
Ando Insurance Group Limited

Carriers Liability Policy Wording



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Introduction

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

This means **We** will:

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

1. Coverage

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

1.1 Carriers Liability

We will indemnify **You** against **Your** liability as a **Carrier** under Part 5, Subpart 1 of the Contract and Commercial Law Act 2017, for **Loss** of or **Damage** to **Goods** specified in the **Schedule** that occurs during **Your** period of responsibility for the **Goods** and during the **Period of Insurance**.

1.2 Limit of Indemnity

Our maximum liability in respect of any **Claim**, or any series of **Claims**, arising out of one **Occurrence**, will not exceed the **Limit of Indemnity** or any specified sub-limit, provided that:

- a) immediately after **We** have paid the **Limit of Indemnity**, or the sub-limit in any applicable Automatic Coverage Clause, in respect of any judgment or settlement, **Our** liability in relation to **Costs and Expenses** will cease; and
- b) if a payment exceeding the **Limit of Indemnity** has to be made to dispose of a **Claim**, **Our** liability in relation to **Costs and Expenses** will be limited to the same proportion as the **Limit of Indemnity** bears to the amount required to dispose of the **Claim**.

1.3 Costs and Expenses

In addition to the applicable **Limit of Indemnity** or any specified sub-limit, and subject to Condition 6.5 (Defence of Legal Proceedings), **We** will pay **Costs and Expenses** necessarily and reasonably incurred in relation to a **Claim** against **You** for which there is cover under this **Policy** irrespective of whether or not **You** are found legally liable.

1.4 Excess

- a) The **Excess**, will be borne by **You** in respect of each and every **Claim**, or series of **Claims**, arising out of one **Occurrence**.
- b) A single **Excess** will apply to a **Claim** where indemnity may be payable under Coverage Clause 1.1 (Carriers Liability) or any applicable Automatic Coverage Clause, Optional Coverage Clause or an endorsement to the **Policy**. The applicable **Excess** will be the highest of the specified **Excesses**.

2. Automatic Coverage Clauses

2.1 Damages Consequential Upon Loss

We will indemnify **You** for any sum **You** become legally liable to pay under s259(3)(c) of the Contract and Commercial Law Act 2017, provided that:

- a) **We** have agreed to provide **You** cover in respect of a **Contract of Carriage** which does not exclude **Your** legal liability for **Loss** or **Damage** consequential upon the breach of a term of the contract.
- b) **Our** maximum liability under this Automatic Coverage Clause will not exceed the sub-limit specified in the **Schedule** (less the **Excess**).
- c) Exclusion 5.5(c) (Damages) does not apply to this Automatic Coverage Clause.

2.2 Debris Removal

We will indemnify **You** for **Your** legal liability for the cost of removal and disposal of **Damaged Goods**, including the cost of cleaning the accident site. Exclusion 5.20 (Seepage and Pollution) will not apply to any sum **You** become legally liable to pay for seepage, pollution or contamination from **Goods** being actually carried by **You** at the time such seepage, pollution or contamination occurs, provided that this was the result of:

- a) fire on or of a **Carrying Vehicle**; and/or
- b) collision or overturning of a **Carrying Vehicle**.

Our maximum liability under this Automatic Coverage Clause will not exceed the sub-limit specified in the **Schedule**. There is no cover under this Automatic Coverage Clause for subcontractors who otherwise have cover under this **Policy** by virtue of Clause 2.4 (Subcontractors).

2.3 Extensions to liability

We will not rely on section 260(2)(d) of the Contract and Commercial Law Act 2017 in defending on **Your** behalf any **Claim** made against **You** by a third party unless **You** specifically request **Us** to do so.

2.4 Subcontractors

This **Policy** covers the legal liability of any contractor engaged by **You** which directly arises from the **Carriage** of any **Goods**, provided that such contractor has agreed in writing to carry the **Goods** on the same terms **You** agreed with the **Contracting Party**.

3. Optional Coverage Clauses

3.1 Warehousemen's Liability

If this Optional Coverage Clause is specified in the **Schedule**, **We** will indemnify **You** against **Your** legal liability as a bailee to pay **Compensation** for accidental physical **Loss** or **Damage** caused by an **Occurrence** during the **Period of Insurance**, to property of others stored under a contract for the storage of **Goods** in premises operated by **You** at the locations specified in the **Schedule**.

Cover under this Optional Coverage Clause applies only where the Contract and Commercial Law Act 2017 does not apply to the storage.

In any case where **You** are entitled to indemnity under this Optional Coverage Clause **We** will also indemnify **You** in respect of:

- a) all **Costs and Expenses** incurred by **You** with **Our** written consent to avoid or minimise a **Claim** or in the settlement or defence of any **Claim**;
- b) all charges, expenses and legal costs recoverable from **You** by any claimant for **Compensation**; and
- c) costs incurred by **You** with **Our** prior written consent in disposing of the remains of any property.

Every **Claim** paid under this Optional Coverage Clause reduces the **Limit of Indemnity** by the amount paid by **Us**, however in the event of **Loss** **We** agree to reinstate the full **Limit of Indemnity** on payment to **Us** of pro rata additional premium on the amount of such **Loss**.

The most **We** will pay under this extension for any one **Period of Insurance** is the amount specified on the **Schedule** (less the **Excess**) unless, following a **Claim**, **You** choose to reinstate the limit for this extension by paying an additional premium as agreed by **Us**.

Exclusion 5.9 (Goods in Storage) does not apply to this Optional Coverage Clause.

3.2 Declared Value or Declared Terms

We will pay **Your** legal liability incurred for **Carriage** at "Declared Value Risk" or "Declared Terms" under sections 245, 248 to 258, 259(1) and 260(1) of the Contract and Commercial Law Act 2017, provided that before carrying **Goods** under any such contract:

- a) **You** have first provided **Us** with a copy of the contract; and
- b) **You** have agreed with **Us** the premium that will apply.

Our maximum liability under this Optional Coverage Clause is set out in the **Schedule**.

4. Definitions

In this **Policy**, unless specifically stated to the contrary:

4.1 Actual Carrier means:

In relation to the **Carriage** of any **Goods**, every **Carrier** who, at any material time, is or was in possession of the **Goods**, or of any container, package, pallet, item of baggage, or any other thing in or on which the **Goods** are or were believed by him to be, for the purpose of performing the **Carriage** or any stage of it or any incidental service; and includes the **Contracting Carrier** where he performs any part of the **Carriage**.

4.2 Carriage means:

Includes **Incidental Service**; and carry has a corresponding meaning

4.3 Carrier means:

A person who, in the ordinary course of his business, carries or procures to be carried goods owned by any other person, whether or not as an incident of the **Carriage** of **Passengers**; and, except in sections 283 to 289 of the Contract and Commercial Law Act 2017, includes a person who, in the ordinary course of his business, performs or procures to be performed any **Incidental Service** in respect of any such **Goods**.

4.4 Carrying Vehicle means:

Any vehicle **You** use or operate for the purpose of fulfilling a **Contract of Carriage** and includes any B-Train, trailer, or similar in which **Goods** are being carried.

4.5 Checked Baggage means:

Baggage, personal effects, or other articles, checked or registered with the **Carrier**, or put in any place at the **Carrier's** direction, or in any other way handed over to and accepted by the **Carrier** (whether or not a check or form of receipt is issued), as baggage intended to be carried incidental to a **Contract for Carriage** of a **Passenger**.

4.6 Claim means:

A claim against **You** by a third party which arises from **Your** legal liability as a **Carrier** under the Contract and Commercial Law Act 2017.

4.7 Compensation means:

Money payable by reason of a judgment of a **Court** or Disputes Tribunal in New Zealand; or by reason of any settlement of any **Claim** negotiated with **Our** consent.

4.8 Contracting Carrier means:

In relation to a **Contract of Carriage**, the **Carrier** who, whether as a principal or as the agent of any other **Carrier**, enters or has entered into the contract with the **Contracting Party**.

4.9 Contract of Carriage means:

A contract for the **Carriage** of **Goods**.

4.10 Contracting Party means:

In relation to a **Contract of Carriage**, means the consignor or (as the case may require) the consignee of the **Goods** who enters or has entered into the contract with the **Contracting Carrier**.

4.11 Costs and Expenses means:

Any legal costs, disbursements, witnesses' costs, assessors or adjusters' costs or experts' costs incurred by **Us**, or by **You** with **Our** prior written consent.

Costs and Expenses does not include any costs of **Your** time including for the avoidance of doubt, any time spent in assisting **Us** or **Our** appointed lawyers with the defence or investigation of any **Claim**.

4.12 Court means:

Any court of competent jurisdiction.

4.13 Damage / Damaged means:

Physical **Loss** or damage.

4.14 Excess means:

The excess specified in the **Schedule** or otherwise specified in this **Policy**.

4.15 Goods means:

Goods, baggage, and chattels of any description; and includes animals and plants; and also includes money, documents, and all other things of value.

4.16 Hand Baggage means:

Baggage, personal effects, or other articles, not being **Checked Baggage**.

4.17 Incidental Service means:

In relation to any **Goods**, any service (such as that performed by consolidators, packers, stevedores, and warehousemen) the performance of which is to be or is undertaken to facilitate the **Carriage** of the **Goods** pursuant to a **Contract of Carriage**.

4.18 International Carriage means:

- a) in relation to the carriage of goods by air, **Carriage** in which, according to the **Contract of Carriage**, the place of departure and the place of destination (whether or not there is a break in the **Carriage** or a transshipment) are within the territories of 2 countries, or within the territory of a single country if there is an agreed stopping place within the territory of another country:
- b) in relation to the **Carriage of Goods** by sea, **Carriage** from any port in New Zealand to any port outside New Zealand, or to any port in New Zealand from any port outside New Zealand, commencing when the **Goods** are loaded onto a **Ship** and ending when they are discharged from a **Ship**.

4.19 Limit of Indemnity means:

The limit of indemnity specified in the **Schedule**, or applicable Automatic Coverage Clause.

4.20 Loss means:

In relation to any **Goods**, includes the non-delivery or destruction of the **Goods**.

4.21 Occurrence means:

Any one event or series of events arising from one source or original cause during the **Period of Insurance** which results in **Damage to Goods**.

4.22 Passenger means:

A person **Carried** pursuant to a **Contract of Carriage** of that person.

4.23 Period of Insurance means:

The period of insurance specified in the **Schedule**.

4.24 Policy means:

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

4.25 Regulations means:

Regulations or rules made under any Act of Parliament or any local authority bylaw.

4.26 Schedule means:

The current schedule issued by **Us**.

4.27 Ship means:

Any vessel used for the **Carriage of Goods** by sea.

4.28 We or Our or Us means:

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

4.29 You, Your or Named Insured means:

- a) The insured(s) named in the **Schedule**.
- b) All subsidiaries incorporated in New Zealand, and any other organisation under the sole control of the insured named in the **Schedule** and which it:
 - (i) actively manages as at the commencement of the **Period of Insurance**; or
 - (ii) acquired, created or took control of during the **Period of Insurance**, provided that you give **Us** written notice and obtain **Our** acknowledgement of coverage within sixty (60) days of acquisition, creation or taking control;
- c) Every director, officer, employee, partner or shareholder of an insured designated in (a) and (b) whilst acting within the scope of their duties as such, except in respect of any liability under the Companies Act.

5. Exclusions

We will not indemnify **You** for any **Claim** in respect of or alleging or any liability arising from:

5.1 Asbestos

Any actual or alleged liability whatsoever for any **Claim** or **Claims** in respect of **Loss** directly or indirectly arising out of, resulting from, in consequence of, contributed to, or aggravated by asbestos in whatever form or quantity.

5.2 Assumed Liability

Liability assumed by **You** by agreement, other than:

- a) an agreement to which Optional Coverage Clause 3.2 (Declared Value or Declared Terms) of this Policy applies; or
- b) where such assumed liability would have attached to **You** notwithstanding such agreement.

5.3 Breach of Driver Licensing

Subject to Condition 6.11 (Invalidation), liability directly or indirectly caused by, or in connection with or to, any **Carrying Vehicle** while it is being driven by any person, including **You** or any of **Your** employees or agents, while such person:

- a) has consumed any liquor or taken any substance or drug; or
- b) is in breach of the driver licensing requirements for the operation of the **Carrying Vehicle** including not having a current and valid motor driver's licence required to drive the **Carrying Vehicle**, except to the extent provided by Automatic Coverage Clause 2.3 (Extensions to Liability).

5.4 Cyber Attack

In no case shall this contract cover **Loss**, **Damage**, liability or expense directly or indirectly caused by or contributed to, by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

5.5 Damages

Liability arising directly or indirectly from:

- a) the terms of a **Contract of Carriage** for damages other than for the **Loss** of or **Damage to Goods**; and
- b) Fines, penalties, loss of market, loss of use, delay or punitive losses or damages of any kind;
- c) Consequential Losses.

5.6 Dishonest or Reckless, or Deliberate Failure to Act

Liability, cost or expense directly or indirectly caused by or in any way connected with an intentional, deliberate, dishonest, criminal, malicious or reckless act or omission, or failure to act, by **You** or **Your** agents, employees or representatives.

5.7 Employee Theft

Subject to Condition 6.11 (Invalidation), **Loss** caused by theft by **Your** employees or persons to whom **Goods** are entrusted.

5.8 Expropriation

The lawful seizure, confiscation, nationalisation or requisition of **Goods**.

5.9 Goods in Storage

Liability in connection with **Damage to Goods** at any time while the **Goods** are in any store, which is owned or occupied by **You** or under **Your** control, unless such storage is incidental to the **Carriage of Goods**.

5.10 Gradual Damage, Inherent Vice, Repair

Liability for **Damage** caused by or in connection with:

- a) aesthetic defects;
- b) any repair, cleaning, restoration or retouching process;
- c) co-mingling;
- d) defect in design, specification, materials or workmanship;
- e) deterioration due to lack of use;
- f) natural shrinkage, or change in moisture content or atmospheric conditions;
- g) wear and tear, gradual deterioration (including corrosion, rust, fading, rot, mould, mildew and fungi).

5.11 Health Hazard

Liability directly or indirectly caused by or medically attributed to any product, compound, derivation, phenomenon, process or formula including waste, by-product, noise, smell or vibration whether or not processed, produced or manufactured by **You** which whether by ingestion, inhalation, absorption or in any other manner, causes illness, disease, incapacity or death of any person consequent upon their exposure to the aforesaid over a period of time, whether continuous or intermittent.

5.12 Household and Office Removals

Liability in connection with household or office removals or relocations.

5.13 Implied Warranties Breach

Liability arising from a:

- a) breach by **You** of either of the implied warranties in section 273(1)(a) of the Contract and Commercial Law Act 2017; or
- b) **Contract of Carriage** where **You**, after being advised by the other **Contracting Party** of any matter breaching either of the implied warranties in section 273(1)(a) of the Contract and Commercial Law Act 2017, have nevertheless accepted **Goods** for **Carriage**.

5.14 Incorrect Statements or Omissions

Liability incurred or increased by an incorrect statement in or omission from **Your** consignment note, bill of lading or other document evidencing the **Contract of Carriage**.

5.15 Insolvency

Liability in any way connected with **Your** insolvency, liquidation or receivership or where **You** are deemed by law to be unable to pay **Your** debts or **You** make any arrangement or compromise with **Your** creditors, or members, or with any class of creditors or members.

5.16 Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and electromagnetic Weapons Exclusion Clause 10/11/2003

Loss, Damage, liability or expense directly or indirectly caused or contributed to by or arising from:

- a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- e) any chemical, biological, bio-chemical, or electromagnetic weapon.

5.17 Mechanical or Electrical Derangement

Liability directly or indirectly in connection to mechanical and/or electrical breakdown or mechanical and/or electrical derangement of **Goods** unless caused by an external force which is clearly evidenced by marks and the like on packaging or other similar evidence.

5.18 Nuclear

Liability incurred by **You** in connection with anything nuclear or radioactive, meaning the ionising radiations from or the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter or nuclear waste, weapon, device, fuel, installation, reactor or any component of these. However, this exclusion does not apply to radioactive isotopes carried for agricultural, commercial, medical or scientific purposes.

5.19 Refrigerated or Cold Storage

Loss or **Damage** resulting from loss of power from an outside source.

5.20 Seepage and Pollution

Liability incurred by **You** for pollution or contamination:

- a) on or over land or inland waters unless caused by a sudden event or insured on a sudden and accidental basis;
- b) caused by disposal or dumping of waste.

Nevertheless, a **Loss** or **Claim** in respect of liability for the following shall not be excluded under this clause:

- a) Seepage, pollution or contamination from or caused by vessels, craft or their cargoes;
- b) General average.

5.21 Ship Navigation or Operation

Liability in connection with the management, operation or navigation of any **Ship** or aircraft in which **You** have an interest as owner, charterer, lessor, lessee or financier or in which **You** otherwise have a legal or equitable interest.

5.22 Terrorism

Terrorism and/or steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived terrorism. For the purpose of this clause, 'terrorism' means any act(s) of any person(s) or organisation(s) involving:

- a) the causing, occasioning or threatening of harm of whatever nature and by whatever means;
- b) putting the public or any section of the public in fear, in circumstances in which it is reasonable to conclude that the purpose(s) of the person(s) or organisation(s) concerned are wholly or partly of the political, religious, ideological or similar nature.

5.23 Transmission and Distribution Lines Damage

Liability, cost or expense directly or indirectly caused by, or in connection with overhead transmission and distribution lines and their supporting structures, of power generating authorities or entities or telecommunication entities.

5.24 Unexplained Disappearances

Shortages revealed only by the taking of an inventory or due to clerical or accounting errors, or disappearance due to unknown causes or circumstances.

5.25 Unsafe Carrying Vehicle

Liability caused by or in connection with a **Carrying Vehicle** which is being driven or used:

- a) outside of the manufacturer's specifications or recommendations, including the size of any load being carried; or
- b) in an unsafe or damaged condition; or
- c) driven by any person at a speed which could result in an instant mandatory suspension of licence.

5.26 Valuable Cargo

The **Carriage** of:

- a) bullion, precious metal objects, precious jewellery, metals or stones;
- b) money (such as bank notes, bonds, negotiable instruments, or securities of any kind);
- c) precious documents (such as deeds, accounts, evidence of debt);
- d) works of art, coin or stamp collections;
- e) wines, spirits, tobacco, tobacco products;
- f) bloodstock.

5.27 Vermin and Other Pests

Liability, cost or expense directly or indirectly caused by vermin, insects or any other pest of any kind.

5.28 War

Loss, Damage or expense caused by war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat derelict mines torpedoes bombs or other derelict weapons of war.

6. Conditions

6.1 Cancellation

- a) **You** may cancel this **Policy** at any time by giving notice to **Us**. **We** will refund to **You** on a pro rata basis the amount of the unexpired premium already paid subject to any applicable minimum premium.
- b) **We** may cancel this **Policy** after sending at least thirty (30) days' notice to **You** in accordance with Conditions 6.15 (b) and (c) (Notices by Us). **We** will refund on a pro rata basis the amount of any unexpired premium already paid.

6.2 Claims

- a) **You** must not (without **Our** prior written consent) make any admission, offer, promise or payment in connection with any **Occurrence** or **Claim**. **We** are entitled to take over and conduct in **Your** name the defence or settlement of any **Claim**.
- b) **We** will have full discretion in the conduct of any proceedings in connection with any **Claim**.
- c) **You** must use best endeavors to preserve all **Goods** and all other things which may assist in the investigation or defence of a **Claim** or in the exercise of rights of subrogation.
- d) In the event of an **Occurrence**, or the likelihood of an **Occurrence**, **You** must promptly take at **Your** own expense all reasonable steps to prevent further **Damage to Goods** arising or continuing out of the same or similar conditions, but such expense will not be recoverable from **Us**.
- e) **You** must give all information, co-operation and assistance as **We** may require in the prosecution, defence or settlement of any **Claim**.
- f) **We** are entitled at any time to conduct in **Your** name, the investigation, defence or settlement of any **Claim**. **We** may appoint and instruct solicitors to act in the investigation, defence or settlement of any such **Claim**.
- g) The solicitor shall at all times be at liberty to disclose to **Us** any information obtained in the course of so acting, whether from **You** or howsoever. **You** hereby waive all claims to legal professional privilege that might otherwise have existed as between **You** and the solicitor retained by **Us** to act on **Your** behalf, in respect of such information.

6.3 Claims Notification

You must advise in writing as soon as practicable and provide all information to **Us** of any:

- a) **Occurrence** or circumstances, which might give rise to a claim under this **Policy**. **We** will not be liable to indemnify **You** for any liability in connection with **Damage** not notified to **Us** within 30 days of **You** first becoming aware of the same.
- b) notice of claim, summons, proceedings, impending prosecution or inquest which might give rise to a **Claim** under this **Policy** regardless of whether **You** believe that:
 - (i) a **Claim** will not be made;
 - (ii) any **Claim** which is made, would fall below the applicable **Excess**; or
 - (iii) any **Claim** which is made, would be groundless.

6.4 Condition Precedent

It is a condition precedent to **Our** liability to indemnify **You** under this **Policy** that:

- a) in any case where a **Claim** has been made against **You** and **You** are, or may be, entitled to claim contribution or indemnity from another **Carrier**, **You** comply in all respects with the provisions of sections 274 to 277 of the Contract and Commercial Law Act 2017, either as they appear in that section or, where such other **Carrier** has either wholly or partly contracted out of sections 274 to 277, in the manner provided for in that **Carrier's** terms and conditions of trade;
- b) if any property is lost or if theft, pilferage, fraud, dishonesty or malicious **Damage** is suspected, the police are notified within 72 hours of **You** becoming aware of the event; and
- c) **You** promptly take all reasonable steps to prevent further **Damage**, disablement or liability.

6.5 Defence of Legal Proceedings

- a) **We** will not require **You** to defend any legal proceedings in respect of any **Claim** against **You**, nor will **You** require **Us** to defend, on **Your** behalf, any legal proceedings in respect of any such **Claim** unless legal counsel appointed by **Us** advises that such proceedings should be defended.

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- b) In formulating such advice, appointed counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of **You** successfully defending the action. The cost of counsel's opinion will be treated as part of the defence costs of any **Claim**.
 - c) In the event that counsel advises that, having regard to all the circumstances, the matter should not be defended but should be settled, provided that settlement can be achieved within certain limits which, in counsel's opinion, are reasonable, then **You** shall co-operate with **Us** to effect such settlement.
 - d) Provided always that if **You** do not agree with **Our** decision to settle a **Claim**, **You** can elect to contest the **Claim** at **Your** own expense but **Our** liability will not exceed the amount for which the **Claim** could have been settled in the opinion of counsel appointed.

6.6 Discharge of Liabilities

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

6.7 Documents

We will under no circumstances be under any obligation to indemnify **You** (whether or not **We** have accepted liability under this **Policy**) until **You** have first provided **Us** with (so far as applicable):

- a) a completed and signed claim form;
- b) a copy of statement of **Claim** / letter of **Claim** made by the claimant to **You**;
- c) any response made by **You**;
- d) an original delivery docket signed by the receiver of any **Goods** delivered by **You**;
- e) a legible copy of consignment note (both sides);
- f) a legible copy of bill of lading (both sides), if applicable; and
- g) a copy of commercial invoice and packing list.

6.8 Fraud

If any **Claim** or information supplied in support of a **Claim** is false or fraudulent in any respect whatsoever or if any information provided to obtain, amend or renew this insurance, is false in any way, **We** will not provide any indemnity to **You** under this **Policy**.

6.9 GST

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

6.10 Inspection

We are entitled to inspect any premises, plant, works, machinery, appliances, **Carrying Vehicle** and electronic equipment used in **Your** business at any time subject to **Us** providing **You** with reasonable notice of such inspection.

If required by **Us**, **You** must provide **Us** with any reasonable information relating to any **Carrying Vehicle**.

6.11 Invalidation

We will indemnify **You** for **Loss** or liability which would otherwise be excluded under Exclusions 5.2 (Assumed Liability) and 5.5 (Damages) if:

- a) the excluded circumstances occurred without **Your** actual or implicit knowledge; and
- b) **You** have reasonable (in relation to the size and nature of **Your** business) satisfactory training, controls, security and procedures intended to detect the behaviour which is the subject of the exclusions; and
- c) the **Claim** is otherwise covered under the **Policy**.

The burden of proof under this Condition 6.11 shall be on **You**.

6.12 Joint Insureds

The inclusion of more than one person or organisation as a **Named Insured** under this **Policy** will not in any way affect the rights of any such person or organisation, either in respect of any **Claim**, demand, suit or judgment made or in favour of any employee of such other Insured or otherwise, it being the intent of this **Policy** to protect such person or organisation covered as Insured in the same manner as though a separate **Policy** had been issued to each person or organisation provided that this clause will only apply where each Insured is a separate legal entity.

Where a **Claim** is made against more than one person or organisation in respect of the same **Occurrence**, the amount of any **Excess** and the **Limit of Indemnity** for any one **Occurrence** will not exceed the amount specified in the **Schedule** regardless of the number of persons indemnified. Where the **Limit of Indemnity** is insufficient to fully indemnify all persons and organisations entitled to indemnity under this **Policy**, it will apply in priority to the first **Named Insured**.

6.13 Legislation Changes

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

6.14 Material Change

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

6.15 Notices by Us

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

6.16 Other Insurance

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

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

6.17 Policy Disputes

The law of New Zealand applies to disputes about this **Policy** and the New Zealand Courts have exclusive jurisdiction.

6.18 Prejudice

Where breach of or non-compliance with any of the conditions of this **Policy** results in prejudice to **Us** in relation to the handling of any **Claim** which in all other respects qualifies to be indemnified under this **Policy**, the indemnity afforded by this **Policy** in respect of such **Claim** will be reduced to such sum as would have been payable by **Us** in the absence of such prejudice.

6.19 Premium

The premium for this **Policy** has been calculated on estimates furnished by **You**. **We** require **You** to keep an accurate record of all matters relevant to the calculation of the premium and will at all times allow **Us** to inspect such record. **You** will, within one calendar month from the expiry of each **Period of Insurance**, supply **Us** with such particulars and information **We** may require. The premium for such period will then be adjusted and the difference paid by, or credited to, **You** as the case may be.

6.20 Preservation

You will use **Your** best endeavours to preserve any **Damaged**, defective, or otherwise deficient premises, plant, works, machinery, appliance, electronic equipment or other item which might prove necessary or useful by way of evidence in connection with any **Claim** whether or not **You** have any knowledge of the possibility of a **Claim**.

So far as may be reasonably practical and where not inconsistent with **Your** duty to mitigate the **Loss**, no repair or alteration is to be effected to any items described in the above paragraph until **We** have first had the opportunity to inspect.

6.21 Reasonable Care

You must:

- a) take all reasonable steps to prevent or minimise **Damage** or liability;
- b) maintain all business premises, including all plant and fitout (such as machinery, refrigeration systems, and electronic equipment) and in the event of a **Claim** provide evidence of such maintenance to **Us** if required;
- c) ensure the proper use and maintenance of any security, protective and warning equipment as required;
- d) comply with all relevant statutory obligations and **Regulations**;
- e) comply with all manufacturers' recommendations.

In particular, in regard to the **Carrying Vehicle**:

- a) **You** will ensure that the vehicle is maintained and fit for purpose, and
- b) when left unattended or out of direct view of the driver (or any other accompanying person) all keys must be removed and the vehicle locked, and any alarm and/or immobiliser fitted must be activated.

6.22 Subrogation

- a) If **We** make any payment under this **Policy** to or on **Your** behalf, whether in respect of any judgment, settlement, Damages or Costs and Expenses, **We** will be subrogated to all **Your** rights of recovery.
- b) **You** will execute all papers and do all that is necessary to assist **Us** in the full exercise of such rights, including prosecuting proceedings in **Your** name at **Our** expense.
- c) If **You** effect any recovery in respect of the **Claim**, **You** will account to **Us** for the full amount received.

6.23 Words

Certain words in this **Policy** have a specific meaning. These words appear in bold and **You** will find the meaning listed in Section 4 'Definitions' of this **Policy**. Words importing persons will include companies and other legal entities. The singular includes reference to the plural and vice versa, and reference to any gender includes all other genders.

Thank you

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