

Because
you're working
for tomorrow
today

TOWER Tailored
Business Policy



Welcome

We welcome **you** as a valued client of TOWER Insurance. **You** have entrusted **us** with the insurance of **your business**. We value that trust.

This **policy** consists of this wording, proposal and declaration and the **certificate of insurance**, completed on the basis of information which **you** have provided to **us**.

Please read this wording, the proposal and declaration and the **certificate of insurance**. If there is an error of any sort, if **your** needs are not met or if **you** are in doubt then please call **us** on **0800 808 808**.

Cover is only provided for the sections of the **policy** that **you** have selected as shown in the **certificate of insurance**.

In this **policy** some words are in bold, eg **you**. This may indicate that the words have a special meaning and any word or expression to which a specific meaning has been given shall bear such meaning wherever it may appear unless otherwise specifically stated. To find out the meaning, please refer to the Section – General Definitions on page 31.

Our guarantee

If **you** are not completely happy with **your policy**, please tell **us** within 30 days of its commencement date. **We** may agree to change the **policy** to suit **you**. If not, and **you** wish to cancel the **policy**, **you** can as long as **you** have not made any claims. **We** will then refund any **premium** **you** have paid and **we** will both regard this **policy** as never commencing.

This policy is underwritten by TOWER Insurance Limited.

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Your duty of disclosure

When **you** apply for insurance **you** have a legal duty of disclosure. This means **you** must disclose all information **you** know or could reasonably be expected to know, which information would influence the judgement of a prudent underwriter:

- a) to accept the risk of insurance; or
- b) if accepted, on what terms and at what cost.

You have the same duty of disclosure each time **you** renew, vary or reinstate **your** insurance. Information **you** will need to disclose includes:

- a) circumstances which could increase the risk of an insurance claim;
- b) any criminal offences or convictions;
- c) any cancellation, refusal to renew insurance or imposing of special terms by another insurer;
- d) insurance claims **you** have made in the past.

Information **you** do not need to disclose include:

- a) circumstances which would diminish the risk of an insurance claim;
- b) anything that **we** know or would be expected to know in the ordinary course of **our** business;
- c) anything **we** advise **you** do not need to disclose.

If in doubt, **you** should disclose.

If **you** fail to comply with **your** duty of disclosure **your policy** can be rendered void from the beginning.

Your other obligations

Some of **your** other important obligations are that **you** or the person in charge of **your business** must:

- allow **us** to complete all necessary documents and authorities in respect of any claims under this **policy** as **your** authorised agent;
- allow **us** to inspect the damaged property and deal with any salvage in a reasonable manner. No property may be abandoned to **us**;
- allow **us** to take over for **our** own benefit and settle any legal right of recovery **you** may have and **you** must co-operate fully in any recovery action;
- comply with all **our** requests relating to **your** claim including providing all co-operation, information and assistance;
- ensure that **your** property is securely locked when unattended;
- establish that **you** have complied with all of **your** obligations under this **policy** and that none of the exclusions apply;
- inform the Police if it appears that there has been arson, theft, burglary or malicious damage;
- not cause or facilitate loss or damage to any property covered by this **policy** or incur liability by any unreasonable, reckless or wilful act or omission;
- not discuss a claim made on **you** by another person with them. Instead, refer them to **us**;
- not make a claim that is false or fraudulent in any way or make any false or incorrect statement in connection with any claim;
- not start repairs to **your** property without **our** prior approval;
- provide **us** immediately with full particulars of any claim made against **you** by another person and all legal documents served on **you** and allow **us** to instruct a solicitor of **our** choice to conduct **your** defence. **You** must follow the recommendations of that solicitor as to the conduct or continuation of **your** defence. That solicitor shall be entitled to confer with **us** when necessary as to the details of the case and the conduct or continuation of **your** defence;
- take all steps which **we** consider reasonable to prevent further loss or damage;
- take reasonable care to protect **your** property;
- tell **us** if any lost or stolen property which was part of the claim is found or recovered and hand it over to **us** or at **our** option refund any money paid by **us** if **we** request it; and
- tell **us** if any person is ordered to make reparation to **you** for any loss or cost which was part of the claim and reimburse **us** for that payment as soon as **you** receive any reparation.

Introduction

This **policy** sets out the definitions, terms, exclusions and conditions of insurance provided by **us** and the operative sections of the **policy** are shown in the **certificate of insurance**. **We** ask that **you** read this **policy**, the **certificate of insurance** and any endorsements, and the proposal and declaration carefully so that **you** are aware of the terms and conditions and, if these are not completely in accordance with **your** intentions, to contact **us**.

Insuring agreement

In consideration of **you** having paid or promised to pay the required **premium**, **we** agree to indemnify **you** in accordance with the insurance selected.

This **policy** is based upon the information provided in the proposal and declaration which is incorporated in this **policy**.

Our liability shall not exceed the **sums insured** or **limit(s) of liability** specified in the **certificate of insurance**.

Section One: Business Assets

Cover

Business Assets indemnity

We will indemnify **you** for physical loss or damage unintended and unforeseen by **you** occurring to any of **your insured property** during the **period of insurance** and at the **situation**.

We may choose to indemnify **you** by payment, by repair, or by replacement of the lost or damaged **insured property** and by payment of any insured costs.

Subject to the "reinstatement of amount of insurance" condition of this **policy**, **our** liability will not exceed the **sum insured**; and if more than one item is included in the **certificate of insurance**, will not exceed in respect of each item the **sum insured** applicable to that item.

Automatic Extensions

Alternative accommodation costs

Where any residential accommodation occupied by **you** or by **your employee** is **insured property** under Section One and is rendered uninhabitable by an insured contingency, this insurance is extended to include reasonable expenses for alternative accommodation necessarily incurred by **you** provided that:

1. The expenses are not otherwise insured;
2. The period for which the expenses are covered will be limited to the period reasonably required for **reinstatement** of the affected accommodation;
3. **We** will be entitled to deduct a reasonable allowance for expenses, reduced or avoided in consequence of the affected accommodation being rendered uninhabitable.

Our liability under this extension is limited to \$10,000 in respect of any one event.

Demolition and costs

This insurance is extended to cover costs necessarily incurred for any of the other following purposes in consequence of loss or damage insured under this **policy**:

1. Demolition, dismantling, shoring up or propping of the **insured property**;
2. Disposal of debris (including any kind of solid, liquid or gaseous matter) from the **site** of the **insured property** damaged and the area immediately adjacent to such **site**;
3. Recovery, defence, safeguard, removal, storage and return of stock, plant and other chattels whether damaged or **undamaged**;
4. Clearing, cleaning and repairing of gutters, drains and the like;
5. Temporary repairs and other measures necessary to secure **insured property** or to make it safe or suitable for continued use;

This extension of cover does not include any sums which **you** become legally liable to pay by way of compensation or other damages consequent upon pollution or contamination of property by any of the debris. The indemnity provided by this extension will not increase **our** liability beyond the **sum insured** on the affected property.

Disclaimer clause

Notwithstanding any provisions of the release of liability extension, this insurance will not be prejudiced by any disclaimer clause in any contract entered into by **you** for: (i) the storage of goods; or (ii) the leasing of property; whether or not the storage and leasing contracts are declared to **us** or not.

Employees' effects

This insurance is extended to insure the personal effects of **your executives** and **employees**, but only whilst the effects are at **premises** owned or occupied by **you**, or elsewhere whilst being worn, kept, carried or used by the **executives** or **employees** acting in the course of their duties of employment. The effects are deemed to be included in the description of **contents of buildings** as if they were owned by **you**.

Unless **you** are responsible for the loss or damage, this extension of cover does not apply to loss or damage to the personal effects of any **executive** or **employee** who is entitled to indemnity for that loss or damage under any other policy of insurance. In respect of any one event **our** liability under this extension to any one **executive** or **employee** is limited to \$5,000.

Equipment breakdown

We will, subject to the terms, conditions and exclusions to this extension, the business assets and business interruption sections, the general conditions and general exclusions to the **policy**, indemnify **you** against loss caused by or resulting from an **accident** to an **object** which is in use or commissioned and ready for use at the **premises**.

Basis of settlement applicable to this automatic extension

Our liability for loss to **insured property** which is damaged is as follows:

1. On **media** and **electronic data** for electronic and electro mechanical data processing and production equipment, the cost of blank material plus the cost of transcription from duplicates or from originals;
2. On exposed film, records, manuscripts, drawings and other valuable papers and records, the cost of blank material plus the cost of transcription from duplicates or from originals;
3. On all other **insured property**, the lesser of the cost at the time of the **accident**,
 - A) to repair the damaged property; or
 - B) to replace the damaged property with similar property of like kind, capacity, size, quality and function.

We will not be liable for:

1. More than the amount actually expended by **you**;
2. The cost of repairing or replacing any part or parts of a piece of equipment which is greater than the cost of repairing or replacing the entire piece of equipment; or
3. Loss or damage to **insured property** which is useless or obsolete to **you**.

If the damaged property is not repaired or replaced within twelve (12) months after the date of the **accident** then **we** will only pay for the **actual cash value** of the damaged property.

The **reinstatement** extension does not apply to this automatic extension equipment breakdown.

Definitions applicable to this automatic extension

Accident means a sudden and accidental breakdown of an **object** or a part thereof, which manifests itself at the time of its **occurrence** by physical damage to the **object** or part thereof that necessitates its repair or replacement, but

Accident shall not mean:

1. Depletion, deterioration, corrosion or erosion of material;
2. Wear and tear;
3. Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
4. Vibration or misalignment;
5. The breakdown of any structure or foundation supporting the **object** or any part thereof;
6. The functioning of any safety device or protective device; or
7. The cracking of any part of a gas turbine exposed to the products of combustion.

Actual cash value means the cost of replacing the damaged property with property of similar kind, capacity, size, quality and function less depreciation however caused. **We** will consider such items as the age, condition and normal life expectancy of the damaged property in determining depreciation.

Hazardous substance means:

1. Any **pollutant**, contaminant or other substance declared by a governmental authority to be hazardous to health or the environment; or

2. Any **mould**, yeast, **fungus** or mildew including any **spores** or toxins created or produced by or emanating from such **mould**, yeast, **fungus** or mildew, whether or not allergenic, pathogenic or toxigenic.

Media means material on which data is recorded, such as magnetic tapes, hard disks, floppy disks, cartridges, cds or dvds.

Object means any equipment owned, leased, operated or controlled by **you** and described below:

1. Any boiler, any fired or unfired **pressure vessel** normally subject to vacuum or internal pressure other than static pressure of contents, any refrigerating or air conditioning vessels and piping or any other piping and its accessory equipment, but **object** shall not include:
 - A) any boiler setting, any refractory or insulating material;
 - B) any part of a boiler or fired vessel that does not contain steam or water;
 - C) any hose, buried piping, sewer piping, drainage piping, sprinkler system or its accessory equipment; or
 - D) any oven, stove, furnace or kiln but not excluding heat recovery piping or vessels used therewith;
2. Any mechanical or electrical **machine** or electrical apparatus used for the generation, transmission or utilisation of mechanical or electrical power, but **object** shall not include:
 - A) 1) any elevator, escalator, crane or hoist; or
2) any oven, stove, furnace or kiln;
But not excluding:
 - i. any pump, compressor, fan, blower, engine or turbine;
 - ii. any separate enclosed gear set connected to such **machine** or apparatus by a coupling, clutch or belt;
 - iii. any electrical equipment; or
 - iv. any electronic equipment used solely to start, stop, control or monitor such **machine** or apparatus;
 - B) any **vehicle**, any mechanically or electrically propelled equipment, any towable equipment, power shovel, excavator, dragline or other mobile equipment, including equipment permanently mounted thereon; or
 - C) any conveyor belt;
3. Any electronic equipment used:
 - A) for the generation, control, transmission, reception, recording, reproduction, playback or other use of television, radio or telephone signals;
 - B) for research, diagnostic, treatment, experimental or other medical or scientific purposes;
 - C) for computing, data processing, duplicating, inventory control, monitoring, scanning or office services; or
 - D) to start, stop, control or monitor one or more insured **objects**, but **object** shall not include:
 - 1) any anode, x-ray or video amplifier tube.

Additional coverages applicable to this automatic extension

The following coverages also apply to loss caused by or resulting from an **accident to insured property**. These coverages do not provide additional amounts of insurance, unless specifically stated otherwise.

1. Business interruption

If **you** have selected Section Two: Business Interruption, this automatic extension indemnifies **you** under that section following a loss which is indemnifiable under this automatic extension, or would have been but for the application of an **excess** or deductible.

The limit of **our** liability under this additional coverage shall not exceed \$250,000 and is in addition to any **sum(s) insured** or **limit(s) of liability** specified in the **certificate of insurance** for Section One: Business Assets.

2. Hazardous substances

If a **hazardous substance** is involved in or released by an **accident**, **we** will be liable for the increase in cost to repair, replace, clean up or dispose of affected **insured property**.

The "increase in cost" or "increase in loss" shall mean that cost or loss beyond that which would have been incurred had no **hazardous substance** been present.

The limit of **our** liability under this coverage shall not exceed \$20,000.

3. Professional fees

Under the professional fees automatic extension, following a loss admissible under the equipment breakdown automatic extension, the limit of **our** liability under that coverage shall not exceed \$20,000.

4. Expediting cost

Under the expediting cost automatic extension, following a loss admissible under the equipment breakdown automatic extension, the limit of **our** liability under that coverage shall not exceed \$20,000.

5. Temporary hire costs

We will pay the cost, reasonably incurred, of hiring temporary replacement equipment of similar specification during the time taken to repair the insured equipment as a result of an **accident**.

The limit of **our** liability under this coverage shall not exceed \$10,000.

6. Media and electronic data restoration

If, solely as a result of an **accident** to an **object, electronic data or media** is lost or damaged, **we** shall be liable under the coverage described in the basis of settlement for this extension, for the additional costs of repairing or replacing such **electronic data or media**, including the cost of gathering or assembling information.

We will not be liable for loss or damage caused by or resulting from programming errors.

The limit of **our** liability under this coverage shall not exceed \$10,000.

7. Demolition and increased cost of construction

We will be liable under this coverage for the increased cost of repair or replacement of damaged and/or **undamaged insured property** (including any necessary demolition and **site** clearing costs) occasioned by the enforcement of any law, by-law, ordinance, regulation, rule or ruling which is in force prior to the time of the **accident** and which regulates or restricts the repair, replacement, construction or installation.

We will also be liable under additional coverage 1. Business interruption during the additional time required, with the exercise of due diligence and dispatch, to effect such repair or replacement as a result of the enforcement of said law, by-law or ordinance.

We will not be liable for:

- A) any expense in excess of the cost at the time of the **accident** to replace the said property on the same **site** or a site adjacent thereto with property of such kind, capacity, size, quality and function as will satisfy the minimum requirements prescribed by any law, by-law, ordinance, regulation, rule or ruling. In the event the replacement is by property of a better kind or quality or of a larger capacity or size, **our** liability shall not exceed the amount that would be paid if replacement had been made by property as would satisfy such minimum requirements.
- B) any increase in loss occasioned by the enforcement of any law, by-law, ordinance, rule or ruling affecting the use or operation of the location or any **object**;
- C) loss or expense excluded by exclusions 1(A) and 1(B) of this automatic extension;
- D) loss in excess of \$100,000.

Exclusions applicable to this automatic extension

This extension does not insure:

- 1. A) any increase in loss as a result of damage, contamination or pollution by a **hazardous substance**;
- B) any increase in loss or additional expenses incurred for cleanup, repair, replacement or disposal of damaged, contaminated or polluted property. As used herein "additional expenses" shall mean expenses incurred beyond those for which **we** would have been liable had no contaminant, **pollutant** or **hazardous substance** been involved in the **accident**;

Except as specifically provided under the **hazardous substances** coverage under this automatic extension.

- 2. Loss caused by or resulting from:
 - A) delay or interruption of business, manufacturing or process;
 - B) lack of power, light, heat, steam or refrigeration; or
 - C) any other indirect result or consequence of an **accident**.

Conditions applicable to this automatic extension

- 1. The definition of machine and pressure vessel under "General Definitions: All Sections of the Policy", do not apply to this automatic extension.

Expediting cost

Where a claim is payable under this insurance for the cost of reinstating any **insured property**, **we** will also indemnify **you** for such additional costs of express freight and overtime labour as are reasonably incurred for the purpose of expediting that **reinstatement**. The indemnity provided by this extension will not increase **our** liability beyond the **sum insured** on the affected property.

Gradual damage – residential portion of building

We will pay for damage to the residential portion of **your** property covered under Section One of this **policy** resulting from the action of micro-organisms, **mould**, mildew, rot, **fungi** or gradual deterioration, caused by water leaking or overflowing from any internal water system, if the loss or damage first occurs during the time that **you** own the property.

The limit includes the cost of searching for the source of the problem if it is reasonably incurred and **we** have accepted a claim for the loss or damage.

An internal water system is any water pipe, waste disposal pipe, water cylinder or water storage tank which is permanently connected and contained within the walls, floors or roof of the residential portion of the structure and any pipe which is hidden from view that is connected to an appliance, such as a washing machine or dishwasher.

Our liability under this extension will not exceed \$5,000 for any one event and must be applied towards searching for and/or repair for the damage.

The **excess** will be the higher of \$500 or the standard **excess** shown in the **certificate of insurance**.

Hazardous substance emergencies

We will indemnify **you** for any charge that the New Zealand fire service is authorised to make against **you** in respect of any **hazardous substance** emergency arising out of or in connection with any **insured property** during the **period of insurance**. The indemnity will be payable regardless of whether the **insured property** has been damaged. '**Hazardous substance emergency**' has the same meaning as defined in the Fire Service Act 1975 or any statutory amendment to or replacement of that Act.

At any one time **our** liability under this memorandum will not exceed \$20,000. The indemnity provided by this memorandum will not increase **our** liability beyond the **sum insured** on the affected property.

Money

Subject to the definitions and additional exclusions set out below, Section One is extended to cover **money** as follows:

Section A

1. **Money** in transit.
2. **Money** at **your business premises** or **sites** of contract during **business hours**.
3. **Money** in a securely locked burglary resistant safe or strong room at **your business premises** outside **business hours**.

Section B

1. **Money** at **your business premises** outside **business hours** and not in a securely locked burglary resistant safe or strong room.
2. **Money** at residential **premises** occupied by **you** or any **principal** or authorised **employee** of **you**.

Additional perils insured

This **policy** is further extended to cover loss of or damage to **money**:

- (a) directly caused by or resulting from any earthquake, hydrothermal activity, landslip, tsunami, volcanic eruption, or subsidence or erosion of the land;
- (b) directly resulting from theft of any kind not expressly excluded from cover under this extension.

Additional exclusions

This extension is subject to the following additional exclusions:

- (i) loss due to errors in receiving payment or paying out;
- (ii) loss or damage occurring whilst the **money** is entrusted to any person other than **you**, any **principal** or any **employee** or agent of **you**, or any professional **money** carrier;
- (iii) loss resulting from payment of **money** in exchange for any cheque which is subsequently dishonoured;
- (iv) loss occurring whilst the **money** is in an unlocked and unattended vehicle;
- (v) loss directly resulting from theft or fraud by any of **your employees**. However this exclusion does not apply to loss **discovered** within 72 hours (excluding Saturdays, Sundays and other public holidays) of the act of theft or fraud;
- (vi) loss covered by a valid and collectable claim under a policy of fidelity guarantee (or equivalent) form of insurance;
- (vii) loss occurring whilst the **money** is in a safe or strong room opened by a key or by use of a combination, either of which has been left at **your business premises** or **sites** of contract outside **business hours**, unless such key or combination details have been properly secured.

Limits of liability

In respect of any one loss under:

Section A, **our** liability under this extension is limited to \$5,000, and

Section B, **our** liability under this extension is limited to \$1,000;

Portable electronic equipment

Section One is extended to cover portable computer equipment and cell phones anywhere in the world.

In respect of any loss or damage covered by this extension, only items of portable electronic equipment less than two years old at the time of loss or damage will be covered for **reinstatement** value.

Our liability is limited to \$5,000 any one item and \$10,000 any one event. The indemnity provided by this memorandum will not increase **our** liability beyond the **sum insured** on contents.

Professional fees

This insurance is extended to cover all reasonable professional and clerk of works fees, salaries and costs necessarily incurred in reinstating damage to **insured property** which is insured under this **policy**. The insured fees, salaries and costs are deemed to be included in the **sum insured** on the affected property. This extension does not apply to fees for preparing claims made under this **policy**.

Protection costs

We will indemnify **you** for any costs reasonably incurred by **you** for the purpose of, and for damage directly resulting from, controlling any cause of loss that involves or threatens to involve **insured property** which is insured under this insurance. However (a) this indemnity does not apply to costs or damage for which indemnity would be payable under this insurance in the absence of this extension; (b) **our** liability under this extension is limited to \$100,000 in respect of costs and damage arising out of any one event;

Redundant foundations

Where the foundations of any **building** or plant are made redundant for any reason in consequence of **insured damage** to the superstructures or plant resting on them, and if the value of the foundations is reduced as a result, the loss of value will be deemed to be loss by physical damage for the purpose of claims under Section One. If it is not necessary to demolish the foundations in order to reinstate damaged property, and if the presence of the abandoned foundations increases the market value of the property to which they are fixed, the amount of increase will be treated as salvage in the adjustment of loss for claim settlement purposes.

Redundant plant and stock

Redundant plant

We will indemnify **you** for redundant:

- a) Interdependent plant; or
- b) Spare parts of the **insured property** affected;

following loss or damage covered by this Business Assets section.

Redundant stock

We will indemnify **you** for unavoidable **permanent** loss of the value of **undamaged** stock resulting from a loss of or damage to other **insured property** covered by this Business Assets section.

Refrigerated goods

We will indemnify **you** against:

- (a) damage to goods stored in refrigerated cabinets or chambers arising from **accidental** stoppage, damage, or malfunction of refrigerating plant; and
- (b) expenses reasonably incurred to avoid or minimise the damage insured by (a) above by transferring the threatened goods to alternative storage or by other means;

Provided that:

- (i) the words "goods stored" are deemed to include goods anywhere on the **premises** at the **situation** specified in the **certificate of insurance** at the time of the loss causing event and which would, but for the event, have been placed in the refrigerated cabinets or chambers;
- (ii) the extension does not cover loss due to the disconnection of public electricity supply by the supply authority where not less than 24 hours prior notice of the disconnection has been given at the time of loss.

Our liability under this extension is limited to \$5,000.

Release of liability

Where **you** are required by legislation or by contractual agreement to release:

- a) The Fire Service Commission and any contractor, service-provider or agent approved by them to carry out fire alarm monitoring;
or
- b) Any other party to an agreement which has been declared to and accepted by **us** from liability arising from loss or damage insured by this **policy**,

the release is allowed without prejudice to this insurance and notwithstanding general condition: subrogation of this **policy**.

Rewards

This insurance is extended to cover the cost of any reward paid by **you** for the purpose of protecting or recovering any **insured property**. However: (a) no payment will be made unless it contributes to the protection or recovery of the **insured property**; (b) the terms of the reward must be agreed by **us** prior to the reward being offered; and (c) **our** liability will not be increased beyond the **sum insured** on that property. **We** will not unreasonably refuse its agreement to the terms of a reward payable under this extension.

Seasonal stock increase

The **sum insured** for stock (if any) is automatically increased by 20% during the months of November, December and January.

Smoke damage

In the event of premises adjacent to **you**, not being **your** own or under **your** custody or control, being damaged by fire, any damage to the **insured property** by smoke or water used in the extinguishing of the fire shall be deemed to be fire damage within the terms of the **policy**.

Social club

This section extends to cover the property of any social club, sports club or similar body whose activities are principally for the benefit of **your employees**. The property is deemed to be included in the description of **insured property** as if it were owned by **you**.

Stolen keys

Where any key (including any equivalent device) or combination giving access to **insured property** is stolen or believed on reasonable grounds to have been duplicated without proper authority, Section One is extended to cover the costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations. The insurance also is extended to cover the reasonable cost of opening any safe or strong room following theft of its key or combination. The costs are deemed to be included in the **sum insured** on the affected property.

Subsidence and landslip

This insurance is extended to cover physical loss or damage to **insured property** caused by subsidence or landslip, provided that the basic principles of site investigation and foundation design have been observed, and that the appropriate and applicable professional and council approvals have been obtained, in respect to the **insured property**.

Our liability under this extension is limited to \$100,000 in respect of any one event.

An **excess** of \$10,000 will apply in respect of all costs and damages arising from any one event.

Temporary removal

This insurance is extended to cover any of the **insured property** (except stock) whilst temporarily removed to any place in New Zealand and whilst in transit to or from that place. The most **we** will pay under this extension, in total, during an annual period, is the amount **we** would be liable to pay if the property had been at its usual **situation**.

In this extension, "temporarily removed" means removed for a particular purpose, with the intention that the property be returned to the place from which it has been removed once that purpose has been served.

Transit

Notwithstanding exclusion (g), this insurance is extended to cover **insured property** whilst in transit within New Zealand. In respect of any one event **our** liability under this extension is limited to \$20,000. The **excess** will be \$1,000.

Theft from locked vehicle

This insurance is extended to cover theft of **insured property** at or away from **your premises** and damage resulting from theft, or any attempt at theft, following forcible entry to or exit from any securely locked motor **vehicle** or theft or any attempt at theft from a securely locked motor **vehicle** accompanied by violence or threat of violence to persons.

In respect of any one event **our** liability under this extension is limited to \$20,000. The **excess** will be \$1,000.

Theft / Burglary

This insurance is extended to cover theft of **insured property** which is not accompanied by violence or threat of violence to persons or violent and forcible entry to or exit from any enclosed building, provided that this extension does not extend to cover: (a) shoplifting; or (b) **you** voluntarily parting with title or possession if induced to do so by any fraudulent scheme, trick or false pretence.

In respect of any one event **our** liability under this extension is limited to \$20,000. The **excess** will be \$1,000.

Unharmd property

If, for the sole purpose of reinstating **insured property** which is insured under Section One it is necessary to demolish, damage or remove any property or part unharmd, **we** will indemnify **you** for the cost of doing so. **We** will also indemnify **you** for the cost of reinstating the property or part to a condition the same as, but not better or more extensive than, its condition immediately prior to the demolition damage or removal. The indemnity provided by this extension will not increase **our** liability beyond the **sum insured** on the property damaged.

Earthquake

This insurance is extended to cover physical loss or damage to **insured property** caused by earthquake, hydrothermal activity, geothermal activity, subterranean fire, volcanic eruption, tsunami or fire following caused by any of these.

The **excess** applicable to this extension will vary based on the location of the **situation** of risk, as specified in the **certificate of insurance**.

Reinstatement

In the event of any **insured property** to which this extension applies being lost or damaged, the basis on which the amount payable under this insurance is to be calculated will be the cost of **reinstatement** of that property. Insurance under this extension is subject to the special provisions set out below, and is subject to the terms and conditions of this insurance except in so far as they are varied by the extension.

Special provisions

1. Compliance with **regulations**: the amount payable under this extension will include the cost incurred in **reinstatement** which is necessary to comply with any **regulations**; provided that the amount payable will not include any such cost: (a) to the extent to which the work has already been required of **you** by notice served prior to the happening of the loss or damage; or (b) in respect of **undamaged** property or **undamaged** portions of property other than foundations (unless foundations are expressly excluded from insurance under this **policy**). This special provision (1) (b) will apply whether or not the **undamaged** property or portion comprises a separate building or structure or a separate item of plant or equipment.
2. **Site of reinstatement**: where property is **destroyed**, the work of **reinstatement** must be carried out on the same **site**; provided that the work may be carried out upon another **site**: (a) where **reinstatement** on the same **site** is not permissible by reason of any **regulations**; or (b) where **reinstatement** on the same **site** is not suitable to **your** reasonable requirement, **reinstatement** may be carried out on any alternative **site**.
3. Limitations of amount payable: (a) where the work of **reinstatement** is carried out in terms of definition **equivalent building** (ii) or (iii), or on any location other than the original location at the same **site**, **our** liability will not exceed the cost which would have been incurred had **reinstatement** been carried out in terms of definition **equivalent building** (i) on the original location; (b) where **your** property is damaged but not **destroyed**, **our** liability will not exceed the amount **we** could have been called upon to pay for **reinstatement** of the property had the property been **destroyed**; (c) **our** liability under this extension in respect of any item of **insured property** will not exceed the **sum insured** in respect of that item.
4. Circumstances where this extension does not apply: no payment, beyond the amount which would have been payable had this extension not been incorporated in this **policy** will be made: (a) if **you** elect not to reinstate the property; or (b) if the work of **reinstatement** is not commenced and carried out with reasonable despatch; or (c) where a building or structure is damaged, but not **destroyed**, and the repair of the damage is not permissible by reason of any **regulations**, or by reason of the **undamaged** portion of the property. Where, by any reason of any of these circumstances, no payment is to be made beyond the amount which would have been payable if this extension had not been incorporated in this **policy**, the rights and liabilities of **you** and **us** in respect of the loss or damage will be the same as if this extension had not been incorporated in this **policy**.
5. Valuation of the property: (a) at the commencement of each **period of insurance**, and in respect of that period, **you** may be required to provide **us** with a certificate by a suitably qualified valuer specifying the estimated cost of **reinstatement** of any item or items of **insured property** to which this extension applies; (b) the certificate should also contain such other estimates and information as **we** may reasonably require; (c) the **sum insured** under this extension in respect of each item will not be less than the amount of the estimate specified in the certificate in respect of that item; (d) if a certificate is not provided in accordance with Special Provision 5(a) within one month of the commencement of any **period of insurance**, the insurance in respect of each item of Section One of this **policy** to which this extension applies will be separately subject to the following condition of *Average*.
6. Average / Underinsurance: If, at the time of loss or damage, the **sum insured** is less than 90% of the cost which would be incurred by **reinstatement** if the whole of the property to which the **sum insured** applies were **destroyed**, then **you** will be considered as an insurer for the difference between the **sum insured** and the sum representing the cost of **reinstatement** of the whole of that property, and must bear a rateable proportion of the loss accordingly.

7. Rates, Tax and Other Charges: The amount payable under this extension will not include the amount of any rate, tax, duty, development charge, or any other assessment arising out of capital appreciation, which may be payable in respect of the property by reason of compliance with any **regulations**.

Exclusions

Section One does not cover:

- a) The **Excess**;
- b) Loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with, including any action taken in controlling, preventing, suppressing or in any way relating to any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss; (i) **war**, invasion, acts of foreign enemies, hostilities or warlike operations (whether **war** be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or (ii) any act of **terrorism**;

However, in the event that a peril listed below results from any of the matters described in paragraph b) above, this **policy**, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the **period of insurance** to the **insured property** by this **policy** directly caused by such listed peril. Listed perils: fire, explosion;

- c) Property in the course of installation, construction, demolition, erection, or testing following any of them, unless the property is owned or to be owned or occupied by **you** and then only if the expected completed value or contract price will not exceed the amount specified in the **certificate of insurance**;
- d) Current coin bank and currency notes, cheques, travellers cheques, postal notes, money orders, unused postage stamps, redeemable vouchers and tokens, phone cards, franking machine credits, other negotiable instruments other than the cover provided under the automatic extension – **Money**;
- e) Jewellery, precious stones, furs, precious metals or bullion, other than as stock of the **business** or as part of any plant;
- f) Motor **vehicles**, other mechanically or electrically propelled **vehicles** (including but not limited to railway locomotives and rolling stock), **watercraft** and **aircraft** of every kind, and accessories contained in them or on them, other than as stock of the **business**;
- g) Property in transit other than at **premises** owned or occupied by **you**;
- h) Property damaged as a result of its undergoing any normal **production process** where the damage is directly caused by that process;
- i) Standing timber, growing crops, livestock, trees, hedges, dams, canals, reservoirs (but not tanks), road or railway tunnels, road or railway bridges, docks, piers, wharves, mining property located beneath the surface of the ground, any land including topsoil and backfill;
- j) Any consequential losses whatsoever including penalties, loss of use of any property, delays, or loss of market;
- k) The cost of:
 - (i) Repairing or replacing faulty materials,
 - (ii) Putting right faulty workmanship,
 - (iii) Putting right work performed to a faulty or defective design plan or design specification, or
 - (iv) Putting right faulty or defective work where the fault or defect results from an error or omission in design plan or design specification;

But this exclusion does not apply to any consequential loss or damage occurring as a result of the faulty or defective materials, workmanship, design plan, design specification or work;

- l) loss, damage, destruction, distortion, erasure, corruption or alteration of **electronic data** from any cause whatsoever (including but not limited to **computer virus**) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss, except as provided for under the equipment breakdown automatic extension.

Notwithstanding any provision to the contrary within the **policy** or any endorsement thereto, it is understood and agreed as follows:

Should **electronic data** processing media insured by this **policy** suffer physical loss or damage insured by this **policy**, then the basis of valuation shall be the cost of the blank media plus the costs of copying the **electronic data** from back-up or from originals of a previous generation. These costs will not include research and engineering or any costs of recreating, gathering or assembling such **electronic data**. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this **policy** does not insure any amount pertaining to the value of such **electronic data** to **you** or any other party, even if such **electronic data** cannot be recreated, gathered or assembled, except as provided for under the equipment breakdown automatic extension.

Section One does not insure loss or damage directly or indirectly caused by or arising from:

- a) Confiscation, requisition, or destruction of or damage to property by order of government or local authority unless the order is given for the purpose of controlling fire or other peril for which insurance is provided by this **policy**;

- b) Nuclear weapons material;
- c) 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, combustion includes any self sustaining process of nuclear fission;
- d) Earthquake, hydrothermal activity, geothermal activity, subterranean fire, volcanic eruption, tsunami or fire following caused by any of these (unless it is covered by the Earthquake insurance in this section in relation to physical loss or damage to **insured property**);
- e) Landslip, subsidence or erosion of the land (unless it is covered by the Subsidence & Landslip insurance in this section in relation to physical loss or damage to **insured property**);
- f) Normal settlement, shrinkage or expansion of **buildings**, foundations, walls, pavements, roads and other structural improvements;
- g) Exposure to weather conditions where the property is not normally left in the open unless reasonable precautions have been taken to protect the property from those conditions;
- h) Interruption of the supply to the **site** of water, gas, electricity or any fuel;
- i) Total or partial cessation of work, retarding or interruption or cessation of any process;
- j) Unexplained disappearances, shortages revealed only by the taking of an inventory, shortages due to clerical or accounting errors;
- k) theft by **you** or by any of **your employees**;
- l) Any fraudulent scheme or device or false pretence practised on **you** or on any other person having care of the **insured property**;
- m) Fumes, gas, dust, smuts;
- n) Normal working, maintenance, wear and tear, gradual deterioration, erosion, corrosion, slowly developing deformation or distortion, marring or scratching, except as provided for under the equipment breakdown automatic extension;
- o) Vermin or insects;
- p) The inherent nature of the property, or action of light;
- q) Pollution or contamination, except as provided for under the equipment breakdown and hazardous substance emergencies automatic extensions;
- r) Changes in artificially controlled temperature or atmosphere, except as provided for under the refrigerated goods automatic extension;
- s) The action of micro-organisms, **mould**, mildew, rot or **fungi**.

We will not indemnify **you** or fulfil any obligation otherwise owed to **you**:

In respect of any building or structure where that indemnity or obligation arises from, is consequent upon or is in connection with the failure of that building or structure to contain: (i) materials; or (ii) a design; or (iii) a system; or (iv) a standard of workmanship; which effectively prevents or manages the presence or penetration of moisture or water to which the building or structure might reasonably be subjected.

Conditions

Earthquake – residential property – excess of earthquake commission cover

The indemnity provided by the automatic extension – Alternative accommodation costs of Section One of this **policy** in respect of **residential property** is only for that amount of the loss that is in excess of the cover provided by sections 18 and 20 of the Earthquake Commission Act 1993 (plus any excess applied by the earthquake commission).

Provided that if the **residential property** has not been declared as such on the proposal for insurance, this **policy** shall not indemnify **you** for loss or damage to **residential property** directly or indirectly caused by or resulting from earthquake, hydrothermal activity, geothermal activity, subterranean fire, volcanic eruption, tsunami or fire following caused by any of these.

Basis of Settlement

- (a) for **insured property** insured for “replacement” the basis of settlement shall be as in the **reinstatement** memorandum of this section.
- (b) for **insured property** insured for “indemnity value” the basis of settlement shall be the lesser of: (i) the cost of repairing that part of the **insured property** damaged, to the condition existing immediately before the time of loss or damage; (ii) the cost of rebuilding or repairing the **insured property** to a condition as when new, less due allowance for the age and condition of the **building** immediately before the time of loss or damage; or (iii) the current market value of the **building** (having due regard to its condition and state of repair immediately before the time of loss or damage); and shall include, where appropriate: (a) the cost of demolition and removal of debris including the removal of **contents of buildings**; and (b) architects, surveyors, legal and other related expenses.

(c) for property insured under stock in trade and materials of trade: (i) in respect of stock in trade insured under declaration conditions, the basis of settlement shall be on the same basis of stock in trade as declared in the monthly declaration figures made to **us** by **you**; or (ii) in respect of stock in trade not insured under declaration conditions, the basis of settlement shall be on the same basis as the **sum insured** was calculated.

Other interests

Where **you** are under an obligation to insure the interest of any person or corporate body having an insurable interest in any of the **insured property**, **we** will indemnify **you** and that person or corporate body as if a separate policy had been issued to each.

However, (a) **we** will not be liable to indemnify any person or corporate body whose interest has not been declared to **us** by the time indemnity becomes payable; and (b) **our** liability will not be increased beyond the amount that would be payable if this clause had not been incorporated in this **policy**.

Progress claim payments

In the event of loss or damage giving rise to a claim under this insurance, it is agreed that **we** will make progress claim payments on production of acceptable evidence of insured loss. Provided that, if the aggregate of progress payments exceeds the total amount of the adjusted loss, **you** will immediately refund the difference between the amount of adjusted loss and the aggregate of payments actually made.

Reinstatement of amount of insurance

In the event of a loss for which a claim is payable under Section One and, in the absence of written notice by **us** or **you** to the contrary, the amount of insurance cancelled by the loss will be automatically reinstated from the date of loss. **You** undertake to pay such pro-rata **premium** at the rate applicable to the item(s) concerned as may be required for the **reinstatement**.

Salvage

Where property insured under Section One is lost or damaged, **we** may: (a) enter any building where the loss or damage has occurred and take and keep possession of the damaged property; (b) deal with the salvage in any reasonable manner, provided that: (i) **you** are not entitled to abandon any property to **us**; (ii) **we** are not entitled to sell or otherwise dispose of salvaged branded goods without **your** prior consent. In the event of **you** declining to give consent, **you** will retain possession of the salvaged goods and their reasonable salvage value will be deducted from the amount of claim that would otherwise be payable. Where it is practical to remove brands, labels or other marks, which identify the goods as supplied by **you**, the salvage value of the goods will be determined after such removal at **our** expense.

Section Two: Business Interruption Cover

Business interruption indemnity

We will indemnify **you** in respect of each item in the **certificate of insurance** the amount of loss resulting from interruption or interference to the **business** if during the **period of insurance** any **building** or **other property** or part thereof used by **you** at the **premises** for the purpose of the **business** be **destroyed** or damaged by:

- (a) such risks as are covered under Section One – Business Assets;
- (b) explosion of any boiler or economiser or pipe or other vessel which, in normal use is subject to generated or applied fluid pressure;

(destruction or damage so caused being called “**insured damage**”) and the **business** carried on by **you** at the **premises** is consequently interrupted or interfered with.

Provided that:

- (i) **we** will not be liable under Section Two unless the **insured property destroyed** or damaged is insured against such **insured damage** under Section One – Business Assets (**insured damage** by explosion of any boiler or economiser or pipe or other vessel which, in normal use is subject to generated or applied fluid pressure excepted) and **we** will have (or would have, but for the application of an **excess**) paid for or admitted liability in respect of the **insured damage**;
- (ii) subject to the “reinstatement of amount of insurance” condition of Section Two, **our** liability will not exceed the **sum insured**; and if more than one item is included in the **certificate of insurance**, will not exceed in respect of each item the **sum insured** applicable to that item.

Automatic Extensions

Closure of transport routes, ports or airports

This insurance is extended to include loss resulting from interruption of or interference with the **business** in consequence of: (a) **insured damage** resulting in closure; or (b) closure by order of any authority as a result of fear of any **insured damage** at any transport route, port or airport anywhere in New Zealand.

Provided that: (i) for the purposes of this extension **insured damage** need not have been insured or liability admitted; and (ii) liability under this extension shall be limited to 15% of each and every item insured by Section Two.

Customers / Suppliers premises

This insurance is extended to include loss resulting from interruption of or interference with the **business** in consequence of **insured damage** within New Zealand: (a) at any premises of suppliers of goods or services to **you**, including suppliers of telecommunication services; (b) at the premises of any customers of **you**.

Provided that: (i) for the purposes of this extension **insured damage** need not have been insured or liability admitted; (ii) liability under this extension shall be limited to 15% of each and every item insured by Section Two.

Health

This insurance is extended to include loss directly resulting from interruption of or interference with the **business** in consequence of action taken by a competent public authority in respect of: (a) **injury** or illness sustained by any guest arising from or traceable to foreign or injurious matter in food or drink provided on the **premises**; or (b) closing of whole or part of the **premises** consequent upon defects in the drains and other sanitary arrangements at the **premises**.

Provided that: (i) liability under this extension shall be limited to 10% of each and every item insured by Section Two; and (ii) **we** will not be liable for the amount of loss arising during the first 7 days immediately following the action taken by a competent public authority.

Murder, suicide or criminal injury

This insurance is extended to include loss directly resulting from interruption of or interference with the **business** in consequence of action taken by a competent public authority in respect of murder, suicide or criminal injury occurring at the **premises**.

Provided that: (i) liability under this extension shall be limited to 10% of each and every item insured by Section Two; and (ii) **we** will not be liable for the amount of loss arising during the first 7 days immediately following the action taken by a competent public authority.

Prevention of access

This insurance is extended to include loss resulting from interruption of or interference with the **business** in consequence of **insured damage** within New Zealand to property within one kilometre radius of the **premises** which shall hinder or prevent the use thereof or access thereto, whether **your premises** or property therein shall be damaged or not.

Provided that: (i) for the purposes of this extension **insured damage** need not have been insured or liability admitted; (ii) liability under this extension shall be limited to 15% of each and every item insured by Section Two.

Public and private utilities

This insurance is extended to include loss resulting from interruption of or interference with the **business** in consequence of **insured damage** within New Zealand to any electricity station or sub-station or power line and cable, gas works or water works of the public and/or private supply from which **you** obtain electric current, gas or water.

Provided that: (i) for the purposes of this extension **insured damage** need not have been insured or liability admitted; (ii) no cover shall apply for any loss in consequence of **insured damage** to the Maui platform or associated offshore pipeline; liability under this extension shall be limited to 20% of each and every item insured by Section Two.

Description of Items

Item 1 – Gross profit

The insurance under this item is limited to loss of **gross profit** due to (a) reduction in **turnover** and (b) increase in cost of working and the amount payable as indemnity under this item shall be:

- (a) in respect of reduction in **turnover**, the sum produced by applying the **rate of gross profit** to the amount by which the **turnover** during the **indemnity period**, in consequence of **insured damage**, falls short of the **standard turnover**;
- (b) in respect of increase in cost of working, the additional expenditure (subject to the provisions of memo 2 of this item) necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in **turnover** which but for that expenditure would have taken place during the **indemnity period** in consequence of **insured damage**, but not exceeding the sum produced

by applying the **rate of gross profit** to the amount of the reduction thereby avoided; less any sum saved during the **indemnity period** in respect of such of the charges and expenses of the **business** payable out of **gross profit** as may cease or be reduced in consequence of **insured damage**.

Memoranda

Memo 1: Alternative trading

If during the **indemnity period**, goods are sold or services rendered elsewhere than at the **premises** for the benefit of the **business**, either by **you** or by others on behalf of **you**, the **money** paid or payable in respect of those sales or services shall be brought into account in arriving at the **turnover** during the **indemnity period**.

Memo 2: Uninsured expenses

If any charges and expenses of the **business** are not insured by this **policy** (having been deducted in arriving at the **gross profit**), then in computing the amount recoverable under this item as increase in cost of working, that proportion only of any additional expenditure shall be brought into account which the **gross profit** bears to the sum of the **gross profit** and those uninsured charges and expenses.

Item 2 – Additional increased cost of working

The insurance under this item is limited to additional expenditure (including the additional cost of obtaining the necessary information for the replacement of all records of the **business**, including deeds, documents, plans, drawings, specifications, valuations, card indices and books of accounts) necessarily and reasonably incurred by **you** during the **indemnity period** in consequence of the **insured damage**, for the purpose of:

- (a) avoiding or diminishing a reduction in **turnover**;
- (b) avoiding or diminishing a reduction in **gross rentals**;
- (c) resuming or maintaining any normal **business** operation or service.

However, the insurance under this item does not apply to: (i) any additional expenditure which would have been recoverable under any other item of Section Two but for the inadequacy of the **sum insured** under that item; or (ii) any expenditure incurred to reinstate physical damage other than expenditure incurred to reconstruct records.

Item 3 – Claims preparation costs

The insurance under this item is limited to such reasonable professional fees, and such other reasonable expenses necessarily incurred by **you** for the preparation of a claim under Section Two and Section One. **We** will indemnify **you** for such reasonable fees and expenses up to but not exceeding in total the **sum insured** under this item.

Item 4 – Gross rents receivable

The insurance under this item is limited to (a) loss of **gross rentals** and (b) increase in cost of working and the amount payable as indemnity under this item shall be:

- (a) in respect of loss of **gross rentals**, the amount by which the **gross rentals** during the **indemnity period**, in consequence of **insured damage**, falls short of the **standard gross rentals**;
- (b) in respect of increase in cost of working, the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the loss of **gross rentals** which, but for that expenditure, would have taken place during the **indemnity period** in consequence of **insured damage**, but not exceeding the amount of the reduction in **gross rentals** thereby avoided; less any sum saved during the **indemnity period** in respect of such expenses of the **business** payable out of **gross rentals** as may cease or be reduced in consequence of **insured damage**.

Memoranda

Alternative premises

If during the **indemnity period**, the **business** is conducted elsewhere than at the **premises**, the **gross rentals** derived from the other **premises** shall be brought into account in arriving at the **gross rentals** during the **indemnity period**.

Conditions

Adjustment of premium

As **premiums** for items 1 and 4 are provisional, the **premium** is subject to adjustment, if deemed necessary by **us**, on expiry of each **period of insurance**, based on the actual insured **gross profit** and **gross rents** received insured by Section Two for the accounting year most nearly concurrent with that **period of insurance** as follows:

- (a) the provisional **premium** will be adjusted at the agreed rate on such actual amounts, or a multiple thereof if the **indemnity period** exceeds 12 months, by payment to **us** of an additional **premium** or by allowance to **you** of a return **premium** as the case may be. Provided that if a return **premium** is due, it shall in no case exceed 50% of the provisional **premium** charged for the items;

(b) in the event of a claim occurring during the **period of insurance** the amount paid or payable for the loss in respect of the period shall be regarded as actually earned.

Provided that in no case shall our liability in respect of each item of this **policy** exceed the **sums insured** specified in the **certificate of insurance**.

Alternative index

In the event of a claim under Section Two adjustments may be based on "**turnover**" or "**output**" or whatever other index of **business** activity affords the most equitable result, and except in the definition of **turnover**, the word "**turnover**" wherever used in Section Two shall be read as "**turnover** or alternative index".

Accumulated stocks

In adjusting any claim, account shall be taken and an equitable allowance made if during the **indemnity period turnover** is temporarily maintained from accumulated stocks of finished goods held by **you**, thus causing a shortage of finished goods after the **indemnity period** has expired.

Departments

If the **business** is conducted in departments or other units, the independent trading results of which are ascertainable, the provisions of clauses (a) and (b) of the **gross profit** item (and any separate items on **gross rentals**) will apply separately to each department or other unit affected by **insured damage**.

New business (gross profit)

For the purpose of any claim arising from **insured damage** occurring before the completion of the first year's trading of the **business** at the **premises** the terms "**rate of gross profit**", "**annual turnover**" and "**standard turnover**" shall bear the following alternative meanings:

- A) **Rate of gross profit** – the **rate of gross profit** earned on the **turnover** during the date of the commencement of the **business** and the date of **insured damage**.
- B) **Annual turnover** – the proportional equivalent for a period of twelve months of the **turnover** realised during the period between the commencement of the **business** and the date of **insured damage**.
- C) **Standard turnover** – the proportional equivalent for a period equal to the **indemnity period** of the **turnover** realised during the period between the commencement of the **business** and the date of **insured damage**. To which such adjustments shall be made as may be necessary to provide for the trend of the **business** and for variations in or other circumstances affecting the **business** either before or after **insured damage** or which would have affected the **business** had **insured damage** not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for **insured damage** would have been obtained during the relative period after **insured damage**.

New business (gross rentals)

For the purpose of any claim arising from **insured damage**, occurring before the completion of the first year's trading of the **business** at the **premises**, the terms "**standard gross rentals**" and "**annual gross rentals**" shall bear the following alternative meaning:

- (a) **standard gross rentals** – the proportional equivalent for a period equal to the **indemnity period**, of the **gross rentals** realised during the period between the commencement of the **business** and the date of **insured damage**;
- (b) **annual gross rentals** – the proportional equivalent for a period of twelve months, of the **gross rentals** realised during the period between the commencement of the **business** and the date of **insured damage**; to which such adjustments shall be made as may be necessary to provide for the trend of the **business** and for variations in or other circumstances affecting the **business** either before or after **insured damage** or which would have affected the **business** had the **insured damage** not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the **insured damage** would have been obtained during the relative period after the **insured damage**.

Payment on account

In the event of the **occurrence** of a loss under this insurance, payments on account will be made to **you** during the **indemnity period** if desired on production of a statement of claim certified by the accountant appointed in accordance with the general condition "Duties in the event of a claim" of the **policy**.

Salvage sale

If following **insured damage** giving rise to a claim under Section Two, **you** shall hold a salvage sale during the **indemnity period**:

- (a) clause (a) of item 1 (**gross profit**) shall for the purpose of such a claim read as follows: in respect of reduction in **turnover**, the sum produced by applying the **rate of gross profit** to the amount by which the **turnover** during the **indemnity period** (less the **turnover** for the period of the salvage sale) shall, in consequence of the **insured damage**, fall short of the **standard turnover**, from which shall be deducted the **gross profit** actually earned during the period of the salvage sale;

- (b) the definition of **shortage in turnover** shall, for the purpose of such claim, read as follows: “**shortage in turnover**” – the amount by which the **turnover** during a period (less the **turnover** for the period of the salvage sale), shall in consequence of the **insured damage**, fall short of the part of the “**standard turnover**” which relates to that period, from which shall be deducted the payroll or wages paid during the period of the salvage sale.

Reinstatement of amount of insurance

In the event of a loss for which a claim is payable under Section Two and, in the absence of written notice by **us** or **you** to the contrary, the amount of the insurance cancelled by such loss will be automatically reinstated from the date of loss. **You** undertake to pay such pro-rata **premium** at the rate applicable to the item(s) concerned as may be required for the **reinstatement**.

Exclusions

Section Two does not cover:

- a) The **Excess**;
- b) Loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with, including any action taken in controlling, preventing, suppressing or in any way relating to any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss; (i) **war**, invasion, acts of foreign enemies, hostilities or warlike operations (whether **war** be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or (ii) any act of **terrorism**;

However, in the event that a peril listed below results from any of the matters described in paragraph b) above, this **policy**, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the **period of insurance** to the **insured property** by this **policy** directly caused by such listed peril. Listed perils: fire, explosion;

- c) Property in the course of installation, construction, demolition, erection, or testing following any of them, unless the property is owned or to be owned or occupied by **you** and then only if the expected completed value or contract price will not exceed the amount specified in the **certificate of insurance**;
- d) Current coin bank and currency notes, cheques, travellers cheques, postal notes, money orders, unused postage stamps, redeemable vouchers and tokens, phone cards, franking machine credits, other negotiable instruments;
- e) Jewellery, precious stones, furs, precious metals or bullion, other than as stock of the **business** or as part of any plant;
- f) Motor **vehicles**, other mechanically or electrically propelled **vehicles** (including but not limited to railway locomotives and rolling stock), **watercraft** and **aircraft** of every kind, and accessories contained in them or on them, other than as stock of the **business**;
- g) Property in transit other than at **premises** owned or occupied by **you**;
- h) Property damaged as a result of its undergoing any normal **production process** where the damage is directly caused by that process;
- i) Standing timber, growing crops, livestock, trees, hedges, dams, canals, reservoirs (but not tanks), road or railway tunnels, road or railway bridges, docks, piers, wharves, mining property located beneath the surface of the ground, any land including topsoil and backfill;
- j) Any consequential losses whatsoever including penalties, loss of use of any property, delays, or loss of market;
- k) The cost of:
 - (i) Repairing or replacing faulty materials,
 - (ii) Putting right faulty workmanship,
 - (iii) Putting right work performed to a faulty or defective design plan or design specification, or
 - (iv) Putting right faulty or defective work where the fault or defect results from an error or omission in design plan or design specification;

But this exclusion does not apply to any consequential loss or damage occurring as a result of the faulty or defective materials, workmanship, design plan, design specification or work;

- l) loss, damage, destruction, distortion, erasure, corruption or alteration of **electronic data** from any cause whatsoever (including but not limited to **computer virus**) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss, except as provided for under the equipment breakdown automatic extension.

Notwithstanding any provision to the contrary within the **policy** or any endorsement thereto, it is understood and agreed as follows:-

Should **electronic data** processing media insured by this **policy** suffer physical loss or damage insured by this **policy**, then the basis of valuation shall be the cost of the blank media plus the costs of copying the **electronic data** from back-up or from originals of a previous generation. These costs will not include research and engineering or any costs of recreating, gathering or assembling such **electronic data**. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this **policy** does not insure any amount pertaining to the value of such **electronic data** to **you** or any other party, even if such **electronic data** cannot be recreated, gathered or assembled, except as provided for under the equipment breakdown automatic extension.

Section Two does not insure loss or damage directly or indirectly caused by or arising from:

- a) Confiscation, requisition, or destruction of or damage to property by order of government or local authority unless the order is given for the purpose of controlling fire or other peril for which insurance is provided by this **policy**;
- b) Nuclear weapons material;
- c) 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, combustion includes any self sustaining process of nuclear fission;
- d) Earthquake, hydrothermal activity, geothermal activity, subterranean fire, volcanic eruption, tsunami or fire following caused by any of these (unless it is covered by the Earthquake insurance in Section One in relation to physical loss or damage to **insured property**);
- e) Infectious human or animal disease / contamination;
- f) Landslip, subsidence or erosion of the land (unless it is covered by the Subsidence & Landslip insurance in Section One in relation to physical loss or damage to **insured property**);
- g) Normal settlement, shrinkage or expansion of buildings, foundations, walls, pavements, roads and other structural improvements;
- h) Exposure to weather conditions where the property is not normally left in the open unless reasonable precautions have been taken to protect the property from those conditions;
- i) Interruption of the supply to the **site** of water, gas, electricity or any fuel, except as provided for under the public and private utilities automatic extension;
- j) Total or partial cessation of work, retarding or interruption or cessation of any process;
- k) Unexplained disappearances, shortages revealed only by the taking of an inventory, shortages due to clerical or accounting errors;
- l) Theft by **you** or by any of **your employees**;
- m) Any fraudulent scheme or device or false pretence practised on **you** or on any other person having care of the **insured property**;
- n) Fumes, gas, dust, smuts;
- o) Normal working, maintenance, wear and tear, gradual deterioration, erosion, corrosion, slowly developing deformation or distortion, marring or scratching;
- p) Vermin or insects;
- q) The inherent nature of the property, or action of light;
- r) Pollution or contamination, except as provided for under the equipment breakdown and hazardous substance emergencies automatic extensions;
- s) Changes in artificially controlled temperature or atmosphere;
- t) The action of micro-organisms, **mould**, mildew, rot or **fungi**.

We will not indemnify **you** or fulfil any obligation otherwise owed to **you**:

In respect of any building or structure where that indemnity or obligation arises from, is consequent upon or is in connection with the failure of that building or structure to contain: (i) materials; or (ii) a design; or (iii) a system; or (iv) a standard of workmanship; which effectively prevents or manages the presence or penetration of moisture or water to which the building or structure might reasonably be subjected.

Section Three: General, Employers, Statutory Liability Insurance

Cover

Cover under this insuring clause is afforded solely with respect to an **occurrence** happening during the **period of insurance** within the **territorial limits** which arises from and within the course of the **business** and provided that the action for damages is brought against **you** in a court of law within the **territorial limits**.

General Liability

We agree to indemnify **you** for all amounts which **you** shall become legally liable to pay as a result of **claims** or **legal proceedings** for **personal injury** or **property damage**.

Cover under these insuring clauses is afforded solely with respect to **claims** first made against **you** during the **period of insurance** that are reported to **us** as required by this **policy**.

Employers Liability

We will pay the **loss** of the **company** due to a claim for **personal injury** sustained by an **employee**.

Statutory Liability

We will pay **your loss** due to a claim for **statutory liability**.

Defence Provisions and Limits of Liability: General Liability

These Defence and Limits Clauses apply to the cover under the General Liability insuring clause only.

Defence costs

We shall defend at **our** cost any **claim** or **legal proceeding** against **you** that seeks compensation, even if the **claim** or **legal proceeding** is groundless, false or fraudulent.

What we will pay

In the defence of any **claim** or **legal proceeding** against **you** that seeks compensation covered by the **policy** we will:

- a) Investigate, negotiate and settle the **claim** or **legal proceeding**; and
- b) Pay the following supplementary payments:
 - i. All costs taxed against **you** in the **claim** or **legal proceeding**;
 - ii. Pre-judgment interest awarded against **you** on that part of the judgment **we** pay;
 - iii. Post-judgment interest that accrues after entry of judgment and before **we** have paid, offered to pay or deposited in court that part of the judgment that is within the applicable limits of liability; and
 - iv. **Your** expenses incurred at **our** request or with **our** written consent.

Notwithstanding, **we** will only be liable for the amount of damages and claimants' costs and expenses arising from an **occurrence** that is above the **excess**. The **excess** amount shall be borne by **you** and shall remain uninsured, with regard to all payments for which **you** shall be liable.

What we may do

We may undertake investigations, conduct negotiations and with **your** written consent settle any **claim** or **legal proceedings** where settlement has been agreed to by the parties being indemnified or has been recommended by a senior counsel. If consent to such settlement is still withheld by **you** then **our** liability on account of that **claim** or **legal proceeding** shall not exceed the amount for which **we** could have settled the **claim** or **legal proceeding** plus the costs and expenses incurred to the date such settlement was recommended in writing to **you**.

What we won't pay

We will not defend any **claim** or **legal proceeding** or investigate any **claim** or **legal proceeding** after the exhaustion of the applicable **limits of liability** by the payment of **loss**.

Limits – Personal injury / Property damage

Our liability in respect of any one **occurrence** shall not exceed the **limit of liability** as set forth in the **policy certificate of insurance**. All **personal injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one **occurrence**.

Limits – Products hazard

Our total aggregate liability during any one **period of insurance** for all **occurrences** involving the **products hazard** shall not exceed the **limit of liability** as set forth in the **certificate of insurance**.

Costs in addition

Expenses incurred to defend or investigate any **claim** or **legal proceeding** will be in addition to the applicable **limits of liability**.

Extensions: Section Three – General, Employers, Statutory Liability

Subject to all of the provisions of this **policy** cover is extended as outlined below. The total of all payments made under these extensions shall be part of and not in addition to the **limit of liability**. These extensions are also subject to the **excess**, if any.

30 Day minimum reporting window

Any **claim** first made against **you** during the last 30 days of the **period of insurance** will be deemed reported within the **period of insurance** if actually reported to **us** within the first 30 days after having been first made against **you**.

Care, custody and control

Notwithstanding the property owned or in **your** physical or legal control or **vehicles** exclusions, **we** agree to indemnify **you** for **property damage** to:

- a) Tangible property (excluding livestock) not owned by **you**, but in the physical or legal control of **you**;
- b) **Premises** which are leased or rented to **you**;
- c) **Premises** and their contents not belonging to, leased or rented to **you** at which **you** are undertaking work in connection with the **business**;
- d) **Vehicles** and their contents (not belonging to or used by or on behalf of **you**) in **your** physical or legal control where such **property damage** occurs while any such **vehicle** is in a car park owned or operated by **you**;
Cover under this extension does not apply if **you** as part of the **business** own or operate a car park for reward;
- e) Goods, equipment, merchandise and property other than real property subject to cover being limited to a maximum of \$250,000 each **occurrence** and in the aggregate during any one **period of insurance** for such **property damage**;

The total amount payable under this extension is \$250,000 for any one **occurrence** and in the aggregate during the **period of insurance**.

An **excess** as described in the **certificate of insurance** for each and every **claim** applies to this extension.

Defence cost advancement

We will advance covered **defence costs** in respect of insuring clauses Employers and Statutory Liability.

Forest and Rural Fires Act

We will cover **you** for **your** legal liability under the Forest & Rural Fires Act 1977 (or any replacement Act) and any subsequent amendments for:

- a) costs and levies under sections 43 and 46 incurred and apportioned by any fire authority; or
- b) costs claimed by any other party in order to protect their property from fire.

This extension will apply:

- a) whether or not **damage to property** has occurred; and
- b) to **vehicles**, whether or not the **vehicle** is or should have been registered.

An **excess** of \$1,000 will apply to claims under this extension unless an alternative amount is shown in the **certificate of insurance**.

Our liability under this extension will not exceed \$250,000.

Heirs, estates and legal representatives

Any **claim** made against any estate, heir or legal representative of an **insured person** for **statutory liability** of that **insured person**, shall be covered as if made against that **insured person**.

Innkeeper's liability

With respect to any liability incurred by **you** under the Innkeepers Act 1962 or its amendments, it is agreed that cover under this **policy** is limited to:

- a) Guests property in safe custody \$20,000 per **occurrence**.
- b) Guests property not in safe custody \$5,000 per **occurrence**.

Landlords liability

Notwithstanding the property owned or in **your** physical or legal control exclusion **we** agree to indemnify **you** for all sums which **you** shall become legally liable to pay for **personal injury** and/or **property damage** in connection with the legal ownership, but not physical occupation, of any **premises** owned by **you**.

Product recall

Notwithstanding the product recall exclusion **we** will contribute to those costs **you** are legally liable to pay for physically recalling or withdrawing products that have already given rise to a claim covered by Section Three of this **policy**, if **we** agree that such recall or withdrawal is necessary to prevent similar claims arising.

Our contribution will be limited to 80% of the costs in excess of the first \$2,500, subject to a maximum contribution by **us** of \$100,000 in respect of all such costs incurred in respect of all such recalls or withdrawals in any one **period of insurance**. An **excess** of \$2,500 shall apply to each and every claim.

Punitive and exemplary damages (for General liability only)

We agree to indemnify **you** for punitive and/or exemplary damages awarded to, or on behalf of, a person who has suffered **personal injury** resulting from an event in connection with **your business**, or **your** ownership, occupancy or tenancy of a building, structure or land, provided that:

- a) The claim must be made against **you** and reported to **us** during the **period of insurance**;
- b) Any punitive or exemplary damages awarded by any court outside of New Zealand are excluded;
- c) The total amount payable under this extension shall not exceed \$1,000,000, inclusive of all costs any one claim and in the aggregate, during any one **period of insurance**;
- d) An **excess** of \$250 inclusive of costs shall apply to each and every claim.

We will not indemnify **you** for claims arising from **personal injury** or an event that caused **personal injury** where such **personal injury** or event occurred prior to the **retroactive liability date** specified in the **certificate of insurance**.

Service and repair – motor vehicles and watercraft

Notwithstanding the property owned by **you** or in **your** physical or legal control or **vehicles** exclusions of this **policy** it is agreed that in respect of **vehicles**, **vehicle** parts or **watercraft** not exceeding 8 metres in length that are or have been in the care, custody or control of **you** for the purposes of service and/or repair, this **policy** extends to indemnify **you** for amounts **you** shall become legally liable to pay in respect of:

- a) Loss of or damage to the **vehicle** being serviced or repaired;
- b) **Personal injury** or **property damage** arising from service and/or repairs to **vehicles**;
- c) **Personal injury** or **property damage** as a result of an accident whilst the **vehicle** is being driven on any public or private road or thoroughfare;

Subject to a **sub-limit** of \$250,000 any one **occurrence** and in the aggregate for all **occurrences** during any one **period of insurance**, provided that **we** will not be liable for the first \$1,000 of each and every claim.

Provided that this extension of cover does not apply to:

- a) **Personal injury** or **property damage** resulting from towing the **vehicle** except where it is being towed for the reason that it is either mechanically disabled or is designed to be towed in the course of its normal use;
- b) The cost of rectifying any defective workmanship or faulty workmanship in respect of the actual part or parts worked on by **you**. However, liability consequent upon **personal injury** or **property damage** resulting from defective workmanship is not excluded;
- c) Liability arising out of any **occurrence** resulting from a **vehicle** or **watercraft** engaged in or being tested in preparation for racing, pace making or speed testing. Or any **occurrence** resulting from a **vehicle** engaged in any hill climbing test or being driven on any racetrack or speedway;
- d) Liability arising out of any **occurrence** resulting from the **vehicle** or **watercraft** being driven by a person with **your** consent, who is under the influence of intoxicating liquor or drugs to the extent that an offence is committed under New Zealand law;
- e) Liability arising out of any **occurrence** resulting from a **vehicle** being driven by a person with **your** consent, who does not have the appropriate licence to drive the **vehicle**.

Spouses

Any claim made against an **insured person's** spouse for **statutory liability** of that **insured person**, shall be covered as if made against that **insured person**.

Tenant's liability

We will cover **you** for legal liability to pay direct compensation as a result of damage to **premises** (including their fixtures and fittings) leased or rented by **you** or in **your** custody or control but not owned by **you**, or for **property damage** in **business premises** that **you** temporarily occupy, but excluding legal liability arising in connection with the failure of **you** to arrange insurance on the property.

Underground property / services

We will indemnify **you** for liability arising directly or indirectly out of **property damage** in New Zealand to property or services normally located underground.

Provided that

- a) Prior to the commencement of any work **you** enquired of the relevant authority, corporation or company as to the location of such services; and
- b) **You** took all reasonable precautions to prevent **personal injury** or **property damage**; and
- c) Any liability arising out of work carried out more than five meters below ground level is excluded; and

- d) Any liability arising out of work carried out underground by directional drilling or by a thrusting or boring machine is excluded; and
- e) Cover for all claims for compensation that arise under this extension out of the one **occurrence** are limited in the aggregate during the **period of insurance** to \$250,000; and
- f) An **excess** of \$5,000 shall apply for each **occurrence**.

Vibration and removal of support

We agree to indemnify **you** for all sums which **you** shall become legally liable to pay for **personal injury** or **property damage** in New Zealand arising from the actions of **you** in removing, weakening or interfering with the support of land or buildings, other than those owned or occupied by **you**, provided that:

- a) The total amount payable under this extension shall not exceed \$250,000 for any one claim and in the aggregate during any one **period of insurance**;
- b) An **excess** of \$5,000 shall apply for each **occurrence**.

Exclusions: Section Three – General, Employers, Statutory Liability

This **policy** shall not cover loss or make any payment in connection with any **claim** and excludes all liability arising out of, based upon or attributable to any:

- a) **Aircraft, hovercraft and watercraft** – Ownership, possession, maintenance, operation or use by or on behalf of **you** of any **aircraft** or **hovercraft**; or any **watercraft** or vessel exceeding eight (8) metres in length.

Provided that this exclusion shall not apply with respect to:

- i) **Watercraft** owned by others and used by **you** for **business** entertainment; or
- ii) Hand propelled or sailing craft.

This proviso i) and ii) shall only apply where such **watercraft** are sailing or operating in New Zealand territorial or inland waters.

- b) **Aircraft products** – Supply, distribution, sale or manufacture of **aircraft products** or reliance upon any representations or warranties made by **you** with respect to **aircraft products** or arising out of the **grounding** of any **aircraft**;
- c) Asbestos – Mesothelioma, asbestosis or for any death, disease, loss of use of property, damage to property (including consequential loss) arising directly or indirectly out of or in connection with or in consequence of:
 - (i) Inhaling, ingesting or physical exposure to asbestos or goods or products containing asbestos; or
 - (ii) The use of asbestos in constructing or manufacturing any good, product or structure; or
 - (iii) The removal of asbestos from any good, product or structure; or
 - (iv) The manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos; or
 - (v) The presence of asbestos in any building;
- d) Conduct – Criminal, fraudulent, wilful or malicious act, error or omission, or any intentional or knowing violation of **statute** or law;
- e) Contractual liability – **Personal injury** or **property damage**:
 - A) Where **you** assume liability under any contract or agreement.

But this exclusion shall not apply to those written contracts:

 - i) Designated in the **policy certificate of insurance**;
 - ii) Where liability would have been implied by law;
 - iii) Where **you** assume liability under a warranty of fitness or quality as regards **your products**;
 - iv) To **incidental contracts** entered into by **you**;
 - v) To **insured contracts** entered into by **you** where **you** are obligated to provide insurance as is afforded by this **policy**, to any person or organisation, but only with respect to their liability arising out of operations conducted by **you** or on their behalf and not to any greater extent than required by the contract or agreement;
 - B) Where **you** have waived any rights, which but for the existence of such waiver would accrue to **you**;
- f) Expected and intended – **Personal injury** or **property damage** expected or intended from **your** standpoint. However, this exclusion does not apply to:
 - (i) **personal injury** or **property damage** resulting from the use of reasonable force to protect persons or property; or
 - (ii) **Your** liability for compensation as the result of an act committed by **your employee(s)** which results in **personal injury** or **property damage** expected or intended from the standpoint of **your employee(s)**, provided such act was not committed at **your** direction;
- g) **Financial loss** – **Financial loss**, unless such loss is a direct result of **personal injury** or **property damage** for which indemnity is provided by this **policy**;

- h) Hazardous materials – Engagement by **you** of any contractor to dispose of or handle materials unless **you** have taken reasonable steps to ensure that the materials will be disposed of or handled lawfully;
- i) Internet operations – **Personal injury** or **property damage** arising directly or indirectly out of or caused by or in connection with **your** internet operations, including but not limited to **business** conducted and/or transacted via the internet, intranet, extranet and/or via **your** own website, internet site, web address and/or via the transmission of electronic mail or documents by electronic means;
- j) Libel and slander – Publication or utterance of a libel or slander: (i) made prior to the effective date of this insurance; or (ii) made at **your** direction with knowledge of the falsity thereof; or (iii) related to advertising, broadcasting or telecasting activities including internet activity conducted by or on **your** behalf;
- k) **Mould / Building defect** – Liability for any **personal injury** or **property damage** or any other loss, injury, damage, cost or expense, including, but not limited to, losses, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:
 - (i) Any **fungus(i)**, **mould(s)**, mildew or yeast, or
 - (ii) Any **spore(s)** or toxins created or produced by or emanating from such **fungus(i)**, **mould(s)**, mildew or yeast, or
 - (iii) Any substance, vapour, gas, or other emission or organic or inorganic body or substance produced by or arising out of any **fungus(i)**, **mould(s)**, mildew or yeast, or
 - (iv) Any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures or acts as a medium for any **fungus(i)**, **mould(s)**, mildew, yeast, or **spore(s)** or toxins emanating therefrom;
 regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that loss, injury, damage, cost or expense.
- l) Non-compliance – **Event** which has resulted from **your** intentional, knowing or reckless failure to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building notice, notice to rectify, compliance schedule, gazetted notice, or order made by a commission, tribunal, or standards review board;
- m) Nuclear material
 - i) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - ii) The radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof;
 Of whatsoever nature, directly or indirectly;
- n) Pollution – **Personal injury** or **property damage** directly or indirectly arising out of, caused by or contributed to by:
 - i) The discharge, dispersal, release or escape of **pollutants** into or upon land the atmosphere or any watercourse or body of water;
 - ii) The cost of removing, monitoring, testing, containing, treating, detoxifying, neutralizing, nullifying or cleaning up **pollutants** or **pollutants** discharged, dispersed, released or escaped into or upon land, the atmosphere or any watercourse or body of water;
 - iii) Fines, penalties, punitive, exemplary or multiple damages relating to the circumstances detailed in i) above;
 - iv) The cost of preventing the escape of **pollutants**;
- o) Prior claims/ circumstances
 - (i) As of the **policy** inception, prior or pending claims or circumstance reported under any **policy** of which this **policy** is a renewal or replacement, or the same, continuous, repeated or related facts as those alleged in such prior or pending claim or such circumstance;
 - (ii) As at the **continuity date**, any pending or prior: a) **litigation**; or b) administrative or regulatory proceeding or official investigation of which an **insured person** had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior **litigation** or administrative or regulatory proceeding or official investigation;
- p) Professional services
 - i) rendering of or failure to render professional advice or services by **you**; or
 - ii) any error or omission arising from the rendering of professional advice, design specification or services;

For a fee.

Provided that this exclusion does not apply to the rendering of or failure to render professional medical advice by **medical persons** employed by **you** to provide first aid and other medical services on **your premises**.

- q) Silica – Presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form, or to any obligation by **you** to indemnify any party because of **bodily injury** or **property damage** arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form;

- r) Statutory liability excluded – Of the following excluded statutes: Arms Act 1983; Aviation Crimes Act 1972; Crimes Act 1961; Land Transport Act 1988; Proceeds of Crime Act 1991; Summary Offences Act 1981; Transport Act 1962; Transport (vehicle and driver registration and licensing) Act 1986 and any other Act of Parliament specified by endorsement as an excluded act;
- s) Transmissible Spongiform Encephalopathy (TSE) – Liability in respect of **personal injury** or **property damage** or any other **loss**, cost or expense, including, but not limited to inspection costs, surveillance costs, slaughter costs and costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by any form of transmissible spongiform encephalopathy (TSE), including, but not limited to bovine spongiform encephalopathy (BSE), chronic wasting disease (CWD), Creutzfeldt-Jakob disease (CJD), new variant Creutzfeldt-Jakob disease (NV-CJD), scrapie or transmissible mink encephalopathy, regardless of any other cause, event, material or product that contributed concurrently or in any sequence to that **personal injury** or **property damage**, **loss**, cost or expense. TSE includes but is not limited to any **loss**, cost or expense which is related to or contributed to, caused or accelerated by or results from any form of TSE, or any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection therewith;
- t) **War** and **terrorism** – **Personal injury** or **property damage** arising directly or indirectly as a result of or in connection with **war** and / or **terrorism** including, but not limited to, any contemporaneous or ensuing **personal injury** or **property damage** caused by fire, looting or theft.

In addition, this **policy** shall not cover **loss** or make any payment in connection with any **claim**:

- u) Additional penalties – For a penalty imposed on **you** in relation to: (i) a daily or ongoing **event** or offence to the extent that the penalty relates to the period of time after **you** first received notice of the prosecution or of the intention to commence the prosecution; or (ii) the cost or payment of any enforcement order, remedial order or compliance order; or (iii) the cost or payment of any tax (penalty or otherwise), interest, compliance costs, duty or other monetary obligation to Inland Revenue; or (iv) any damages or compensation, not part of a penalty, imposed by a tribunal or court of competent jurisdiction;
- v) **Bodily injury** – For **bodily injury**, sickness, disease, or death of any person, or infliction of emotional distress; provided that this exclusion does not apply to cover for **claims** made under the employers or general liability insuring clauses and extensions thereto;
- w) Indirect activities – For any **employee** engaged in any activity or occupation not directly part of **your business** unless **you** give prior written notice of such engagement to **us** and **we** signify **our** agreement to cover being extended by way of endorsement to the **policy** and the payment by **you** of such additional **premium** as **we** may require;
- x) Loss of use – For loss of use of any tangible property which has not been physically injured or **destroyed** resulting from:
 - i) A delay in or lack of performance by **you** or on **your** behalf of any contract or agreement; or
 - ii) The failure of **your products** to meet the level of performance, quality, fitness or durability express or implied, warranted or represented by **you**.

Provided that this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of **your products** after such products have been put to use by any person or organisation other than **you**;

- y) Personal injury (general liability) – Made under the general liability insuring clause for **personal injury** to any **employee** arising out of or in the course of his or her employment in the **business**. But this exclusion does not apply with respect to liability of others assumed by **you** under written contract;
- z) Personal injury legislation
 - A. In respect of **bodily injury** sustained by an **employee** which arises out of or in the course of their employment by **you**;
 - B. Imposed by the provisions of any:
 - i) Workers' compensation legislation or under any similar legislation;
 - ii) Accident compensation legislation or under any similar legislation;
 - iii) Industrial award, agreement or determination;
 - C. For any obligation for which **you** may be held liable under any worker's compensation law or under any similar law;
- aa) Product recall – For any cost or expense incurred or claimed for the withdrawal, inspection, repair, replacement, or loss of use of **your products** or of any property of which such products form a part, if such products, or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- bb) **Vehicles** – For **personal injury** or **property damage** caused by or arising out of the ownership, possession, use of or operation by **you** of any **vehicle** which is registered or in respect of which insurance is required by virtue of any legislation. Provided that this exclusion shall not apply to **your** liability for **personal injury** or **property damage** arising from:
 - a) The actual loading, unloading, delivery or collection of goods to or from any **vehicle**;
 - b) The use of any **tool of trade** either on any site where **you** are undertaking work or at **your premises**.

This proviso b) does not extend cover to the use of any **tool of trade**, whilst in transit or whilst being used for transport or haulage.

Conditions

Limit and Excess

Limit of liability

The total amount payable by **us** under this **policy** shall not, in the aggregate, exceed the **limit of liability**. **Sub-limits** of liability, extensions and **defence costs** are part of that amount and are not payable in addition to the **limit of liability** except for payments under the General Liability defence payments extension. The total amounts payable by **us** under any extensions subject to a **sub-limit** of liability shall not exceed the applicable amount specified as such for that extension. The inclusion of more than one person under this **policy** does not increase the total amount payable by **us** under this **policy**.

Excess

We will only pay for the amount of any **direct financial loss, loss** or payments under the General Liability insuring clause or any applicable extension which, after any applicable allocation, are above the **excess**. Nevertheless, the **excess** shall not apply to loss of an **insured person** that cannot be indemnified by the **company**. The **excess** applies to **defence costs** and must be borne by the **company** and shall remain uninsured. A single **excess** shall apply to **loss** arising from all claims alleging the same **direct financial loss, personal injury, or property damage**.

We will not defend any **claim** or **legal proceeding** or investigate any **claim** or **legal proceeding** arising from an **occurrence** after the exhaustion of the applicable **limits of liability** by the payment of **loss**.

Non-compliance

The amount of indemnity under this **policy** shall be reduced where **your** breach of, or non-compliance with, the terms and conditions of this **policy** prejudices the settlement or handling of a **loss** or claim, to such sum which in **our** opinion would have been payable by them without such prejudice.

Conditions: Claims

Advance payment of defence costs

Any payments advanced in respect of **defence costs** for which it is ultimately established **we** are not liable must be repaid by **you** and/or the **company**.

Bankruptcy or insolvency

The bankruptcy of any **insured person** or insolvency of the **company** shall not relieve **us** of any obligations under this **policy**.

Circumstances

You must, during the **period of insurance**, notify **us** of any circumstance reasonably expected to give rise to a claim. The notice must include the reasons for anticipating that claim, and full particulars as to dates, acts and persons involved.

Claims made & reported

Cover under this section for all insuring clauses and extensions other than for General Liability is afforded solely with respect to claims first made against **you** during the **period of insurance** that are reported to **us** as soon as practicable during the **period of insurance** or the discovery period, if applicable. All notifications must be addressed as required in the claims notice item in the **certificate of insurance** and reference the **policy** number.

Cover under the general liability insuring clause is afforded solely with respect to an **occurrence** happening during the **period of insurance** within the **territorial limits** which arises from and within the course of the **business** and provided that the action for damages is brought against **you** within the **territorial limits**.

Duties in event of general liability claim

Upon the happening of an **occurrence** which may give rise to a **claim** or **legal proceeding** under this **policy** you must:

- a) As soon as reasonably practicable-
 - i) Notify **us** of such **occurrence**;
 - ii) Provide in writing as required all particulars and information as **we** may request;
- b) Immediately-
 - i) On receipt forward to **us** every letter, claim, writ of **legal proceedings** or other document served on **you** or **your** representative;
 - ii) Notify **us** of any impending prosecution, inquest, fatal inquiry or proceedings in any court;
- c) As **we** may require-
 - i) Retain anything connected therewith;
 - ii) Provide all assistance;

- d) Promptly take at **your** own expense, all reasonable steps to prevent other **personal injury** or **property damage** arising out of the same conditions, but such expense shall not be recoverable under this **policy**.

You shall not:

- a) Make any admission of liability;
- b) Take any action which may be construed as an admission of liability;
- c) Repudiate or settle any claim or **legal proceeding**; or
- d) Waive any rights of recovery without **our** prior written consent.

We have the right to:

- a) Defend any claim or **legal proceeding** against **you**;
 - i) Take over and conduct the defence or settlement of any claim or **legal proceeding**;
 - ii) Prosecute for **your** own benefit any claim or **legal proceeding** for indemnity or damages or otherwise in **your** name;
- b) Have subrogation of all **your** rights of recovery against any person or organisation, whether before or after, indemnification by **us**;
- c) Exercise full discretion in the conduct of any **legal proceedings** and in the settlement of any claim or **legal proceeding**, whether before or after indemnification by **us**.

Your consent

We may settle any claim with respect to **you**, subject to **your** written consent.

Our consent

You shall not admit or assume any liability, enter into any settlement agreement, or consent to any judgment without **our** prior written consent. Only judgments resulting from claims defended in accordance with this **policy** shall be recoverable as a **direct financial loss** or **loss** under this **policy**.

Continuity

Notwithstanding the known or prior exclusion, cover is provided under this **policy** for any claim, or circumstance, which could or should have been notified under any earlier **policy**, provided always: (i) the claim, or circumstance, could and should have been notified after the **continuity date**; and (ii) the cover provided under this condition shall be in accordance with the provisions of the **policy** under which the claim, or circumstance, could and should have been notified. This condition applies to all insuring clauses other than the general liability insuring clause.

Defence/ settlement

You must, at **your** own cost, render all reasonable assistance to **us** and take all reasonable measures to mitigate **loss**. **You** shall defend and contest any claim made against **you**. **We** will be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve **us**. **We** may undertake investigations, conduct negotiations and with **your** written consent settle any **claim** or **legal proceedings** where settlement has been agreed to by the parties being indemnified or has been recommended by a senior counsel.

Determination of whether **our** settlement recommendations are reasonable

Should **you** wish to contest any **legal proceedings** which **we** want to settle, then **we** agree to the appointment, at **your** request, of a senior lawyer (to be mutually agreed upon by **you** and **us**, or in the absence of mutual agreement to be appointed by the president of the Law Society, or equivalent organisation, in the jurisdiction in which the **legal proceedings** were first served) to determine whether **our** settlement recommendation is reasonable. The senior lawyer shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of **you** successfully defending the action. The costs of the senior lawyer's opinion shall be borne by **us**.

Loss allocation

Where any **loss** is incurred in respect of any claim which arises from both covered matters and matters not covered by this **policy**, **our** liability under this **policy** is limited to the proportion of the **loss** which represents a fair and equitable allocation between **you** and **us**, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this **policy**.

Allocation disputes

If the parties are unable to agree, then the fair and equitable allocation is to be determined by a senior lawyer (to be mutually agreed upon by **you** and **us**, or in the absence of agreement, to be appointed by the President of the Law Society, or equivalent organisation, in the jurisdiction in which the **loss** was incurred). The senior lawyer is to determine the fair and equitable allocation as an expert, not as an arbitrator. **You** (or **your** designee) and **us** may make submissions to the senior lawyer. The senior lawyer is to take account of

the parties' submissions, but the senior lawyer is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgment and opinion. The senior lawyer's determination shall be final and binding. The costs of the senior lawyer's determination are to be borne by **us**.

For so long as the proportion of **defence costs** to be advanced under the **policy** remains not agreed and undetermined, **we** will advance the proportion of the **defence costs** which it considers represents a fair and equitable allocation. The fair and equitable allocation finally agreed or determined shall be applied retrospectively to any **defence costs** incurred prior to agreement or determination.

Loss mitigation

As soon as **you** discover a **direct financial loss** involving an identified **employee**, **you** must immediately take all necessary steps to prevent any additional **direct financial loss** being caused by the same identified **employee**. Any further **direct financial loss** caused by the same **employee** after the date of **discovery** will not be covered by this **policy**.

Preservation of right to indemnity

In the event and to the extent that the **company** is permitted or required to indemnify any **insured person** in respect of a claim, but for whatever reason fails or refuses to do so, then **we** will pay on **your** behalf any **loss** arising from such claim. In such event the **excess** applicable to directors and **officers** cover shall be paid by the **company** to **us**. In the event of the **company** being placed in liquidation (other than voluntary liquidation) no **excess** shall apply.

Recovery

This **policy** and any rights under it may not be assigned without **our** prior written consent. Upon payment, **we** will be subrogated to all **your** rights of recovery even if **you** have not been fully compensated for **your loss** and be entitled to pursue and enforce such rights in **your** name.

Related claims

If notice of a claim or circumstance is given as required by this **policy**, then any subsequent claim alleging, arising out of, based upon or attributable to the facts alleged in that claim or described in that circumstance notice shall be deemed first made against **you** and reported to **us** at the time the required notices were first provided. Any **claim** arising out of, based upon or attributable to continuous, repeated or related **statutory liability**, **personal injury**, or **property damage** shall be considered a single **claim**.

Related dishonest acts

Any **direct financial loss** resulting from a series of continuous, repeated or related **dishonest acts** shall be considered a single **direct financial loss**.

Basis of valuation

With respect to any **loss** which is covered under this **policy**, **we** are not liable for more than:

- (i) the actual market value of **securities**, **money** or precious metals at the close of business on the day the **loss** was **discovered** (determined by the value published in the New Zealand Herald), or the actual cost of replacing the **securities**, **money** or precious metals, whichever is less;
- (ii) the actual cash value of **other property** (not referred to in (i) above) at the close of business on the day the **loss** was **discovered**, or the actual cost of replacing the property with property of like quality or value, whichever is less;
- (iii) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by **you** in order to reproduce books of account and other records; or
- (iv) the cost of labour for the actual transcription or copying of **electronic data** furnished by **you** in order to reproduce such **electronic data**.

General Conditions: All Sections of the Policy

Alteration of risk

Upon **you** becoming aware of any change in the nature of occupation or other circumstances material to the risk of **loss** or damage, this insurance will cease in respect of the affected property unless and until the change is accepted by **us** in writing.

You shall notify **us** in writing within thirty (30) days of any material changes to the **business** description as stated in the proposal and declaration. **We** reserve the right to accept or deny coverage at the time of such notification and to establish a separate rate and **premium** for any such change in description of **business** as set forth in the **certificate of insurance**.

However, this insurance will not be prejudiced by:

- a) Such changes in the use or occupancy of the **premises** as are usual or incidental to **your business**;
- b) The performance of any structural alterations or repairs to **insured property**, providing the circumstances are reported to **us** in writing within a reasonable time after **you** become aware of them; and provided that **you** agree to pay a reasonable additional **premium** for the increased risk if so required by **us**;
- c) The cessation of operations or vacancy of any building for a period in excess of 30 consecutive days, providing the circumstances are reported to **us** within a reasonable time after **you** become aware of them; and provided that **you** agree to pay a reasonable additional **premium** for the increased risk if so required by **us**.

Assignment

This **policy** and any rights hereunder cannot be assigned without **our** prior written consent.

Authority

It is agreed that **you** act on behalf of all parties with respect to the exercise of all their rights and the discharge of all their duties in respect of this **policy**, including but not limited to:

- a) Negotiating the terms and conditions of cover;
- b) Binding cover;
- c) The notification of a **claim**, circumstance, **direct financial loss**, **legal proceeding** or **loss**;
- d) The giving and receiving of any notice of cancellation;
- e) The payment of **premium** and the receipt of any refund of **premium** that may become due;
- f) The payment of the **excess**;
- g) The negotiation and receipt of any endorsement;
- h) The appointment of lawyers to defend a **claim** or **legal proceeding** or **loss**;
- i) The receipt of amounts payable by **us** under this **policy**.

Cancellation

You may cancel this **policy** at any time by writing to **us**. **We** will refund 80% of **your** unused **premium**. **We** may cancel this **policy** at any time by writing to **your** postal address for this **policy** on **our** records. The letter will provide at least 14 days notice. **We** will refund **your** unused **premium**.

If **you** make a claim that is false or fraudulent in any way **we** may avoid **your policy** or cancel it effective immediately.

However, if any **claims**, **direct financial loss**, **legal proceedings** or **losses** have been notified to **us** during the relevant **period of insurance** and prior to the date of cancellation, no refund of **premium** shall be made to **you**.

Changes in the policy

You can have this **policy** altered at any time as long as **we** agree in writing to such alteration before it takes effect. **We** can, in exceptional circumstances, alter the terms of this **policy** by writing to **your** postal address for this **policy** on **our** records and the change will take effect 14 days after the date of that letter from **us**.

Compliance

You shall comply with all statutory requirements concerning the inspection of passenger lifts and steam pressure apparatus.

Cross liability

If **you** comprise more than one party, **we** will provide indemnity to each in the same manner and to the same extent as if a separate policy had been issued to each, provided that **our** total liability for liability sustained by any or all of the parties shall not exceed the **limit of liability** stated in the **certificate of insurance**.

Currency

All amounts under this **policy** are expressed and payable in New Zealand dollars. If judgment is given, settlement is made or other element of **loss** under this **policy** is stated in a currency other than New Zealand dollars, payment under this **policy** will be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars by the Reserve Bank of New Zealand on the date the final judgment is reached or in the event of a settlement, the date upon which the amount of the settlement is agreed upon.

Duties in the event of claim

If anything occurs which could give rise to a **claim** under this **policy**, **you** must:

- a) Notify **us** as soon as practicable;
- b) In respect of a business assets claim:
 - Promptly take all reasonable steps to prevent further loss or damage;
 - Inform the police as soon as possible if a criminal act is suspected;
 - Submit full particulars of the claim in writing to **us** as soon as practicable after any event from which a claim arises;
 - At **your** own expense, provide **us** with any reasonably required proof and information in respect of the claim.
- c) In respect of a business interruption claim:
 - Promptly take all reasonable steps to minimise any interruption or interference with the **business** or to avoid or diminish the loss;
 - If required, forward to **us** a statement in writing of the claim certified by an accountant with all particulars and details reasonably practicable, and produce and furnish all books of account and other **business** books, invoices, vouchers and other documents, proofs, information, explanations and other evidence and facilities as may be reasonably required for investigation and verification of the claim.

Enforceability, construction and conformance to statute

- a) If any provision contained in this **policy** is, for any reason, held to be invalid, illegal or unenforceable in any respect, it is hereby deemed to be severed and to have no effect on any other valid, legal and enforceable provision of this **policy**.
- b) If any provision contained in this **policy** is for any reason held to be invalid, illegal or unenforceable, it will be construed by limiting it so as to be valid, legal and enforceable to the extent compatible with applicable law.
- c) Any provisions of this **policy** which are in conflict with the **statutes** or **regulations** of the state or country wherein this **policy** is issued are hereby amended to conform to such **statutes** or **regulations**.

Fraud

If any **claim** under this **policy** is in any respect fraudulent or if any fraudulent means or devices are used to obtain any benefit under this **policy**, or if any loss, destruction or damage be occasioned by wilful act or with **your** connivance, all benefit under this **policy** shall be forfeited.

Governing law

Any interpretation of this **policy** relating to its construction, validity or operation shall be made in accordance with the laws of New Zealand. The parties agree to submit to the exclusive jurisdiction of the New Zealand courts.

GST

All amounts indicated in this **policy** and the attached **certificate of insurance** are exclusive of Goods and Services Tax where payable by law.

Headings and titles

The descriptions in the headings and titles of this **policy** are solely for reference and convenience and do not lend any meaning to this **policy**. Words in **bold** typeface have special meaning and are defined in the section – General Definitions: All Sections of the Policy. Words and expressions in the singular shall include the plural and vice versa. Words that are not specifically defined in this **policy** have the meaning normally attributed to them.

Inspection

We will be permitted but not obligated to inspect **your** property and operations at any time. Neither **our** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for **your** benefit or others, to determine or warrant that such property or operations are safe. **We** may examine and audit **your** books and records at any time during the **period of insurance** and extensions thereof and within three years after the final termination of this insuring agreement, as far as they relate to the subject matter of this insurance.

We may give **you** reports on the conditions that **we** find. **We** may also recommend changes. **We** do not, however, undertake to perform the duty of any person or organisation to provide for the health or safety of **your employees** or the public. **We** do not warrant the health and safety conditions of **you** or **your premises** or operations or represent that **you** or **your premises** or operations comply with laws, **regulations**, codes or standards.

Material facts

The truth of any statements and answers in any:

- a) **claim** form;
- b) proposal and declaration or underwriting information provided for the purpose of obtaining this insurance or any renewal or extension thereof;

Given to **us** by or on behalf of **you** shall be conditions precedent to any liability of **ours** to make payment under this **policy**.

New Zealand jurisdiction

All disputes arising out of or under this **policy** shall be subject to determination by any court of competent jurisdiction within New Zealand.

Non accumulation

Regardless of the number of years this **policy** shall continue in force, the number of **premiums** paid and irrespective of whether it is or may be renewed, the **limits of liability** as specified in the **certificate of insurance** shall not accumulate from year to year or from **period of insurance** to **period of insurance**.

Other insurance

If at the time of any **claim** or **occurrence** arising under this **policy**, there is other valid and collectable insurance covering all or part of the same loss, the insurance under this **policy** shall be excess insurance over and above the amount of liability covered under such other policy of indemnity or insurance and the **limits of liability** under this **policy** shall be reduced by an amount equal to the limits of liability afforded under such other policy.

Policy purchase

In granting **you** cover, **we** have relied upon all the information and documentation submitted to **us** in connection with the underwriting of this **policy** or any prior policy of which this **policy** is a renewal or a replacement or which it succeeds in time. Those documents and information form the basis of cover and shall be considered incorporated into and a part of this **policy**.

Reasonable precautions

You shall take all reasonable precautions to:

- a) Avoid or minimise loss or damage;
- b) Maintain all **premises**, fittings, appliances, machinery and electronic equipment in safe and sound condition;
- c) Maintain and keep operational all security, protective and warning equipment;
- d) Comply with all statutory regulatory or local authority requirements pertaining to the ownership, occupation and use of the property.

Reference to statute

In this **policy** references to any statutory provision are to be construed as references to that statutory provision as amended, supplemented, re-enacted, or replaced from time to time and are to include any orders, **regulations**, instruments or other subordinated legislation made under or deriving validity from that statutory provision.

Severability – proposal

In granting cover under this **policy** **we** have relied upon the declarations and statements which are contained in or constitute the written proposal and declaration together with its attachments and the other information supplied forming part of this **policy**.

Such written proposal and declaration together with its attachments and the other information supplied for coverage shall be construed as a separate proposal and declaration for coverage individually submitted by each **insured person**.

Severability – conduct

For the purpose of determining the applicability of the conduct exclusion, the **wrongful acts**, criminal, fraudulent, wilful or malicious act, error or omission, or any intentional or knowing violation of **statute** or law, or knowledge possessed by any **insured person** shall not be imputed to any other **insured person**.

Subrogation

In the event of a payment under this **policy** to **you** or on behalf of **you** **we** shall be subrogated to and/or receive assignment of all **your** rights of recovery against all persons and organisations and **you** shall execute and deliver any and all appropriate instruments and papers and do all that is necessary to assist **us** in the exercise of such rights including prosecuting proceedings in **your** name at **our** expense. Any such amount so recovered shall first be apportioned to pay **your excess** and secondly to reimburse **us** to the extent of **our** actual payment hereunder.

Validity

This **policy** shall not be binding upon **us** unless it is countersigned on the **certificate of insurance** by **our** authorised representative.

General Definitions: All Sections of the Policy

Term	Definition
Aircraft	Means a vehicle designed to be used primarily in the air and to be supported by the dynamic reaction of the air upon the vehicle's wings or rotor-blades, and/or by the vehicle's buoyancy in the air. The term aircraft, however, excludes missiles, spacecraft and the ground support or control equipment used therewith.
Aircraft Products	Means: <ol style="list-style-type: none"> Aircraft and any ground support or control equipment used therewith; Any insured product furnished by you and installed in aircraft or used in connection with aircraft; Any tooling used for the manufacture of (a) or (b) above; Any ground handling tools and equipment used in connection with (a) or (b) above including training aids, navigational aids, instruction or manuals; Blueprints, engineering or other data furnished by you in connection with (a), (b), (c) or (d) above; Any advice, service and/or labour furnished by you in connection with (a), (b), (c), (d) or (e) above.
Bodily Injury	Means bodily injury (including death), illness, disability, disease, shock, fright, mental anguish or mental injury.
Buildings	Means buildings, other structures and their appurtenances including but not restricted to the plant, fixtures, pipes and cables pertaining to any of them and located in or about the situation . Including fixed signs and lettering, tanks, poles, power lines and their supports, walls, gates, fences, landscaping, gardens, ornamental trees and shrubs, roads, paths, yards and the like.
Business	Means all your usual activities and operations as described in the certificate of insurance and includes: <ol style="list-style-type: none"> Your ownership, tenancy or occupation of premises; Private work carried out with your consent for any of your executive, partner or senior official by an employee; The provision or management of canteen, social or sports organisations for your employees; and The provision of your own internal fire, first aid, medical, security and ambulance services.
Business Hours	Means any hours during which you or any principal or any employee entrusted with the care, custody or control of money is on the premises for the purpose of your business .
Certificate of insurance	Means the certificate of insurance first issued to you or the current renewal certificate whichever applies and any endorsement certificates that have been added during the period of insurance .
Claim	Means any: (i) written complaint, proceeding or arbitration seeking damages or non-monetary relief; (ii) criminal charge; and (iii) official, written notice or other demand in connection with an investigation. For the general liability insuring clause, claim means a written demand, notice or other written communication received by you seeking a remedy and/or alleging liability or responsibility on your part for an occurrence covered by this policy .
Company	Means the entity specified in the certificate of insurance .
Computer Virus	Means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. Computer virus includes but is not limited to 'Trojan horses', 'worms' and 'time or logic bombs'.
Contents of Buildings	Means contents of buildings, chattels in the open or under shelter, tenant's improvements and all other tangible property not being buildings , stock in trade or other property . Including, where you are the tenant of the building, glass and other landlord's fixtures and fittings if you are responsible for insuring them and if their value is not included in the sum insured on buildings .
Continuity Date	Means the date specified in the certificate of insurance .
Credit Arrangement	Means any credit agreement, extension of credit or hire-purchase agreement, loan or transaction in the nature of a loan, lease or rental agreement, invoice, account, agreement or other evidence of debt.
Defence Costs	Means reasonable and necessary fees, costs and expenses incurred by or with our prior written consent in the defence, investigation (by or on behalf of you), adjustment, settlement or appeal of any claim against you for any personal injury (employers liability only), or statutory liability .
Destroyed	Means so damaged by an insured event that the property by reason only of that damage cannot be repaired.
Direct Financial Loss	Means direct financial loss caused by the loss of money , securities or other property : <ol style="list-style-type: none"> owned by the company; or in the care, custody or control of the company and for which the company is legally liable. <p>Direct financial loss does not include: (i) wages, salaries or other remuneration or benefits paid by the company to its employees and executives; (ii) complete or partial non-payment or default under any credit arrangement; or (iii) any costs, fees or other expenses incurred by you in prosecuting or defending any demand, claim or legal proceeding resulting from a direct financial loss which is covered under this policy.</p>

Term	Definition
Discovered / Discovery	Means when any executive (who is not in collusion with an employee who has or is attempting to commit a dishonest act) first becomes aware of any facts which would cause a reasonable person to assume that a direct financial loss which may be covered under this policy has been or is likely to be incurred, even though the exact amount or details of the direct financial loss are not known at the time the executive first became aware of such facts.
Dishonest Acts	Means any fraudulent or dishonest acts committed by an employee (acting alone or in collusion with others) with the principle intent to cause the company to sustain a direct financial loss and results in the employee making an improper financial gain for themselves or for any other individual or organisation intended by the employee to receive such gain.
Electronic Data	Means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.
Employee	Means any past, present or future full-time, part-time, seasonal and temporary employees who are not executives , auditors, consultants, secondees or agents; For the general liability insuring clause, employee includes: a) Any person hired or borrowed by you from another employer under an agreement by which the person is deemed to be employed by you ; b) Any person under a work experience or similar scheme while engaged and working under the direction and control of you in connection with and in the course of the business .
Equivalent Building	Means: a) A building or structure which is as nearly as practicable the same as the building or structure lost or destroyed , using currently equivalent materials and techniques and incorporating such alterations as are necessary to comply with any building or other regulations made under or framed in pursuance of any act of parliament or regulation or by-law of any local authority; b) Where, as a result of any special circumstances, no building or structure which falls within the scope of (a) can be constructed; a building or structure which is designed to perform a purpose of function the same as or equivalent to (but not more extensive than) that performed by the building or structure lost or destroyed ; c) Where as a result of any special circumstances, no building or structure which falls within the scope of (a) is suitable to your reasonable requirement, then, with our consent (which will not be unreasonably withheld), a building or structure which is designed to perform a purpose or function suitable to that requirement, but not more extensive than that performed by the building or structure lost or destroyed .
Equivalent Plant	Means any plant or equipment as nearly as practicable the same as or equivalent to the plant or equipment lost or destroyed , having regard to the current state of technology, and having an equivalent capacity to that of the lost or destroyed plant or equipment but not greater capacity unless plant or equipment with an equivalent capacity is not available and the replacement plant or equipment has the nearest equivalent capacity.
Event	Means any act or omission within the territorial limits which may result in the violation of a statute .
Excess	Means the amount of any claim which you must bear. The excess applies to each and every event that results in a claim. Where you discover damage caused on multiple occasions then an excess will be applied in relation to each occasion or event that occurred. Where an automatic extension specifies an excess, that excess will apply over and above any other excess in your policy or in the certificate of insurance . The amounts are shown in the certificate of insurance and/or in this wording.
Executive	Means any natural person who is a past, present or future: (i) duly elected or appointed director or trustee (other than a trustee of an Insolvent entity); (ii) executive officer or senior manager; or (iii) any other person with duties equivalent to those of the positions listed in (i) or (ii) above.
Financial Loss	Means a) A pecuniary or economic loss or expense; b) A decrease greater than 30% of the total consolidated annual revenues of the company as at the end of the company's last financial year.
Fungus(i)	Includes, but is not limited to, any of the plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including moulds , rusts, mildews, smuts and mushrooms.

Term	Definition
Gross Profit	Means the amount by which the sum of the turnover and the amount of the closing stock shall exceed the sum of the amount of the opening stock and the amount of the uninsured working expenses . Note: <ol style="list-style-type: none"> 1. The amount of the opening and closing stocks shall be arrived at in accordance with your normal accounting methods, due provision being made for depreciation. 2. The words and expressions used in the definition shall have the meaning usually attached to them in your books and accounts.
Gross Rentals	Means the money paid or payable to you by tenants in respect of rental of the premises .
Grounding	Means the withdrawal of one or more aircraft from flight operations or the imposition of speed, passenger or load restrictions on such aircraft , by reason of the existence of or alleged or suspected existence of any defect, fault or condition in such aircraft or any part thereof sold, handled or distributed by you or manufactured, assembled or processed by any other person or organisation according to your specifications, plans, suggestions, orders or drawings or with tools, machinery or other equipment furnished to such persons or organisations by you , whether such aircraft so withdrawn are owned or operated by the same or different persons, organisations or corporations. A grounding will be deemed to commence on the date of an occurrence which discloses such condition or on the date an aircraft is first withdrawn from service on account of such condition, whichever occurs first.
Hovercraft	Means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.
Incidental Contracts	Means: <ol style="list-style-type: none"> a) Any written agreement for lease of real or personal property which does not impose upon you: <ol style="list-style-type: none"> i) An obligation to insure such property; or ii) Any liability regardless of fault; b) Any written contract with any entity for the supply of water, gas or electricity but only to the extent of indemnifying any such entity in respect of liability arising out of the business other than contracts for the performance of work or provision of services by you.
Indemnity Period	Means the period beginning with the occurrence of the insured damage and ending not later than the number of months specified in the certificate of insurance during which the results of the business shall be affected in consequence of the insured damage .
Injury	Means a bodily injury to an insured person resulting from an accident caused by violent, external and visible means and occurring solely and directly and independently of any other cause including any pre-existing physical or congenital, provided the injury: <ol style="list-style-type: none"> a) Occurs on or after the insured person's inception date of individual insurance, and b) Results in any of the events specified in the certificate of insurance within 12 calendar months from the date of such injury.
Insured Contract	Means that part of any contract or agreement pertaining to your business under which you assume the tort liability of another party to pay for personal injury or property damage to a third person or organisation. However, the personal injury or property damage must arise out of an occurrence that takes place subsequent to the execution of the insured contract. Tort liability means a liability that would be imposed by law upon the other party in the absence of any contract or agreement.
Insured Damage	Means that damage insured under Sections One and Two of this policy
Insured Event	Means cover under Sections One and Two of this policy
Insured Person	Means any executive or any employee of any company .
Insured Property	Means buildings, contents of buildings , stock in trade, or other property not expressly excluded all being your own or held by you jointly or in trust or on commission, for which you are legally responsible, is located at the situation , and is specified in the certificate of insurance of sums insured.
Legal Proceedings	Means litigation , arbitration, mediation, adjudication or any other process of dispute resolution.
Limit of Liability	Means the amount specified in the certificate of insurance .
Litigation	Includes, but is not limited to, any civil, criminal, administrative or regulatory proceeding as well as any official investigation, examination, inquiry, arbitration or adjudication.

Term	Definition
Loss	<p>Means:</p> <ul style="list-style-type: none"> (i) compensatory damages; and (ii) legal costs and expenses of a plaintiff; and (iii) penalties; (iv) punitive and exemplary damages (for the employers liability insuring clause and general liability extension only) <p>That any insured person is legally obligated to pay under the terms of: (a) a final judgment entered against you; or (b) a settlement negotiated by or pre-approved in writing by us.</p> <p>Loss includes defence costs, but does not include: (i) fines or penalties (with the exception of any penalties under iii) above); (ii) taxes; (iii) employment-related compensation or benefits; (iv) internal or overhead expenses of any insured person or any company; (v) the cost of complying with non-monetary damages or relief; (vi) matters which may be deemed uninsurable under applicable law; or (vii) punitive and exemplary damages.</p>
Machine	Means any contrivance for the conversion and direction of motion or energy, or for the performance of any electronic process, and includes any protective device in connection with that contrivance.
Medical Persons	Means any medical doctor, medical nurse, dentist and first aid attendant.
Money	Means current local or foreign currency, coins, bank notes, cheques, travellers cheques, registered cheques, unused postage stamps, redeemable vouchers and tokens, bank drafts, money orders, franking machine credits, and other negotiable instruments.
Mould(s)	Includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce moulds.
Occurrence	<p>Means an event, including continuous or repeated exposure to substantially the same general conditions, which results in personal injury or property damage neither expected nor intended from your standpoint.</p> <p>All events of a series consequent on or attributable to one source or original cause shall be deemed one occurrence.</p>
Officer	Means any employee who is concerned in, or takes part in, the management of the company regardless of the name that is given to their position.
Other Property	Means other property more particularly described in the certificate of insurance .
Output	Means the sale value and/or internal transfer value as between departments insured hereby, of finalised goods and/or partially processed materials or goods of any and every description.
Permanent	Means lasting 12 consecutive months and at the end of that period being beyond hope of improvement.
Personal Injury (Employers Liability)	<p>Means, for the employers liability insuring clause:</p> <ul style="list-style-type: none"> a) Bodily injury, sickness or disease including death resulting from bodily injury, sickness or disease; and b) Disability shock, mental anguish or injury; sustained by an employee arising out of or in the course of their employment with you within the territorial limits. <p>For the purposes of this policy disease shall be sustained when the employee is first exposed to conditions in New Zealand out of which the disease being the subject of the claim arose.</p>
Personal Injury (General Liability)	<p>Means, for the general liability insuring clause:</p> <ul style="list-style-type: none"> a) Bodily injury; b) False arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation; c) Libel, slander, defamation of character or invasion of privacy; and d) Assault and battery not committed by or at the direction of you unless committed for the purpose of preventing or eliminating danger to persons or property.
Policy	Means this policy together with any certificate of insurance and endorsement and proposal and declaration issued by us attached or intended to be attached to it.
Period of insurance	Means the period of insurance specified in the first issued certificate of insurance or if renewed the period of insurance specified in the renewal certificate of insurance , or any shorter period arising as a result of cancellation of this policy .
Pollutant	Means but is not limited to any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to, smoke, vapour, soot, fibres, mould , spores , fungus , germs, fumes, acids or alkalis of any sort, chemicals and waste. Waste includes but is not limited to, material to be recycled, reconditioned or reclaimed.
Premises	<p>Means</p> <ul style="list-style-type: none"> a) The premises specified in the certificate of insurance; and b) The interior portion of any building or property owned or occupied by the company as a place to conduct its business.

Term	Definition
Premium	Means the annual premium in effect immediately prior to the end of the period of insurance .
Pressure Vessel	Means a vessel which, in normal use, is subject to generated or applied fluid pressure.
Principal	Means any of your executives , but only in their capacity as such.
Production Process	Means any process of producing, making, treating or servicing goods.
Products Hazard	Means personal injury or property damage arising out of your products or reliance upon a representation or warranty made at any time with respect thereto, but only if the personal injury or property damage occurs away from premises owned by, leased to, rented to or occupied by you and after physical possession of such products has been relinquished to others.
Property Damage	Means: <ul style="list-style-type: none"> a) Physical injury to or destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; 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 injury to or destruction of other tangible property.
Rate of Gross Profit	Means the rate of gross profit earned on the turnover during the financial year immediately before the date of the insured damage .
Regulations	Means building or other regulations made under or framed in pursuance of any Act of Parliament or regulation or by-law of any local authority.
Reinstatement	Means: <ul style="list-style-type: none"> a) Where property is lost or destroyed, its replacement by an equivalent building or by equivalent plant as the case may require; b) Where property is damaged but not destroyed, the restoration of the damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new.
Residential Property	Means that property that is covered by sections 18 and 20 of the Earthquake Commission Act 1993.
Retroactive Liability Date	Means the date specified in the certificate of insurance .
Securities	Means any negotiable or non-negotiable instruments or contracts representing money or other property including but not limited to shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.
Shortage in Turnover	Means the amount by which the turnover during a period shall in consequence of insured damage fall short of the part of the standard turnover which related to that period.
Site	Means any parcel of land owned or occupied by you .
Situation	Means the location or locations referred to in the certificate of insurance .
Spore(s)	Means any dormant or reproductive body produced by or arising or emanating out of any fungus(i) , mould(s) , mildew, plants, organisms or micro-organisms.
Standard Gross Rentals	Means the gross rentals during that period in the twelve months immediately before the date of insured damage which corresponds with the indemnity period ; to which such adjustments shall be made as may be necessary to provide for the trend of the business and for variations in or other circumstances affecting the business either before or after insured damage or which would have affected the business had insured damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for insured damage would have been obtained during the relative period after insured damage .
Standard Turnover	Means the turnover during that period in the twelve months immediately before the date of the insured damage which corresponds with the indemnity period ; to which such adjustments shall be made as may be necessary to provide for the trend of the business and for variations in or other circumstances affecting the business either before or after the insured damage or which would have affected the business had the insured damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the insured damage would have been obtained during the relative period after the insured damage .
Statute	Means any Act of the New Zealand Parliament other than an excluded Act. Statute also includes any amendment to or re-enactment of those Acts, and any regulations or other subordinate legislation made under those Acts.
Statutory Liability	Means liability for penalties for an event .
Sub-Limit	Means the amount specified in the certificate of insurance . Any specified sub-limit forms part of, and is not payable in addition to, the limit of liability .
Sum insured	Means the amount specified in the certificate of insurance .

Term	Definition
Territorial Limits	Means anywhere in New Zealand.
Terrorism	Means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority or military force, when the effect is to intimidate or coerce a government, the civilian population or any segment thereof, or to disrupt any segment of the economy. Terrorism shall also include any act which is verified or recognised by the government of any country in which you operate or export products into, as an act of terrorism.
Tool of Trade	Means any equipment, instruments, tools, devices, machinery, whilst such equipment is being used in the normal course or scope of a person's profession, trade or occupation.
Turnover	Means the money paid or payable to you for goods sold and delivered and for services rendered in course of the business at the premises .
Undamaged	Means not damaged physically and directly by an event insured under Section One of this policy .
Uninsured Working Expenses	Means all expenses subtracted in the annual calculation of insured gross profit for the purpose of premium adjustments (which are not insured under item 1).
Vehicle	Means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.
War	Means war, whether declared or not, or any war-like activities including use of military force by any sovereign nation to achieve economic, geographic, nationalistic, political, racial, religious or other ends. War includes any act of war, civil war, invasion, insurrection, and revolution, use of military power or usurpation of government or military power.
Watercraft	Means any vessel or watercraft made to or intended to float on or in or travel on or through or under water.
We / us / our	Means TOWER Insurance Limited.
Wrongful Act	Means any actual or alleged wrongful act, error or omission by any: <ul style="list-style-type: none"> (i) executive of a company; (ii) employee of a company; or (iii) company.
You / your	Depending on the context in which it is used in this policy , means: <ul style="list-style-type: none"> a) The entity as listed in the certificate of insurance; b) An insured person; For general liability, in addition to a) and b) above, also means: <ul style="list-style-type: none"> c) If you are an individual, your spouse, but only with respect to the conduct of a business of which you are the sole owner; d) If you are an individual and die, your legal representative but only with respect to the legal representatives duties in administering or undertaking your business; e) Your partners, executives, employees, shareholders or volunteers while acting within the scope of their duties on behalf of your business; f) Any person or organisation to whom you are obligated by a written insured contract to provide insurance such as is afforded by this policy, but only with respect to their liability arising out of operations conducted by you or on their behalf and not to any greater extent than required by the contract or agreement; and g) Any office bearer or member of social and/or sporting clubs formed with your written consent in respect of claims arising from duties connected with activities of any such club. Cover shall not apply to personal injury to or property damage of any participants of any game, match, race, practice or trial.
Your products	Means any goods or products (after they have ceased to be in your possession or under your control) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, treated, imported, exported, produced, processed, assembled, erected, installed, repaired, serviced, sold, supplied or distributed by you . Insured products includes any packaging or containers, designs, formulae or specifications thereof, directions, instructions or advice given or omitted to be given in connection with such things other than a vehicle or vending machine.

How to make a claim

It is important that **you** tell **us** immediately **you** become aware of any circumstances which may give rise to a claim. If **you** are asked to fill in a claim form, **we** must receive the completed claim form within 30 days.

For claims assistance Freephone **0800 808 808**

How we will look after your claim

Once **we** receive advice of **your** claim **we**:

- will acknowledge that **we** have received it and ask **you** for any further information or assistance **we** may require to enable **us** to consider **your** claim;
- may appoint an assessor or field officer to look after **your** claim.

If you have a concern

While **we** make every effort to get things right, problems may sometimes occur. **We** have a complaints procedure in place that is intended to resolve any problem quickly and fairly. In order to avoid delay in solving a problem to **your** satisfaction, please follow the steps below:

1. In the first instance call:

TOWER Insurance
Freephone **0800 808 808**

2. If TOWER Insurance is unable to resolve the problem, **you** may make a formal complaint to:

Manager: Complaints Investigation and Resolution
TOWER New Zealand
22 Fanshawe Street
PO Box 90347 Auckland

Freephone **0800 808 808**
Facsimile (09) 369 0546

3. If the complaint has been through all the steps above and **you** are still dissatisfied, **you** may then ask the Insurance and Savings Ombudsman to arbitrate, provided **your** complaint falls within their terms of reference.

TOWER Tailored Business Policy



Contact us

Call 0800 808 808
Or visit www.tower.co.nz