



Excess Liability Insurance

Policy Wording



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Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited, ABN 13 000 296 640 (ZAIL incorporated in Australia) trading as Zurich New Zealand. In this policy wording, Zurich New Zealand may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurer that serves its customers in global and local markets. Zurich provides a wide range of general insurance and life insurance products and services in more than 210 countries and territories. Zurich's customers include individuals, small businesses, and mid-sized and large companies, including multinational corporations.

Duty of Disclosure

Before the *insured* enters into a contract of general insurance with us, the *insured* has a duty at common law to disclose to us every matter they know, or could reasonably be expected to know, that a prudent insurer would want to take into account in deciding whether to insure the *insured* and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

The *insured* has the same duty to disclose those matters to us before they renew, extend, vary or reinstate a contract of general insurance. This duty however, does not require disclosure of a matter that:

- diminishes the risk to be insured;
- is of common knowledge;
- we know or in the ordinary course of our business we ought to know;
- we indicate to the *insured* that we do not want to know.

Non-disclosure or Misrepresentation

If the *insured* makes material misrepresentation to us, or if you do not comply with the duty of disclosure we may treat your policy as if it never existed.

Our contract with you

This policy is a contract of insurance between the *insured* and Zurich and contains all the details of the cover that we provide.

This policy is made up of:

- the policy wording. It states what is covered, sets out the claims procedure, Exclusions and other terms and conditions of cover;
- the *submission* which is the information you provide to us when applying for insurance cover;
- the most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to the *insured*, which shows the insurance details relevant to the *insured*. It includes any changes, Exclusions, terms and conditions made to suit the individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the policy *schedule* are insured. Please keep the policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

Excess Liability Insurance

In consideration of the *insured* having paid or agreed to pay the premium, Zurich, on the basis of all information provided to us, agrees with the *insured* to provide insurance as follows, subject to the provisions of this policy and on the basis that this policy shall not be in force unless it has been signed by an authorised Zurich official.

1. Insuring Clause

Zurich shall indemnify the *insured* for loss in excess of and after all *underlying insurance* has been exhausted by payment of any *compensation* and shall then apply in accordance with the Terms, Conditions, Exclusions and Endorsements of the *primary policy*, together with all Limitations, Restrictions or Exclusions contained in or added by Endorsement to any other *underlying insurance*, except as specifically set forth in the Terms, Conditions and Endorsements of this policy.

This policy shall not provide broader coverage than would be provided by any of the reduced or exhausted *underlying insurance*; except as otherwise expressly stated and/or agreed to in this policy.

2. Extensions of Cover

2.1 Step Down Clause

If an aggregate Limit of Liability for an *underlying insurance* is partially or totally exhausted by reason of *compensation* paid or payable by *underlying insurers* and for which indemnity is provided under this policy, Zurich will, subject to the Terms and Conditions of the *primary policy*, in the event of:

- 2.1.1 partial exhaustion: pay the excess of the reduced Limits of Liability for the *underlying insurance*; or
- 2.1.2 total exhaustion: treat this policy as the *underlying insurance*, and on the basis that this policy shall only pay excess of any *deductible* or *self insured retention* specified for the *underlying insurance*, for the remainder of the *period of insurance* stated in the *schedule*.

In the event of partial or total exhaustion of an aggregate Limit of Liability for an *underlying insurance* by reason of *compensation* outside the scope of the indemnity provided by this policy, then such *compensation* will be deemed not to have exhausted the aggregate Limit of Liability of the *underlying insurance* for the purposes of this policy.

This policy does not indemnify the *insured* in respect of any liability which is the subject of any Sub-Limit in any *underlying insurance* specified in the *schedule* of this policy.

2.2 Costs Clause

2.2.1 If the *underlying insurers* invoke their right to pay *costs* and *expenses* pursuant to the *underlying insurance* for which they are responsible up to the time of such payment, then Zurich may agree to pay for further *costs* and *expenses* for which the *underlying insurers* would have been liable had they not invoked such right.

2.2.2 In the event of a *claim* or *claims* for which there is indemnity under this policy, then provided:

- (a) the *primary policy* indemnifies the *insured* for *costs* and *expenses*; and
- (b) Zurich has agreed to incur *costs* and *expenses* under this policy,

then Zurich will pay a proportion of such *costs* and *expenses* in the ratio that the amount of indemnity payable under this policy (excluding *costs* and *expenses*) bears to the total sum payable by the *insured* (excluding *costs* and *expenses*) in the settlement of such *claim* or *claims* after making proper deduction for all recoveries and salvages whether recovered or not.

3. Definitions

When used in this policy, its *schedule* and its Endorsements, the following definitions shall apply:

3.1 Act of Terrorism

act of terrorism means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

3.1.1 involves violence against one or more persons;

3.1.2 involves damage to property;

3.1.3 endangers life other than that of the person committing the action;

3.1.4 creates a risk to health or safety of the public or a section of the public; or

3.1.5 is designed to interfere with or to disrupt an electronic system.

3.2 Claim

claim has the same meaning in this policy as the same or equivalent definition or understanding in the *primary policy*.

3.3 Compensation

compensation has the same meaning in this policy as the same or equivalent definition or understanding in the *primary policy*.

3.4 Costs and Expenses

costs and *expenses* has the same meaning in this policy as the same or equivalent definition or understanding in the *primary policy*.

3.5 Deductible

deductible means the Deductible specified in the *schedule*.

3.6 Insured

insured means the Insured named in the *schedule*.

3.7 Occurrence

occurrence has the same meaning in this policy as the same or equivalent definition in the *primary policy*.

3.8 Period of insurance

period of insurance means the Period of Insurance specified in the *schedule* of the *primary policy*, and any subsequent extension agreed to in writing between Zurich and the *insured*.

3.9 Primary policy

primary policy means the first layer of insurance cover specified in the *schedule* and issued in respect of the same risk as this policy.

3.10 Schedule

schedule means the Schedule attaching to and forming part of this policy, including any Schedule substituted for the original Schedule.

3.11 Self Insured Retention

self insured retention means the Self Insured Retention specified in the *schedule*.

3.12 Silica

silica means silicon dioxide, (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

3.13 Silica related dust

silica related dust means a mixture or combination of silica and other dust or particles.

3.14 Underlying Insurance

underlying insurance means all other insurance policies as specified in the *schedule* which attaches before this policy.

3.15 Underlying Insurers

underlying insurers means the insurers issuing:

3.15.1 the *primary policy* specified in the *schedule*; and

3.15.2 any underlying excess policy specified in the *schedule* providing indemnity in excess of the *primary policy*, up to the Limits of Liability specified in the *schedule*.

4. Exclusions

Zurich will not be liable under this policy in respect of:

4.1 Asbestos

any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from asbestos or asbestos products or asbestos contained in any products.

However, this Exclusion does not apply to actual or alleged loss, cost, expenses or liability where such loss, cost, expense or liability is not related to asbestos content of goods, materials or products or completed operations.

4.2 Silica

any liability directly or indirectly caused by, or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, actual, alleged, threatened or suspected inhalation or absorption of *silica* or *silica related dust*.

4.3 War, Act of Terrorism, Radioactivity

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

4.3.1 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;

4.3.2 any *act of terrorism*;

4.3.3 any order of any Government, Public or Local Authority involving the confiscation, nationalisation, requisition, damage or destruction of any property unless such destruction was undertaken to reduce the spread of fire; or

4.3.4 radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion. However this shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

This policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to the above.

5. General Conditions

5.1 Action against Zurich

Zurich shall not be liable unless the *insured* has complied fully with all provisions of this policy nor until the amount of *compensation* has been finally determined, either by judgment against the *insured* or by written agreement with the *insured*, the claimant and Zurich.

The *insured* shall make a definite *claim* for which Zurich may be liable within a reasonable time after such final determination.

5.2 Appeals

If the *insured's* Underlying Insurer elects not to appeal a judgment in excess of the *insured's* Retained Limit, Zurich may do so at its own expense. Under no circumstances will Zurich's liability for the ultimate net loss exceed the applicable limit of liability, plus the taxable costs, disbursements and interest incidental to such appeal.

5.3 Cancellation

5.3.1 The *insured* may cancel this policy at any time by giving notice in writing to us.

5.3.2 Zurich may cancel this policy at any time by giving notice in writing to the *insured*, such cancellation to take effect within 30 days from the time of notification received by the *insured*.

5.3.3 Upon cancellation by the *insured* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*;

5.3.4 Upon cancellation by Zurich, a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

5.4 Change in Risk

Every change materially affecting the facts or circumstances existing at the commencement of or during the course of this policy, or at any subsequent renewal date, shall be notified to Zurich as soon as such change comes to the *insured's* notice. Zurich reserves the right to accept or deny coverage at the time of such notification and to establish a separate rate and premium for any such coverage.

5.5 Claims assistance and cooperation

The *insured* must assist and cooperate with Zurich fully and promptly in relation to a *claim*, including:

5.5.1 supplying us with all information and assistance we may reasonably require;

5.5.2 allowing us to negotiate, defend or settle the *claim*:

(a) in the *insured's* name and on the *insured's* behalf; or

(b) in the name of and on behalf of any other party covered by the *insured's* policy.

5.5.3 sending to us any *claim*, writ, summons, or full details of other relevant legal or other proceedings such as an impending prosecution or inquest you receive or becomes aware of; and

5.5.4 as far as possible, preserve any product, appliance, plant or other items which might prove necessary or useful as evidence until Zurich has had an opportunity of inspection.

5.6 Control of claims

5.6.1 The *insured* shall not, without Zurich's written consent, admit or repudiate liability, negotiate or make any offer, promise or payment in connection with any *claim*.

5.6.2 Zurich shall be entitled, but not obligated, to take over and conduct in the *insured's* name, the defence or settlement of any *claim*, or to prosecute in the name of the *insured* at its own expense and for its own benefit any *claim*, for indemnity or damages or otherwise against any persons, and shall have full discretion in the conduct of any proceedings and in the settlement of any *claim*.

5.6.3 The *insured* shall give all such information and assistance as Zurich may require.

5.7 Discharge of any liability

Zurich may at any time pay the Limits of Liability (after deduction of sum or sums already paid), or any lesser sums for which any *claim* or *claims* can be settled, and shall then be under no further liability in respect thereof except for the payment of *costs* and *expenses* incurred prior to such payment.

In the event of a *claim* or series of *claims* arising from an *occurrence* resulting in liability of the *insured* to pay a sum in excess of the Limits of Liability, Zurich's liability for such *costs* and *expenses* shall not exceed an amount being in the same proportion as Zurich's payment bears to the total payment made by or on behalf of or to be made by the *insured* in satisfaction of the *claim* or *claims*.

5.8 Fraud

If any *claim* upon this policy be in any respect fraudulent, or if any fraudulent means or devices be used by the *insured*, or if any damage be occasioned by a wilful act of the *insured* or with their connivance, all benefit under this policy shall be forfeited and the policy void.

5.9 Headings

Headings have been included for ease of reference, but do not form part of the policy.

5.10 Inspection and audit

Zurich shall be permitted but not obligated to inspect the *insured's* property and operations at any reasonable time. Neither our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of an *insured* or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation.

Zurich may examine and audit the *insured's* books and records at any time during the *period of insurance* and within three years after the final termination of the policy, as far as they relate to the subject matter of this insurance.

5.11 Liability not to be admitted

The *insured* shall not admit liability for or offer to or agree to settle any *claim* without Zurich's written consent. Zurich shall be entitled to take over and defend, any *claim* with full discretion in the conduct of that *claim*.

5.12 Maintenance of Underlying Insurance

The *underlying insurance* specified in the *schedule*, shall be maintained in force as valid collectible insurance during the currency of this policy, except for any reduction of the aggregate limits contained therein solely by reason of payment of *claims*.

Failure to comply with the foregoing or bankruptcy or insolvency of any of the *underlying insurers* shall not invalidate this policy but in the event of such circumstances, Zurich shall be liable only to the extent that it would have been liable had such circumstances not existed during the *period of insurance*.

The *insured* shall give Zurich written notice as soon as practicable of any change in the scope of coverage or in the amount of limits of insurance in the *underlying insurance* and of the termination of any coverage or exhaustion or likely exhaustion of aggregate limits of any *underlying insurance*.

5.13 Notice and proof of claim

Upon the discovery of any personal injury, or property damage loss or circumstance giving rise or which may give rise to a *claim* (whether or not the *insured* believes the *claim* amount might fall below the applicable *deductible* or *self insured retention*) under this policy, the *insured* shall:

5.13.1 give notice in writing to Zurich as soon as practicable after the *insured* becomes aware of such loss or circumstance and within 30 days thereafter provide, at the *insured's* own expense, a written statement detailing all relevant information;

5.13.2 advise of the cause and the amount of loss and any other proof or information with respect to the *claim* that may be reasonably required;

- 5.13.3 furnish to us details of any other insurance covering or which may cover the same loss;
- 5.13.4 take reasonable steps to prevent further loss; and
- 5.13.5 at all reasonable times permit us or its agents to inquire into, investigate and examine the circumstances of any loss.

5.14 Payments in respect to Goods and Services Tax

All sums insured in this policy (except for the *deductible*) exclude GST where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to claim payments. However, this does not apply to the *deductible* which is GST inclusive.

5.15 Proper law and jurisdiction

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with New Zealand law.

In the event of any dispute arising under this policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, the *insured* will submit to the exclusive jurisdiction of any competent Court in New Zealand.

A reference to any statute, regulation or subordinate legislation includes any amendment, replacement, successor or equivalent to or of that statute, regulation or subordinate legislation.

5.16 Reasonable precautions

It is a condition precedent to Zurich's liability under this policy that the *insured* shall, at its own expense:

- 5.16.1 take, and cause to be taken, reasonable precautions to prevent personal injury, property damage and/or advertising liability;
- 5.16.2 comply with all statutory or local authority law, obligations and requirements or equivalent;
- 5.16.3 to prevent the manufacture, sale or supply of defective products; and
- 5.16.4 the *insured* shall at its own expense withdraw, inspect, repair, replace, trace, recall or modify any of the products containing any defect or deficiency of which the *insured* has knowledge or has reason to suspect.

5.17 Sanctions regulation

Notwithstanding any other terms or conditions under this policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any *insured* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.

5.18 Subrogation

Zurich waives all rights of subrogation under this policy against:

- 5.18.1 any corporation or organisation the majority of whose capital stock is owned or controlled by the *insured*.
- 5.18.2 any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this policy, except that if such corporation, organisation or person is protected from such loss by any other policy of indemnity or insurance, Zurich's right of subrogation is not waived to the extent and up to the amount of such other policy.

5.19 Valuation and foreign currency

All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in New Zealand currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of loss under this policy is stated in a currency other than New Zealand dollars, payment under this policy shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars as reported in the National Business Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

5.20 Waiver of privilege

If we instruct any lawyer to investigate or defend any claim against any *insured*, the *insured* authorises the lawyer to provide us with any documents, information or advice in respect of the claim, including in relation to indemnity, and the *insured* waives any privilege to the extent necessary to give full effect to our entitlement in this respect.

Zurich Australian Insurance Limited

(incorporated in Australia)

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