



# Carriers Liability Insurance Policy Wording

Effective date: 01 January 2025

360TLCLIV125



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# Carriers Liability Insurance Policy Wording

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# About this Booklet



## Introduction

Thank you for choosing TLC Insurance Limited to provide you with your insurance cover.

Arranging insurance means you are making a legal contract under which you promise to meet certain obligations and conditions, and in return we promise to provide specified insurance cover.

The obligations, memoranda, warranties, exclusions, extensions and conditions in this contract are subject to your rights under the *Insurance Law Reform Acts 1977 and 1985*.

Words starting with a capital and shown in **bold** are words that have had their meaning defined. These meanings are found in the definitions section of this **Policy** or on the **Schedule** of this **Policy**. Any word or expression to which a specific meaning has been given will have the same meaning wherever it appears.

Please examine this document, including the **Schedule**, to ensure the insurance protection is in accordance with your requirements. If it does not meet your requirements, or you wish to make changes to the insurance cover, please contact your insurance broker, adviser or TLC Head Office.

## Carriers Liability

THIS **POLICY** OF INSURANCE confirms that in return for payment of the premium shown in the **Schedule**, we have agreed to insure you, in accordance with the details shown in the **Schedule** in conjunction with this **Policy** wording.

In accepting this Insurance, the Underwriters have relied on the information and statements that you have provided on the Proposal Form (or subsequent renewal declaration). you should carefully read this **Policy** wording and the **Schedule** attached hereto, and if it is not correct please contact us. It is an important document and you should keep it in a safe place with all other papers relating to this Insurance.

This **Policy** of Insurance is issued by TLC Insurance Limited in accordance with the authority granted to them by AIG Insurance New Zealand Limited.

## How To Make a Claim

For all claims enquiries, you can contact TLC:

Freephone. 0800 TLCCLAIMS (0800 852 524)  
Email. [claims@tlcinsurance.co.nz](mailto:claims@tlcinsurance.co.nz)

You can download a Carriers Liability Claim Form from our website: <https://360uw.co.nz/tlc-insurance/>

## For Further Information

Our knowledge, expertise and experience are always available to your broker and you. If you need any further information about this **Policy**, or any other product or service we provide, then contact your broker or TLC Insurance Limited at:

Post. PO Box 7006, Tauranga 3148  
Phone. +64 7 544 6686  
Freephone. 0800 TLC INS (0800 852 467)  
Email. [info@tlcinsurance.co.nz](mailto:info@tlcinsurance.co.nz)  
Website. [360uw.co.nz](http://360uw.co.nz)

# General Information for Your Carriers Liability Insurance Policy Wording

**exclaim**

## Complaint Handling Process

If you are not happy, we want to know so that we can help.

Our goal is to have loyal and happy customers. We want our customers to be completely satisfied in all dealings with us. TLC is committed to:

- + listening to what our customers and brokers tell us
- + being accurate and honest in telling customers and brokers about our products and services
- + communicating clearly with our customers and brokers, and
- + resolving any customer complaints or concerns.

This is part of our commitment to the *Fair Insurance Code*.

You can provide feedback or raise a complaint via the following methods:

### Phone

If you have a complaint, please preferably phone the number on the back of your **Policy** wording or call us on one of the numbers below weekdays 8.30am to 5.00pm. Here you can discuss Your concern with one of our team members.

Phone. +64 7 544 6686  
Freephone. 0800 TLC INS (0800 852 467)

### Writing or By Email

Send us the full details of your complaint, including any support documents and explain what you would like us to do. Mail to:

Post. PO Box 7006, Tauranga 3148  
Email. [info@tlcinsurance.co.nz](mailto:info@tlcinsurance.co.nz)

### In Person

If you would like to come in to talk to us face to face, please call and we will arrange an appointment for a meeting.

Phone one of the numbers below for an appointment.

Phone. +64 7 544 6686  
Freephone. 0800 TLC INS (0800 852 467)

Alternatively, you can provide feedback directly to AIG at [www.aig.co.nz/home/contact-aig/complaints-and-feedback](http://www.aig.co.nz/home/contact-aig/complaints-and-feedback) or via email at [customerfeedbacknz@aig.com](mailto:customerfeedbacknz@aig.com)

## TLC Complaint Procedure

If you make a complaint we will:

1. record your complaint
2. make sure your concerns are addressed as quickly as possible and seek to achieve a fair outcome for both parties
3. treat your complaint respectfully and handle all personal information in accordance with our privacy policy
4. assess your complaint upon receipt
5. acknowledge your complaint and give you the name and contact details of the person handling your complaint.
6. respond to your complaint as soon as possible and after we have all the information we need to determine your complaint

If we cannot resolve your complaint to your satisfaction through our internal dispute resolution process you can take your complaint to Financial Services Complaints Limited (FSCL), AIG's independent external dispute resolution scheme as the selected dispute resolution scheme required under the terms of the *Financial Service Providers (Registration and Dispute Resolution) Act 2008*.

Contact details as below:

Post. Financial Services Complaints Ltd  
PO Box 5967  
Wellington, 6101  
New Zealand  
Phone. 0800 347 257  
Email. [info@fscl.org.nz](mailto:info@fscl.org.nz)  
Website. [www.fscl.org.nz](http://www.fscl.org.nz)

# Carriers Liability Insurance Policy Wording

In consideration of the payment of the premium and in reliance on the declaration and any other underwriting information provided, which will be deemed to be incorporated into and be the basis of the **Policy**, and subject to the provisions of this **Policy**, the **Insurer** will indemnify the **Insured** as follows:

## Section 1: Insuring Clauses And Extensions

### 1.1 Limited Carriers Risk

The **Insurer** will indemnify the **Insured** for all sums the **Insured** becomes legally liable as a Carrier to pay for **Loss** or damage to **Goods** occurring during a **Transit** which commences within the **Policy Period**, where the **Goods** are carried at "Limited Carrier's Risk" as defined in the **Act**.

## Automatic Extensions

The cover provided by this **Policy** is extended as detailed below. This cover is subject to the terms and conditions of this **Policy**. Each of the following Extensions apply only if the Insuring *Clause 1.1* applies as well.

### 1.2 Consequential Loss

The cover provided by this **Policy** extends to include any liability of the **Insured** which is described in section 259(3) (c) of the **Act**, provided it is a liability for consequential loss that is a direct result of the **Loss** or physical damage to the **Goods**.

All payments made under this Extension will be subject to a limit of NZ\$100,000 per **Transit** and NZ\$200,000 in the aggregate during the **Policy Period**, in addition to the **Limit of Indemnity**.

### 1.3 Contamination

The cover provided by this **Policy** extends to include the reasonable costs of removing foreign matter deposited onto or infiltrated into the **Goods** during the **Insured's** period of responsibility by possession or contractual obligation for the **Goods**.

All payments under this Extension will be subject to a limit of NZ\$50,000 per **Transit** and NZ\$100,000 in the aggregate during the **Policy Period**, in addition to the **Limit of Indemnity**.

### 1.4 Employee Breach of Driving Licence Requirements

The cover provided by this **Policy** extends to include any sums which the **Insured** becomes legally liable to pay for

**Loss** or damage to **Goods** which arises out of a **Carrying Vehicle** being driven by an **Employee** while the driver is:

1.4.1 under the influence of any intoxicating liquor or any drug; or

1.4.2 in breach of the driver licensing requirements for the operation of the **Carrying Vehicle**, including not having a current and valid motor driver's licence required to drive the **Carrying Vehicle**,

provided that the **Insurer** is satisfied that:

1.4.3 the **Insured** and/or the driver's management had no prior knowledge that the **Carrying Vehicle** was being or would be driven in these circumstances; and

1.4.4 the driver had no knowledge of the existence of this clause prior to the **Transit**.

### 1.5 Expediting Expenses

The cover provided by this **Policy** extends to include additional costs properly and reasonably incurred by the **Insured** in forwarding any surviving **Goods** following **Loss** or damage to their New Zealand destination.

All payments under this Extension will be subject to a limit of NZ\$100,000 per **Transit** and NZ\$200,000 in the aggregate during the **Policy Period**, in addition to the **Limit of Indemnity**.

### 1.6 Litigation Costs and Expenses

The cover provided by this **Policy** extends to include all reasonable legal costs and/or expenses incurred with the **Insurer's** prior written consent, which consent will not be unreasonably withheld or delayed, in connection with any claim for which the **Insured** is entitled to be indemnified by this **Policy** or would be so entitled.

Provided that the **Insurer** shall not pay any costs and expenses in respect of any **Loss** or damage to **Goods** covered by this **Policy** after the **Insurer** has paid amounts under this **Policy** up to the **Limit of Indemnity**.

All payments under this Extension will be subject to a limit of NZ\$100,000 per **Transit** and NZ\$200,000 in the aggregate during the **Policy Period**, in addition to the **Limit of Indemnity**.

### 1.7 Saving life or property in peril

The **Insurer** will not rely on section 260(2)(d) of the **Act** to avoid liability unless specifically requested by the **Insured**.

## Optional Extensions

Coverage is only provided for the following Extensions where these are shown on the **Schedule** as included. This cover is subject to the terms and conditions of this **Policy**.

### 1.8 Dangerous Goods or Hazardous Substances

The **Insurer** will indemnify the **Insured** for all sums the **Insured** becomes legally liable as a **Carrier** to pay arising out of the **Carriage of Dangerous Goods or Hazardous Substances** if specified as included on the **Schedule**, occurring during a **Transit** which commences within the **Policy Period**. The **Excess** specified on the **Schedule** will apply.

### 1.9 Declared Value and/or Declared Terms Contracts

The **Insurer** will indemnify the **Insured** for all sums the **Insured** becomes legally liable as a **Carrier** to pay pursuant to **Contracts of Carriage** at "Declared Value" or on "Declared Terms" in accordance with the **Act**, occurring during a **Transit** which commences within the **Policy Period** provided that:

- 1.9.1 before carrying **Goods** under any contract:
- a. the **Insured** has first provided the **Insurer** with a copy of the contract;
  - b. the **Insurer** has agreed with the terms of the contract and offers to provide coverage for this additional exposure; and
  - c. the **Insured** accepts in writing the terms, conditions and additional premium required by the **Insurer** for the coverage, and
- 1.9.2 if any additional premium is payable, the **Insured** pays the additional premium when due.

All payments under this Extension will be subject to the limit specified on the **Schedule** for Declared Value or Declared Terms, as applicable. The **Excess** specified on the **Schedule**, as applicable, will apply.

### 1.10 Livestock

The **Insurer** will indemnify the **Insured** for its legal liability arising out of the **Carriage of Livestock** if specified as included on the **Schedule**. The **Excess** specified on the **Schedule** will apply.

The cover provided by this **Policy** extends to include all reasonable costs and expenses necessarily incurred in the event of a **Carrying Vehicle** accident or overturning for the:

- 1.10.1 mustering of the **Livestock** at the scene of the accident; and
- 1.10.2. **Loss of Livestock** due to wandering from the scene of the accident; and
- 1.10.3. vet costs associated with euthanising **Livestock** at the scene of the accident.

All payments under *Extensions 1.10.1, 1.10.2 and 1.10.3* will be subject to a limit of NZ\$1,000 per animal and NZ\$25,000 in the aggregate during the **Policy Period**. Payments under this Extension are part of and not in addition to the **Limit of Indemnity** specified on the **Schedule**.

### 1.11 Valuable Cargo

The **Insurer** will indemnify the **Insured** for its legal liability arising out of the **Carriage of Valuable Cargo** if specified as included on the **Schedule**. The **Excess** specified on the **Schedule** will apply.

## Section 2: Definitions

- 2.1 **Act** means the *Contract and Commercial Law Act 2017* or any amending or replacing legislation.
- 2.2 **Actual Carrier, Carriage, Carrier, Contracting Carrier, Contracting Party, Contract of Carriage, Goods, Loss, Successive Carrier and Unit**, all have the same meaning as is given to each of them in the **Act**.
- 2.3 **Carrying Vehicle** means any ship, vessel, aircraft, rail, road or other method of transport utilised to carry the **Goods**.
- 2.4 **Dangerous Goods** means those substances, articles or receptacles to which the current Land Transport Rule: *Dangerous Goods 2005* (or any amending or replacing legislation) applies, whether or not being transported by land.
- 2.5 **Employee(s)** means any person employed, hired or borrowed by the **Insured** in connection with the business activities covered by this **Policy**, including any trainee or person on work experience, or consultant under a contract of service with the **Insured** or supplied to the **Insured** by any employment agency or self-employed persons providing the **Insured** with labour only; regardless of whether the persons are employed full or part-time or whether employment is of a permanent or temporary nature.
- 2.6 **Excess** means the amount specified on the **Schedule**.
- 2.7 **GST** means Goods and Services Tax as defined in the *Goods and Services*



*Tax Act 1985*, or any amending or replacing legislation.

- 2.8 Hazardous Substance** has the meaning given to it in the *Hazardous Substances and New Organisms Act 1996* or any amending or replacing legislation.
- 2.9 Health Hazard** means any product, compound, derivation, phenomenon, process or formula including waste, by-product, noise, smell or vibration whether or not processed, produced or manufactured by the **Insured** which whether by ingestion, inhalation, absorption or in any other manner, causes illness, diseases, incapacity or death of any person consequent upon his or her exposure to the aforesaid, over a period of time, whether continuous or intermittent.
- 2.10 Insured** means the **Policyholder** and:
- 2.10.1** any subsidiary company of the **Policyholder** including subsidiaries thereof or any other entity controlled by the **Insured** and over which the **Insured** assumes active management by:
- a. owning an interest of an entity representing more than 50% of the power to manage or control said entity, including the power to elect, appoint or designate a majority of the board of directors or equivalent executives of such entity; or
  - b. having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an entity, to elect, appoint or designate a majority of the board of directors or equivalent executives of the entity;
- 2.10.2** any director, **Employee**, partner of the **Insured**, but only whilst acting within the scope of the duties in that capacity;
- 2.10.3** any person, principal, organisation, trustee or estate to whom the **Insured** is obligated by virtue of a written contract to provide insurance as is afforded by this **Policy**, but only to the extent required by the contract and in any event only for the cover and **Limits of Indemnity** as provided in the **Policy**; and

**2.10.4** each company and organisation acquired during the **Policy Period** or over which the **Policyholder** takes active management control during the **Policy Period**, provided that the **Insurer** is advised in writing of the acquisition or assumption of active management control within 30 days of the acquisition or assumption.

- 2.11 Insurer** means AIG Insurance New Zealand Limited.
- 2.12 Left Unattended** means that neither the driver nor any person accompanying the driver of any **Carrying Vehicle** (whether any of those persons is the **Insured** or not) is in the **Carrying Vehicle** and the **Carrying Vehicle** is either out of the direct line of sight of all persons, or at a distance from persons that they are unable to intervene to provide interference with the **Carrying Vehicle** or any **Goods** in it.
- 2.13 Limit of Indemnity** means the amount specified on the **Schedule**.
- 2.14 Livestock** means cattle, sheep, horses and similar farm animals which are the subject of a **Contract of Carriage**.
- 2.15. Policy** means this policy wording, the **Schedule** and any Endorsement attaching to and forming part of the **Policy** either at commencement or during the **Policy Period**. In the event of any conflict between the **Policy** and the **Schedule**, the **Schedule** will take precedence.
- 2.16 Policyholder** means the entity or natural person specified on the **Schedule**.
- 2.17 Policy Period** means the duration of the **Policy** as specified on the **Schedule** unless the **Policy** is cancelled in which event the **Policy Period** will end on the effective date of cancellation. Insurance will apply to **Transits** which commence no earlier than the beginning of the **Policy Period** and no later than the end of the **Policy Period**.
- 2.18 Schedule** means the **Schedule** attached to and forming part of this **Policy**.
- 2.19 Transit** means the period of time from the point where the **Insured** first takes possession of the **Goods** for the purpose of loading onto the **Insured's Carrying Vehicle** for transportation to the consignee at another destination, provided that the **Carrying Vehicle** leaves the consignor's warehouse or premises within 72 hours of the **Insured** taking possession of the **Goods** for the

purposes of transportation, failing which the **Loss** and damage arising from that **Transit** is not regarded as a **Transit** covered by this **Policy**.

**Transit** continues until either:

- 2.19.1 completion of unloading and final delivery to the consignee at their warehouse or premises;
  - 2.19.2 interruption of the normal course of transport at the election of the **Insured's** customer for the purposes of storage, allocation or distribution; or
  - 2.19.3 delivery of the **Goods** to the receiver or another responsible party as agreed with the consignor or consignee, whichever is earlier.
- 2.20 **Valuable Cargo** includes bullion, precious metal objects, precious stones, precious jewellery, bank notes, coins, bonds, negotiable instruments or securities of any kind, valuable works of art, wines, spirits, tobacco and tobacco products.

## Section 3: Exclusions

This **Policy** will not cover the Insured's legal liability for Loss or damage to **Goods** directly or indirectly caused by, resulting from, attributable to, arising out of or in any way connected with:

### 3.1 Carrying Vehicle

The **Carrying Vehicle** being driven:

- 3.1.1 in an unsafe condition and of which the **Insured** or any authorised driver is aware, or ought to have been aware, prior to the **Transit**;
- 3.1.2 by a person while under the influence of intoxicating liquor or drugs as prescribed by the *Transport Act 1962* or any amending or replacing legislation;
- 3.1.3 in breach of the driver licensing requirements for the operation of the **Carrying Vehicle**, including not having a current and valid motor driver's licence required to drive the **Carrying Vehicle**;
- 3.1.4 loaded to a weight, height or width in excess of the manufacturer's specification;

except to the extent provided in *Automatic Extension 1.4 (Employee Breach of Driving License Requirements)*.

### 3.2 Conduct

Any **loss** or damage intentionally caused by the **Carrier**.

### 3.3 Cyber Risk

The use or operation, as a means of inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.

### 3.4 Declared Value and/or Declared Terms Contracts

Any actual or alleged liability or other obligation assumed or accepted by the **Insured** under any verbal or written contract or agreement, except to the extent provided in *Optional Extension 1.10 (Declared Value and/or Declared Terms Contracts)* if this cover is shown on the **Schedule** as included.

This Exclusion does not apply to liability incurred by the **Insured** in respect of the **Contracts of Carriage** at "Limited Carrier's Risk", under Section 248(2)(d) of the **Act**.

### 3.5 Fines and penalties

Any fine or penalty imposed upon the **Insured** or any punitive or exemplary damages awarded against the **Insured**.

### 3.6 Goods not covered (unless otherwise agreed)

- 3.6.1 **Dangerous Goods** or **Hazardous Substances**, except to the extent provided in *Optional Extension 1.9 (Dangerous Goods or Hazardous Substances)* if this cover is shown on the **Schedule** as included;
- 3.6.2 **Valuable Cargo**, except to the extent provided in *Optional Extension 1.12 (Valuable Cargo)* if this cover is shown on the **Schedule** as included;
- 3.6.3 household goods and personal effects;
- 3.6.4 goods owned or leased by the **Insured** or **Employees** of the **Insured** or goods used by the **Insured** for personal, domestic or household purposes; or
- 3.6.5 **Livestock** except to the extent provided in *Optional Extension 1.11 (Livestock)* if this cover is shown on the **Schedule** as included.

### 3.7 Governmental Actions

Confiscation, requisition, or destruction of or damage to **Goods** by order of any government or local authority.

### 3.8 Infectious or Contagious Disease

The actual or suspected presence or threat of any virus, organism or like substance that is capable of inducing disease, illness, physical distress or death to any humans, animals or plants, whether infectious or otherwise, including but not limited to any epidemic, pandemic, influenza, or any outbreak of a virus or disease affecting humans, animals or plants, or any derivative or mutation thereof. This includes, but is not limited to, the human coronavirus, SARS-CoV-2, which causes the disease COVID-19.

### 3.9 Insolvency

The insolvency of the **Insured**.

### 3.10 Liability Assumed

Liability or other obligation assumed or accepted by an **Insured** under the terms of a **Contract of Carriage** except to the extent covered by *Automatic Extension 1.2 (Consequential Loss)*.

### 3.11 Mechanical Failure

Mechanical, electrical or electronic derangement, except to the extent covered by *Insuring Clause 1.1* but not any of the *Extensions 1.2 - 1.12*.

### 3.12 Nature of Goods

- 3.12.1 inherent vice or nature of the **Goods**;
- 3.12.2 any process of maturing or aging, except to the extent covered by *Insuring Clause 1.1* but not any of the *Extensions 1.2 - 1.12*;
- 3.12.3 corrosion, rust, rot, mould, mildew, fungi, or deterioration due to lack of use, aesthetic defects, atmospheric conditions, the action of light or any other gradually operating cause.

### 3.13 Nuclear

- 3.13.1 nuclear weapons material;
- 3.13.2 radiation or contamination by radioactivity from any material or nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel. For the purposes of this exclusion combustion will include any self-sustaining process of nuclear fission;
- 3.13.3 the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof, including, but not limited to, any use of material or nuclear fuel, assembly or component in conjunction with any act of terrorism; or
- 3.13.4 a chemical, biological, biochemical or electromagnetic weapon.

### 3.14 Pollution and Health Hazards

3.14.1 pollution, contamination and/or pollution clean-up costs, or any fines or penalties, howsoever incurred, including, but not limited to, any liability, costs, expenses, fines or penalties arising as a result of any law, statute, regulation, ordinance, order, or other requirement of law;

3.14.2 a **Health Hazard**,

except to the extent provided in *Automatic Extension 1.7 (Removal of Debris)*.

### 3.15 Sanctions

The Insurer shall not be deemed to provide cover and the Insurer shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer, its parent company or its ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or **Regulations** of New Zealand, Australia, the European Union, United Kingdom or the United States of America.

### 3.16 Storage

The **Goods** while stored in any warehouse, depot, premise, store, holding yard, pen or similar holding or storage facility, other than **Goods** in the normal course of **Transit**.

### 3.17 Theft and Fraud

- 3.17.1 theft by the **Insured** or by any of the **Insured's Employees**, agents or representatives; or
- 3.17.2 any fraudulent scheme or device or false pretence practised on the **Insured** or on any other person or entity having care, custody or control of the **Goods**, unless notified to the Police within seventy-two (72) hours of the **Insured** becoming aware of the **Loss**.

### 3.18 Unexplained Disappearances

Unexplained disappearances, shortages revealed only after the taking of any inventory, or shortages due to clerical or accounting errors.

### 3.19 Vermin and Other Pests

Vermin, insects or any other pest of any kind.

### 3.20 War and Terrorism

Any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, strikes, lockouts, labour disturbances, riots, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order

of, any governmental, public or local authority or any political or terrorist organisation for the purposes of instilling fear into a civilian population.

## Section 4: Claim Conditions

### 4.1 Co-operation

4.1.1 the **Insured** and the **Insured's** agents will:

- a. render all reasonable assistance to the **Insurer** and co-operate in the investigation and settlement of any claim under this **Policy**;
- b. use due diligence and take such measures as may be reasonable for the purposes of averting or minimising a **Loss** and to ensure that all rights against the **Contracting Carrier(s)**, the **Actual Carrier(s)** and **Successive Carrier(s)** or other third parties are properly preserved and exercised;
- c. in the event of **Loss to Goods**, immediately clause all consignment notes, bills of lading or air waybills accordingly;
- d. report any theft, fraud, dishonesty, attempted theft or malicious damage to the police as soon as practicable and obtain a crime event report reference or identifier;
- e. provide the following claims documentation promptly:
  - I. a completed and signed claim form;
  - II. a copy of statement of claim/letter of claim made by the claimant against the **Insured**;
  - III. any response made by the **Insured**;
  - IV. an original delivery docket signed by the receiver of any **Goods** delivered by the **Insured**;
  - V. a legible copy of any relevant consignment note (both sides)
  - VI. a legible copy of the relevant bill of lading or airway bill (both sides), if applicable
  - VII. a copy of any relevant commercial invoice and packing list;
  - VIII. a copy of any statement of claim/letter of claim made by the **Insured** against any other **Carrier**/sub-contractor; and
  - IX. photographs of damage, if available.

4.1.2 the **Insured** waives all claims to legal professional privilege between themselves and any solicitor retained by the **Insurer** to act on the **Insured's** behalf in relation to any claim to the extent that the **Insured** will allow the solicitor to disclose to the **Insurer** any information obtained in the course of the solicitor's duties.

### 4.2 Defence and Settlement

- 4.2.1 as a condition precedent to the right to be indemnified under this **Policy**, the **Insured** (and any person, firm, or company acting for or on behalf of the **Insured**) will not incur any legal costs and expenses, admit liability for, compromise, settle or make any offer or payment in respect of any **Loss** or damage to **Goods** or claim or other matter for which cover is provided under this **Policy** without the **Insurer's** prior written consent, which consent is not to be unreasonably withheld or delayed, provided the **Insurer** is entitled to exercise all of its rights under the **Policy**.
- 4.2.2 in any case where a claim has been made against the **Insured** and the **Insured** is, or may be, entitled to claim contribution or indemnity from another **Carrier**, the **Insured** must do all things necessary and take all appropriate steps to preserve or enable the pursuing of recovery, including by complying in all respects with the provisions of sections 274 - 277 of the **Act** requiring the giving of notice and particulars either as they appear in that section or, where any **Carrier** has either wholly or partly contracted out of sections 274 - 277 of the **Act**, in the manner provided for in that **Carrier's** terms and conditions of trade.
- 4.2.3 the **Insured** will defend any claim brought against the **Insured**; however the **Insurer** will have the right but not the duty to take over the investigation, defence and settlement of any claim, and the **Insurer** will have full discretion in the handling and resolution thereof (notwithstanding that a dispute may have arisen between the **Insured** and the **Insurer**).
- 4.2.4 the **Insured** will not be required by the **Insurer** to contest any legal proceedings against the **Insured** unless a Queen's Counsel (to be mutually agreed upon by the **Insurer** and the **Insured** and in the absence of agreement to be determined by the President of the New Zealand Law Society), advises that the proceedings can be contested with a reasonable prospect of success. The costs of that advice will be borne by the **Insurer** and will be in addition to the cover for legal costs and expenses set out in *Automatic Extension 1.6 (Litigation Costs and Expenses)* and in addition to the **Limit of Indemnity**.

- 4.2.5 if the **Insured** does not agree with the decision by the **Insurer** to settle a claim, the **Insured** can elect to contest the claim at its own expense but the liability of the **Insurer** will not exceed the amount for which the claim could have been settled in the opinion of a Queen's Counsel (to be mutually agreed upon by the **Insured** and the **Insurer** and in the absence of agreement to be determined by the President of the New Zealand Law Society). The costs of that advice will be borne by the **Insurer** and will be in addition to the cover for legal costs and expenses set out in *Automatic Extension 1.6 (Litigation Costs and Expenses)* and in addition to the **Limit of Indemnity**.

The **Insurer** will pay all legal costs and expenses (subject to the sub limit specified in *Automatic Extension 1.6 (Litigation Costs and Expenses)*) incurred up to the date the **Insured** notifies the **Insurer** in writing of its election under this Condition of the **Policy**, and will pay the **Insured** (subject to any **Excess**) the amount for which the claim could have been so settled. The **Insured** expressly agrees that the **Insurer's** liability in respect of that claim will then be at an end.

### 4.3 Fraudulent Claims

If any **Insured** claims cover for any liability under this **Policy** knowing that claim to be false or fraudulent in regards to the amounts or otherwise, or uses fraudulent devices to advance what is otherwise a valid claim, that claim will be excluded under the **Policy**, and the **Insurer** will have the right to cancel the **Policy** and to be reimbursed by the **Insured** for all payments made in connection with that claim.

### 4.4 Mutually Acceptable Adjusters

Where the **Insurer** wishes to appoint a loss adjuster, assessor, or surveyor in respect of any claim lodged under this **Policy** by the **Insured** named in the **Schedule**, the appointee is to be mutually acceptable to the **Insurer** and the **Insured**.

### 4.5 Notification of Claims

- 4.5.1 the **Insured** must, as a condition precedent to the obligations of the **Insurer** under this **Policy**, give written notice to the **Insurer** as soon as practicable of any **Loss** or damage to **Goods**, fact, matter, event or circumstances which may give rise to a claim under this **Policy**.
- 4.5.2 all notifications must be in writing and addressed via the **Insured's** insurance broker or to the **Insurer** as specified in the **Schedule**.

### 4.6 Progress Claim Payments

- 4.6.1 in the event of the **Insured** incurring liability giving rise to a claim under this **Policy**, the **Insurer** will, at the request of the **Insured**, make progress claim payments on submission by the **Insured** of complete

substantiation documentation for as much of the **Loss** as is verified at the time the request is made, provided the **Insurer** is satisfied with the documentation provided.

- 4.6.2 No progress claim payment will be made under this clause until the amount of **Loss** is known to exceed the amount of any **Excess** set out on the **Schedule**, as applicable to the claim. The **Excess** will be deducted from the first progress claim payment made. The **Insured's** right to full indemnity under this **Policy** in respect of the liability will not be prejudiced by acceptance of a progress claim payment.

## Section 5: General Conditions

### 5.1 Alteration to Risk

The **Insured** must notify the **Insurer** in writing as soon as practicable of any material alteration to the risk covered by this **Policy** that occurs during the **Policy Period**, including but not limited to any change in the nature of or cessation of the **Insured's** business. Following receipt of that notice, the **Insurer** will have the right to either:

- 5.1.1 exclude coverage for this additional exposure by issuing an Endorsement to this **Policy** specifically excluding that exposure; or
- 5.1.2 offer to provide coverage for this additional exposure by issuing a quote to the **Policyholder** for that coverage.

However, the coverage will be provided only if the **Policyholder**:

- 5.1.3 provides the **Insurer** with full particulars of the event(s), as requested by the **Insurer**, that materially alters the risk covered by this **Policy**; and
- 5.1.4 accepts in writing the terms, conditions and additional premium required by the **Insurer** for the coverage; and
- 5.1.5 pays the additional premium when due.

### 5.2 Authorisation

The **Policyholder** will act as agent on behalf of all **Insureds** with respect to all matters under this **Policy** including:

- 5.2.1 the giving and receiving of all correspondence regarding this **Policy**;
- 5.2.2 the giving of notice of any claim, circumstance or other matter;
- 5.2.3 the sending or receiving of notice of cancellation;
- 5.2.4 the payment of the premium; and
- 5.2.5 the receipt and acceptance of any Endorsements attaching to and forming part of this **Policy**.

### 5.3 Cancellation

- 5.3.1 the **Policyholder** may cancel the **Policy** at any time by notifying the **Insurer** in writing stating the effective time of the cancellation, provided that date is at least 30 days after the date the notice is given.
- 5.3.2 the **Insurer** may cancel the **Policy** at any time by sending 30 days' notice in writing to the **Policyholder** of the date from which cancellation is to take effect. That notice may be delivered personally, posted, emailed or faxed to the **Policyholder** or the representative last notified to the **Insurer**.
- 5.3.3 on cancellation of this **Policy**, the **Insurer** will retain the proportion of the premium calculated pro-rata up to the date of the cancellation, unless a claim has been paid.

### 5.4 Excess

- 5.4.1 unless paragraph 5.4.2 or 5.4.3 below applies, the amount specified on the **Schedule** as the **Excess** applies to all claims under this **Policy**.
- 5.4.2 the amount specified on the **Schedule** as the Specified Peril **Excess** applies where:
  - a. the **Insured's** liability for damage to **Goods** has arisen as a result of any **Loss** or damage to **Goods** caused by fire, collision or overturning of the **Insured's Carrying Vehicle**; and
  - b. the claim is not otherwise excluded by the terms of this **Policy**.
- 5.4.3 the amount specified on the **Schedule** as the Declared Value and/or Declared Terms **Excess** applies where *Optional Extension 1.10 (Declared Value and/or Declared Terms Contracts)* is shown on the **Schedule** as Included and cover is provided under that Optional Extension.
- 5.4.4 the above **Excesses** are the first amount for all claims arising out of any one **Transit** which is to be borne by the **Insured** and will remain uninsured. If multiple **Excesses** apply to any one claim under this **Policy**, the **Insurer** will only apply the highest **Excess**.

### 5.5 Goods & Services Tax

- 5.5.1 where, upon receiving any indemnity payment under this **Policy**, the **Insured** is liable to pay tax under section 5(13) of the *Goods and Services Act 1985* or any amending or replacing legislation, the **Insurer** will indemnify the **Insured** for the amount of that tax.
- 5.5.2 all amounts indicated in this **Policy** and **Schedule** are inclusive of Goods and Services Tax.

### 5.6 Innocent Non-Disclosure and Material Non-Disclosure

- 5.6.1 the **Insurer** will not exercise its right to avoid this **Policy**, nor will the **Insurer** reject a request for indemnity solely on the grounds of non-disclosure in the declaration or a breach of the notice provisions in *Claims Condition 4.5 (Notifications of Claims)* provided that:
  - a. the **Insured** establishes to the **Insurer's** reasonable satisfaction that the non-disclosure or breach was free of any fraudulent conduct or intent to deceive; and
  - b. if the non-disclosure or breach has resulted in prejudice to the **Insurer** in the handling or settlement of any claim or request for indemnity, the indemnity afforded by this **Policy** in respect of the claim or request for indemnity will be limited to the sum as would have been payable, in the **Insurer's** reasonable opinion, by the **Insurer** in the absence of the prejudice.
- 5.6.2 in consideration of the **Insurer** waiving its right to avoid this **Policy** in accordance with *General Condition 5.6.1*, and in the event of a material non-disclosure in the declaration, the **Insurer** will be entitled in its sole discretion **I.** to determine the amount of any additional premium to be paid by the **Insured** and **II.** charge the additional premium to the **Insured**.
- 5.6.3 if the **Insurer** becomes entitled to avoid this **Policy** from inception or from the time of any variation in cover, the **Insurer** may at its discretion maintain this **Policy** in full force but exclude the consequences of and any claim relating to any matter which ought to have been disclosed before inception or any variation in cover.

### 5.7 Inspection

The **Insurer** is entitled to inspect any premises, plant, works, machinery, **Carrying Vehicles** and electronic equipment used in the **Insured's** business at any time subject to the **Insurer** providing the **Insured** with reasonable notice of the inspection. If required by the **Insurer**, the **Insured** must provide the **Insurer** with any reasonable information relating to any **Carrying Vehicle**.

## 5.8 Jurisdiction

This **Policy** is governed by the laws of New Zealand whose Courts have exclusive jurisdiction in any dispute regarding this **Policy** or the interpretation of it.

## 5.9 Limit of Indemnity

- 5.9.1 the total amount payable by the **Insurer** under this **Policy** will not exceed the applicable **Limit of Indemnity** in respect of any one **Transit**.
- 5.9.2 sub-limits of indemnity and any amounts specified in the *Insuring Clauses and Extensions* are part of and not payable in addition to the **Limit of Indemnity**, except where specifically stated within *Automatic Extensions 1.2 (Consequential Loss)*, *1.3 (Contamination)*, *1.5 (Expediting Expenses)*, *1.6 (Litigation Costs and Expenses)* and *1.7 (Removal of Debris)*.
- 5.9.3 the inclusion of more than one **Insured** under this **Policy** does not operate to increase the total amount payable by the **Insurer** under this **Policy**.

## 5.10 Other Insurance

Insurance as is provided under this **Policy** will apply only as excess over any other valid and collectible insurance.

## 5.11 Plurals, 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 contract. Words and expressions in the singular will include the plural and vice versa. In this **Policy** words in bold typeface have special meaning and are defined. Words that are not specifically defined in this **Policy** have the meaning normally attributed to them.

## 5.12 Premium

Where the premium is provisionally based on the **Insured's** estimates, the **Insured** will keep accurate records and after expiry of the **Policy Period** declare as soon as possible the details which the **Insurer** requires, and the premium will be adjusted and any difference paid by the **Insured**.

## 5.13 Reasonable Care

The **Insured** must take all reasonable actions and/or precautions, and comply with all of the **Insurer's** reasonable requirements, to:

- 5.13.1 prevent or minimise damage or liability;
- 5.13.2 maintain all business premises, fittings, appliances, machinery, plant, motor vehicles and electronic equipment in safe and sound condition;
- 5.13.3 maintain and keep operational security, protective and warning equipment;

- 5.13.4 comply with all statutory obligations, by laws or regulations imposed by any public or local authority, relating to safety or property; and

- 5.13.5 comply with any manufacturer's recommendations.

For the avoidance of doubt, in relation to any **Carrying Vehicle**:

- 5.13.6 the **Insured** will ensure that the **Carrying Vehicle** is suitable for the purpose for which it is, or will be, used; and
- 5.13.7 which has been **Left Unattended**, the taking of all reasonable steps includes (without limitation) removing the keys from and locking any **Carrying Vehicle** and where a vehicle alarm or vehicle immobiliser is fitted, ensuring that this is activated.

## 5.14 Sub-contractors

When acting as **Contracting Carrier** under the **Act** the **Insured** will:

- 5.14.1 ensure that all sub-contractors and/or **Actual Carriers** contracted to the **Insured** agree to carry the **Goods** on the same terms as the **Insured** agreed with the **Contracting Party**; and
- 5.14.2 agree that the benefit of this insurance will in no circumstances whatsoever pass to sub-contractors and/or **Actual Carriers**, unless otherwise agreed in writing with the **Insurer**.

## 5.15 Subrogation

If any payment is to be made under this **Policy** in respect of a claim, the **Insurer** will be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated.

The **Insurer** will be entitled to pursue and enforce those rights in the name of the **Insured**, who will provide the **Insurer** with all reasonable assistance and cooperation in doing so, including the execution of any necessary instruments and papers. The **Insured** will do nothing to prejudice these rights.

Any amount recovered in excess of the **Insurer's** total payment will be restored to the **Insured** less the cost to the **Insurer** of the recovery. The **Insurer** agrees not to exercise its rights of recovery against any **Employee** unless the claim is brought about or contributed to by serious or wilful misconduct of the **Employee**.

In its sole discretion, the **Insurer** may, in writing, waive any of its rights in this Condition.







**HEAD OFFICE**

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