Change of Risk

- (a) The Insured shall give immediate notice to the Insurer of any material change to any of the facts or circumstances existing at the commencement of the Period of Insurance.
- (b) The Insurer shall be entitled to charge an additional premium.

#### 10. Other Insurance

If the Insured shall be entitled to indemnity under any other policy of insurance, any benefit under this Policy shall be in excess of such other insurance.

#### 11. Policy Disputes

This Policy shall be governed by the laws of New Zealand whose courts shall have jurisdiction in relation to any dispute.

#### 12. Prejudice

Where the Insured's breach or non-compliance with Conditions 4 (Claims Notifications and Duties) and 14 (Reasonable Precautions) of this Sub-Section 7.2 results in prejudice to the Insurer in relation to the handling of any claim, the indemnity afforded by this Sub-Section 7.2 in respect of such claim shall be reduced to such sum as would have been payable by the Insurer in the absence of such prejudice.

#### 13. Progress Payment of Legal Expenses

In the event of an Event for which the Insurer has agreed to indemnify the Insured, on production of acceptable evidence of expenditure prior to the final settlement of the claim, the Insurer shall pay Defence Costs necessarily and reasonably incurred by the Insured.

#### 14. Reasonable Precautions

The Insured shall take all reasonable precautions to:

- (a) avoid, prevent or minimise any circumstances that may give rise to an Event;
- (b) comply with all relevant statutory obligations.

#### 15. Sanctions

The Insured is not entitled to indemnity under this Policy where a claim payment breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of New Zealand, Australia, the European Union, United Kingdom or United States of America.

## 16. Severability and Non-Imputation

To the extent that this Policy insures more than one Insured, the application of any exclusion to any Insured, shall not prejudice the right of any other Insured to indemnity under this Policy.

PROVIDED THAT:

- (a) such remaining parties shall be entirely innocent of such fact or misstatement; and
- (b) the Insurer's total liability in the aggregate shall not exceed the Limit of Indemnity specified in the Policy Schedule.

## 17. Subrogation

In the event of a payment under this Policy to or on behalf of the Insured, the Insurer shall be subrogated to all the Insured's rights of recovery against all persons and organisations. The Insured shall do all that is necessary to assist the Insurer in the exercise of such rights, including prosecuting proceedings in the name of the Insured at the Insurer's expense.

# SUB-SECTION 7.3 – EMPLOYER'S LIABILITY (CLAIMS MADE)

## A. THE COVER

The Insurer shall indemnify the Insured in respect of legal liability for any Claim brought by an Employee for:

### 1. COVER A:

Damages as a result of that Employee sustaining Personal Injury in New Zealand that arose out of, or in the course of, such Employee's employment in the Business

PROVIDED THAT:

the Personal Injury WAS NOT a Personal Injury for which coverage is determined to exist under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation;

OR

### 2. COVER B:

Punitive or Exemplary Damages as a result of that Employee sustaining Personal Injury in New Zealand that arose out of, or in the course of, such Employee's employment in the Business;

PROVIDED THAT:

the Personal Injury WAS a Personal Injury for which coverage is determined to exist under the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation

PROVIDED THAT in respect of COVER A and B above:

3. the Claim against the Insured was first made during the Period of Insurance; and
4. the Claim was immediately notified in writing to the Insurer by the Insured during the Period of Insurance or within twenty-one (21) days of expiry, time being of the essence; and
5. the Personal Injury arose out of an event, circumstance, accident or happening which occurred subsequent to the Retroactive Date and before the expiry of the Period of Insurance;

PROVIDED THAT Claims which do not accord with 3, 4 and 5 above are not the subject of this insurance or any indemnity.

6. The Insurer shall also pay Legal Costs and Expenses incurred with the written consent of the Insurer in the defence or settlement of any Claim.

## B. THE INDEMNITY FOR SUB-SECTION 7.3

1. the Insurer's maximum liability for all Claims that are notified to the Insurer during the Period of Insurance is limited to the Limit of Indemnity specified in the Policy Schedule, irrespective of:
  - (a) the number of Claims made; or
  - (b) the number of Personal Injuries sustained; or
  - (c) whether indemnity is granted for Claims under either or both COVER A or B of this Policy.
2. Where:
  - (a) the Insured gives notice of any Claim to the Insurer during the Period of Insurance; and
  - (b) the Employee in a subsequent period of insurance makes further Claims, or alleges further and/or different injuries ("the additional Claims") were suffered in the event, circumstance, accident or happening which first gave rise to the original Claim;

then all such additional Claims shall be treated for the purposes of the Limit of Indemnity and Excess as if they had been incurred in the Period of Insurance in which the first notice of Claim was originally made.
3. The Insurer's liability for Costs and Expenses of a Claim is limited to the Limit of Indemnity or NZD 1,000,000, whichever is the lesser.

## C. DEFINITIONS FOR SUB-SECTION 7.3

**Act of Terrorism** means, for the purpose of Exclusion 9, an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to

influence any government and/or to put the public, or any section of the public, in fear.

**Business** means the Business specified in the Policy Schedule and any other activity which the Insured now undertakes or may undertake in accordance with their Memorandum of Association or Constitution.

**Claim** means:

1. legal proceedings instituted and served upon the Insured; or
2. any threat or intimation of a Claim; or
3. any circumstance which may give rise to a Claim.

**Damages** for the purposes of COVER A means:

1. monies ordered to be paid or agreed to be paid pursuant to (respectively) a judgement or settlement of any common law claim brought or capable of being brought in the District or High Court of New Zealand in respect of Personal Injury to an Employee of the Insured; but
2. not including any such monies payable pursuant to any remedy or relief provided in any statute of New Zealand, whether by way of damages, penalty, fine, reparation or other order.

**Employee** means:

1. any person who is directly employed by the Insured in connection with its Business and in respect of whose remuneration the Insured deducts PAYE tax at source;
2. any temporary Employee engaged either directly or indirectly by the Insured to be employed in connection with the Business.

**Insured** means:

1. the named Insured specified in the Policy Schedule; and
2. if the Insured is a company, its directors and any subsidiary company and its directors.

**Legal Costs and Expenses** means the Legal Costs and Expenses and/or defence witness costs and expenses and/or defence expert costs and expenses incurred in investigating and/or defending any Claim; including Legal Costs and Expenses incurred where, in respect of a Claim, the Insured makes an application to the Court to determine whether the Personal Injury is properly the subject of cover pursuant to the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation.

**Limit of Indemnity** means the Limit of Indemnity specified in the Policy Schedule.

**Period of Insurance** means the period of time specified in the Policy Schedule as the Period of Insurance.

**Personal Injury** means:

1. bodily injury, sickness, disease or infection;
2. death resulting therefrom;

3. disability, shock, fright, mental anguish or mental injury;

sustained by an Employee which arose out of or in the course of such Employee's employment in the Business.

**Policy** means this document, the Policy Schedule and any endorsements issued by the Insurer.

**Policy Schedule** means the schedule issued by the Insurer.

**Punitive or Exemplary Damages** means, for the purposes of COVER B, monies ordered to be paid as Punitive or Exemplary Damages pursuant to a judgement of the District or High Court of New Zealand in respect of a common law action brought by an Employee against the Insured in relation to Personal Injury.

**Retroactive Date** means the date specified as such in the Policy Schedule.

## D. EXCLUSIONS FOR SUB-SECTION 7.3

the Insurer will not indemnify the Insured in respect of:

### 1. Exclusions specifically for Cover A

Under Cover A:

- (a) any Personal Injury suffered by an Employee for which cover:
  - (1) is provided by the Accident Rehabilitation and Compensation Insurance Act 1992 or the Accident Insurance Act 1998 or any amending or replacement legislation; or
  - (2) would be so provided if the Insured were not an exempt employer under the Act; or
  - (3) would have been so provided had a claim been lodged under such legislation;
- (b) any Claim seeking aggravated, Punitive or Exemplary Damages;
- (c) any Claim as a result of an Employee sustaining Personal Injury which arose out of any wilfully intentional or deliberate conduct of the Insured which the Insured knew or should have known could cause injury to any Employee;
- (d) any Claim resulting from or contributed to by any dishonest, fraudulent, criminal, or malicious act or omission of the Insured;
- (e) any Claim as a result of an Employee sustaining Personal Injury which arose out of the failure by the Insured to comply with any improvement, prohibition or suspension notice issued to the Insured or its Employees under the Health and Safety in Employment Act 1992.

### 2. Exclusions specifically for Cover B

Under Cover B:

- (a) any Claim in respect of Personal Injury suffered by an Employee, which if made the subject of a Claim under the Accident Rehabilitation and Compensation Insurance Act 1992 or the

Accident Insurance Act 1998 or any amending or replacement legislation, would not be eligible for cover under such legislation;

- (b) any Claim seeking any relief other than Punitive or Exemplary Damages;
- (c) any Claim by an Employee as a result of that Employee sustaining Personal Injury which was caused by any wilfully reckless and/or contumelious conduct of the Insured;
- (d) any Claim as a result of an Employee sustaining Personal Injury which arose out of the wilfully reckless omission of the Insured to comply with any improvement, prohibition or suspension notice issued to the Insured under the Health and Safety in Employment Act 1992 or any amending or replacement legislation.

### **3. Trespass to the person, assault and battery**

Any Damages or Punitive or Exemplary Damages sought by, or awarded to, an Employee pursuant to a cause of action pleading or alleging against the Insured trespass to the person, assault, battery, false imprisonment, intentional physical harm, malicious prosecution, sexual harassment, or sexual abuse;

### **4. Activities outside the Business**

Any Claim as a result of the Insured directing an Employee to undertake activities otherwise than in the course of or in connection with the usual activities of the Insured's Business;

### **5. Retroactive Date**

Any Claim as a result of an Employee sustaining Personal Injury that arose out of any event, circumstances or accident that occurred prior to the Retroactive Date;

### **6. Foreign judgments**

Any liability under any judgement entered in any Court other than a New Zealand Court or any debt incurred by the Insured as the result of such a judgement;

### **7. Prior knowledge of Claim**

Any Claim arising from any event, circumstance, accident or happening which the Insured had become aware prior to the inception of the Period of Insurance and which a reasonable person in the Insured's Business would at any time prior to such inception have considered may give rise to a Claim;

### **8. Asbestos**

Any actual or alleged liability whatsoever for any Claim or Claims in respect of losses directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity;

### **9. Terrorism**

- (a) Any loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or

indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

- (b) Any loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

## **E. CONDITIONS FOR SUB-SECTION 7.3**

### **1. Claims Notification and Duties**

- (a) The Insured shall give the Insurer prompt advice in writing upon becoming aware of any circumstance(s) or event(s) that may constitute a Personal Injury or Claim.
- (b) At the same time, or as soon thereafter as possible, the Insured shall:
  - (1) provide full details of such, together with any documentation, information and details that are relevant to the Claim;
  - (2) co-operate with the Insurer or their authorised representatives in the investigation, settlement or defence of the Claim;
  - (3) not make any admission of liability, offer, promise, payment or settlement in connection thereto without the prior consent in writing of the Insurer;
  - (4) if the Personal Injury is a continuing one, promptly take, at its expense, all reasonable steps to prevent its continuation.

### **2. Reasonable Precautions**

The Insured shall take all reasonable precautions to prevent Personal Injury and comply with all statutory obligations relating to the Insured's Business.

### **3. Conduct of Defence**

Upon acceptance by the Insurer of the Insured's Claim to be indemnified, the Insurer shall have:

- (a) the right to nominate a solicitor to act as the Insured's solicitor; and
- (b) the total discretion as to the conduct or defence of any Claim, prosecution, inquiry, settlement negotiation or proceedings instituted by any person against the Insured.

### **4. Prejudice**

Where the Insured's breach or non-compliance with General Conditions 1 (Claims Notification and Duties) and 2 (Reasonable Precautions) of this Sub-Section 7.3 results in prejudice to the Insurer in relation to the handling of any Claim which in all other respects qualifies to be indemnified under this Sub-Section 7.3, the indemnity afforded by this Sub-Section 7.3 in respect of such Claim shall be reduced to such

sum as would have been payable by the Insurer in the absence of such prejudice.

## 5. Other Insurance

If in respect of any Claim if the Insured is, or but for the existence of this Policy would be, entitled to indemnity under any other policy or policies, the Insurer shall not be liable except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this Policy not been effected.

## 6. Sanctions

The Insured is not entitled to indemnity under this Policy where a Claim payment breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of New Zealand, Australia, the European Union, United Kingdom or United States of America.

## 7. Subrogation

In the event of a payment under this Policy to or on behalf of the Insured:

- (a) the Insurer shall be subrogated to and/or receive assignment of all the Insured's rights of recovery against all persons and organisations;
- (b) the Insured shall do all that is necessary to assist the Insurer in the exercise of such rights, including prosecuting proceedings in the name of the Insured at the Insurer's expense;
- (c) Any such amount so recovered shall first be apportioned to reimburse the Insurer to the extent of its actual payment hereunder, and secondly to pay the Insured's excess.

## 8. Assignment

No assignment of interest under this Policy shall bind the Insurer unless the Insurer's written consent is endorsed herein.

## 9. Cessation

The insurance provided by this Policy ceases absolutely at the time and date specified in the Policy Schedule.

## 10. Circumstances Notified

Provided that notice referred to in Condition 1 (Claims Notification and Duties) of this Sub-Section 7.3 has been given to the Insurer prior to the expiration of the Period of Insurance, any Claim arising from the circumstances thus notified which is subsequently made after the expiration of such Period of Insurance shall be deemed to have been made and notified to the Insurer during the currency of this Policy.

## 11. Change of Risk

The Insured shall advise the Insurer of any material change to the Insured's Business activities during the Period of Insurance.

## 12. Additional Insureds

- (a) The Insured shall be entitled to request the Insurer to add as an Insured any new company or entity formed or acquired by it during the Period of Insurance provided the Insured exercises active management control over its activities and first obtains the Insurer's written consent and endorsement to its inclusion as an Insured.
- (b) the Insurer shall be entitled to charge an additional premium for such additional insureds.

## 13. Extended Reporting Period

- (a) If the Insurer refuses to renew the Policy, the Insured may, upon payment of an additional premium of 50% of the full annual premium payable for the expiring Period of Insurance, extend the cover under this Sub-Section 7.3 for a further twelve (12) months from the date of expiry, but only in respect of Claims arising out of any Personal Injury which occurred before such expiry.
- (b) This option to extend the cover under this Sub-Section 7.3 must be notified in writing to the Insurer within thirty (30) days of the Policy expiring.

## Contact:

---

### Head Office Newcastle

Hunter Mall Chambers  
175 Scott St  
PO Box 656  
Newcastle NSW 2300  
**P:** Australia: +61 2 4925 6666  
**F:** Australia: +61 2 4929 6621

### Auckland Office

Level 6, AMP Centre  
29 Customs Street West  
PO Box 44  
Auckland 1140  
New Zealand  
**P:** +64 9980 3447  
**P:** +64 0800 UAA INS (822 467)  
**F:** +64 99379 7777

### Perth Office

Level 18  
200 St. Georges Terrace  
PO Box 7863 Cloisters  
Square Post Office  
Perth W.A. 6050  
**P:** +61 8 9481 3773  
**F:** +61 8 9481 8773

### Brisbane Office

4/192 Evans Rd  
PO Box 202  
Salisbury QLD 4107  
**P:** (07) 3272 7502  
**F:** (07) 3272 7503

### Melbourne Office

628 Bourke Street  
Melbourne VIC 3000  
PO Box 4323  
Melbourne 3001  
**P:** +61 3 9495 1633  
**F:** +61 3 9495 1644

### Adelaide Office

Level 9,  
400 King William Street  
PO Box 6229 Halifax Street  
Adelaide SA 5000  
**P:** +61 8 8213 5318  
**F:** +61 8 8202 2300



**W:** [www.uaa.com.au](http://www.uaa.com.au) | **E:** [enquiry@uaa.com.au](mailto:enquiry@uaa.com.au)

Industrial Special Plant (ISP) is underwritten by QBE Insurance (Australia) Limited.  
ABN 78 003 191 035.

Underwriting Agencies of Australia Pty Ltd (UAA). ABN 86 003 565 302, AFSL 238517  
Underwriting Agencies of New Zealand Limited (UAA). 4758199, NZBN: 9429040999678