

CASUALTY

ACE COMBINED LIABILITY

POLICY WORDING



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PUBLIC LIABILITY POLICY

1. INSURING AGREEMENT

In consideration of the premium being paid by the **Insured** to ACE Insurance Limited (hereinafter called '**ACE**') and in reliance upon the written proposal agreement and declaration which shall be deemed to be the basis of this **Policy**, ACE agrees to indemnify the **Insured** as follows:

1.1 Public and Products Liability Coverage

Subject to the terms, conditions, limitations and exclusions of this **Policy** all sums which the **Insured** shall be legally liable to pay as **Compensation** on account of:

- (a) **Personal Injury**; or
- (b) **Property Damage**,

occurring within the **Policy Territory** during the **Policy Period** as a result of an **Occurrence** happening in connection with the **Business** of the **Insured** described in Item 4 of the **Schedule**.

1.2 Limit of Liability

ACE's liability under this Policy shall not exceed the **Limit of Liability** stipulated in Item 8 of the **Schedule**.

1.3 Supplementary Payments

In addition to the **Limit of Liability** stipulated in Item 8 of the **Schedule**, ACE will pay:

- (a) all reasonable charges, expenses and legal costs incurred by either ACE or the **Insured** with the written consent of ACE in the settlement or defence of any claim for **Compensation** in respect of which the **Insured** is entitled to indemnity under this **Policy**;
- (b) all charges, expenses and legal costs recoverable from the **Insured** by claimants in connection with such **Compensation**;
- (c) in the event of a claim being made against the **Insured** in any court or before any other legally constituted body in the United States of America, Canada or their respective protectorates and territories, the total amount payable in respect of the claim by ACE under this **Policy** including all charges, legal costs and expenses will not exceed the **Limit of Liability** stipulated in Item 8 of the **Schedule**.

provided that ACE's liability to pay either or both of these types of charges, expenses or legal costs shall cease upon the **Limit of Liability** stipulated in Item 8 of the **Schedule** having been exhausted by payment of judgments or settlements.

1.4 Deductible

The Deductible is the amount stipulated in Item 11 of the **Schedule** payable by the **Insured**. The Deductible applies to each **Occurrence** and is payable by the **Insured** at such time required by ACE. ACE's liability to indemnify the **Insured** under this **Policy** is over and above the Deductible.



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2. AUTOMATIC COVERAGE EXTENSIONS

Subject to all of the terms, conditions, exclusions and limitations of this **Policy** (including the Insuring Agreements) cover is extended by the following coverage extensions. Unless ACE otherwise agreed in writing all cover provided by these extensions form part of and do not increase the **Limit of Liability** stipulated in Item 8 of the **Schedule**.

2.1 Advertising Injury

Notwithstanding Definition 3.9(c), ACE agrees to indemnify the Insured in respect of liability for **Personal Injury** from any unintentional:

- (a) libel;
- (b) slander;
- (c) defamation;
- (d) invasion of rights of privacy,

arising out of the **Insured's** advertising activities.

2.2 Business Advice/Service/Medical Advice

Notwithstanding Exclusion 4.17, ACE agrees to indemnify the **Insured** in respect of liability for **Personal Injury** or **Property Damage** arising out of:

- (a) the rendering of or failure to render medical advice or service by medical persons employed by the **Insured** to provide first aid on the **Insured's** premises; or
- (b) other professional advice or service not given for a fee.

2.3 Care Custody & Control and Tenant's Liability

Notwithstanding Exclusion 4.13, ACE agrees to indemnify the **Insured** in respect of liability for **Property Damage** to:

- (a) premises which are leased, rented, tenanted or hired by the **Insured**;
- (b) **Vehicles**, other than **Vehicles** owned or used by or on behalf of the **Insured**, in the care, custody or control of the **Insured** only whilst such **Vehicles** are in a car park owned or operated by the **Insured** other than for income or reward as a car park operator;
- (c) directors', employees' and visitors' clothing and personal effects;
- (d) any other goods, equipment, merchandise and property (not owned by the Insured), other than real property, provided that a sub limit of NZD250,000 any one Policy Period shall apply to this sub-paragraph (d).

2.4 Excess Motor Liability

Exclusion 4.22 does not apply to **Personal Injury** or **Property Damage** resulting from the ownership possession control or use by or on behalf of the **Insured** of any **Vehicle** or trailer attached thereto;

Provided that:

- (a) there is separate motor insurance in force in respect of such liability with a limit of liability of at least NZD10,000,000; and
- (b) this Extension 2.4 shall apply only to amounts in excess of such limit of liability stated in paragraph (a) above.

2.5 Forest and Rural Fires Act 1977

For the purpose of this Extension 2.5 only, notwithstanding Insuring Agreement 1.1 or Exclusion 4.9, coverage under this **Policy** extends to all sums which the **Insured** shall be legally obligated to pay in respect of:

- (a) costs (but excluding levies for expenditure under Section 44 and 45 of the Forest and Rural Fires Act 1977), fines and penalties incurred and apportioned by any Fire Authority (as that term is defined therein) under the Forest and Rural Fires Act 1977 or any amendments or replacing legislation; and
- (b) costs incurred and claimed by any other person as to measures taken in order to protect that person's property from fire,

where such costs arise as a result of and in connection with the **Business** of the **Insured** described in the **Schedule**.

The cover provided by this Extension 2.5:

- (1) shall apply whether **Property Damage** or **Personal Injury** has occurred or not; and



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- (2) shall apply to machinery, plant, trailers or **Vehicles** (insofar as liability covered under this extension 2.5 is not otherwise **Insured**); and
- (3) is subject always to the terms exceptions limits and conditions of the **Policy** insofar as they are not specifically varied by this Extension 2.5; and
- (4) is subject to a sub limit of NZD250,000 any one **Policy Period**.

2.6 Indemnity to Principals and Others

ACE will indemnify any person or organisation to which the **Insured** (as defined in Definition 3.5(a) or (b) only) is obligated by virtue of a written contract to provide insurance as is afforded by this **Policy**, but only for the vicarious liability of such person or organisation arising out of the performance by the **Insured** (as defined in Definition 3.5(a) or (b) only) of such written contract and for such coverage and **Limit of Liability** as provided in this **Policy**.

2.7 Mechanical Plant

Notwithstanding Exclusion 4.22, ACE agrees to indemnify the **Insured** in respect of liability for **Personal Injury** or **Property Damage**:

- (a) arising from the loading or unloading of any **Vehicle** used by or on behalf of the **Insured** but not where the **Vehicle** is under the care custody or control of the **Insured**; or
- (b) arising from any **Vehicle** that either has plant or machinery attached to it or is primarily designed as mobile plant or machinery, while it is operating as plant or machinery.

2.8 NZ Exemplary Damages

- (a) Coverage Extension

Notwithstanding Exclusion 4.9, ACE agrees to indemnify the **Insured** for **Exemplary Damages** which the **Insured** is legally obliged to pay as a result of a claim for **Personal Injury** that is covered under this **Policy** provided that such claim:

- (1) is first made against the **Insured** during the **Policy Period** or is subject to clause (b) of this Extension 2.8; and
- (2) is notified to ACE during the **Policy Period**; and
- (3) is brought by, or on behalf of, a person who has suffered a **Personal Injury**.

- (b) Coverage For Claims Made After The End Of The **Policy Period**

The cover provided by this Extension 2.8 ceases at the end of the **Policy Period**. However, ACE agrees to indemnify the **Insured** under clause (a) of this Extension 2.8 in respect of a claim which is first made against the **Insured** after the end of the **Policy Period**, if the claim arises from circumstances which arose during the **Policy Period** and which the **Insured** has notified to ACE during the **Policy Period**.

- (c) Extension Sub Limit

A sub limit of NZD2,000,000 any one **Policy Period** shall apply to this Extension 2.8.

- (d) Defence Costs and Expenses

In addition to the sub limit specified in (c) above, ACE agrees to pay the expenses and costs referred to in Insuring Agreement 1.3 in relation to the claims covered by this Extension 2.8.

- (e) Definitions

For the purposes of the coverage provided by this Extension 2.8 only:

- (1) the Definition of "**Occurrence**" at Clause 3.8 is deleted and replaced with the following:

"**Occurrence**" means an event including continuous or repeated exposure to conditions which results in **Personal Injury** neither expected nor intended from the standpoint of the **Insured**. All **Occurrences** of a series consequent on or attributable to one source or original cause shall be deemed one **Occurrence**.
- (2) the following Definition applies:

"**Exemplary Damages**" means exemplary damages paid or agreed to be paid by judgment or settlement for **Personal Injury** provided such damages only payable in respect of an **Occurrence** to which this Extension 2.8 applies.



(f) Exclusions

In addition to the Exclusions applicable to this **Policy**, with respect to the cover provided by this Extension 2.8 only, ACE shall not indemnify the **Insured** against:

- (1) any claim made, threatened, or in any way intimated against the **Insured** before the **Policy Period** commences;
- (2) any claim arising from a circumstance that, at the start of the **Policy Period**, the **Insured** was aware or ought reasonably have been aware may give rise to a claim against the **Insured**;
- (3) any claims or circumstance disclosed on the proposal for insurance or which the **Insured** has notified to any previous insurer (including ACE);
- (4) any claim arising out of any statement, act or omission of the **Insured** made, done or committed outside New Zealand;
- (5) any claim against the **Insured** brought outside New Zealand or any settlement or compromise of a claim entered into outside New Zealand;
- (6) any claim arising out of the enforcement of a judgment, order or award obtained outside New Zealand;
- (7) any claim as a result of any judgment entered in any Court, other than a New Zealand Court applying the law of New Zealand; or
- (8) any claim arising directly or indirectly from deliberate, intentional or malicious conduct by the **Insured**.

(g) Conditions

In addition to the General Conditions applicable to this **Policy**, it is a condition precedent to the **Insured's** right to be indemnified under this Extension 2.8, that the **Insured** must notify ACE as soon as possible in writing if:

- (1) any claim for Exemplary Damages is made against the **Insured**; or
- (2) the **Insured** is notified of any matter which may give rise to a claim under this Extension 2.8; or
- (3) the **Insured** becomes aware of any circumstances which may give rise to a claim under this Extension 2.8.

This applies even if the claim is likely to be less than the Deductible stipulated in Item 10 of the **Schedule**.

2.9 Product Recall Expenses

Notwithstanding Exclusion 4.16, ACE will indemnify the **Insured** for 80% of the costs and expenses incurred to instigate and carry out a withdrawal or recall of the **Insured's Products** from use in New Zealand, which has already given rise to a claim for **Personal Injury** or **Property Damage** under this **Policy**;

Provided that:

- (a) the prior approval of ACE was obtained prior to the withdrawal or recall of the **Insured's Products**; and
- (b) a sub limit of NZD100,000 shall apply to this Extension 2.9.

2.10 Service and Repair

Notwithstanding Exclusion 4.1 and Exclusion 4.18, ACE will indemnify the **Insured** for liability in respect of **Property Damage** to all **Watercraft, Vehicles**, machinery and parts thereof that are, or have been, in the care custody or control of the **Insured** for the purposes of service and/or repair, subject to the following sub limits:

- (a) **Property Damage** to **Watercraft, Vehicles** or machinery being serviced or repaired:
Sub Limit: NZD250,000 any one **Policy Period** shall apply to this Extension 2.10(a); and
- (b) **Personal Injury** or **Property Damage** to other property arising from service and/or repairs to **Watercraft, Vehicles** or machinery:
Sub Limit: NZD250,000 any one **Policy Period** shall apply to this Extension 2.10(b);

provided that in all cases there is no cover for liability for the costs of rectifying defective or faulty:

- (1) workmanship; or
- (2) materials,

in respect of the actual **Watercraft, Vehicle** and/or machinery being worked upon.



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2.11 Sudden and Accidental Pollution

Exclusion 4.14 shall not apply to **Personal Injury** or **Property Damage** which:

- (a) arises from a sudden, identifiable, unintended and unexpected event from the standpoint of the **Insured**; and
- (b) which takes place in its entirety at a specific time and place and occurs outside of the United States of America, Canada and their respective protectorates and territories.

2.12 Underground Services

ACE agrees to indemnify the **Insured** in respect of **Personal Injury** arising out of and **Property Damage** in New Zealand to existing underground services, cables, pipes or equipment;

Provided that:

- (a) prior to the commencement of any work, the **Insured** inquired of the relevant authority, corporation or company as to the location of such underground services, cables, pipes or equipment and the **Insured** took all reasonable precautions to prevent **Personal Injury** or **Property Damage**; and
- (b) a sub limit of NZD250,000 shall apply to this Extension 2.12.

2.13 Vibration and Removal of Support

ACE agrees to indemnify the **Insured** for or in respect of **Personal Injury** and **Property Damage** in New Zealand arising from the vibration, or removing, weakening or interfering with, the support of land or buildings;

Provided that:

- (a) the land or buildings are not owned or occupied by the **Insured** and the **Personal Injury** or **Property Damage** arises from the actions of the **Insured**; and
- (b) a sub limit of NZD250,000 shall apply to this Extension 2.13.

3. DEFINITIONS

Wherever appearing in this **Policy** or any annexure forming a part hereof, the following terms shall, unless otherwise stated, be interpreted in the manner described below:

3.1 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.

3.2 Aircraft means:

any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

3.3 Business means:

All activities and operations of the business stated in Item 4 of the **Schedule** including the ownership and occupation of premises for the purposes of the **Business**, and the provision or management of canteen, social, sports, welfare or child care services or activities for the Insured's employees and internal first aid, fire, security and ambulance services.

3.4 Compensation means:

monies paid or agreed to be paid by judgment or settlement for:

- (a) **Personal Injury**; or
- (b) **Property Damage**

provided that **Compensation** is only payable in respect of an **Occurrence** to which this **Policy** applies.

3.5 Insured means:

- (a) the **Insured** named in the **Schedule**;
- (b) any subsidiary company (including subsidiaries thereof) of the **Insured** named in the **Schedule** and any other organisation under the control of the **Insured** named in the **Schedule** and over which it is exercising active management;
- (c) any director, employee, partner or shareholder of the **Insured**, but only whilst acting within the scope of their duties in such capacity;



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- (d) any social and/or sporting club formed with the consent of the **Insured** including any office bearer or member thereof in their capacities as such;
- (e) any new organisation acquired by the **Insured** during the **Policy Period** through consolidation, merger, purchase of the assets of or assumption of control and active management, provided such acquisition or assumption is reported to ACE within ninety (90) days after it is effected and provided further that such acquisition is endorsed on this **Policy**.

3.6 Insured's Products means:

goods or products (after they have ceased to be in the possession of, or under the control of the **Insured**) manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the **Insured** including any container thereof (other than a **Vehicle**).

3.7 Limit of Liability means:

the limit of liability amount(s) stipulated in Item 8 of the **Schedule**.

3.8 Occurrence means:

an event including continuous or repeated exposure to conditions which results in **Personal Injury** or **Property Damage** neither expected nor intended from the standpoint of the **Insured**. All **Occurrences** of a series consequent on or attributable to one source or original cause shall be deemed one **Occurrence**.

3.9 Personal Injury means:

- (a) bodily injury death, illness, disability, shock, fright, mental anguish or mental injury;
- (b) false arrest, detention, false imprisonment, malicious prosecution or humiliation;
- (c) the publication or utterance of libel slander or other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:
 - (1) when the first such publication or utterance was made prior to the commencement of this **Policy**; or
 - (2) when any such publication or utterance is made in the course of or is related to advertising, broadcasting or telecasting activities conducted by or on behalf of the **Insured**;
- (d) wrongful entry or eviction or other invasion of the right of private occupancy;
- (e) assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing or eliminating danger to persons or property.

3.10 Policy means:

this policy wording including the Schedule and any endorsements hereto.

3.11 Policy Period means:

the period stipulated in Item 6 of the **Schedule** or such further period shown in a renewal certificate for which the **Policy** has been renewed.

3.12 Policy Territory means:

New Zealand including the overseas activities of travelling executives and salesmen on **Business** who are non-resident in such countries.

3.13 Products Hazard means:

Personal Injury and/or **Property Damage** arising out of the **Insured's Products** or their use but only where loss from such injury or damage accrues to persons other than the **Insured**.

3.14 Property Damage means:

- (a) physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting there from; or
- (b) loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by physical damage of other tangible property.

3.15 Schedule means:

the **Schedule** issued with this **Policy**.

3.16 Vehicle means:

any type of machine on wheels or on caterpillar tracks made or intended to be self-propelled by mechanical power.

3.17 Watercraft means:

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



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4. EXCLUSIONS

This **Policy** does not apply to:

4.1 Aircraft, Hovercraft, Watercraft

Personal Injury or Property Damage arising out of the ownership, maintenance, operation or use by the **Insured** of:

- (a) any **Aircraft** or hovercraft; or
- (b) any **Watercraft** exceeding 15 metres in length while on, in or under water. However this clause 4.1 (b) shall not apply to **Watercraft** not owned or operated by the **Insured** but used by the **Insured** for **Business** entertainment purposes.

4.2 Aircraft Products

any product that is incorporated with the **Insured's** knowledge in an **Aircraft**.

4.3 Asbestos

any loss, demand, claim, suit or other **Occurrence** arising out of or related in any way to asbestos or asbestos-containing materials. ACE shall have no duty of any kind with respect to any such loss, demand, claim suit, or **Occurrence**.

4.4 Building Defects & Mould

Personal Injury or Property Damage (or charges, expenses and legal costs) which is directly or indirectly caused by, arising out of or in any way connected with:

- (a) the actual, threatened or alleged ingress, inhalation, discharge, dispersal, seepage, migration, absorption, release or escape of external water, liquid or moisture from any source at any time in or into any building or structure or any materials or components thereof; or
- (b) the actual, threatened or alleged existence or effects of any concentration of external water, liquid or moisture on or within any building or structure or any materials or components thereof; or
- (c) the actual, threatened or alleged existence or effects of:
 - (1) fungus, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms; or
 - (2) any spore, toxin, vapour, gas or other emission or organic or inorganic body or substance, created, produced by or emanating from such fungus, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure or any materials or components thereof; or
- (d) any costs or expenses arising out of the preventing, abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in any way responding to or assessing the matters set out in paragraphs (a), (b) and/or (c) above; or
- (e) the actual, threatened or alleged failure of any building or structure or any materials or components thereof to comply with or conform 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) or to meet the level of performance, quality, fitness or durability of its intended purpose, in relation to:
 - (1) external water, liquid or moisture; or
 - (2) protection from external water, liquid or moisture entering that building or structure or any materials or components thereof, or the effects thereto.

This Exclusion 4.4 shall apply regardless of any other cause, event, building materials or building components that contributed concurrently or in any sequence to the **Personal Injury or Property Damage** (or charges, expenses and legal costs).

However this Exclusion 4.4 shall not exclude any indemnity for **Personal Injury or Property Damage** that is caused by or arises out of leakage of internal water pipes or cisterns.



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4.5 Contractual Liability

any liability assumed by the **Insured** under any contract, agreement or warranty except to the extent that such liability would have been implied by law in the absence of such contract, agreement or warranty.

4.6 Efficacy

any legal liability arising out of or in any way connected with the failure of any of the **Insured's Products** to fulfill a particular purpose or intended function or meet a particular level of performance, where the **Insured** has expressly or impliedly warranted or represented that the **Insured's Products** will fulfill such purpose or function (including purposes such as curing, alleviating, preventing, monitoring, detecting, eliminating or retarding **Personal Injury** or **Property Damage**) or meet such level of performance.

4.7 Employment Liability

- (a) any **Personal Injury** to any person arising out of or in the course of employment of such person by the **Insured**; or
- (b) any liability that the **Insured** is or would be entitled to indemnity under any fund, scheme, policy of insurance or self-insurance pursuant to or required by any legislation relating to workers' compensation whether or not such insurance has been effected.

4.8 Faulty Workmanship

any claims in respect of the cost to rectify faulty workmanship, provided that this Exclusion 4.8 shall not apply to **Personal Injury** or **Property Damage** resulting from such faulty workmanship.

4.9 Fines, Penalties and Damages

finer, penalties, punitive, exemplary, liquidated or aggravated damages.

4.10 Genetically Modified Organisms (GMOs)

Personal Injury or **Property Damage** arising from any condition directly or indirectly caused by or associated with Genetically Modified Organisms (GMOs).

For the purpose of this Exclusion 4.10, "GMOs" shall mean any organism in which the genetic material has been modified or altered through gene technology in a way that does not occur naturally by multiplication and / or natural recombination.

4.11 Loss of Use

loss of use of tangible property which has not been physically injured or destroyed resulting from:

- (a) a delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement, or
- (b) the failure of the **Insured's Products** or work performed by or on behalf of the **Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured**.

This Exclusion 4.11 does not apply to loss of use of property other than the **Insured's Products** resulting from the sudden and accidental physical injury to or destruction of the **Insured's Products** or work performed by or on behalf of the **Insured** after such products or work have been put to use by any person or organisation other than the **Insured**.

Molestation

4.12 Personal Injury

sustained by any person arising out of or resulting from the Molestation of or interference with any person by:

- (a) any **Insured**;
- (b) any employee of any **Insured**; or
- (c) any person performing any volunteer or unpaid services for or on behalf of the **Insured**.

2. ACE will have no duty to defend any allegation, claim, action, suit, proceeding or litigation against the Insured either directly or vicariously seeking damages on account of such **Personal Injury** and, for the avoidance of doubt, the **Policy** does not apply to any costs associated with such defence.

3., Molestation means:

- (a) to cause trouble to;



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- (b) to vex;
- (c) to annoy;
- (d) put to inconvenience; and/or
- (e) to meddle with injuriously or with hostile intent.

4.13 Own Property and Property in the Insured's Care, Custody or Control

Property Damage to:

- (a) property owned by the **Insured**, or in the **Insured's** care, custody or control; or
- (b) the **Insured's Products** arising out of such products or any part of such products.

4.14 Pollution

Personal Injury or **Property Damage** arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water. Waste includes material to be recycled, reconditioned or reclaimed

4.15 Product Guarantee

any product guarantee or warranty given by or on behalf of the **Insured** but this Exclusion 4.15 does not apply to legislative requirements concerning product safety and information.

4.16 Product Recall

the liability or costs of withdrawal, recall, inspection, repair, adjustment, removal, replacement or loss of use of the **Insured's Products** or work completed by or for the **Insured** and/or the withdrawal or recall of any property of which such products form a part.

4.17 Professional Liability

Personal Injury or **Property Damage** arising from the rendering of or failure to render professional advice or services by the **Insured** or any error or omission connected therewith.

4.18 Property Worked Upon

Property Damage to property on which the **Insured** is or has been working if the **Property Damage** is caused directly by that work.

4.19 Radioactivity

Personal Injury or **Property Damage** 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. For the purpose of this Exclusion 4.19 only combustion shall include any self-sustaining process of nuclear fission; or
- (b) nuclear weapons material.

4.20 Sanctioned Territories

the extent that trade or economic sanctions or other laws or regulations prohibit ACE from providing insurance, including, but not limited to, the payment of claims.

4.21 Terrorism

any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss or any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

4.22 Vehicles

Personal Injury or **Property Damage** arising out of the use of any **Vehicle** owned by, or in the physical or legal control of the **Insured**:

- (a) which is or should have been registered; or
- (b) in respect of which insurance is required by virtue of any legislation relating to **Vehicles**; or
- (c) which is otherwise insured in respect of the same liability.

This Exclusion 4.22 does not apply to **Vehicles** described in Extension 2.3 (b).



4.23 War

liability of the **Insured** directly or indirectly occasioned by, happening through, or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or local authority.



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CU1-3, Shed 24
Princes Wharf
Auckland 1010
Tel: 09 377 1459 Fax: 09 303 1909
www.acegroup.com/nz

5. GENERAL CONDITIONS

5.1 Action against ACE

No action shall lie against ACE unless as a condition precedent thereto, there shall have been full compliance with all the terms of this **Policy**, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and ACE. Any person or organisation or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this **Policy** to the extent of the insurance afforded by this **Policy**. No person or organisation shall have any right under this **Policy** to join ACE as a co-defendant in any action against the **Insured** to determine the **Insured's** liability, nor shall ACE be impleaded by the **Insured** or his legal representative.

5.2 Applicable Law

Should any dispute arise concerning this **Policy**, the dispute will be determined in accordance with the laws of New Zealand. In relation to any such dispute the parties agree to submit to the exclusive jurisdiction of any competent court in New Zealand.

5.3 Assignment

Assignment of interest under this **Policy** shall not bind ACE until its consent is endorsed hereon; if, however, the **Insured** shall die, or be adjudged bankrupt or insolvent, such insurance as is afforded by this **Policy** shall apply to:

- (a) the **Insured's** legal representative, as the **Insured** but only while acting within the scope of his duties as such;
- (b) with respect to the property of the **Insured**, to the person or corporation having proper temporary custody thereof, as **Insured**, but only until the appointment and qualification of the legal representative.

5.4 Cancellation

- (a) This **Policy** may be cancelled by the **Insured** by surrender thereof to ACE or any of its authorised agents or by mailing to ACE written notice stating when thereafter the cancellation shall be effective.
- (b) ACE may cancel this **Policy** by mailing to the **Insured** at the address shown in the **Policy** written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient notice. The time of surrender or the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice as specified in (a) or (b) above shall be equivalent to mailing.
- (c) If the **Insured** cancels, earned premium shall be computed in accordance with the customary short period rate and procedure. If ACE cancels, earned premiums shall be computed pro rata. If any matter has been notified under the **Policy** the premium will be deemed to be fully earned and none will be repayable to the **Insured**.
- (d) When this **Policy** insures more than one (1) **Insured** cancellation may be effected by the first **Insured** specified in the Schedule for the account of all **Insureds**. Notice of cancellation by ACE to the first **Insured** specified in the Schedule or the authorised representative shall be deemed notice to all **Insureds** and payment of any unearned premiums to such **Insured** or representative shall be for the account of all **Insureds**.
- (e) Premium adjustment may be made either at the time cancellation is affected or as soon as practicable after cancellation becomes effective, but notice of cancellation by ACE shall be effective even though ACE makes no payment or tender of return premiums with such notice.

5.5 Changes

- (a) Every change materially affecting the facts or circumstances existing at the commencement of this insurance, or at any subsequent renewal date, shall be notified to ACE as soon as practicable after such change comes to the notice of the **Insured's** Officer responsible for insurance;
- (b) Notice to any agent or broker or knowledge possessed by any agent or broker or by any other person shall not constitute notice to ACE and shall not effect a waiver or a change in any part of this **Policy** or stop ACE from asserting any right under the terms of this **Policy** nor shall the terms of this **Policy** be waived or changed except by endorsement issued to form part of this **Policy**.

5.6 Cross Liability

- (a) In the event of claims being made by reason of **Personal Injury** suffered by any employee of one **Insured** for which another **Insured** is legally liable, then this **Policy** shall cover such **Insured** against whom a claim is made in the same manner as if separate policies had been issued to each **Insured** under this **Policy**.



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(b) In the event of claims being made by reason of **Property Damage** to property belonging to one **Insured** for which another **Insured** is legally liable then this **Policy** shall cover such **Insured** against whom a claim is made in the same manner as if separate policies had been issued to each **Insured** under this **Policy**, provided that this Condition 5.6 shall only apply where the **Insured** are separate legal entities.

Nothing contained in this clause shall operate to increase the **Limit of Liability** stipulated in Item 8 of the Schedule.

5.7 Hot Work Warranty

It is warranted by the **Insured** that any Hot Work carried out either by it or by any person for whom the **Insured** is legally responsible will be undertaken strictly in accordance with New Zealand Standard 4781:1973 Code of Practice for Safety in Welding and Cutting (and any amendment or substitution thereto) and/or its equivalents in any relevant jurisdiction.

For the purpose of this Condition 5.7:

“**Hot Work**” means the use of any electric, oxy-acetylene, laser or similar welding or cutting and spark producing equipment, blow lamps (including electric hot air blowers) or other heat or flame producing apparatus and allied processes.

5.8 Insured's Duties in the event of an Occurrence, Claim or Suit

- (a) The **Insured** shall give notice in writing to ACE as soon as practicable of every **Occurrence** and shall immediately forward to ACE all information relevant to such **Occurrence** received or held by him or his representative.
- (b) In the event of an **Occurrence** or the likelihood of an **Occurrence** the **Insured** shall take at his own expense all reasonable steps to prevent **Personal Injury** or **Property Damage** arising, or continuing out of the same or similar conditions.
- (c) The **Insured** shall co-operate with ACE and, upon ACE's request, assist in making settlements, in the conduct of allegations, claims, litigation, proceedings and suits and in enforcing any right of contribution or indemnity against any person or organisation who may be liable to the **Insured** because of an **Occurrence** and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** shall not without the consent in writing of ACE make any admission, offer, promise or payment in connection with any **Occurrence** or claim, and ACE if it so desires shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any claim.

5.9 Other Insurance

If other valid insurance with any other Insurer is available to the **Insured** covering a loss also covered by this **Policy**, then ACE shall only be liable for the amount payable in excess over and above such other insurance.

5.10 Premium

Unless otherwise provided for the premium for this **Policy** is an adjustable premium. In the event of additional **Insureds** being added to the coverage or increased exposure under this **Policy**, notice shall be given to ACE who shall be entitled to charge an appropriate additional premium.

5.11 Subrogation

In the event of any claim or payment under this **Policy**, ACE shall be subrogated to all the **Insured's** rights of recovery therefore against any person or organisation and the **Insured** shall execute and deliver any and all appropriate instruments and papers and do whatever else is necessary to secure such rights. Any amount so recovered shall be apportioned in the following order of priority:

- (a) firstly, to the uninsured proportion of the loss;
- (b) secondly, to reimburse ACE to the extent of its actual payment hereunder; and
- (c) if any balance then remains unpaid, it shall be applied to reimburse the **Insured** or any underlying Insurer as their interest may appear.

The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no such recovery in proceedings conducted solely by ACE, it shall bear the expenses thereof.

Where the **Insured** has agreed with another person or company, who would otherwise be liable to compensate the **Insured** for or contribute towards any loss or damage which is covered by the **Policy**, that the **Insured** will not seek to recover such loss or damage or contribution from that person, ACE will not cover the **Insured**, to the extent permitted by law, for such loss or damage or contribution, unless the agreement is specified in the **Schedule**.



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STATUTORY LIABILITY POLICY

This insurance is given only:

- in consideration of the **Insured** paying the **Premium** to **ACE**; and
- in reliance upon the written proposal and any other information provided by the **Insured** (all of which forms the basis of this **Policy**); and
- on the terms set out in this **Policy**.

1. INSURING AGREEMENT

1. **ACE** agrees to indemnify the **Insured** for Penalties and Sentences of Reparation, which the **Insured** is legally obliged to pay, and any **Defence Costs**, up to the **Limit of Liability** as a result of **Allegation(s)**. The **Allegation(s)** must all:
 - (a) first be made against the **Insured** during the **Policy Period** or any **Discovery Period**.
 - (b) be notified to **ACE** during the **Policy Period** or **Discovery Period** or within 14 days after the end of the **Policy Period**.
 - (c) result directly out of an **Event**.
2. The indemnity **ACE** provides under this **Policy** ceases absolutely at the end of the **Policy Period** or any **Discovery Period**. However, **ACE** agrees to indemnify the **Insured** for Penalties, Sentences of Reparation and Defence Costs under clause 1 as a result of **Allegation(s)** which are made against the **Insured** after the end of the **Policy Period** or any **Discovery Period**, if the **Allegation(s)** arise from **Circumstances** the **Insured** has notified to **ACE** during the **Policy Period** or any **Discovery Period**.

2. DEFINITIONS

The following words have the following meanings in this **Policy** unless the context otherwise requires:

ACE:

ACE Insurance Limited.

The Acts:

As the context requires, each of the **Acts** identified as insured in the **Schedule** and any regulations or other subordinate legislation made under any of those **Acts**. If All **Acts** is identified as insured in the **Schedule** then this means all **Acts** of the New Zealand Parliament and any Regulations or other subordinate legislation made under any of those **Acts**.

A reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision.

Allegation:

Each separate intimation, threat or allegation that the **Insured** breached or may have breached or committed an offence under any provision of one or more of the **Acts**. It includes any inquiry or investigation by a statutory authority or enforcement agency under any of the **Acts**. If specific **Acts** are identified as being insured in the **Schedule**, then the alleged breach or commission of an offence, or inquiry must be under those **Acts**.

Business:

The Business of the **Insured** as stated in the **Policy Schedule**.

Circumstance:

Where the **Insured** knows of an **Event** which might give rise to an **Allegation**.

Claim:



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A claim for indemnity under this **Policy** notified to **ACE** in accordance with this **Policy**.

Deductible:

The amount stated in the **Schedule**, which must be paid by the **Insured** before indemnity, is available under this **Policy**.

Defence Costs:

Legal costs and necessary expenses, which are incurred with **ACE's** written, consent in order to investigate or defend any **Allegation** arising out of an **Event**.

Discovery Period:

An additional twelve (12) months from the end of the **Policy Period** which shall extend the period within which the **Insured** can make a **Claim** for an **Allegation** arising out of an **Event** which happens in its entirety before the **Policy Period** expires if:

- (a) **ACE** decides not to offer renewal at the end of the **Policy Period**; and
- (b) the **Insured** elects within fourteen (14) days after the end of the **Policy Period** to purchase this **Discovery Period** insurance; and
- (c) the **Insured** pays an additional premium of 50% of the premium.

Employee:

Any person directly employed by the **Insured** in respect of whose remuneration the **Insured** deducts PAYE tax or any person who is an appointed director of the **Insured**.

Event:

An unintentional and unexpected result of an act or omission, which has occurred in the course of and arises directly from the **Business** and has occurred in its entirety after the **Retroactive Date** stated in the **Schedule** which results in an **Allegation**.

GST:

Any liability the **Insured** may have under s5(13) of the Goods & Services Tax Act 1985.

Insured:

Any one or more of the **Named Insured** and any subsidiary companies declared in the proposal, and the **Employees** of any of them.

Named Insured:

The company which is first named in the **Schedule**.

Penalty:

A fine or other cash penalty (including court costs) payable by the **Insured** upon conviction of an offence under the **Acts** arising out of an **Event**, but does not include any losses, damages, compensation, reinstatement costs, remedial costs, restitution of anything, reparation, expenses or taxes, rates, duties or levies. The conviction must result from a prosecution brought by a statutory authority or enforcement agency under any of the **Acts**.

Limit of Liability:

ACE's aggregate liability in accordance with **Condition 5**.

Policy Period:

The period stated in the **Schedule**.

Retroactive Date:

The date stated in the **Schedule**.

Securities:

Any equity or debt instrument issued by the Company.

Sentences For Reparation:

A sentence of reparation made under the Sentencing Act 2002 or Sentencing Amendment Act 2014 arising from a breach of the Health & Safety in Employment Act 1992.

A reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision.



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3. EXCLUSIONS (WHAT IS NOT COVERED)

ACE will not indemnify the Insured in respect of any Claim:

1. arising out of any **Allegation** that the **Insured** has breached, may have breached or committed an offence under one or more of the following:
Arms Act 1983, Aviation Crimes Act 1972, Crimes Act 1961, Proceeds of Crime Act 1961, Summary Offences Act 1981, Transport Act 1962, Transport (Vehicle and Driver Registration and Licensing) Act 1986; and any other Act specially stated as being excluded in the **Schedule**;
2. any pecuniary penalty, restitution, compensation or order for payment imposed by a court upon the **Insured** pursuant to Sections 78, 80, 83 or 89 (3)(b) of the Commerce Act 1986.
3. for a penalty arising out of any **Allegation** that the **Insured** has breached or committed an offence under an **Act** if it is illegal for **ACE** to indemnify the **Insured** in relation to the **Penalty**.
4. for **Defence Costs** arising from appealing, or otherwise challenging, an infringement notice given under the Health & Safety in Employment Act 1992.
5. arising out of any deliberate breach of, disregard for, resistance to, or failure to comply with the provisions of, or any notice given or requirement made under, any of the **Acts**.
6. for the costs of complying with or remedying any breach of any of the **Acts**.
7. arising out of any threatened or actual civil claim or civil proceedings.
8. arising out of an **Event** which is directly or indirectly brought about by, or contributed to by, any deliberately dishonest or fraudulent or malicious act or omission by the **Insured**. However, this exclusion will not apply to **Defence Costs** and **Penalties**, and **Sentences of Reparation** incurred by any **Insured** who has not committed or condoned the deliberately dishonest or fraudulent or malicious act or omission.
9. arising out of any **Allegation** relating to acts or omissions which do not directly arise out of the **Business**.
10. arising out of any **Allegation** which was or ought to have been notified under any previous policy of insurance held by the **Insured** or in respect of which the **Insured** received any intimation or notice before the **Policy Period**.
11. arising out of an **Event** which takes place outside the territory of New Zealand.
12. arising out of any judgement:
 - (a) entered in a court outside New Zealand or by an arbitrator outside New Zealand; or
 - (b) which does not apply New Zealand law.
13. arising out of any **Allegation** directly or indirectly caused by or contributed to by or arising from:
 - (a) ionising radiation's or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
 - (b) the radioactive toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component of an explosive nuclear assembly.
14. arising out of the engagement by the **Insured** of any contractor to dispose of or handle materials unless the **Insured** has taken reasonable steps to ensure that the materials will be disposed of or handled in a lawful manner.
15. Loss, demand, claim or suit arising out of or related in any way to asbestos or asbestos-containing materials. **ACE** shall have no duty of any kind with respect to any such loss, demand, claim or suit.
16. for an **Allegation** or **Circumstance** which was not notified in accordance with this **Policy**.
17. Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes death, injury, illness, loss, damage, 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 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 any Act of Terrorism.



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18. arising out of any **Allegation** that the **Insured** has breached or committed an offence under an **Act** in connection with:
 - (a) offering any **Securities** for issue, including inviting applications for issue of any **Securities**;
 - (b) offering any **Securities** for sale, including inviting offers to purchase any **Securities**; or
 - (c) any other distribution of **Securities**,
19. to the extent that trade or economic sanctions or other laws or regulations prohibit **ACE** from providing insurance, including, but not limited to, the payment of **Claims**.

4. CONDITIONS

1. As a condition precedent to their right to be indemnified, the Insured must give **ACE** written notice of every **Allegation** and of each **Circumstance**. This notice must be given as soon as practicable after the **Insured** becomes aware of the **Allegation** or **Circumstance**. **ACE** will not accept a **Claim**, notice of which is first given more than fourteen (14) days:
 - (a) after the end of the **Policy Period**; or
 - (b) if applicable, after the end of the **Discovery Period**.
2. If the Insured makes a **Claim** under this **Policy** in accordance with **Condition 1**, the any subsequent **Allegation** arising out of the same **Event** which gave rise to the **Claim** will be treated as having been notified under this **Policy**.
3. In order to obtain indemnity under this **Policy**, the **Insured** must:
 - (a) at its own expense, use due diligence and do and assist in doing all things which are reasonably practicable to avoid or reduce any **Claim**.
 - (b) give all necessary information and assistance to **ACE** which will enable **ACE** to defend any **Allegation**.
 - (c) take all reasonable precautions to comply with the **Acts**.
 - (d) not make any admission, incur any **Defence Costs** or make any payments in relation to any **Allegation** without **ACE's** written consent.
 - (e) not assign this **Policy** without **ACE's** written consent.
4. Where the **Insured's** breach of or non-compliance with **Condition 3** results in prejudice to the cost, handling and/or settlement of any **Allegation** which in all other respects qualifies to be indemnified under this **Policy**, the indemnity afforded by this **Policy** in respect of that **Allegation** shall be reduced to such sum as would have been payable to **ACE** in the absence of that prejudice.
5. **ACE's** total aggregate liability:
 - (a) for all **Claims** made during the **Policy Period** (including any **Discovery Period**) shall not exceed the **Limit of Liability** stated in the **Schedule**.
 - (b) for all **Claims** made as a result of an **Allegation** under HASIE made during the **Policy Period** (including any **Discovery Period**) shall not exceed the sublimit stated in the **Schedule**.
6. **ACE** is entitled to appoint a solicitor to act for the **Insured**.
7. If the available **Limit of Liability** is inadequate to pay all **Claims** made in one **Policy Period**, **ACE** will pay the types of loss in the following order:
 - (a) **Penalties** and **Sentences of Reparation** imposed on the **Named Insured**.
 - (b) **Defence Costs** of the **Named Insured**.
 - (c) **Penalties** and **Sentences of Reparation** imposed on any subsidiary companies.
 - (d) **Defence Costs** of any subsidiary companies.
 - (e) **Penalties** and **Sentences of Reparation** imposed on any **Employees**.
 - (f) **Defence Costs** of **Employees**.
8. The laws of New Zealand apply to this **Policy**. The New Zealand courts have exclusive jurisdiction over any legal proceedings brought in relation to the **Policy**. **ACE** and the **Insured** agree to use their best endeavours to resolve any dispute under this policy before resorting to legal proceedings.



9. If **ACE** disagrees with the **Insured** whether any **Allegation** should be admitted or contested, a senior counsel shall be appointed by **ACE** to advise whether the **Allegation** should be contested and on the overall cost of contesting the **Allegation**. In giving advice, the senior counsel must take into account the likely **Penalty, Sentence of Reparation** and **Defence Costs** and whether there is a reasonable prospect of successfully defending the **Allegation**. The senior counsel's fee will be a **Defence Cost** for **Policy** purposes if the senior counsel agrees with the **Insured**. The **Insured** is liable for the senior counsel's fee if the senior counsel agrees with **ACE**. If the senior counsel advises that the **Allegation** should be admitted, and the **Insured** elects to contest the **Allegation**, **ACE'S** liability shall not exceed the overall cost as set out in the senior counsel's advice (including the likely **Penalty** and **Sentences of Reparation**) plus **Defence Costs** incurred to the date of that advice.
10. If, when a **Claim** is made, there is any other collectible insurance covering all or part of the same **Claim**, this **Policy** will apply only to the amount of any **Claim** which exceeds that recoverable under the other insurance.
11. If the **Insured** is liable to pay GST on receiving any indemnity payment under this **Policy**, **ACE** will indemnify the **Insured** for the cost of GST in addition to the **Limit of Liability**.
12. This **Policy** will end:
- (a) at the end of the **Policy Period**; or
 - (b) if written notice of cancellation is given by either **ACE** or the **Insured**. **ACE** must give at least 30 days notice of their intention to cancel this **Policy**.
The notice runs from 4.00pm on the date on which the notice is given. If this **Policy** is cancelled, **ACE** will refund the premium relating to the balance of the **Policy Period**; or
 - (c) if any **Claim** under this **Policy** is fraudulent in any respect, or 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 its agents to obtain indemnity under this **Policy** in respect of any **Claim**; or
 - (d) if the amounts which **ACE** has paid are in total equivalent to or exceed the **Limit of Liability**.
13. For the purpose of **Condition** 12 (c) only, each of the **Insured** (if more than one) will be treated as if they have a separate policy. Nothing in this clause will increase, alter or affect the **Limit of Liability**.



EMPLOYERS LIABILITY POLICY

1. INSURING AGREEMENT

ACE Insurance Limited ('ACE') agrees to:

- indemnify the **Insured** for **Damages** which the **Insured** is legally obliged to pay, and any **Defence Costs**; and
- extend that indemnity to cover any **Sentence** for **Reparation** which the **Insured** is legally obliged to pay and any **Defence Costs** ('the **Extension**') if the **Insured** purchases the **Extension**, up to the **Limit of Liability** as a result of **Allegation(s)** made or **Circumstances** notified to **ACE** in accordance with this policy within the **Policy Period** or any **Discovery Period** or 14 days after expiry of either **Period**, which **Allegation** arises directly out of an **Event**.

This insurance is given only:

- in consideration of the **Insured** paying the **Premium** to **ACE**; and
- in reliance upon the written proposal and any other information provided by the **Insured** (all of which forms the basis of this **Policy**); and
- on the terms set out in this **Policy**.

2. DEFINITIONS

The following words have the following meanings in this **Policy** unless the context otherwise requires:

The Act:

The Health and Safety in Employment Act 1992 (HASIE), and any regulations or other subordinate legislation made under that **Act**, where the **Insured** has purchased the extension as stated in the **Schedule**.

A reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision

Allegation:

Each separate intimation, threat or allegation that the **Insured**:

breached or may have breached or committed an offence under the **Act** including:

- (a) a criminal prosecution
- (b) an inquest
- (c) an inquiry under s27 of the Act; or

is responsible for **Personal Injury** arising out of an **Event**.

Business:

The business of the **Insured** as stated in the **Policy Schedule**.

Circumstance:

Where the **Insured** knows of an **Event** which might give rise to an **Allegation**.

Claim:

A claim for indemnity under this **Policy** notified to **ACE** in accordance with this **Policy**.

Damages:

An award of damages which the **Insured** is legally liable to pay (including the claimant's costs and expenses).

Deductible:



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The amount stated in the **Schedule** which must be paid by the **Insured** before indemnity is available under this **Policy**.

Defence Costs:

Legal costs and necessary expenses which are incurred with **ACE's** written consent in order to investigate or defend any **Allegation** arising out of an **Event**.

Discovery Period:

An additional 12 months from the end of the **Policy Period** which shall extend the period within which the **Insured** can make a **Claim** for an **Allegation** arising out of an **Event** which happens in its entirety before the **Policy Period** expires if:

- (a) **ACE** decides not to offer renewal at the end of the **Policy Period**; and
- (b) the **Insured** elects within 14 days after the end of the **Policy Period** to purchase this **Discovery Period** insurance; and
- (c) the **Insured** pays an additional premium of 50% of the premium.

Employee:

Any person directly employed by the **Insured** in respect of whose remuneration the Insured deducts PAYE tax or any person who is an appointed director of the **Insured**.

Event:

An unintentional and unexpected result of an act or omission which has occurred in the course of and arises directly from the **Business** and has occurred in its entirety after the retroactive date stated in the **Schedule** which results in:

Personal Injury to an **Employee**; and/or

An **Allegation** under the **Act**.

Extension:

The additional cover provided for an **Allegation** under the **Act** as set out in the Insuring Agreement on Page 1 of this **Policy**.

GST:

Any liability the **Insured** may have under s5(13) Goods & Services Tax Act 1985.

Insured:

Any one or more of the **Named Insured** and any subsidiary companies declared in the proposal, and the **Employees** of any of them.

Named Insured:

The company which is first named in the **Schedule**.

Personal Injury:

Bodily injury, sickness, disease, death, disability, shock, fright, mental anguish or mental injury.

Limit of Liability:

ACE's aggregate liability in accordance with condition 5.

Policy Period:

The period stated in the **Schedule**.

Sentence For Reparation:

A sentence of reparation made under the Sentencing Act 2002 or the Sentencing Amendment Act 2014 arising from a breach of the **Act**. The **Sentence** must result from a prosecution brought by a statutory authority or enforcement agency under the **Act**.

A reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision



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3. EXCLUSIONS (WHAT IS NOT COVERED)

ACE will not indemnify the Insured in respect of any Claim for any Sentence for reparation, Damages or Defence Costs:

1. arising out of **Personal Injury** for which cover to any extent is provided by the Accident Rehabilitation and Compensation Insurance Act 1992 ('ACC') or would have been provided by ACC but for the **Insured** being an exempt employer under ACC, except for the cover which is provided if the **Insured** has purchased the **Extension** as stated in the **Schedule**.
2. arising out of any deliberate or reckless breach of, disregard for, or failure to comply with, the provisions of, or any notice given under, the **Act**.
3. in connection with appealing, or otherwise challenging, an infringement notice given under the **Act**.
4. for the costs of complying with or remedying any breach of the **Act**.
5. arising out of an **Event** which is directly or indirectly brought about by, or contributed to by, any dishonest or fraudulent or malicious act or omission by the **Insured**.
6. arising out of any **Allegation** made against the **Insured** for acts or omissions which do not directly arise out of the **Business**.
7. arising out of any **Allegation** which was or ought to have been notified under any previous policy of insurance held by the **Insured** or in respect of which the **Insured** received any intimation or notice before the **Policy Period**.
8. arising out of an **Event** which takes place outside the territory of New Zealand.
9. arising out of any judgment:
 - (a) entered in a court outside New Zealand or by an arbitrator outside New Zealand; or
 - (b) which does not apply the law of New Zealand.
10. arising out of any **Allegation** directly or indirectly caused by or contributed to by or arising from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, monetary or usurped power or confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.
11. for any **Allegation** 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;
 - (b) the radioactive toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component of an explosive nuclear assembly.
12. arising out of the engagement by the **Insured** of any contractor to dispose of or handle materials unless the **Insured** has taken reasonable steps to ensure that the materials will be disposed of or handled in a lawful manner.
13. arising out of asbestos and/or related diseases whether directly or indirectly, in whole or in part.
14. arising out of any prosecution other than under the **Act**.
15. for a liability assumed in a contract unless that liability would be implied by law.
16. arising out of any termination of employment or unlawful discrimination against an employee.
17. Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes death, injury, illness, loss, damage, 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 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 any Act of Terrorism.



18. to the extent that trade or economic sanctions or other laws or regulations prohibit ACE from providing insurance, including, but not limited to, the payment of **Claims**.



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4. CONDITIONS

1. As a condition precedent to their right to be indemnified, the **Insured** must give **ACE** written notice of every **Allegation**, and of each **Circumstance** which might give rise to a **Allegation**. This notice must be given as soon as practicable after the **Insured** becomes aware of the **Allegation** or **Circumstance**. **ACE** will not accept a **Claim**, notice of which is first given more than 14 days:
 - (a) after the end of the **Policy Period**; or
 - (b) if applicable, after the end of the **Discovery Period**.
2. If the **Insured** makes a **Claim** under this **Policy** in accordance with condition 1, then any subsequent **Allegation** arising out of the **Event** which gave rise to the **Claim** will be treated as having been notified under this **Policy**.
3. In order to obtain indemnity under this **Policy**, the **Insured** must:
 - (a) at its own expense, use due diligence and do and assist in doing all things which are reasonably practicable to avoid or reduce any **Claim**.
 - (b) give all necessary information and assistance to **ACE** which will enable **ACE** to defend any **Allegation**.
 - (c) take all reasonable precautions to comply with the **Act**.
 - (d) not make any admission, incur any **Defence Costs** or make any payments in relation to any **Allegation** without **ACE's** written consent.
 - (e) not assign this **Policy** without **ACE's** written consent.
4. Where the **Insured's** breach of or non-compliance with condition 3 of this **Policy** results in prejudice to the handling and/or settlement of any **Allegation** which in all other respects qualifies to be indemnified under this **Policy**, then the indemnity afforded by this **Policy** in respect of such **Allegation** shall be reduced to such sum as would have been payable by **ACE** in the absence of that prejudice.
5. **ACE's** total aggregate liability:
 - (a) for all **Claims** made during the **Policy Period** (including any **Discovery Period**) shall not exceed the **Limit of Liability** stated in the **Schedule**.
 - (b) for all **Claims** made as a result of an **Allegation** under HASIE made during the **Policy Period** (including any **Discovery Period**) shall not exceed the sublimit stated in the **Schedule**.
6. **ACE** is entitled to appoint a solicitor to act for the **Insured**.
7. If the available **Limit of Liability** is inadequate to pay all **Claims** made in one **Policy Period**, **ACE** will pay the types of loss in the following order:
 - (a) **Damages** or **Penalties** imposed on the **Named Insured**.
 - (b) **Defence Costs** of the **Named Insured**
 - (c) **Damages** or **Penalties** imposed on any subsidiary companies.
 - (d) **Defence Costs** of any subsidiary companies.
 - (e) **Damages** or **Penalties** imposed on any **Employees**.
 - (f) **Defence Costs** for **Employees**.
8. The laws of New Zealand apply to this **Policy**. The New Zealand courts have exclusive jurisdiction over any legal proceedings brought in relation to the **Policy**. **ACE** and the **Insured** agree to use their best endeavours to resolve any dispute under this policy before resorting to legal proceedings.
9. If **ACE** disagrees with the **Insured** whether any **Allegation** should be admitted or contested, a senior counsel shall be appointed by **ACE** to advise whether the **Allegation** should be contested and on the overall cost of contesting the **Allegation**. In giving advice, the senior counsel must take into consideration the likely **Sentence** for reparation and **Defence Costs** and whether there is a reasonable prospect of successfully defending the **Allegation**. The senior counsel's fee will be a **Defence Cost** for **Policy** purposes if the senior counsel agrees with the **Insured**. The **Insured** is liable for the senior counsel's fee if the senior counsel agrees with **ACE**. If the senior counsel advises that the **Allegation** should be admitted, and the **Insured** elects to contest the **Allegation**, then **ACE's** liability shall not exceed the overall



cost as set out in the senior counsel's advice (including the likely **Sentence** for reparation) plus **Defence Costs** incurred to the date of that advice.

10. If, when a **Claim** is made, there is any other collectible insurance covering all or part of the same **Claim**, this **Policy** will apply only to the amount of any **Claim** which exceeds that recoverable under the other insurance.
11. If the **Insured** is liable to pay GST on receiving any indemnity payment under this **Policy**, **ACE** will indemnify the **Insured** for the cost of GST in addition to the **Limit of Liability**.
12. This **Policy** will end:
 - (a) at the end of the **Policy Period**; or
 - (b) if written notice of cancellation is given by either **ACE** or the **Insured**. **ACE** must give at least 30 days notice of their intention to cancel this **Policy**. The notice runs from 4:00 pm on the date on which the notice is given. If this **Policy** is cancelled, **ACE** will refund the premium relating to the balance of the **Policy Period**; or
 - (c) if any **Claim** under this **Policy** is fraudulent in any respect, or 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 its agents to obtain indemnity under this **Policy** in respect of any **Claim**; or
 - (d) if the amounts which **ACE** has paid are in total equivalent to or exceed the **Limit of Liability**.
13. For the purpose of condition 12(c) only, each of the **Insured** (if more than one) will be treated as having been issued with a separate policy. Nothing in this clause will increase, alter or affect the **Limit of Liability**.
14. **ACE** shall have subrogation rights in respect of all claims which the **Insured** may have against any person(s) responsible for any **Personal Injury** or breach of the **Act**.
15. Any money recovered by **ACE's** efforts is to be applied:
 - (a) first to reimburse the **Insured** for any uninsured losses (including the **Deductible**); and
 - (b) secondly to reimburse **ACE** for payments made to the **Insured** and any legal costs **ACE** has incurred.



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PRIVACY STATEMENT

ACE Insurance Limited (ACE) is committed to protecting your privacy. This document provides you with an overview of how we handle your personal information. Our Privacy Policy can be accessed on our website at www.acegroup.com/nz

Personal Information Handling Practices

Collection, Use and Disclosure

ACE collects your personal information (which may include health information) when you are applying for, changing or renewing an insurance policy with us or when we are processing a claim. We collect the information to assess your application for insurance, to provide you or your organisation with competitive insurance products and services and administer them and to handle any claim, complaint or dispute that may be made under a policy. If you do not provide us with this information, we may not be able to provide you or your organisation with insurance or to respond to any claim, complaint or dispute.

We may disclose the information we collect to third parties, including contractors and contracted service providers engaged by us to deliver our services or carry out certain business activities on our behalf (such as actuaries, loss adjusters, claims investigators, claims handlers, professional advisers including doctors and other medical service providers, credit reference bureaus and call centres), other companies within the ACE Group, insurance and reinsurance intermediaries, other insurers, our reinsurers, and government agencies (where we are required to by law). These third parties may be located outside New Zealand.

You agree to us using and disclosing your personal information as set out above. This consent remains valid unless you alter or revoke it by giving written notice to our Privacy Officer.

From time to time, we may use your personal information to send you offers or information regarding our products that may be of interest to you. If you do not wish to receive such information, please contact our Privacy Officer using the contact details provided below.

How to Contact Us

If you would like to access a copy of your personal information, or to correct or update your personal information, please contact our Privacy Officer on +64 (9) 377 1459 or email Privacy.NZ@acegroup.com

If you have a complaint or want more information about how ACE is managing your personal information, please contact:

Privacy Officer,
ACE Insurance Limited,
PO Box 734 Auckland,
Tel: +64 (9) 377 1459
or email Privacy.NZ@acegroup.com



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ABOUT ACE

ACE Group is one of the world's largest multiline property and casualty insurers. With operations in 54 countries, ACE provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance and life insurance to a diverse group of clients. ACE Limited, the parent company of ACE Group, is listed on the New York Stock Exchange (NYSE: ACE) and is a component of the S&P 500 index. ACE's core operating insurance companies are rated AA for financial strength by Standard & Poor's and A++ by A.M. Best.

ACE's operation in New Zealand (ACE Insurance Limited) offers corporate Property & Casualty, Group Personal Accident and corporate Travel Insurance products through brokers. For ACE in New Zealand, the AA- long term insurer financial strength and counterparty credit ratings by Standard & Poor's are indicative of the company's strong capitalisation. It leverages global expertise and local acumen to tailor solutions to mitigate risks for clients ranging from large multinational companies to local corporates.

More information can be found at www.acegroup.com/nz.

FINANCIAL STRENGTH RATING INFORMATION

At the time of print, ACE has an "AA-" insurer financial strength rating given by Standard & Poor's (Australia) Pty Limited.

The rating scale is as follows:

AAA Extremely Strong	BBB Good	CCC Very Weak	SD or D – selective default or default
AA Very Strong	BB Marginal	CC Extremely Weak	R – Regulatory Action
A Strong	B Weak		NR – Not Rated

Ratings from 'AA' to 'CCC' may be modified by the addition of a plus (+) or minus (-) sign to show relative standing within the major rating categories.

A full description of the rating scale is available on the Standard & Poor's website.

FAIR INSURANCE CODE

As a member of the Insurance Council of New Zealand ("ICNZ") ACE have made a commitment to the Fair Insurance Code. The Fair Insurance Code was developed by the ICNZ as a set of principles which aims to continually improve the standard of practice and service that member companies provide to their customers. This set of principles is in addition to those obligations created by law.

A copy of the Fair Insurance Code is available from the ICNZ's website (www.icnz.org.nz).



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