

DUAL Liability Insurance

# General Conditions and Exclusion

A close-up photograph of a fountain pen nib writing on a document. The nib is dark and has 'DILLO' and 'F3' engraved on it. The document has cursive handwriting, with the word 'LAWYER' visible. The background is a light, textured surface.

**DUAL**

# DUAL New Zealand Mind the Gap

General Conditions & Exclusions Policy Wording

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# Section 6: General Conditions & Exclusions

## Important Information

### 6.1 Preamble

We will provide cover to the extent described in this **policy** during the **insurance period**, subject to the terms, conditions, exclusions and limitations set out in the **policy**. Cover commences upon payment of the premium unless otherwise agreed by **us** in writing.

Subject to the terms and conditions of the **policy**, the total amount payable by **us** under the **policy** shall not exceed the **indemnity limit** displayed in the **schedule**.

If there is a sub-limit referred to in the **schedule** for an Insuring Clause or an Additional Coverage Clause, then that is the maximum amount, in the aggregate, which is payable by **us** for that Insuring Clause or Additional Coverage Clause.

All applicable sub-limits are displayed in the **schedule** and shall be part of and not in addition to the **indemnity limit** unless otherwise expressed.

If the **schedule** states "Not Included" or there is no dollar value denoted there is no cover under that Insuring Clause and/or Additional Coverage Clause.

### 6.2 Reading This Policy

This **policy** is not a completed contract unless provided with a completed **schedule** which together shall be read as one contract.

Words and phrases appearing in bold have the meaning defined in the definition section specific to **policy**. In addition:

- a. The definitions apply to the plural and any derivatives of the words in bold.
- b. The headings are for descriptive purposes only;
- c. "Person" includes individuals, partnerships, body corporates and associations;

If any portion of the **policy** is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

### 6.3 About The Insurers – Several Liability

This insurance is underwritten by Certain Underwriters at Lloyd's. Dual New Zealand is a Lloyd's Coverholder.

An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this policy.

The proportion of liability under this **policy** underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all members of the syndicate taken together) is shown in the **schedule**.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract.

**You** can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Lloyd's Underwriters is liable by requesting them from **us**.

## 6.4 The Fair Insurance Code

Lloyd's is a member of the Insurance Council of New Zealand, and is committed to comply with the Council's Fair Insurance Code.

For further information on the Code, please visit [www.icnz.org.nz/regulation/fair-insurance](http://www.icnz.org.nz/regulation/fair-insurance)

## 6.5 Complaints And Dispute Resolution Process

**We** view seriously any complaint made about **our** products or services and will deal with it promptly and fairly.

Any enquiry or complaint relating to this policy should be referred to us in the first instance by email to our office at: [claims@dualnewzealand.co.nz](mailto:claims@dualnewzealand.co.nz)

If this does not resolve the matter or **you** are not satisfied with the way a complaint has been dealt with, **you** can write to:

Lloyd's General Representative in New Zealand

c/o Hazelton Law

Level 29 Plimmer Towers

2-6 Gilmer Terrace

Wellington, New Zealand

Telephone +64 4 472 7582

Facsimile +64 4 472 7571

If **you** are not satisfied with the final decision, **you** may wish to contact the Insurance and Financial Services Ombudsmen Scheme (IFSO). The IFSO is a free independent external disputes resolution service provided to customers to review and resolve complaints where **we** have been unable to satisfy **your** concerns. **You** can contact the IFSO as follows:

The Insurance and Financial Services Ombudsman Scheme

PO BOX 10-845

Wellington 6143

T: 0800 888 202 or +64 (09) 499 7612

E: [info@ifso.nz](mailto:info@ifso.nz)

W: [www.iombudsman.org.nz](http://www.iombudsman.org.nz)

## 6.6 Governing Law and Jurisdiction

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

Any summons, notice or process to be served upon **us** for the purpose of instituting any legal proceedings against **us** in connection with this **policy** must be served upon:

The Claims Manager

DUAL New Zealand Limited

Level 6, 5 High Street

Auckland 1010

[claims@dualnewzealand.co.nz](mailto:claims@dualnewzealand.co.nz)

# General Exclusions

We will not cover the **insured**, including for **defence costs**, in respect of any liability, **claim**, **occurrence**, **event** or **loss** under the **policy**:

## 6.7 Asbestos

Arising from or directly or indirectly attributable to or in consequence of, or in any way involving the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos or other things that contain it.

## 6.8 Dishonesty

Arising from or directly or indirectly attributable to or in consequence of any actual or alleged act or omission by the **insured** which was deliberate, reckless, fraudulent, dishonest, malicious or criminal.

Where a **claim**, is determined to be deliberate, reckless, fraudulent, dishonest, malicious or criminal whether by judgment, adjudication, admission or otherwise **we** shall seek reimbursement of any amounts paid to the **insured** under the **policy** including any advancement of **defence costs** made by **us**.

This Exclusion shall not apply to Insuring Clause 1.2 (a) (Crime) of the DUAL New Zealand Mind the Gap Management Liability Policy or to Insuring Clause 1.2 of the DUAL New Zealand Mind the Gap Professional Indemnity Policy.

## 6.9 Jurisdiction

Arising from or directly or indirectly attributable to or in consequence of any legal action or regulatory proceedings:

- a. first brought against the **insured** in any country outside of the countries specified in the **schedule** under Jurisdiction;
- b. brought in a Court of Law within the jurisdiction of the countries specified in the **schedule** to enforce a judgment of a Court of Law outside the jurisdiction of the countries specified in the **schedule** whether by way of reciprocal agreement or otherwise; or
- c. in which proper law to be applied to the issues or any of them is that of a country other than the countries specified in the **schedule**.

## 6.10 Misuse of Drugs

Arising out of or in any way connected with the use, manufacture or distribution of methamphetamine or any other substance prohibited by the Misuse of Drugs Act 1975 or any amending or replacement legislation.

## 6.11 Molestation

**Personal injury** arising out of or in connection with sexual harassment, sexual intercourse or any other form or sexual activity or any behaviour of a sexual nature.

This Exclusion shall not apply to the Insuring Clauses in Section 1 of the DUAL Mind the Gap Employers Liability Policy Wording.

## 6.12 Nuclear/Radioactivity

Arising from or directly or indirectly attributable to or in connection with **loss** or destruction of or damage to any property whatsoever or any **loss** or expense whatsoever or any consequential **loss** or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by 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; or

- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### 6.13 Prior Knowledge

- a. Arising from or in connection with a fact or circumstance that the **insured** knew or ought reasonably to have known prior to the **insurance period** might or could give rise to a **claim, occurrence, event** or **loss**; or
- b. Arising from or in connection with a fact or circumstance of which notice has been or reasonably should have been given under any previous insurance; or
- c. That was first made, threatened or intimated against the **insured** prior to the **insurance period**; or
- d. Arising from any litigation or other proceeding pending or begun before the commencement of this **policy**; or
- e. Arising from or in connection with the subject matter of any contingent liability noted in the **company's** Financial Statements.

### 6.14 Sanctions Limitation and Exclusion

Of whatsoever nature in respect of or alleging that the provision of such cover, payment of such **claim** or provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of New Zealand, the European Union, United Kingdom or United States of America.

### 6.15 War / Terrorism

Of whatsoever nature in respect of or alleging:

- a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b. **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**.

For the purpose of this Exclusion an **act of terrorism** means 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.

This **policy** also excludes **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**.

## General Conditions

### 6.16 Alteration to Risk

The **insured** must give to **us** written notice as soon as possible of any material alteration of risk from that disclosed in the **proposal**, declaration and any other underwriting information provided for this insurance that occurs during the **insurance period** including but not limited to:

- a. the **insured** going into voluntary bankruptcy, receivership or liquidation; or
- b. the **insured** failing to pay debts as and when those debts become due; or

- c. the **insured** breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- d. any material change in the nature of the **business**; or
- e. with respect to Insuring Clause 1.2 (a) (Crime) of the DUAL New Zealand Mind the Gap Management Liability Policy only, **discovery** of any **dishonest act** by any **employee**.

**We** may impose additional premiums or terms and conditions arising from such alteration of the risk.

**We** may not cover the **insured** for any **claim, occurrence, event, loss** or other **claim** under this **policy** if the **insured** does not notify **us** in writing as soon as practicable of any material alteration to risk.

## 6.17 Assignment

The **insured** must not assign the **policy** or any rights under the **policy** without **our** prior written consent by way of endorsement to the **policy**.

## 6.18 Cancellation

- a. The **insured** may cancel the **policy** at any time with immediate effect by notifying **us** in writing.
- b. **We** may cancel or **modify** the **policy** at any time by advising the **insured** (or the **insured's** broker or agent) by letter or email. Cancellation or modification will take effect at 4pm on the 30th day after the date of **our** letter or email.

Provided that there have been no **claims** or notifications made on or under the **policy**, **we** agree to allow a refund of premium calculated on a pro-rata basis, provided that **we** will always retain a minimum of 25% of the full annual premium.

## 6.19 Claims Notification

The **insured** shall notify **us** as soon as practicable and within the **insurance period** of:

- a. any **claim, occurrence, event, loss** or any other **claim** under **this policy**; or
- b. any circumstances of which the **insured** becomes aware, and which the **insured** or a reasonable **insured** should consider may give rise to a **claim, occurrence, event, loss** or any **claim** under **this policy**.

Notice of any **claim, occurrence, event, or loss** under **this policy** shall be given to **us** in writing via:

- a. **Your** insurance broker (email or letter); or
- b. the DUAL New Zealand Limited office by email at: [claims@dualnewzealand.co.nz](mailto:claims@dualnewzealand.co.nz)

## 6.20 Conduct of Defence

- a. Unless otherwise agreed, **we** shall have the right to assume, in the name of the **insured**, the legal defence of any **claim, occurrence, event, or loss** covered under **this policy**.
- b. **We** shall have the right to appoint the lawyers that will defend and represent the **insured** in respect of any **claim, occurrence, event, or loss** covered under **this policy** or any available counterclaim.
- c. **We** shall have full 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**. Where the **insured** disagrees with **us** over its defence, including strategy, **we** shall provide the **insured** in writing with **our** reasons and shall refer them to an independent barrister for a final determination as to their reasonableness. This independent determination shall be binding on both the **insured** and **us**.
- d. The **insured** agrees not to admit liability for or settle any **claim, occurrence, event, or loss** covered under **this policy**, make any admission, offer any payment or assume any obligation in connection with any **claim, occurrence, event, or loss** covered under **this policy**, or incur any **defence costs** in connection with any **claim, occurrence, event, or loss** covered under **this policy** without **our** written consent.
- e. **We** shall not be liable for any settlement, **defence costs**, admission, offer, payment or assumed obligation made, incurred or entered into without **our** written consent.

- f. In the event that **we** recommend settlement of a **claim, occurrence, event, or loss** under this **policy**, and the **insured** does not agree to the settlement of the **claim, occurrence, event, loss** or any other **claim** under this **policy** and the **insured** decides to contest the **claim, occurrence, event, loss** or any other **claim** under this **policy** our liability shall not exceed the amount for which the **claim, occurrence, event, loss** or any other **claim** under this **policy** could have been settled, and **defence costs** incurred up until the date upon which the **claim, occurrence, event, loss** or any other **claim** under this **policy** could have been settled.
- g. If **we** are of the opinion that a **claim, occurrence, event, or loss** covered under this **policy** will not exceed the **deductible**, **we** may require the **insured** to conduct the defence of the **claim, occurrence, event, or loss** covered under this **policy**. If the **defence costs** and/or any other payment exceed the **deductible** then **we** will pay the amount in excess of the **deductible**.

## 6.21 Confidentiality

The **insured** must not disclose, either personally or through any person or entity acting on the **insured's** behalf or at the **insured's** direction, to any third party:

- a. the existence of this **policy**; or
- b. the nature of the indemnity provided; or
- c. the **indemnity limit**; or
- d. the amount of premium paid.

However, the **insured** may disclose the above matters to the extent that:

- i. the **insured** is required to do so by the law; or
- ii. **we** consent to the disclosure in writing.

## 6.22 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 **us**.
- b. The terms of this **policy** shall not be waived or changed, except by **our** written agreement.

## 6.23 Co-operation

- a. The **insured** shall, at the **insured's** own cost, frankly and honestly provide **us** with all information and assistance reasonably required by **us** and/or the lawyers and investigators and others appointed by **us** in relation to any **claim, occurrence, event, or loss** under this **policy** including any available counterclaim. Any unreasonable failure to comply with this obligation may entitle **us** to deny cover for the **claim, occurrence or event, or loss** under this **policy** in whole or part.
- b. The **insured** shall, at its own cost, do all things reasonably practicable to minimise the **insured's** liability in respect of any **claim, occurrence, event, or loss** under this **policy**.
- c. The **insured** waives all **claims** to legal professional privilege between themselves and any solicitor retained by **us** to act on the **insured's** behalf in relation to any **claim, occurrence, event, or loss** under this **policy**. The **insured** will allow the solicitor to disclose to **us** and **our** reinsurers any information obtained in the course of his duties.
- 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 **ourselves** until **we** have had an opportunity of inspection and authorised such repairs.

- e. **We** may, upon receipt of notice from the **insured** of any request for indemnity under this **policy**, take whatever action **we** consider appropriate to protect the **insured's** position in respect of the **claim, occurrence, event, or loss** under this **policy** and such action by **us** will not be regarded in any way as prejudicing the **insured's** or **our** position and will not be an admission of the **insured's** entitlement to indemnity. If the **bodily injury, offence or occurrence** is a continuing one, the **insured** shall promptly take, at its expense, all reasonable steps to prevent its continuation.

## 6.24 Currency

Any reference to premium, **indemnity limit, deductible, defence costs**, or any other amounts payable by **us** under the policy are expressed and are payable in New Zealand Dollars. Where any payment is to be made into an admitted foreign jurisdiction, such payment is to be made and denominated in New Zealand Dollars at the cash rate for the purchase of New Zealand Dollars set by the Reserve Bank of New Zealand as at 4.00pm on the date which the foreign payment becomes due, save for any payments under Insuring Clause 1.2 (a) (Crime) which will be at the cash rate of exchange for the purchase of New Zealand dollars issued by the Reserve Bank of New Zealand on the date that the **loss** was first **discovered**.

## 6.25 Deductible

The amount(s) shown in the **schedule** as the **deductible** for each section of the **policy** shall be borne by the **insured** in respect of each and every **claim**.

## 6.26 Endorsements

Any Endorsement or Automatic Coverage Clause to this **policy** is subject to all the terms of the **policy** unless specifically stated to the contrary within the Endorsement or Automatic Coverage Clause.

## 6.27 Discharge of Liabilities

At any time, **we** shall be entitled to pay to the **insured** the balance of indemnity available up to the applicable **indemnity limit** or such lesser sum for which the **claim** can be settled. Upon such payment, **we** shall be under no further liability to the **insured** under this **policy**, except for **defence costs** already incurred up until the time of payment.

## 6.28 Fraudulent Claim

The **insured** must make sure that all statements are true (whether given by the **insured** or any other person) when applying for this insurance, when notifying **us** of any change in circumstance and /or when making any **claim** under this **policy**.

If the **insured** makes any statement to **us** that is false in any way, **we** may:

- a. Refuse to pay all or part of the **claim**;
- b. Cancel the **policy**; or
- c. Cancel the insurance from the start date of the **policy**.

For the purposes of this condition, if the **insured** comprises more than one person or corporation each **insured** will be treated as having been issued with a separate **policy**.

## 6.29 Goods and Service Tax

Where the **insured** is 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 Act) on receiving any indemnity payment under this **policy**, **we** will indemnify the **insured** for the cost of that tax. The amount payable under this condition is in addition to the **indemnity limit** specified in the **schedule**.

## 6.30 Governing Law and Jurisdiction

This **policy** is governed by the laws of New Zealand. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of New Zealand.

### 6.31 Insured's Right to Contest

We shall not require the **insured** to contest a **claim** or an **offence**, nor shall the **insured** require **us** to contest a **claim** or **offence**, unless a Queen's Counsel (to be mutually agreed upon by the **insured** and **us**) advises that the **claim** or **offence** should be contested, taking into account all likely **defence costs**, prospects of successfully defending the **claim** or **offence** and the damages and costs likely to be recovered by the third party claimant.

The costs of Queen's Counsel's advice shall be regarded as part of the **defence costs**.

### 6.32 Notices by Us

Any notice given in writing by **us** to the first named **insured** in the **schedule**, or to the broker through which the **insured** arranged this **policy** with **us**, shall be deemed to be notice to each **insured**.

Any notices by **us** may be effected by sending a letter or email to the last known contact address.

### 6.33 Other Insurance

This **policy** will only cover **loss** under the **policy** to the extent that the amount of such **loss** is in excess of any indemnity or cover available to the **insured** in respect of that **loss** under any other **policy** entered into by the **insured**, including but not limited to those policies specified in the **schedule** or by endorsement, even if the **other insurance** or indemnity has a term to that effect.

This **policy** will only cover **loss** to the extent that the amount of such **loss** is in excess of any indemnity or cover available to the **insured** in respect of that **loss** under any other **policy** effected on behalf of the **insured** or under which the **insured** is a beneficiary, including but not limited to those policies listed in the **schedule** or by endorsement, even if the **other insurance** or indemnity has a term to that effect (but not a **policy** to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies to such other insurance that is written only as specific excess insurance over the **indemnity limit** provided in this **policy**.

If such **other insurance** is provided by **us**, or any other member **company**, associate or affiliate, and it covers a **loss** covered by this **policy** in respect of a **claim, occurrence, event, loss** or any other **claim** covered under this **policy**, the **indemnity limit** under this **policy** in respect of that **claim, occurrence, event, loss** or any other **claim** covered under this **policy** or inquiry shall be reduced by any amount paid by **us** (or member **company**, associate or affiliate) under such **other insurance**.

Other insurance means any other insurance policy including but not limited to those policies specified in the schedule, or by endorsement.

### 6.34 Policy Response

No more than one Insuring Clause or Additional Coverage Clause of the policy shall respond to any one claim under the policy. Where the same act, error or omission, or other qualifying event triggers more than one Insuring Clause or Additional Coverage Clause of the policy the insured shall elect which section of the policy shall respond.

### 6.35 Subrogation

- a Where **we** have paid an amount under the **policy** **we** become entitled to any rights of the **insured** against any party in relation to the **claim, occurrence, event, loss** or any other **claim** covered under this **policy**, to the extent of **our** payment; and
  - i the **insured**, at its own cost, must assist **us** and provide information as **we** may reasonably require to exercise **our** rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.
  - ii **we** may, at **our** cost, prosecute proceedings in the name of the **insured**.

- b. **We** shall not exercise any subrogated rights of recovery against any **employee** of the **insured** unless the **claim** has been brought about or contributed to the dishonest, fraudulent, criminal or malicious act or omission of the **employee**.
- c. If the **insured** effects any recovery in respect of the **claim**, it shall account to **us** for the full amount received.

Helping you do more

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