

# Liability Insurance Certificate Wording

incorporating

Section 1 – Public Liability

Section 2 – Statutory Liability

Section 3 – Employers Liability



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## Insurance Clause

In consideration of the Insured named in the Schedule having paid or promised to pay the required Premium, the Insurer named in the Schedule will indemnify the Insured as set out in this Certificate. Except where provided to the contrary, the Insurer's liability will not exceed the Sum Insured and, if more than one Item is included in the Schedule, will not exceed in respect of each Item the Sum Insured applicable to that Item.

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## Section 1 – Public Liability Insurance

### The Indemnity

Subject to the terms of this insurance and in consideration of the Insured's payment or agreement to pay the required premium Insurers will indemnify the Insured as set out in this Section of the Certificate. The terms of this insurance include those set out in this Section and, in so far as they can apply, those set out in the General Conditions of the Certificate.

The Insurers will indemnify the Insured for all sums that the Insured becomes legally liable to pay:

- (a) as compensation; or
- (b) as any penalty or exemplary, aggravated or liquidated damages;

consequent upon accidental Injury to any person or accidental Damage to tangible property occurring in connection with the Business within the Territory during the Period of Insurance.

In respect of a claim to which this indemnity applies, the Insurers will also pay:

- (c) any costs recovered by any claimant from the Insured; and
- (d) any costs incurred with the Insurers's written consent.

### Territory

The 'Territory' means anywhere in the world. However, where the Insured is represented in Canada or in the United States of America by a branch, parent Insurers or subsidiary Insurers, this insurance will not cover liability arising out of Injury or Damage occurring in that country. Further, this insurance does not cover liability consequent upon Injury or Damage anywhere in Canada or in the United States of America unless the Injury or Damage happens in connection with Products, or in connection with incidental travel or transportation to and within that country.

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## Definitions

**'Aerial Device'** means any type of aircraft, hovercraft, spacecraft or other craft or thing made or intended to float on or in or travel through air or space.

**'Business'** means the business described in the Schedule, and includes the business of:

- (a) property ownership; and
- (b) the Insured's canteen, social, sports or welfare organisations; first aid, fire or ambulance services; pension fund management service; or any of them.

**'Damage'** means physical loss or damage. 'Damaged' has a corresponding meaning.

**'Employee'** means any:

- (a) person under a contract of service or apprenticeship with the Insured;
- (b) person hired to or borrowed by the insured;
- (c) self-employed person;
- (d) person employed by labour only sub-contractors;

all while working for the Insured in the conduct of its Business.

**'Injury'** means bodily injury, disease, illness, shock, fright or mental injury or anguish, including death or disability resulting therefrom.

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

**'Products'** means any goods or other property, including their containers and packaging, supplied, sold, distributed, handled, manufactured, constructed, erected, installed, serviced, repaired, altered, renovated, treated or otherwise worked upon by the Insured in the course of the Business, but only after the goods or property have passed from the Insured's control and actual physical custody.

**'Product'** has a corresponding meaning.

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



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## Exclusions – Section 1

### VEHICLES – OWNERSHIP / USE

This insurance does not cover liability for Injury or Damage caused by or arising in connection with the ownership, possession or use by the Insured of:

- (a) any mechanically propelled vehicle that is required by law to be licensed or registered for road use, but this exclusion does not apply to any mobile plant (other than any crane) while in use for its designed purpose and not as a motor vehicle;
- (b) any locomotive, Aerial Device or Watercraft, but this exclusion does not apply to any Watercraft up to 5 metres in length with a maximum speed capability (if powered) not exceeding 17 knots if the Watercraft is used only on inland waterways or within 5 kilometres of a coastline.

Exclusion 1(a) will not apply to Injury or Damage arising from the loading or unloading of a vehicle or the bringing to or taking away of a load from a vehicle unless the Insured is otherwise insured against the same liability.

### VEHICLES – WORK ON

This insurance does not cover liability for Injury or Damage caused by or arising in connection with work that is or has been undertaken by the Insured on any mechanically propelled vehicle, locomotive, Aerial Device or Watercraft.

### EARTHQUAKE

This insurance does not cover liability for Injury or Damage caused by or arising in connection with earthquake.

### OTHER PEOPLE

This insurance does not cover liability for Injury to:

- (a) any Employee;
- (b) any member of the Insured's family ordinarily living with the Insured;
- (c) any other person entitled to compensation for the same Injury under any Accident Compensation legislation.

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## **VIBRATION / WEAKENING CUSTODY OR CONTROL**

This insurance does not cover liability for Damage to:

- (a) any structure or land due to vibration or to the withdrawal or weakening of support;
- (b) property owned, occupied or held in trust by or in the custody or control of the Insured but this exclusion does not apply to:
  - 1) premises at which the Insured is undertaking work in connection with the Business;
  - 2) premises anywhere in New Zealand occupied by or held in trust by or in the custody or control of the Insured, but not owned by the Insured;
  - 3) property in the Insured's custody or control while in any car park operated by the Insured;
  - 4) the first \$100,000 of all sums that the Insured becomes liable to pay in consequence of the Damage to property not owned by the Insured but held by the Insured in trust or in the Insured's custody or control.

## **WORK ON PROPERTY**

This insurance does not cover liability for Damage to that part of any property on which the Insured is or has been working if the Damage arises out of that work.

## **AGREEMENT**

This insurance does not cover liability assumed by the Insured under any agreement unless the liability would have attached in the absence of that agreement. However, this exclusion does not apply to liability assumed under any agreement:

- (a) for the hire, lease or rental of any property;
- (b) with any railway operator in respect of a railway siding;
- (c) with any oil Insurers in respect of any property hired or leased from them.

The exclusion nevertheless applies to liability for Damage to any property that is the subject of the agreement and to any obligation on the Insured to arrange insurance on that property.

## **PROFESSIONAL BREACH OF DUTY**

This insurance does not cover liability arising out of

- (a) any breach of duty owed by the Insured in a professional capacity, or
- (b) any design, formula or specification devised by the insured,
- (c) any error or omission in advice or instructions given by the insured.

However, (b) and (c) shall only apply where such service is provided for a fee, but it shall not apply where such advice or instruction is given in regard to any goods manufactured, sold, supplied or repaired by the Insured.



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## **ERROR OR OMISSION**

This insurance does not cover liability arising out of any error or omission in advice or instructions given by the Insured, or in any design, formula or specification devised by the Insured.

## **POLLUTANTS**

This insurance does not cover liability for any Injury or Damage directly or indirectly caused by or arising out of any Pollutant. However, this exclusion does not apply where the Damage results from an identifiable accidental release, discharge, dispersal, seepage, migration or escape of the Pollutant;

- (a) that commences during the Period of Insurance; and
- (b) is detected within 7 days of its commencement; and
- (c) reported to the Insurers within 7 days of it being detected.

For the purposes of this insurance, where the release, discharge, dispersal, seepage, migration or escape of the Pollutant is an intermittent series of events, it is deemed to have commenced at the commencement of the first event of the series.

## **POLLUTANTS – CLEAN UP**

This insurance does not cover liability arising out of any obligation on the Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of Pollutants on structures, premises, sites or land currently or previously owned, occupied, used by or under the control of the Insured where the obligation arises out of such ownership, occupancy, use or control by the Insured.

## **ASBESTOS**

This insurance does not cover liability arising directly or indirectly out of:

- (a) mining, processing, transporting, distributing or storing asbestos;
- (b) manufacturing or processing materials containing asbestos;
- (c) any process of decontamination, treatment or control of asbestos;
- (d) the presence of asbestos in any building or structure;
- (e) asbestos pollution or contamination.

## **REPAIR / RECALL**

This insurance does not cover liability for:

- (a) any loss of use of or the cost of repairing, reconditioning or replacing, any Products that have given rise to a claim on this insurance;
- (b) Damage to any Products due to any defect therein or the unsuitability thereof;
- (c) the cost of recalling any defective or potentially defective Products or worked upon.

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## **FINES / EXEMPLARY DAMAGES**

For the avoidance of doubt, this insurance does not cover;

- (a) any fine;
- (b) any penalty;
- (c) any exemplary, aggravated or liquidated damages;

imposed upon or awarded against the Insured by reason of any dishonest or fraudulent act.

## **LOSS OF USE / FAILURE OF PRODUCT**

This insurance does not cover liability for loss of use of tangible property that has not been Damaged where the loss of use results from:

- (a) a delay in or lack of performance by the Insured of any contract or agreement; or
- (b) failure of any Product to meet the level of performance, quality, fitness or durability warranted or represented by the Insured. This exclusion does not apply to loss of use of other tangible property resulting from accidental Damage to the Product after it has been put to use by any person or organisation other than an Insured.

## **BUILDING DEFECTS**

This insurance does not cover liability for Damage consequent upon any building or structure being affected by:

- (a) moisture or water build-up or the penetration of external moisture or water; or
- (b) The action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa, or anything similar.

However, this exclusion will only apply where the Damage is directly or indirectly caused by:

- (c) non-compliance with a New Zealand building code; or
- (d) faulty design or faulty specification, including but not limited to faulty sequence, procedure or programme; or
- (e) faulty materials; or
- (f) faulty workmanship;

during construction, alteration, repair, renovation or maintenance of the building or structure.

The exclusion does not apply to liability for Damage caused by or directly arising from leakage of internal pipes, internal water systems or internal cisterns.



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## Amount Payable – Section 1

### MAXIMUM AMOUNT PAYABLE

The Insurers's liability for all sums that the Insured becomes legally liable to pay will not exceed the Limit of Indemnity shown in the Schedule.

Where the liability is for any penalty or exemplary, aggravated or liquidated damages, the Insurers's liability will be further limited to the sub-limit specified in the Schedule.

Where the liability is in connection with Products or with the release, discharge, dispersal, seepage, migration or escape of any Pollutant, the Limit of Indemnity applies in the aggregate for the Period of Insurance.

For the purpose of this insurance, any Injury or Damage caused by a Pollutant will be deemed to have occurred at the time the dispersal, seepage, migration or escape of that Pollutant commenced, irrespective of whether it was continuous or intermittent.

The Limit of Indemnity otherwise applies to any one claim or series of claims consequent on or attributable to one source or original cause. However, it does not apply to costs recovered from the Insured by any claimant, or to any costs incurred by the Insured with the Insurers's written consent.

### DEDUCTIBLE

In respect of claims arising from Damage, the Insurers will not be liable for the first amount shown in the Schedule for any one claim or, where the claims are a series consequent on or attributable to one source or original cause, for any one series of claims.

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# Conditions – Section 1

## CLAIM CONDITIONS

### Reporting of Any Incident by the Insured

Upon the happening of any event that may give rise to a claim on this insurance (regardless of any Deductible) the Insured must forthwith give written notice to the Insurers with full particulars.

### Claim Correspondence

Every letter, claim, writ summons and process must be forwarded to the Insurers on receipt. Written notice must also be given to the Insurers immediately the Insured becomes aware of any prosecution or inquest in connection with any event for which there may be liability under this insurance.

### Conduct of Claim

The Insured must not make any admission, offer, promise, payment or indemnity without the written consent of the Insurers, which will be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim, or to prosecute in the name of the Insured for its own benefit any claim, and will have full discretion in the conduct of any proceedings and in the settlement of any claim. The Insured must give all such assistance as the Insurers may require.

### Insurers' Option

In connection with any claim or series of claims made against the Insured consequent on or attributable to one source or original cause, the Insurers may at any time after the deduction of any Deductible pay to the Insured the Limit of indemnity (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and thereupon the Insurers will relinquish the control of such claims and be under no further liability in connection therewith, except for costs for which the Insurers may be responsible under this Section in respect of matters prior to the date of such payment.

### Contribution to Costs

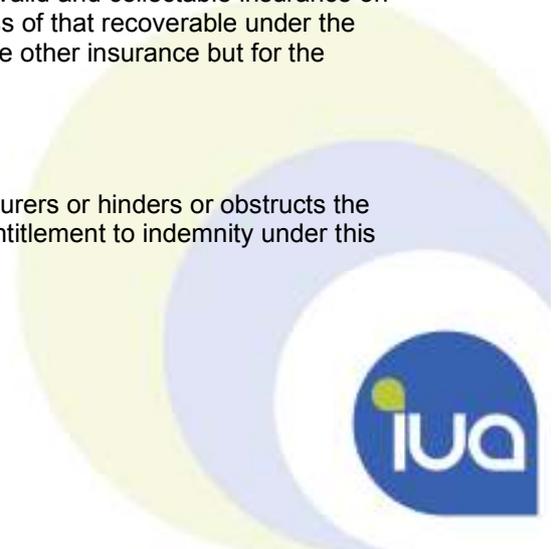
If the Insurers has not exercised its rights under the Insurers's Option Condition, the liability of the Insurers to pay costs in circumstances where the amount or amounts of direct compensation payable exceed the Limit of Indemnity will be limited to such proportion of the costs as such Limit of Indemnity bears to the total amount payable for direct compensation.

### Other Insurance

If at the time of any claim on this insurance, there is any other valid and collectable insurance on the same liability, this insurance will only apply to loss in excess of that recoverable under the other insurance, or that would have been recoverable under the other insurance but for the existence of this insurance.

### Rights of the Insurers

If the Insured does not comply with the requirements of the Insurers or hinders or obstructs the Insurers in exercising its rights under this insurance, then all entitlement to indemnity under this insurance will be forfeited.



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## DUTY OF CARE

The Insured must take reasonable precautions to prevent Injury and Damage and to comply with all obligations and regulations set out in any legislation applicable or imposed by any authority and to maintain all buildings, furnishings, ways and works, machinery and plant in sound condition. The Insured at its own expense must cause any defect or danger to be made good or remedied as soon as possible after discovery and in the meantime must cause such additional precautions to be taken as the circumstances may require.

If the Insurers gives notice in writing to the Insured of any defect or danger whether actual or potential, the liability of the Insurers to indemnify the Insured for any liability arising out of such defect or danger will be suspended until the Insurers withdraws the notice in writing.

## INSPECTION

The Insurers will be entitled to inspect the Insured's work places or property at any time and the Insured must provide all details and information as may reasonably be required by the Insurers in relation to this insurance. However this condition does not impose any obligation whatsoever upon the Insurers, and failure to make an inspection or any inspection report will not constitute an undertaking or representation that such work place or property is safe or that the conditions of this insurance have been complied with.

## JURISDICTION

This insurance will not apply to any judgment delivered by or obtained from a court in any country outside New Zealand in which the Insured is represented by or through any branch or subsidiary or associated Insurers or by any employee resident in such country or by a Insurers or individual holding the Insured's power of attorney. Furthermore the Insurance will not apply in respect of any judgment or order obtained in New Zealand for the enforcement of a judgment obtained in such other country.

This Condition will not apply in respect of the activities of any person whose normal place of residence is in New Zealand but is away for a short time in connection with the performance of non-manual work in the course of the Business.

## SUBROGATION

Where, upon accepting liability for a claim under this Section, the Insurers is entitled to become subrogated to the Insured's right of recovery or indemnity from any other person or corporation, the Insured must, at the Insurers's expense, do and concur in doing and permit to be done anything reasonably required by the Insurers for the purpose of enforcing that right. The Insured must comply with this condition when required, whether before or after having been indemnified by the Insurers.

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## Extensions – Section 1

### FOREST AND RURAL FIRES ACT

This insurance extends to cover the Insured's liability for:

- (a) costs (but not levies for expenditure under Sections 44 and 45), fines and penalties incurred and apportioned by any Fire Authority under the Forest and Rural Fires Act 1977, or any amendments to or replacement of that Act;
- (b) costs claimed by any other party in order to protect their property from fire arising in connection with the Business.

This extension applies irrespective of whether any Damage has occurred. The exclusion of liability arising in connection with the ownership, possession or use of any mechanically propelled vehicle does not apply to cover under this extension.

In respect of any one claim or series of claims consequent on or attributable to one source or original cause, the Insurers' liability under this extension is subject to the Special Limit shown in the Schedule. The Special Limit does not apply to loss that would be recoverable under this insurance in the absence of the extension.

### PRODUCT RECALL

This insurance extends to cover reasonable costs incurred, where it is necessary for the Insured to withdraw or recall the Insured's Products, provided that:

1. the product defect(s), which cause the withdrawal or recall, have already given rise to a claim covered under Section 1 of this Certificate, and
2. the costs are incurred within twelve months of the Insured first notifying the Insurers of the products claim (as mentioned in 1 above), and
3. the costs are limited to the withdrawal or recall of products within New Zealand.

Exclusion (c) of Repair/Recall Exclusion does not apply to this extension.

The Insurers will pay 80% of the costs incurred for any event and a maximum of \$100,000 for all events that happen during an annual period, unless a different amount is shown in the schedule.

An excess of \$2,500 applies for each event under this extension unless a different amount is shown in the schedule.

#### **Subject to the following limitation:**

This Extension does not apply if the Insured is involved in manufacturing and the turnover derived from manufacturing operations exceeds \$2,000,000 in the current 12 month period.

### VEHICLE DAMAGE TO PREMISES

This insurance extends to cover the Insured's liability for Damage to premises occupied but not owned by the Insured where the Damage arises in connection with the ownership, possession or use by or the Insured of any mechanically propelled vehicle. This extension does not apply to loss that would be recoverable under this insurance in the absence of the extension.



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## Section 2 – Statutory Liability

### DEFINITIONS

**'Accident'** means an event or omission that is unexpected and unintended from the Insured's point of view.

**'Act'** means any Act of the New Zealand Parliament, other than any Excluded Act, that is in force at the start of the Period of Insurance. 'Act' (whether excluded or not) includes any statutory amendment to or subsequent re-enactment of the Act, and any regulation made under the authority of the Act.

**'Complaint'** means whichever of the following the Insured becomes aware of first:

- (a) any official complaint made against the Insured of a breach or potential breach of an Act; or
- (b) any prosecution or notice of intended prosecution brought against the Insured under any Act; or

**'Excluded Acts'** means:

The Arms Act 1983  
The Aviation Crimes Act 1972  
The Crimes Act 1961  
The Criminal Investigations (Blood Samples) Act 1995  
The Land Transport Act 1998  
The Misuse of Drugs Act 1975  
The Summary Offences Act 1981  
The Transport Act 1962  
The Transport (Vehicle and Driver Registration and Licensing) Act 1986  
Any other Act listed in the Schedule as 'Additional Excluded Acts'.

**'Fine'** means money payable by the Insured as any:

- (a) fine or infringement fee, including associated court costs;
- (b) reparation under section 32 of the Sentencing Act 2002;

but does not include any compliance or remedial costs.

**'Occurrence'** means an Accident that:

- (a) occurs in New Zealand; and
- (b) occurs after the Retroactive Date; and
- (c) is connected with the Insured's Business described in the Schedule.

**'Retroactive Date'** means a date that is six months before the original commencement of this insurance or the date shown in the Schedule, whichever is the earlier.

**'Statutory Damages'** means damages for any breach by the Insured of the Privacy Act 1993 or the Human Rights Act 1993.

**'Strict Liability Offence'** means an offence under an Act where conviction can be obtained without proof of intention to commit the offence.

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## Insuring Agreements – Section 2

Subject to the terms of this insurance, and in consideration of the Insured's payment or agreement to pay the required premium, Insurers will indemnify the Insured as set out in this Section of the Certificate. The terms of this insurance include those set out in this Section and, in so far as they can apply, those set out in the General Conditions of the Certificate. However no indemnity will be payable in relation to any Complaint unless the Insured first becomes aware of the Complaint during the Period of Insurance and first notifies the Insurers of it during the Period of Insurance or within 30 days after it has expired.

### STATUTORY FINES

The Insurers will indemnify the Insured for any Fine imposed on the Insured by a New Zealand court or tribunal for a Strict Liability Offence, but only where the Fine arises out of a Complaint made in connection with an Occurrence.

### STATUTORY FINES DEFENCE COSTS

The Insurers will indemnify the Insured for all legal costs reasonably incurred by the Insured in defence of a Complaint.

No indemnity will be payable under this clause unless the Insured first became aware of the Complaint during the Period of Insurance and first notified the Insurers of it no later than 30 days after the Period of Insurance has expired.

### DEFENCE COSTS WHERE ACQUITTED

The Insurers will indemnify the Insured for all legal costs incurred by the Insured in defence of a prosecution for any alleged offence arising out of a Complaint made in connection with an Occurrence, but only where the Insured is acquitted.

### STATUTORY DAMAGES COVER (Privacy Act and Human Rights Act)

The Insurers will indemnify the Insured against liability to pay Statutory Damages arising out of a Complaint made in connection with an Occurrence.

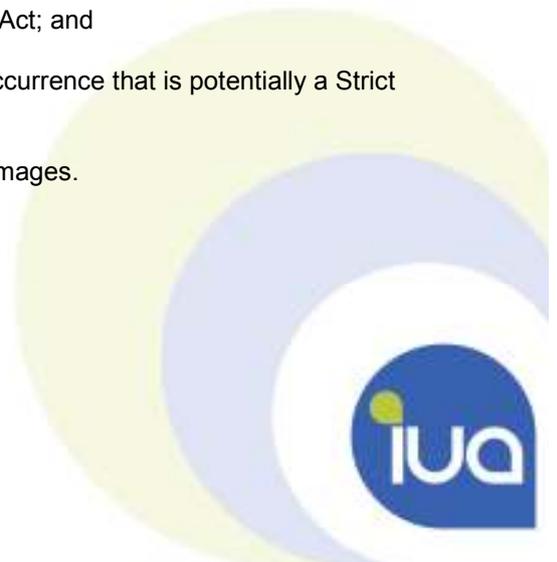
### STATUTORY DAMAGES DEFENCE COSTS

The Insurers will indemnify the Insured for all legal costs reasonably incurred by the Insured in defence of liability for any Statutory Damages that fall within the scope of the Statutory Damages cover provided under this Section.

### OFFICIAL INVESTIGATIONS COVER

The Insurers will indemnify the Insured for all legal costs reasonably incurred by the Insured in connection with any investigation by a competent body, but only if the investigation:

- (a) relates to the Insured's breach or potential breach of an Act; and
- (b) arises out of a Complaint made in connection with an Occurrence that is potentially a Strict Liability Offence under an Act; or
- (c) will result in the Insured being liable to pay Statutory Damages.



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## Exclusions – Section 2

### **INTENTIONAL OR RECKLESS BREACH**

This insurance does not cover any Fine, liability or cost incurred in consequence of the Insured's intentional or reckless breach of an Act.

### **DISHONESTY / FRAUD / MALICE**

This insurance does not cover any Fine, liability or cost incurred in consequence of the Insured's dishonest, fraudulent or malicious act or omission.

### **TAXES**

This insurance does not cover any Fine, liability or cost incurred in connection with the Insured's obligation to pay any kind of tax, rate, duty, levy, charge, fee or any other kind of revenue under an Act.

### **WAR**

This insurance does not cover any Fine, liability or cost incurred in connection with:

- (a) war, invasion or act of foreign enemy; or
- (b) hostilities or warlike operations (whether war is declared or not); or
- (c) civil war, mutiny, rebellion, revolution or insurrection; or
- (d) military or usurped power.

### **CONTINUING OFFENCES**

Where a Fine is imposed on the Insured for a continuing offence under an Act, this insurance does not cover any part of the Fine relating to the period during which the Insured knew or ought to have known that an offence was being committed.

### **HEALTH & SAFETY IN EMPLOYMENT ACT 1992**

This insurance does not cover any Fine incurred under the Health and Safety in Employment Act 1992. For the avoidance of doubt, this exclusion does not apply to that part of a Fine comprising reparation under section 32 of the Sentencing Act 2002, nor to any costs insured under this Section.

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## **BUILDING DEFECTS**

This insurance does not cover any Fine, liability or cost incurred in consequence of any building or structure being affected by:

- (a) moisture or water build-up or the penetration of external moisture or water; or
- (b) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa, or anything similar.

However, this exclusion will only apply where the Fine, liability or cost is incurred in consequence of:

- (c) non-compliance with a New Zealand building code; or
- (d) faulty design or faulty specification, including but not limited to faulty sequence, procedure or programme; or
- (e) faulty materials; or
- (f) faulty workmanship;

during construction, alteration, repair, renovation or maintenance of the building or structure.

The exclusion does not apply to any Fine, liability or cost incurred in consequence of leakage of internal pipes, internal water systems or internal cisterns.

## **Amount Payable – Section 2**

### **MAXIMUM AMOUNT PAYABLE**

The Insurers's liability under this Section (including any Extended Reporting Period) will not exceed, in the aggregate, the Limit of Indemnity specified in the schedule.

### **DEDUCTIBLE**

The Deductible shown in the schedule will be deducted from the amount of all Fines and Statutory Damages incurred in consequence of any one Occurrence or series of Occurrences arising from one source or original cause.



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## Conditions – Section 2

### CLAIM CONDITIONS

#### Reporting of any Occurrence by the Insured

On becoming aware of any Occurrence that is likely to give rise to a claim on this insurance, the Insured must:

- (a) immediately notify the Insurers; and
- (b) take all reasonable steps to:
  - 1) minimise the Fine, liability or cost that might be incurred in consequence of the Occurrence; and
  - 2) prevent repetition or continuation of the Occurrence.

#### Conduct of Claim

The Insured must not admit liability or do anything that could prejudice either:

- (a) a defence against the imposition of any Fine, liability or cost to which this insurance applies; or
- (b) the prospect of a recovery from any other party.

#### Claim Correspondence / Documents / Access

To make a claim on this insurance the Insured must:

- (a) complete the Insurers's claim form in full; and
- (b) give the Insurers free access to examine and assess particulars of the claim; and
- (c) send any relevant correspondence or court documents to the Insurers as soon as possible; and
- (d) authorise the disclosure to the Insurers of any personal information about the Insured that is held by any other parties and is relevant to this insurance or the claim; and
- (e) provide the Insurers with any other information or assistance that the Insurers may reasonably require; and
- (f) if requested by the Insurers in connection with the claim, make a statutory declaration or submit to examination under oath by a person nominated by the Insurers.

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### **Insurers's Option**

Where, upon accepting liability for a claim under this Section, the Insurers is entitled to become subrogated to the Insured's right of recovery or indemnity from any other person or corporation, the Insured must, at the Insurers's expense, do and concur in doing and permit to be done anything reasonably required by the Insurers for the purpose of enforcing that right.

The Insured must comply with this condition when required, whether before or after having been indemnified by the Insurers.

In the event of a successful recovery from that person or corporation, the Insurers will distribute the recovery as follows:

- (a) first, to reimburse the Insured for any Deductible and any uninsured portion of the loss;
- (b) second, to reimburse the Insurers for indemnity paid for the loss;
- (c) any remaining balance will be paid to the Insured.

### **Proceedings**

The Insurers will have the right to act in the Insured's name and on the Insured's behalf in connection with any proceedings to which this insurance applies, and to appoint its own lawyers to represent the Insured. The Insurers's lawyers will report directly to the Insurers.

### **CONFIDENTIALITY**

Where, in relation to any Complaint, the Insured is asked by any investigating or prosecuting body or by its lawyers to reveal the existence or terms of this insurance, the Insured must not do so unless required by law or unless the Insurers agrees in writing.

### **OTHER INSURANCE**

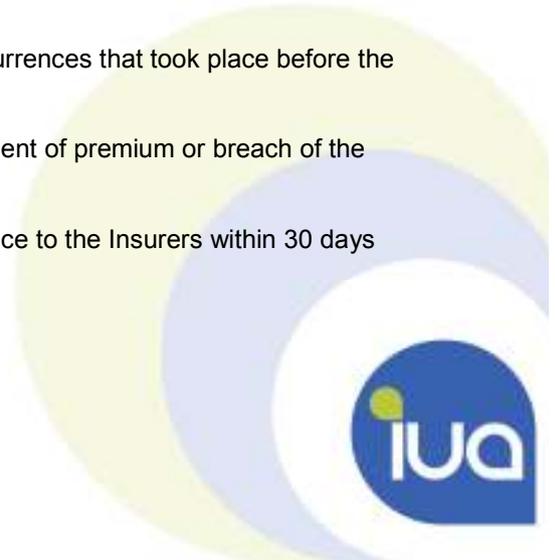
The Insured must notify the Insurers immediately of any other insurance that covers any of the same risks as are covered under this Section. If any such other insurance exists, the Insurers's liability under this Section will only apply to the amount of any Fine, liability or cost in excess of that recoverable under the other insurance.

### **EXTENDED REPORTING PERIOD**

Where the Insurers terminates this insurance by cancellation or by declining renewal, the Insured may pay an additional premium (being 50 per cent of the premium otherwise payable for a 12-month Period of Insurance), to extend the insurance for a further 12 months. However, cover during the extended period will:

- (a) only apply to Fines, liabilities and costs arising out of Occurrences that took place before the insurance was terminated; and
- (b) not apply at all if the reason for termination was non-payment of premium or breach of the terms of this insurance.

The Insured may exercise its right to the extended period by giving notice to the Insurers within 30 days after the insurance is terminated.



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## NOTICES UNDER ACTS

The Insured must comply with any lawful notice that the Insured receives from a competent authority under any Act. The Insured must do this within the time-frame specified on the notice. If no time-frame is specified, then the Insured must comply within a reasonable time.

## REASONABLE CARE

The Insured must take reasonable care at all times, and at its own expense, to avoid circumstances that could result in a claim. This insurance will not cover any Fine, liability or cost incurred as a result of the Insured's reckless or grossly irresponsible act or omission.

# Section 3 – Employers Liability

## DEFINITIONS

**'Accident'** means an event or omission that is unexpected and unintended from the Insured's point of view. 'Accidental' has a corresponding meaning.

**'Injury'** means bodily injury, disease, illness, shock, fright or mental injury or anguish, including death or disability resulting therefrom.

**'Claim'** means a claim made against the Insured and includes any notice received by the Insured of an intention by another party to make such a claim. If the Insured becomes aware of an event that is likely to result in such a claim, the claim will be deemed to have been made at that time.

**'Employee'** means a person employed directly in the Business under a contract of service or apprenticeship with the Insured.

**'Prosecution'** means a prosecution made against the Insured and includes any notice received by the Insured of an intention by another party to make such a claim. If the Insured becomes aware of an event that is likely to result in such a claim, the claim will be deemed to have been made at that time.

**'Strict Liability Offence'** means an offence under an Act where conviction can be obtained without proof of intention to commit the offence.

Any reference to legislation in this Section includes any statutory amendment to or subsequent re-enactment of the legislation, and any regulation made under the authority of the legislation.

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## Insuring Agreements – Section 3

Subject to the terms of this insurance, and in consideration of the Insured's payment or agreement to pay the required premium, Insurers will indemnify the Insured as set out in this Section of the Certificate.

The terms of this insurance include those set out in this Section and, in so far as they can apply, those set out in the General Conditions of the Certificate.

### **CIVIL LIABILITY – DAMAGES**

The Insurers will indemnify the Insured against liability to pay damages (including claimants' costs) arising from any Employee sustaining Injury in connection with the Business anywhere in New Zealand.

However, no indemnity will be payable in relation to any Claim:

- (a) arising out of any Injury sustained before inception of the Period of Insurance or, if the Period of Insurance is part of an uninterrupted series of such periods, inception of the first period in the series;
- (b) unless the Insured first becomes aware of the Claim during the Period of Insurance and first notifies the Insurers of it during the Period of Insurance or within 30 days after it has expired.

### **CIVIL LIABILITY – DEFENCE COSTS**

The Insurers will indemnify the Insured for all legal costs that the Insured reasonably incurs in the defence of any Claim to which this insurance applies, even if the Claim seems to be groundless.

### **CIVIL LIABILITY – EXEMPLARY DAMAGES (Optional Cover)**

Providing a Special Limit is shown for Exemplary Damages in the Schedule, the Insurers will indemnify the Insured against civil liability for any penalty, exemplary damages, aggravated damages or liquidated damages arising out of any Claim to which this insurance applies. The insurance does not otherwise cover any such civil liability.

### **HEALTH & SAFETY PROSECUTION DEFENCE COSTS (Optional Cover)**

The optional cover under this clause only applies if it is specified in the Schedule. If so specified, the Insurers will indemnify the Insured for all legal costs incurred by the Insured in defending a Prosecution for a Strict Liability Offence under the Health and Safety in Employment Act 1992. However, no indemnity will be payable under this clause unless:

- (a) the Prosecution arises from Injury sustained in New Zealand by an Employee in connection with the Business; and
- (a) the Injury was sustained after inception of the Period of Insurance or, if the Period of Insurance is part of an uninterrupted series of such periods, after inception of the first period in the series;
- (b) the Insured first becomes aware of the Prosecution during the Period of Insurance and first notifies the Insurers of it during the Period of Insurance or within 30 days after it has expired.

If the defence of the Prosecution is unsuccessful, this insurance does not cover any appeal or further appeal against either conviction or sentence unless the Insurers consents to the appeal in writing. The Insurers will not unreasonably withhold its consent. For the avoidance of doubt, cover under this clause does not include indemnity for any fine or other penalty.



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## Exclusions – Section 3

### **ACCIDENT INSURANCE LEGISLATION**

This insurance does not cover liability for compensation that is available under Accident Compensation legislation, or would have been so available but for the Insured's status as an exempt employer, or the Insured's decision to share some of the risk itself.

### **OVERSEAS JUDGMENTS**

This insurance does not cover liability that has been determined by judgment or decision of a court outside of New Zealand, irrespective of whether the judgment is enforceable in New Zealand.

### **DISHONESTY / FRAUD / MALICE**

This insurance does not cover liability or costs incurred in connection with a Strict Liability Offence arising out of the dishonest, fraudulent or malicious act or omission by the Insured.

### **KNOWING / RECKLESS BREACH**

This insurance does not cover liability or costs arising out of the Insured knowingly or recklessly breaching the Health and Safety in Employment Act 1992.

### **EXPOSURE BEFORE THE COMMENCEMENT OF THIS INSURANCE**

This insurance does not cover liability or costs incurred in connection with any disease that results from conditions to which the Employee was first exposed before inception of the Period of Insurance or, if the Period of Insurance is part of an uninterrupted series of such periods, before inception of the first period in the series.

### **ASBESTOS**

This insurance does not cover liability or costs arising out of a Strict Liability Offence in connection with any of the following:

- (a) mining, processing, transporting, distributing or storing asbestos;
- (b) manufacturing or processing materials containing asbestos;
- (c) any process of decontamination, treatment or control of asbestos;
- (d) the presence of asbestos in any building or structure;
- (e) asbestos pollution or contamination.

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## **WAR / CONFISCATION / NUCLEAR**

This insurance does not cover liability or costs arising out of a Strict Liability Offence in connection with any of the following:

- (a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war is declared or not), civil war, mutiny, rebellion, revolution, insurrection, military or usurped power;
- (b) confiscation, nationalisation, requisition or destruction of, or damage to, property by order of government, public or local authority;
- (c) nuclear weapons material;
- (d) ionising radiation or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel. Solely for the purpose of this exclusion, combustion includes any self-sustaining process of nuclear fission.

## **FINES / EXEMPLARY DAMAGES**

- (a) This insurance does not cover any fine imposed on the Insured.
- (b) This insurance does not cover liability for any exemplary damages awarded against the Insured where the award is made in connection with any dishonest or fraudulent act or omission by the Insured, even if the insurance is otherwise extended to cover exemplary damages.

## **EMPLOYMENT RELATIONS ACT**

This insurance does not cover liability or costs incurred by the Insured under the Employment Relations Act 2000.



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## Amount Payable – Section 3

### CIVIL LIABILITY COVER

#### **Maximum Amount Payable**

The Insurers's liability under this Section will not exceed, in the aggregate, the Limit of Indemnity specified in the Schedule.

#### **Deductible**

In respect of each Injury to each Employee, the Deductible shown in the Schedule will be deducted from the total amount of all Claims arising out of any one source or original cause.

### HEALTH & SAFETY PROSECUTION DEFENCE COSTS COVER

#### **Maximum Amount Payable**

The Insurers's liability under this Section for Health & Safety Prosecution Defence Costs will not exceed, in the aggregate, the Limit of Indemnity specified in the Schedule.

#### **Deductible**

The Deductible shown in the Schedule will be deducted from the total amount of all Health & Safety Prosecution Defence Costs arising out of any one source or original cause.

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## Conditions – Section 3

### CLAIM CONDITIONS

#### Reporting of any Situation by the Insured

On becoming aware of any situation that is likely to give rise to a Claim, the Insured must:

- (a) immediately notify the Insurers with full particulars of the situation; and
- (b) advise the party who makes the Claim, or indicates an intention to make a Claim, to contact the Insurers; and
- (c) take all reasonable steps to:
  - 1) minimise the Claim; and
  - 2) prevent repetition or continuation of the situation that led to the Claim.

#### Conduct of Claim

The Insured must not admit liability or do or say anything that may prejudice the Insurers's ability to defend the Claim or to take recovery action in the Insured's name.

#### Claim Correspondence / Documents / Access

To make a claim on this insurance the Insured must:

- (a) complete the Insurers's claim form in full; and
- (b) give the Insurers free access to examine and assess particulars of the claim; and
- (c) send any relevant correspondence or court documents to the Insurers as soon as possible; and
- (d) authorise the disclosure to the Insurers of any personal information about the Insured that is held by any other party and is relevant to this insurance or the claim; and
- (e) provide the Insurers with any other information or assistance that the Insurers may reasonably require; and
- (f) if requested by the Insurers in connection with the claim, make a statutory declaration or submit to examination under oath by a person nominated by the Insurers.



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## **Insurers's Option**

Where, upon accepting liability for a claim under this Section, the Insurers is entitled to become subrogated to the Insured's right of recovery or indemnity from any other person or corporation, the Insured must, at the Insurers's expense, do and concur in doing and permit to be done anything reasonably required by the Insurers for the purpose of enforcing that right.

The Insured must comply with this condition when required, whether before or after having been indemnified by the Insurers.

In the event of a successful recovery from that person or corporation, the Insurers will distribute the recovery as follows:

- (a) first, to reimburse the Insured for any Deductible and any uninsured portion of the loss;
- (b) second, to reimburse the Insurers for indemnity paid for the loss;
- (c) any remaining balance will be paid to the Insured.

## **Proceedings**

The Insurers will have the right to act in the Insured's name and on the Insured's behalf in connection with any proceedings to which this insurance applies, and to appoint its own lawyers to represent the Insured. The Insurers's lawyers will report directly to the Insurers.

## **NOTICES UNDER ACTS**

The Insured must comply with any lawful notice that the Insured receives from a competent authority under the Health and Safety in Employment Act 1992. The Insured must do this within the time-frame specified on the notice. If no time-frame is specified, then the Insured must comply within a reasonable time.

## **OTHER INSURANCE**

The Insured must notify the Insurers immediately of any other insurance that covers any of the same risks as are covered under this Section. If any such other insurance exists, the Insurers's liability under this Section will only apply to the amount of any Fine, liability or cost in excess of that recoverable under the other insurance.

## **SEPARATE INSURANCE**

If the Insured comprises more than one legal entity, each entity is deemed to be insured as if issued with a separate Certificate in its own name. However, the Insurers's liability to all such entities combined will not exceed the Limit of Indemnity specified in the Schedule.

## **REASONABLE CARE**

The Insured must take reasonable care at all times, and at its own expense, to avoid circumstances that could result in a claim. This insurance will not cover any Fine, liability or cost incurred as a result of the Insured's reckless or grossly irresponsible act or omission.

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## General Conditions – Applicable To All Sections

### CANCELLATION

**(a) By the Insured**

This insurance may be cancelled by the Insured at any time and with immediate effect by written notice delivered to the Insurers. In the event of such cancellation, the Insurers will refund the unused part of the premium less the standard short term charges (subject to any adjustment required by the terms of this insurance).

**(b) By the Insurers**

This insurance may be cancelled by the Insurers at any time by giving written notice to the Insured. The notice may be delivered personally or posted by registered mail or equivalent to the Insured's last known postal address. The cancellation will take effect at 4 pm on the 30th day after the notice has been delivered or posted. In the event of such cancellation, the Insurers will refund to the Insured a pro-rata proportion of the premium, subject to any adjustment required by the terms of this Insurance.

### CHANGE IN RISK

The Insured must notify the Insurers immediately if, during the Period of Insurance, there is any material change in the risks insured against. Upon being notified of a material change, the Insurers may charge additional premium, change the terms of insurance, or both, commensurate with any increase in the risks insured against.

Any such additional premium or change in the terms of insurance will take effect from the time the material change took place.

If the Insured fails to notify the Insurers of any material change in the risks insured against, the Insurers may void the insurance. If the Insurers elects not to void the insurance, the Insurers will nevertheless be relieved of liability to pay any claim whose cause has been wholly or partially contributed to by the material change.

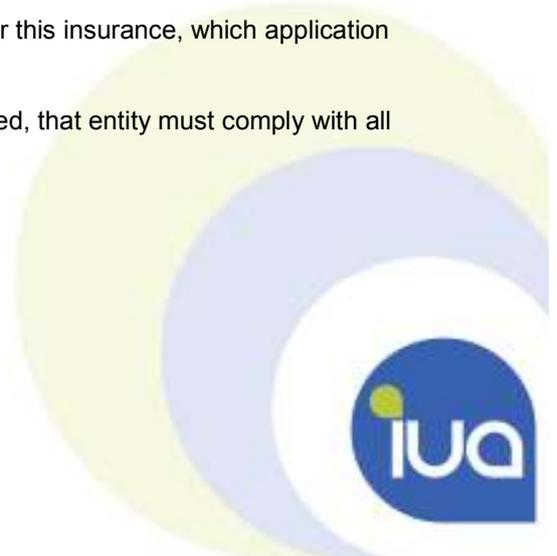
The Insurers' rights under this condition will be effective from the time the Insured knew, or ought to have known, of the material change in the risks insured against.

### COMPLIANCE

The Insurers will not be liable to pay any indemnity under this insurance unless:

- (a) the Insured has complied with all the terms of the relevant Section in so far as they can apply; and
- (b) statements made in support of the Insured's application for this insurance, which application is deemed to be incorporated in this Certificate, were true.

Where this insurance is to the benefit of any entity other than the Insured, that entity must comply with all terms of this insurance in so far as they can apply.



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## **FRAUD**

If any claim on this insurance is dishonest or fraudulent in any way, the Insurers may, at its sole discretion, do any of the following:

- (a) decline the claim either in whole or in part;
- (b) void this insurance;
- (c) without further notice, cancel all other insurance contracts between the Insured and the Insurers with effect from the date of the dishonest or fraudulent act.

## **GOODS & SERVICES TAX**

Where the Insured is required to pay Goods and Services Tax (GST) on the amount of any indemnity payment received under this insurance, the amount of that payment will be increased sufficiently to reimburse the Insured for that GST. The GST is payable in addition to any Limit of Indemnity or other limitation of the Insurers' liability.

## **GOVERNING LAW**

This insurance is subject to New Zealand law and to the exclusive jurisdiction of New Zealand courts.

## **INDEMNIFIED PARTIES**

Subject to the applicable Limit of Indemnity not being thereby increased, the Insurers will indemnify each of the following as an additional Insured. Each Insured will be indemnified in the same manner as if a separate Certificate had been issued to each of them:

- (a) any New Zealand domiciled subsidiary Insurers, more than half the nominal value of whose equity share capital is owned by a named Insured;
- (b) any partner, shareholder, director, executive officer or Employee of an Insured, but only in respect of liability for which the Insured is or would have been indemnified had the claim been made against it;
- (c) any officer, committee member or ordinary member of an Insured's:
  - 1) canteen, social, sports or welfare organisation;
  - 2) first aid, fire or ambulance service;
  - 3) pension fund management service;
  - 4) administrative committee;each in its respective capacity as such.

The rights and obligations of each Insured are subject all terms of this insurance in so far as they can apply.

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## **NOTICES**

Any notice from the Insured to the Insurers must be in writing and either delivered or posted to any of the Insurers' offices.

Any notice from the Insurers to the Insured must be in writing and either delivered or posted to the Insured's last known address or, if the Insured is represented by an insurance.

## **PREMIUM ADJUSTMENT**

If the premium for this insurance has been calculated on estimated figures, it is only a provisional premium for the Period of Insurance. Within three months after expiry of the Period of Insurance, the Insured must tell the Insurers what the actual figures are. The Insurers will then calculate the actual premium based on those figures. The difference between the actual and the provisional premiums will be payable to or refunded by the Insurers as the case may require.

## **SEPARATE INSURANCE**

If the Insured comprises more than one legal entity, each entity is deemed to be insured as if issued with a separate Certificate in its own name. However, the Insurers's liability to all such entities combined will not exceed the relevant Limit of Indemnity specified in the Schedule.





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