



**Policy** Wording

# Employers Liability



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## Insuring Clause

In consideration of payment of the premium, in reliance on the proposal and declarations (which shall be deemed to be the basis of this policy) and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("the Company") will indemnify the Insured against all claims for Damages, and all Defence Costs, which the Insured shall become legally liable to pay as a result of any employee (including any temporary or part-time employee) of the Insured sustaining Personal Injury arising out of or in the course of their employment and which is notified to the Company during the Period of Insurance stated in the Schedule or within 30 days after its expiry, or, if exercised, the Extended Reporting Period.

Provided that:

- (a) the Personal Injury has taken place on or after the Retroactive Date;
- (b) the maximum amount payable by the Company for Damages and Defence Costs for all claims under this policy shall not exceed the Limit of Indemnity stated in the Schedule.

## Limit of Indemnity and Excess

All claims for Damages and Defence Costs arising out of any one Personal Injury or inter-related Personal Injuries are deemed to be one claim. Any claim arising from inter-related Personal Injuries is deemed to have originated in the earliest period of insurance in which any of the Personal Injuries is first notified to the Company.

The Company's liability under this policy applies only to that part of such claims exceeding the Excess stated in the Schedule.

Subject to Extension 2 - Goods and Services Tax of this policy, the Company's aggregate liability under this policy in respect of claims arising out of Personal Injuries will not exceed the Limit of Indemnity stated in the Schedule.

## Extended Reporting Period

If the Company terminates or refuses to renew this policy, the Insured is entitled to an extension of the cover granted under this policy for a further period of twelve (12) months immediately following termination or non-renewal of the policy, but only in respect of any Personal Injury taking place both before the effective date of termination or non-renewal and after the Retroactive Date. If this right is exercised, then this further period shall be part of the last Period of Insurance and not an additional period.

The entitlement to this extension must be exercised by written notice to the Company prior to the effective date of termination or within 30 days following the effective date of non-renewal.

## Extensions

The terms of this policy 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 the policy unless expressly stated otherwise.

### 1. Health and Safety at Work Act 2015

If this extension is stated as INCLUDED in the Schedule, then this policy extends to cover the Insured and any Officer against Defence Costs and Penalties arising out of any Personal Injury which is connected with the business or affairs of the Insured and which is notified to the Company during the Period of Insurance stated in the Schedule or within 30 days after its expiry, or if exercised, during the Extended Reporting Period, provided that the Personal Injury was suffered on or after the Retroactive Date. Exclusion 4 - Fines Penalties etc and Exclusion 5 - Health & Safety Act, do not apply to this extension.

Provided that this extension shall not cover the Insured nor any Officer:

- (a) for any deliberate failure to comply with the Health and Safety in Employment Act 1992 or the Health and Safety at Work Act 2015;
- (b) if the Insured or any Officer has a Statutory Liability Defence and Penalties Insurance Policy with the Company or any other Insurer for the same Personal Injury.

For the purpose of this extension each Officer will be treated as having been issued with a separate policy.

### 2. Goods and Services Tax

- (a) Where the Insured is liable to pay tax under the Goods and Services Tax Act 1985 on receiving any payment under this policy, the Company will indemnify the Insured for the cost of that tax.
- (b) The amount payable under this extension is payable by the Company in addition to the stated Limit of Indemnity.

### 3. Newly Created or Acquired Subsidiary Company

If any Subsidiary Company is created or acquired by the Insured after the inception of this policy such Subsidiary Company shall be included as an Insured provided that:

- (a) written notice of such creation or acquisition is given to the Company together with appropriate underwriting information and the payment of any additional premium required at the next renewal date;
- (b) in respect of acquisitions, cover granted under this policy shall only apply to Personal Injuries both discovered by the Insured after the date of such acquisition and suffered after the Retroactive Date, and where the Insured has agreed to cover any such Subsidiary Company.

### 4. Subsidiary Company Change of Ownership

- (a) In the event that an entity ceases to be a Subsidiary Company prior to or during the Period of Insurance, cover under this policy with respect to such Subsidiary Company and the Insured shall continue until the expiry date of the Period of Insurance, provided that such cover shall only apply in respect of a Personal Injury suffered after the Retroactive Date or the date of creation or acquisition by the Insured (whichever is the later), and until the date such entity ceased to be a Subsidiary Company.
- (b) Where the entity has ceased to be a Subsidiary Company because it is acquired by a third party, then this extension shall only apply where the Insured has agreed to retain a continuing obligation to indemnify the third party for claims for Damages and Defence Costs against the Insured arising out of any Personal Injury that has been suffered whilst it is a Subsidiary Company.

## Exclusions

The Company shall not indemnify the Insured:

### 1. Accident Compensation

for any costs or compensation for which cover to any extent is provided by the Accident Compensation Act 2001 or any other Workers Compensation legislation.

### 2. Asbestos

for 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 or in consequence of, asbestos in whatever form or quantity.

### 3. Employment

in respect of any claim which is or should properly be brought in the Employment Tribunal or Employment Court, or for any personal grievance.

**4. Fines Penalties etc**

for any fine or penalty levied against the Insured, provided that this exclusion shall not apply to any punitive or exemplary damages.

**5. Health & Safety Act**

for any Personal Injury which has resulted from any breach or contravention of any provisions of the Health and Safety in Employment Act 1992 or Health and Safety at Work Act 2015.

**6. Known Circumstances**

for any circumstance or Personal Injury of which, at the commencement of the Period of Insurance or, if this policy is renewed, the effective date of renewal, the Insured is aware or ought reasonably to be aware and may give rise to a claim against the Insured.

**7. "Leaky Buildings" – Moisture or Water Penetration, Building Defects**

against any liability for, or fulfil any obligation in respect of any claim or defence costs, which are directly or indirectly caused by or contributed to, or arises directly or indirectly out of:

- (a) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or
- (b) any cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or similar or like forms, in any building or structure; or
- (c) the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:
  - (i) external water or moisture; or
  - (ii) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.

**8. Outside New Zealand**

for any judgment entered in any Court other than a New Zealand Court, or any debt incurred by the Insured as the result of such a judgment.

**9. Prior Claims**

in respect of any claim made, threatened or in any way intimated against the Insured and not notified to the Company prior to the commencement of the Period of Insurance or, if this policy is renewed, prior to the effective date of renewal.

**10. Prior Litigation**

for any liability arising out of any litigation in existence at the commencement of the Period of Insurance.

**11. Radioactivity**

for Personal Injury directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof.

**12. Retroactive Date**

for any Personal Injury which has taken place or allegedly taken place prior to the Retroactive Date stated in the Schedule.

**13. War, Terrorism**

for death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or
- (b) any Act of Terrorism.

Definition: "Act of Terrorism" means 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.

This Exclusion also excludes death, injury, illness, loss, damage, 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 (a) and/or (b) above.

In respect of the Exclusions no fact pertaining to, knowledge possessed by, nor Personal Injury committed by any Insured, shall be imputed to any other Insured for the purpose of determining the availability of cover.

**Conditions****1. Assignment**

No assignment of interest under this policy shall bind the Company unless its written consent is endorsed on this policy.

**2. Authorisation**

By acceptance of this policy, the Insured agrees to act on behalf of any Subsidiary Company with respect to giving or receiving any notice of claim or termination, payment of premiums and receiving any return premiums that may become due under this policy, acceptance of endorsements, and giving or receiving of any other notice provided for in this policy, and each Subsidiary Company agrees that the Insured shall act on its behalf.

**3. Cancellation**

The Insured may cancel this Policy at any time by giving written notice to their broker or the Company.

The Company may cancel the Policy at any time by giving written notice to the Insured or their broker. Cancellation will take effect at 4pm on the 30th day after the date of the notice.

All notices to be given to or by the Company may be delivered personally, posted or emailed to the last known contact address of the relevant party.

The Company will refund any unexpired premium, on a pro-rata basis.

**4. Claims**

- (a) The Insured shall as a condition precedent to its right to be indemnified under this policy give the Company notice in writing as soon as practicable of:
  - (i) any claim made against them or any of them;

(ii) the receipt of notice from any person or party of any intention to hold the Insured responsible for any Personal Injury for which this policy provides cover;

(iii) any circumstance which the Insured shall become aware which may give rise to a claim or claims under this policy,

irrespective of whether the claim is considered justified and/or the quantum is likely to be within the Excess stated in the Schedule.

(b) The insurance provided by this policy ceases absolutely at the expiry of the Period of Insurance. However, provided that the notice referred to in 4(a) has been given to the Company prior to the expiration of the Period of Insurance, within thirty (30) days after its expiry or, if exercised, during the Extended Reporting Period, any claim arising from the notified circumstances, which is subsequently made after the expiration of the Period of Insurance, shall be deemed to have been made during the subsistence of this policy.

(c) The Insured shall give to the Company or its authorised representatives all such information and assistance as they may reasonably require. The Company may assume control and conduct of any claim, and any counterclaim (which shall be a condition precedent to the Insured's right to indemnity under this Policy).

(d) The Insured shall not in relation to any claim under this policy:

- (i) make any admission of liability;
- (ii) incur any expense;
- (iii) make any payment or settlement of liability, without the prior written consent of the Company. Such consent shall not be unreasonably withheld. The Company is not liable for any admissions, expenses, payments or settlements made without its prior written consent.

(e) If the Insured shall refuse to consent to any settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled (over and above the Excess stated in the Schedule), including Defence Costs incurred up to the date of such refusal.

(f) The Insured shall not be required to contest any legal proceedings unless a King's, Queen's or Senior Counsel (to be mutually agreed upon by the Insured and the Company) shall advise such proceedings should be contested by the Insured.

#### 5. Consolidation or Merger

If the Insured acquires by merger, consolidates with, is merged into or acquired by any other entity after the inception of the Period of Insurance, written notice shall be given to the Company as soon as practicable together with such information as the Company may require. The Company shall be paid any reasonable premium that may be required.

#### 6. Fraud

If any claim is in any respect fraudulent, if any false declaration is made or used in support of any claim, or if any fraudulent means or devices are used by the Insured or any one acting on its behalf to obtain any benefit under this policy, all benefits will be forfeited.

#### 7. Jurisdiction

This policy shall be governed by the law of New Zealand, the Courts of which shall have exclusive jurisdiction over any dispute.

#### 8. Other Insurance

If, at the time of any claim arising under this policy, there is any other valid and collectable insurance covering all or part of the same Personal Injury, this policy will apply to the amount in excess of that recoverable or in fact recovered under the other insurance, whether such insurance is stated to be primary or excess, unless such other insurance is written only as specific excess insurance over the Limit of Indemnity under this policy.

#### 9. Subrogation

(a) The Company shall be entitled to use the name of the Insured in any proceedings to enforce, for the benefit of the Company, any order made for costs or otherwise, and shall have the right of subrogation in respect of all rights which the Insured may have against any person or entity who may be responsible to the Insured in respect of any claim for any Personal Injury covered by this policy, and the Insured shall do everything necessary to secure and preserve such rights including executing any necessary documents for the purpose of vesting such rights in the Company. Any monies recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of the Company to the extent of the amount paid by it in respect of that claim (including related costs and expenses), and the remaining monies shall become the property of the Insured.

(b) If no recovery is made as a result of proceedings conducted solely by the Company, then it shall bear the expenses.

Provided that the Company waives all rights of subrogation against any Officer, unless the right of subrogation arises from the dishonest or intentional criminal conduct of the Officer.

#### 10. Territory

This policy only provides cover for Damages and Defence Costs arising both out of Personal Injuries suffered in New Zealand and from proceedings brought in New Zealand courts.

#### 11. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured waives any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

### Definitions

#### 1. Act

means, as the context requires, any Act of the New Zealand Parliament or any amendment to, re-enactment, replacement or substitution of any such Act and any rules or regulations or other subordinate legislation made under such Act.

#### 2. Damages

means the total amount which the Insured or any Officer becomes legally obligated to pay on account of all claims, investigations, inquiries, administrative or regulatory proceedings, suits, legal actions, summons, writs, examinations made or commenced against them (including any written demands communicated to the Insured or any Officer alleging a Personal Injury by whatever means) for any Personal Injury to which cover under this policy applies, including but not limited to damages, judgments, settlements, interest, claimant costs and claimant expenses, but not including Defence Costs.

**3. Defence Costs**

means:

- (a) the costs and expenses (including defence witness costs and expenses and defence expert costs and expenses) of being represented at any hearing, prosecution, inquiry, investigation, proceeding, settlement negotiation or review, relating to any Personal Injury;
- (b) the costs of applying to set aside a Court order or conviction, or conducting an appeal of any action or proceeding, relating to any Personal Injury;
- (c) the costs of applying to a Court to determine whether an employee's claim for Personal Injury is properly covered by the Accident Compensation Act 2001.

**4. Insured**

means the company or other entity named in the Schedule and any Subsidiary Company.

**5. Limit of Indemnity**

means the amount of the Limit of Indemnity stated in the Schedule.

**6. Officer**

means any person who, at the time of an offence or alleged offence under the Act, holds the position of director, officer, trustee, manager or secretary of the Insured, trust or other organisation, or who performs the duties of director, officer, manager or secretary under any other name, or who holds any other position as an employee (whether full time, part-time or temporary) of the Insured, trust or other organisation, and includes any such person who has subsequently relinquished that position.

**7. Penalties**

means any:

- (a) court costs,
- (b) reparation order,
- (c) prosecution witness costs and expenses,
- (d) prosecution solicitors' costs,
- (e) regulators' costs awarded under Section 152 of the Health and Safety at Work Act 2015 or the section's equivalent, if replaced,

imposed by the Court on the Insured upon conviction for an offence under the Health and Safety in Employment Act 1992 or the Health & Safety at Work Act 2015, and does not include any fine or infringement fee.

**8. Period of Insurance**

means the period stated in the Schedule.

**9. Personal Injury**

means bodily injury, sickness, disease or infection, including resulting death, and disability, shock, fright or mental anguish or injury. For the purposes of this insurance, disease shall be sustained when the employee is first exposed to conditions in New Zealand out of which the disease the subject of the claim arose.

**10. Schedule**

means the current Schedule attaching to this Policy duly signed by an authorised officer of the Company.

**11. Subsidiary Company**

means any company that is or was:

- (a) controlled by the Insured through legal or beneficial ownership of more than 50% of the issued voting stock;
- (b) deemed a subsidiary of the Insured by virtue of any applicable legislation or law, including companies held either directly or indirectly through one or more subsidiaries (ie, subsidiaries of subsidiaries).