

# Chubb Global Guard Multinational Liability Insurance Policy Wording

Insured: Rotary International

Policy Period: 01/09/2022 – 31/12/2023  
(both dates inclusive)

CHUBB®

## Important Information

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In this section “We”, “Our” and “Us” means Chubb Insurance New Zealand Limited (Chubb). “You” and “Your” refers to Our customers and prospective customers as well as those who use Our website.

## Duty of Disclosure

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### Your Duty of Disclosure

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Before entering into a contract of insurance with Chubb, each prospective insured has a duty to disclose to Chubb information that is material to Chubb’s decision whether to accept the insurance and, if so, on what terms. This includes material information about the insured, any other people and all property and risks insured under the policy. Information may be material whether or not a specific question is asked.

There is the same duty to disclose material information to Chubb before renewal, extension, variation or reinstatement of a contract of insurance with Chubb. You should also provide all material information when You make a claim or if circumstances change during the term of the contract of insurance.

It is important that each prospective insured understands all information provided in support of the application for insurance and that it is correct, as each prospective insured will be bound by the answers and by the information they have provided.

The duty of disclosure continues after the application for insurance has been completed up until the time the contract of insurance is entered into.

### *Consequences of Non-Disclosure*

If an insured fails to comply with their duty of disclosure, Chubb may be entitled, without prejudice to its other rights, to reduce its liability under the contract in respect of a claim or refuse to pay the entire claim. Chubb may also have the right to avoid the contract from its beginning. This means the contract will be treated as if it never existed and no claims will be payable.

## Financial Strength Rating

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At the time of print, Chubb has an “AA-” insurer financial strength rating given by S&P Global Ratings. The rating scale is:

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

The rating from ‘AA’ to ‘CCC’ may be modified by the addition of a plus (+) or minus (-) sign to show relative standings within the major rating categories. A full description of the rating scale is available on the S&P Global Ratings [website](#).

Our rating is reviewed annually and may change from time to time, so please refer to Our website for Our latest financial strength rating.

## Fair Insurance Code

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We are a member of the Insurance Council of New Zealand (**ICNZ**) and a signatory to ICNZ’s Fair Insurance Code (**the Code**). The Code and information about the Code is available at [www.icnz.org.nz](http://www.icnz.org.nz) and on request.



## Privacy Statement

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This statement is a summary of Our privacy policy and provides an overview of how We collect, disclose and handle Your personal information. Our privacy policy may change from time to time and where this occurs, the updated privacy policy will be posted on Our [website](#).

Chubb is committed to protecting Your privacy. Chubb collects, uses and retains Your personal information in accordance with the requirements of New Zealand's Privacy Act, as amended or replaced from time to time.

### Personal Information Handling Practices

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#### *When do We collect Your personal information?*

Chubb collects Your personal information (which may include health information) from You when You interact with Us, including when You are applying for, changing or renewing an insurance policy with Us or when We are processing a claim, complaint or dispute. Chubb may also (and You authorise Chubb to) collect Your personal information from other parties such as brokers or service providers, as detailed in Our privacy policy.

#### *Purpose of Collection*

We collect and hold the information to offer products and services to You, including to assess applications for insurance, to provide and administer insurance products and services, and to handle any claim, complaint or dispute that may be made under a policy.

If You do not provide Us with this information, We may not be able to provide You or Your organisation with insurance or to respond to any claim, complaint or dispute, or offer other products and services to You or Your organisation.

Sometimes, We may also use Your personal information for Our marketing campaigns and research, to improve Our services or in relation to new products, services or information that may be of interest to You.

#### *Recipients of the Information and Disclosure*

We may disclose the information We collect to third parties, including:

- contractors and contracted service providers engaged by Us to deliver Our services or carry out certain business activities on Our behalf (such as actuaries, loss adjusters, claims investigators, claims handlers, professional advisers including lawyers, doctors and other medical service providers, credit reference bureaus and call centres);
- intermediaries and service providers engaged by You (such as current or previous brokers, travel agencies and airlines);
- other companies in the Chubb group;
- the policyholder (where the insured person is not the policyholder);
- insurance and reinsurance intermediaries, other insurers, Our reinsurers, marketing agencies; and
- government agencies or organisations (where We are required to by law or otherwise).

These third parties may be located outside New Zealand. In such circumstances We also take steps to ensure Your personal information remains adequately protected.

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

#### *Rights of Access to, and Correction of, Information*

If You would like to access a copy of Your personal information, or to correct or update Your personal information, want to withdraw Your consent to receiving offers of products or services from Us or persons We have an association with, please contact the Privacy Officer by posting correspondence to Chubb Insurance New Zealand Limited, PO Box 734, Auckland; telephoning: +64 (9) 3771459; or emailing [Privacy.NZ@chubb.com](mailto:Privacy.NZ@chubb.com).

#### *How to Make a Complaint*

If You have a complaint or would like more information about how We manage Your Personal Information, please review Our [Privacy Policy](#) for more details, or contact Our Privacy Officer at the details above.

You also have a right to address Your complaint directly to the Privacy Commissioner by telephoning 0800 803 909, emailing [enquiries@privacy.org.nz](mailto:enquiries@privacy.org.nz) or using the online form available on the Privacy Commissioner's website at [www.privacy.org.nz](http://www.privacy.org.nz).

## **Complaints and Dispute Resolution**

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Chubb takes the concerns of its customers very seriously and has detailed complaint handling and dispute resolution procedures that You may access, at no cost to You. To assist Chubb with Your enquiries, please provide Us with Your claim or policy number (if applicable) and as much information as You can about the reason for Your complaint or dispute.

Chubb's complaints and dispute procedures are as follows:

### **Stage 1 - Complaint Handling Procedure**

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If You are dissatisfied with any of Chubb's products or services and You wish to lodge a complaint, please contact Us via:

E [Complaints.NZ@chubb.com](mailto:Complaints.NZ@chubb.com)

O 0800 422 346  
F +64 9 303 1909  
Post:  
The Complaints Officer  
Chubb Insurance New Zealand Limited  
PO Box 734  
Shortland Street  
Auckland 1140

#### Stage 2 – Dispute Resolution Procedure

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If You are dissatisfied with Chubb's response to Your complaint, You can advise that You wish to take Your complaint to Stage 2 and referred to Chubb's dispute resolution team. Chubb's internal dispute resolution team can be contacted via:

E [DisputeResolution.NZ@chubb.com](mailto:DisputeResolution.NZ@chubb.com)

O +64 9 377 1459

F +64 9 303 1909

Post:  
Internal Dispute Resolution Service  
Chubb Insurance New Zealand Limited  
PO Box 734  
Shortland Street  
Auckland 1140

#### Stage 3 - External Dispute Resolution

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Chubb is a member of an independent external dispute resolution scheme operated by Financial Services Complaints Limited (FSCL) and approved by the Ministry of Commerce & Consumer Affairs. Subject to FSCL's Terms of Reference, if You are dissatisfied with Our dispute determination or We are unable to resolve Your complaint or dispute to Your satisfaction within two months You may contact FSCL via:

Postal address: PO Box 5967, Lambton Quay, Wellington 6145

O 0800 347 257 (Call Free for consumers) or +64 4 472 FSCL (472 3725)

F +64 4 472 3728

E [info@fscl.org.nz](mailto:info@fscl.org.nz)

W [www.fscl.org.nz](http://www.fscl.org.nz)

Please note if You would like to refer Your complaint or dispute to FSCL You must do so within 2 months of the date of Our dispute determination.

Further details regarding Our complaint handling and dispute resolution procedures are available from Our website and on request.

## Chubb Global Guard Multinational Liability Policy Schedule

No.	Title	Description	
Item 1.	Policy Number	NZCASA10919	
Item 2.	Insured	Rotary International Districts 9910, 9920, 9940, 9930 and 9999 and NZ and Pacific Island based Rotary Clubs, Rotaract Clubs and Interact Clubs in the District including NZ Charitable Trusts formed within those clubs	
Item 3.	Insured's Address	C/- Aon Takapuna	
Item 4.	Business	Charitable organisation including fundraising and events	
Item 5.	Policy Period	Start:	01 September 2022
		Expiry:	31 December 2023
		Both days inclusive at 4:00pm <b>Local Standard Time.</b>	
Item 6.	Limit of Liability	6(a) \$10,000,000 Any one Occurrence	
		6(b) \$10,000,000 in the aggregate (Product Liability)	
Item 7.	Premium	As agreed	
Item 8.	Deductible	NZD 500 each and every Occurrence increasing to NZD2,500 each and every other Occurrence outside New Zealand	

## Endorsements

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### Professional Negligence – Absolute Exclusion

By way of endorsement to the **Policy**, the parties agree that Exclusion 3.15 is deleted in its entirety and replaced with the following:

**Professional Liability**

the rendering of or failure to render professional advice or service by the **Insured**, , but this exclusion does not apply to the provision of first aid on the **Insured's** premises.

## Endorsements

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### Molestation Exclusion

By way of endorsement to the **Policy**, the parties agree notwithstanding anything contained in the **Policy** to the contrary:

1. This **Policy** does not apply to **Personal Injury** sustained by any person arising out of or resulting from the Molestation of or interference with any person by:
  - a) any Insured;
  - b) any employee of any Insured; or
  - c) any person performing any volunteer or unpaid services for or on behalf of the Insured.
2. **Chubb** will have no duty to defend any allegation, claim, action, suit, proceeding or litigation against the Insured either directly or vicariously seeking damages on account of such **Personal Injury** and, for the avoidance of doubt, the **Policy** does not apply to any costs associated with such defence.
3. For the purposes of this Endorsement only, **Molestation** means:
  - a) to cause trouble to;
  - b) to vex;
  - c) to annoy;
  - d) put to inconvenience; and/or
  - e) to meddle with injuriously or with hostile intent.

In all other respects the **Policy** remains unaltered.



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## 1. Insuring Agreement

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In consideration of the payment of the premium and in reliance upon all statements and declarations made and information provided to Chubb Insurance New Zealand Limited (**Chubb**) which proposal, statements, declaration and information shall be deemed to be incorporated into and to be the basis of this **Policy**, and subject to all the terms, conditions and limitations of this **Policy**, **Chubb** agrees with the **Insured** as follows

1.1 **Chubb** shall indemnify the **Insured** against all sums which the **Insured** shall become legally liable to pay as **Compensation** in respect of:

- a) **Personal Injury**
- b) **Property Damage**
- c) **Advertising Injury**

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

## 2. Definitions

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Wherever appearing in this **Policy**, the following definitions apply:

2.1 **Act of Terrorism** means

Any act, including but not limited to the use of force or violence or threat thereof, of any person, people or group of people, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons, including the intention to influence any government or to put the public, or any section of the public, in fear.

2.2 **Advertising Injury** means

Any unintentional libel, slander, defamation, infringement of copyright, title or slogan, piracy, unfair competition, idea misappropriation or invasion of rights of privacy, arising out of the **Insured's** advertising activities.

2.3 **Aircraft** means

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

2.4 **Business** means

All activities and operations of the **Business** stated in Item 5 of the **Schedule** including the ownership and occupation of premises for the purposes of the **Business**, and the provision or management of canteen, social, sports, welfare or child care services or activities for the **Insured's** employees and internal first aid, fire, security and ambulance services.

2.5 **Compensation** means

Monies paid or payable by judgment or settlement together with any liability on the **Insured's** part to pay legal costs and expenses (other than **Defence Costs**).

2.6 **Deductible** means

The amount stated in Item 8 of the **Schedule** which is borne and payable by the **Insured** arising from each and every **Occurrence**. The **Deductible** is payable by the **Insured** at such time required by **Chubb**. The **Deductible** applies to **Defence Costs** as well as **Compensation**. **Chubb's** liability to indemnify the **Insured** under this **Policy** applies only in respect of the amount of **Defence Costs** and **Compensation** that exceeds the **Deductible**.

2.7 **Defence Costs** means

All reasonable legal costs and expenses incurred by **Chubb** or by the **Insured** with the prior written agreement of **Chubb**:

- a) in defending or appealing a claim covered under this **Policy**; and/or
- b) for legal representation at any coronial inquest or other fatal accident inquiry, following an **Occurrence**.

**2.8 Employment Practices** means

Any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment or prospective employment by the Insured.

**2.9 Incidental Contract** means

- a) any written rental agreement or lease of real property;
- b) any written contract with any public authority for the supply of water, gas, electricity or telephone services except those contracts in connection with work done for such authorities;
- c) any written contract with any railway authority for the loading, unloading and/or transport of any **Product**, including contracts relating to the operation of railway sidings.

**2.10 Insured** means

- a) The **Insured** named in Item 2 of the **Schedule**;
- b) any subsidiary company (including subsidiaries thereof) of the **Insured** named in the **Schedule** and any other organisation under the control of the **Insured** named in the **Schedule** and over which it is exercising active management;
- c) any new organisation acquired from the date of such acquisition by the **Insured** during the **Policy Period** through consolidation, merger, purchase of the assets of or assumption of control and active management or creation, provided that:
  - 1) such acquisition is notified to **Chubb** in writing within 60 days;
  - 2) **Chubb** gives notice in writing to the **Insured** that such new organisation shall be covered by the **Policy**;
  - 3) the **Insured** pays any additional premium that may be required by **Chubb** in respect of such new organisation;
- d) any director, officer, employee, voluntary worker, work experience person, partner or shareholder of the **Insured**, but only whilst acting within the scope of their duties in such capacity;
- e) any social or sporting clubs, first aid, fire and ambulance services formed with the consent of the **Insured** including any office bearer or member thereof in their respective capacities as such.

**2.11 Limits of Liability** means

- a) The amount stated in Item 6(a) of the **Schedule** which is the maximum amount **Chubb** shall indemnify the **Insured** for in respect of all **Compensation** arising out of any one **Occurrence**.
- b) The amount stated in Item 6(b) of the **Schedule** which is the maximum amount **Chubb** shall indemnify the **Insured** for in respect of all **Compensation** for **Personal Injury, Property Damage** and **Advertising Injury** occurring during the **Policy Period** arising out of the **Insured's Products**.

2.12 **Local Policy** means

a) a policy issued by:

- 1) **Chubb**;
- 2) any authorised representative of **Chubb**;
- 3) any other insurer authorised by **Chubb**;

as part of the insurance programme for which this **Policy** is the master policy to provide local insurance in territories other than New Zealand; or

b) a policy issued to any **Insured** which is not issued as part of the aforementioned insurance programme and which provides cover for any risk(s) which is/are covered hereunder.

2.13 **Local Standard Time** means

The time applicable at the location of any **Occurrence** giving rise to a claim under this **Policy**.

2.14 **Occurrence** means

An event including continuous or repeated exposure to substantially the same general conditions which results in **Personal Injury** or **Property Damage** or **Advertising Injury** neither expected nor intended from the standpoint of the **Insured**. All events of a series consequent on or attributable to one source or original cause are deemed one **Occurrence**.

2.15 **Personal Injury** means

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

2.16 **Policy** means

This policy wording including the **Schedule** and any endorsement hereto.

2.17 **Policy Period** means

The period stated in Item 5 of the **Schedule** or such further period for which this **Policy** has been extended as agreed by **Chubb** in writing.



2.18 **Policy Territory** means

Anywhere in the world.

2.19 **Pollutants** means

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

2.20 **Product** means

Any goods or products (after they have ceased to be in the possession or under the control of the **Insured**) manufactured, constructed, erected, installed, repaired, serviced, treated, grown, extracted, produced, processed, assembled, imported, sold, supplied or distributed by the **Insured** (including any labelling, packing materials, instructions and directions associated therewith) and any container thereof

2.21 **Property Damage** means

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

2.22 **Schedule** means

The schedule issued with this **Policy** wording or any subsequent or amended version of that schedule issued by **Chubb**.

2.23 **Vehicle** means

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

2.24 **Watercraft** means

Any vessel, craft or thing made or intended to float on or in or travel on, through or under the water.

### 3. Exclusions

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This **Policy** does not indemnify the **Insured** or any other person for any liability directly or indirectly caused by, arising out of or in any way connected with:

3.1 **Advertising Liability**

- a) failure of performance of contract but this exclusion 3.1(a) does not apply to claims for unauthorised appropriation of ideas based upon breach of an implied contract;
- b) infringement of trade mark, service mark or trade name, but this shall not relate to titles or slogans;
- c) incorrect description of any good or product (including any **Product**);
- d) mistake in advertised price.





### 3.2 Aircraft

the ownership, operation or navigation of any Aircraft or hovercraft.

### 3.3 Aircraft Products

any **Product** that is incorporated with the **Insured's** knowledge in an **Aircraft** which is connected with the safety, propulsion, navigation or flying capabilities of an **Aircraft**.

### 3.4 Asbestos

asbestos or materials containing asbestos.

### 3.5 Building Defects & Mould

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

- a) the actual, threatened or alleged ingress, inhalation, discharge, dispersal, seepage, migration, absorption, release or escape of external water, liquid or moisture from any source at any time in or into any building or structure or any materials or components thereof; or
- b) the actual, threatened or alleged existence or effects of any concentration of external water, liquid or moisture on or within any building or structure or any materials or components thereof; or
- c) the actual, threatened or alleged existence or effects of:
  - 1) fungus, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms; or
  - 2) any spore, toxin, vapour, gas or other emission or organic or inorganic body or substance, created, produced by or emanating from such fungus, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure or any materials or components thereof; or
- d) any costs or expenses arising out of the preventing, abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in any way responding to or assessing the matters set out in paragraphs (a), (b) and/or (c) above; or
- e) the actual, threatened or alleged failure of any building or structure or any materials or components thereof to comply with or conform to the requirements of the New Zealand Building Code contained in the first Schedule to the Building Regulations 1992 (or any amendment or substitution thereof) or to meet the level of performance, quality, fitness or durability of its intended purpose, in relation to:
  - 1) external water, liquid or moisture; or
  - 2) protection from external water, liquid or moisture entering that building or structure or any materials or components thereof, or the effects thereto.

This Exclusion 3.5 shall apply regardless of any other cause, event, building materials or building components that contributed concurrently or in any sequence to the **Personal Injury or Property Damage** (or charges, expenses and legal costs).

However this Exclusion 3.5 shall not exclude any indemnity for **Personal Injury or Property Damage** that is caused by or arises out of leakage of internal water pipes or cisterns.

### 3.6 Contractual Liability

liability assumed under any contract, agreement or warranty except:

- a) to the extent that such liability would have been implied by law in the absence of such contract, agreement or warranty; or
- b) where the contract is an **Incidental Contract** and the liability does not arise by reason of an obligation to insure a leased property or an obligation to indemnify a landlord irrespective of fault.

### 3.7 Employment Liability

- a) any fund, scheme, policy of insurance or self-insurance pursuant to or required by any legislation relating to workers' compensation whether or not such insurance has been effected;
- b) any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination;
- c) any **Employment Practices**; or
- d) **Personal Injury** to any person caused by or arising out of the employment of such person by the **Insured**.

Exclusions 3.7 (a) (b) and (d) shall not apply in respect of any amount in excess of the limit of liability of any other insurance or fund or USD1,000,000 each **Occurrence** whichever is the greater amount.

### 3.8 Fines, Penalties and Damages

finer, penalties, punitive, exemplary, liquidated or aggravated damages or multiplication of compensatory damages.

### 3.9 Genetically Modified Organisms (GMOs)

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

For the purpose of this Exclusion 3.9, "GMOs" shall mean any organism in which the genetic material has been modified or altered through gene technology in a way that does not occur naturally by multiplication and / or natural recombination.

### 3.10 Loss of Use

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

- a) a delay in or lack of performance by or on behalf of the **Insured** in respect of any contract or agreement; or
- b) the failure of a **Product** or work performed by or on behalf of the **Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured**; but this Exclusion 3.10(b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the **Product** or work performed by or on behalf of the **Insured** after the **Product** or work has been put to its intended use by any person or organisation other than the **Insured**.

### 3.11 Pollutants

- a) the discharge, dispersal, release, seepage, migration or escape of **Pollutants**, including, without limitation, the cost of testing, monitoring, treating, detoxifying, removing, neutralising or cleaning up **Pollutants**; or
- b) the cost of preventing the escape of **Pollutants**.

### 3.12 **Product Defect**

**Property Damage** to:

- a) any **Product** or any part of it if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof however this exclusion shall not apply to **Personal Injury** or **Property Damage** resulting therefrom; or
- b) any part of any property that must be repaired, reconditioned or replaced by reason of incorrect work performed by the **Insured** or on the **Insured's** behalf, or by reason of materials or equipment which are or are proved to be defective or inadequate in connection with such work, but this exclusion 3.12(b) does not apply to **Property Damage** resulting from such work.

### 3.13 **Product Guarantee**

any product guarantee or warranty given by or on behalf of the **Insured**, but this exclusion 3.13 does not apply to legislative requirements concerning product safety and information.

### 3.14 **Product Recall**

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

### 3.15 **Professional Liability**

the rendering of or failure to render professional advice or service by the **Insured**, but this exclusion 3.15 only applies to:

- a) medical advice or service by qualified medical practitioners, dentists, nurses and first aid attendants employed by the **Insured**, but this does not apply to the provision of first aid on the **Insured's** premises.
- b) professional advice or service given for a fee.

### 3.16 **Property in the Insured's Care, Custody or Control**

**Property Damage** to property owned by the **Insured** or in the **Insured's** care custody or control.

### 3.17 **Property Worked Upon**

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

### 3.18 **Radioactivity**

ionising radiation or contamination by radioactivity from any nuclear fuel, weapon or waste whether occurring naturally or otherwise; the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or the storage, transport, assembly, disassembly, maintenance or operation of any nuclear weapon or nuclear component thereof.

### 3.19 **Terrorism**

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

### 3.20 **Vehicles**

the use of any **Vehicle** owned by, or in the physical or legal control of the **Insured**:

- a) which is required by law to be registered; or
- b) in respect of which insurance is required by virtue of any legislation

but this exclusion 3.20 does not apply to:

- 1) a **Vehicle** (other than a **Vehicle** owned or used by or on behalf of the **Insured**) whilst that **Vehicle** is in a car park owned or operated by the **Insured** other than for income or reward as a car park operator; or
- 2) **Personal Injury** or **Property Damage** occurring during the loading or unloading of a **Vehicle** caused by or arising from the collection or delivery of any goods from or to the **Vehicle** where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability; or
- 3) **Personal Injury** or **Property Damage** caused by the use of any tool, plant or equipment forming part of or attached to or used in connection with any **Vehicle** and where applicable legislation does not require insurance against such liability.

### 3.21 **War**

war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any act of any person or persons acting on behalf of or in connection with any organisation the objects of which are to include the overthrowing or influencing of any de jure or de facto government by terrorism or by any violent means.

### 3.22 **Watercraft**

the ownership, operation or navigation of any Watercraft exceeding 8 metres in length while on, in or under the water.

## 4. Extensions

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Each of the following Extensions automatically applies unless otherwise stated in the endorsements. Each Extension is, unless otherwise stated, subject to the Insuring Agreement and all other terms, exclusions and limitations of this **Policy**, including without limitation, any applicable limit of liability.

### 4.1 Defence Costs

In respect of any liability for **Compensation** indemnifiable under this **Policy**, **Chubb** will pay **Defence Costs**, subject to the following:

- a) **Chubb** is not obliged to pay any **Defence Costs** or to defend any suit after the **Limit of Liability** has been exhausted;
- b) if a payment exceeding the **Limit of Liability** has to be made to dispose of a claim, the liability of **Chubb** for **Defence Costs** is limited to the proportion that **Chubb's** liability to indemnify the **Insured** for **Compensation** under this **Policy** bears to that payment; and
- c) in the event of a claim being made against the **Insured** in any Court or before any other legally constituted body in the United States of America, Canada or their respective protectorates and territories, the total amount payable by **Chubb** in respect of any one **Occurrence** including **Defence Costs** will not exceed the **Limit of Liability**.

### 4.2 Excess Motor Liability

Exclusion 3.20 does not apply to **Personal Injury** or **Property Damage** resulting from the ownership, possession, control or use by or on behalf of the **Insured** of any **Vehicle** or trailer attached thereto provided that:

- a) there is separate motor insurance in force in respect of such liability;
- b) this Extension shall apply only to amounts in excess of;
  - 1) USD5,000,000 in respect of any **Occurrence** in the United States of America or any territory within its jurisdiction;
  - 2) USD5,000,000 in respect of any **Occurrence** in Australia, Canada and the United Kingdom;
  - 3) USD1,000,000 in respect of any **Occurrence** elsewhere in the world; or
  - 4) the applicable minimum limit required by law;whichever is the greater; and
- c) the maximum aggregate liability of **Chubb** under this extension in respect of all damages payable as a result of any one **Occurrence** shall be the difference between such limit of indemnity and the **Limit of Liability** stated in the **Schedule**.

#### 4.3 Forest and Rural Fires Act 1977

For the purpose of this Extension 4.3 only, notwithstanding Insuring Agreement 1.1 or Exclusion 3.8, coverage under this **Policy** extends to all sums which the **Insured** shall be legally obligated to pay in respect of:

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

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

The cover provided by this Extension 4.3:

- 1) shall apply whether **Property Damage** or **Personal Injury** has occurred or not; and
- 2) shall apply to machinery, plant, trailers or **Vehicles** (insofar as liability covered under this extension 4.3 is not otherwise **Insured**); and
- 3) is subject always to the terms exceptions limits and conditions of the **Policy** insofar as they are not specifically varied by this Extension 4.3; and
- 4) is subject to a sub limit of NZD500,000 any one **Policy Period**.

#### 4.4 Indemnity to Principals and Others

**Chubb** will indemnify any person or organisation to which the **Insured** (as defined in Definition 2.10(a) or (b) only) is obligated by virtue of a written contract to provide insurance as is afforded by this **Policy**, but only for the vicarious liability of such person or organisation arising out of the performance by the **Insured** (as defined in Definition 2.10(a) or (b) only) of such written contract and for such coverage and **Limit of Liability** as provided in this **Policy**.

#### 4.5 Mechanical Plant

Notwithstanding Exclusion 3.20, **Chubb** agrees to indemnify the **Insured** in respect of liability for **Personal Injury** or **Property Damage**:

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

#### 4.6 NZ Exemplary Damages

##### a) Coverage Extension

Notwithstanding Exclusion 3.8 *Where you are submitting a notification, we will take the following steps on receipt:*

- *acknowledge receipt within 5 business days*
- *identify your insurance policy, register your matter against it, and assign a claim number for reference*
- *review whether any further information may be needed.*

*If we have all the information we need to assess your matter, then we will review to decide whether or not to accept it. We will let you know if we need further information.*

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

- 1) is first made against the **Insured** during the **Policy Period** or is subject to clause (b) of this Extension 4.6; and
- 2) is notified to **Chubb** during the **Policy Period**; and
- 3) is brought by, or on behalf of, a person who has suffered a **Personal Injury**.

##### b) Coverage For Claims Made After The End Of The Policy Period

The cover provided by this Extension 4.6 ceases at the end of the **Policy Period**. However, **Chubb** agrees to indemnify the **Insured** under clause (a) of this Extension 4.6 in respect of a claim which is first made against the **Insured** after the end of the **Policy Period**, if the claim arises from circumstances which arose during the **Policy Period** and which the **Insured** has notified to **Chubb** during the **Policy Period**.

##### c) Extension Sub Limit

A sub limit of NZD2,000,000 any one **Policy Period** shall apply to this Extension 4.6.

##### d) Defence Costs and Expenses

In addition to the sub limit specified in (c) above, **Chubb** agrees to pay the expenses and costs referred to in Definition 2.7 in relation to the claims covered by this Extension 4.6.

##### e) Definitions

For the purposes of the coverage provided by this Extension 4.6 only:

- 1) the Definition of "**Occurrence**" at Clause 2.14 is deleted and replaced with the following:  
  
"**Occurrence**" means an event including continuous or repeated exposure to conditions which results in **Personal Injury** neither expected nor intended from the standpoint of the **Insured**. All **Occurrences** of a series consequent on or attributable to one source or original cause shall be deemed one **Occurrence**.
- 2) the following Definition applies:



**“Exemplary Damages”** means exemplary damages paid or agreed to be paid by judgment or settlement for **Personal Injury** provided such damages only payable in respect of an **Occurrence** to which this Extension 4.6 applies.

f) Exclusions

In addition to the Exclusions applicable to this **Policy**, with respect to the cover provided by this Extension 4.6 only, **Chubb** shall not indemnify the **Insured** against:

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

g) Conditions

In addition to the General Conditions applicable to this **Policy**, it is a condition precedent to the **Insured's** right to be indemnified under this Extension 4.6, that the **Insured** must notify **Chubb** as soon as possible in writing if:

- 1) any claim for Exemplary Damages is made against the **Insured**; or
- 2) the **Insured** is notified of any matter which may give rise to a claim under this Extension 4.6; or
- 3) the **Insured** becomes aware of any circumstances which may give rise to a claim under this Extension 4.6.

This applies even if the claim is likely to be less than the **Deductible** stipulated in Item 8 of the **Schedule**.

#### 4.7 Product Recall Expenses

Notwithstanding Exclusion 3.14, **Chubb** will indemnify the **Insured** for 80% of the costs and expenses incurred to instigate and carry out a withdrawal or recall of the **Insured's Products** from use in New Zealand, which has already given rise to a claim for **Personal Injury** or **Property Damage** under this **Policy**;

Provided that:

- a) the prior approval of **Chubb** was obtained prior to the withdrawal or recall of the **Insured's Products**; and
- b) a sub limit of NZD100,000 shall apply to this Extension 4.7.

#### 4.8 **Property in the Insured's Care Custody or Control and Tenant's Liability**

Exclusion 3.16 shall not apply to:

- a) premises tenanted, leased, rented or hired by the **Insured**;
- b) **Vehicles** (other than **Vehicles** owned or used by or on behalf of the **Insured**) in the **Insured's** care custody or control but only whilst such **Vehicles** are in a car park owned or operated by the **Insured** other than for income or reward as a car park operator; or
- c) directors', employees' and visitors' clothing and personal effects; or
- d) any other goods, equipment, merchandise and property (not owned by the Insured), other than real property, provided that a sub limit of NZD500,000 any one Policy Period shall apply to this sub-paragraph (d).

#### 4.9 **Service and Repair**

Notwithstanding Exclusion 3.17 and Exclusion 3.22, **Chubb** will indemnify the **Insured** for liability in respect of **Property Damage** to all **Watercraft, Vehicles**, machinery and parts thereof that are, or have been, in the care custody or control of the Insured for the purposes of service and/or repair, subject to the following sub limits:

- a) **Property Damage** to **Watercraft, Vehicles** or machinery being serviced or repaired:  
Sub Limit: NZD250,000 any one **Policy Period** shall apply to this Extension 4.9(a); and
- b) **Personal Injury** or **Property Damage** to other property arising from service and/or repairs to **Watercraft, Vehicles** or machinery:  
Sub Limit: NZD250,000 any one **Policy Period** shall apply to this Extension 4.9(b);  
provided that in all cases there is no cover for liability for the costs of rectifying defective or faulty:
  - 1) workmanship; or
  - 2) materials,in respect of the actual **Watercraft, Vehicle** and/or machinery being worked upon.

#### 4.10 **Sudden and Accidental Pollution**

Exclusion 3.11(a) shall not apply to **Personal Injury** or **Property Damage** which:

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

#### 4.11 Underground Services

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

Provided that:

- a) prior to the commencement of any work, the **Insured** inquired of the relevant authority, corporation or company as to the location of such underground services, cables, pipes or equipment and the **Insured** took all reasonable precautions to prevent **Personal Injury** or **Property Damage**; and
- b) a sub limit of NZD250,000 shall apply to this Extension 4.11.

#### 4.12 Vendors Indemnity

Where required by contract, **Chubb** agrees to include as an additional insured, any person who or organisation which distributes or sells the **Insured's Products** in the regular course of their business (herein referred to as 'vendor') but only with respect to **Personal Injury** or **Property Damage** arising out of the distribution or sale of the **Insured's Products**.

Provided that:

- a) the cover with respect to the vendor does not apply to any liability of the vendor in connection with:
  - 1) any express warranty, or any distribution or sale for a purpose, unauthorised by the named **Insured**;
  - 2) **Personal Injury** or **Property Damage** arising out of:
    - i. any act of the vendor which changes the condition of the **Insured's Products**;
    - ii. any failure to maintain the **Insured's Products** in merchantable condition;
    - iii. any failure to make such inspections, adjustments tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the **Insured's Products**; or
    - iv. **Insured's Products** which after distribution or sale by the **Insured** have been labelled or re-labelled or used as a container, part or ingredient of any other thing or substance by or for the vendor;
  - 3) **Personal Injury** or **Property Damage** occurring within the vendor's premises not directly caused by the **Insured's Products**.
- b) the insurance does not apply to any liability of the vendor which arises from the **Insured's** acquisition from the vendor of any products or any ingredient, part or container of such products.

#### 4.13 Vibration and Removal of Support

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

Provided that:

- a) the land or buildings are not owned or occupied by the **Insured** and the **Personal Injury** or **Property Damage** arises from the actions of the **Insured**; and

- b) a sub limit of NZD500,000 shall apply to this Extension 4.13

## 5. Conditions

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### 5.1 Action against Chubb

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

### 5.2 Applicable Law

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

### 5.3 Assignment

Assignment of an interest under this **Policy** does not bind **Chubb** until its consent is endorsed on the **Policy**. If the **Insured** dies or is adjudged bankrupt or insolvent, this insurance will cover:

- a) the **Insured's** legal representative acting on behalf of the **Insured** or the **Insured's** estate;
- b) any person or corporation having lawful temporary custody of property which is or was before the **Insured's** death owned or possessed by the **Insured** until the appointment of a legal representative.

### 5.4 Cancellation

- a) The **Insured** may cancel this **Policy** by giving notice in writing to **Chubb**. If such notice is given, the cancellation will take effect on the day the notice is received by **Chubb**.
- b) **Chubb** may cancel this **Policy** by giving notice in writing to the **Insured**. Such cancellation is to take effect 30 days from the time notification is received by the **Insured**.
- c) Upon cancellation by the **Insured** or **Chubb** the **Insured** will receive a pro rata refund of premium for the unexpired **Policy Period** subject to the **Insured** complying with Condition 5.4 (d) unless any matter has been notified under the **Policy**, in which case the premium will be deemed to be fully earned and none will be repayable to the **Insured**.
- d) When the premium is subject to adjustment, cancellation will not affect the obligation of the **Insured** to supply to **Chubb** such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

### 5.5 Changes

Every change materially affecting the facts or circumstances existing at the commencement of this insurance, or at any subsequent renewal date, must be notified to **Chubb** in writing immediately after such change comes to the notice of the **Insured's** officer responsible for insurance. Where such a change has not been notified to **Chubb** in accordance with this clause, **Chubb** reserves the right to decline to pay claims and/or to take other measures prescribed in this **Policy**.



## 5.6 Cross Liability

Each of the parties comprising the **Insured** is considered a separate legal entity and the word “**Insured**” applies to each party as if a separate policy had been issued to each of the said parties but nothing contained in this clause will operate to increase **Chubb’s** liability under this **Policy**.

## 5.7 Deductible

The **Deductible** is the amount stated in Item 8 of the **Schedule** which is borne and payable by the **Insured**. The **Deductible** is payable by the **Insured** at such time required by **Chubb**. The **Deductible** applies to **Defence Costs** as well as **Compensation**. **Chubb’s** liability to indemnify the **Insured** under this **Policy** applies only in respect of amounts of **Defence Costs** and/or **Compensation** that exceed the **Deductible**.

## 5.8 Hot Work Warranty

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

For the purpose of this Condition 5.8:

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

## 5.9 Insured’s duties in the event of an Occurrence, Claim or Suit

- a) In the event of an **Occurrence** or if an **Occurrence** appears reasonably likely to take place the **Insured** must immediately take at its own expense all responsible steps to prevent or minimise **Personal Injury, Property Damage, Advertising Injury** and any other loss, damage or expense.
- b) The **Insured** must give notice in writing to **Chubb** immediately of every **Occurrence** likely to give rise to a claim under this **Policy** and must immediately forward to **Chubb** all documents and information relevant to each such **Occurrence** including but not limited to every demand, writ, summons, proceedings, notice of prosecution, inquest or inquiry and all associated information.
- c) The **Insured** must give notice in writing to **Chubb** immediately of every **Occurrence** involving serious **Personal Injury** (including, but not limited to quadriplegia, paraplegia, brain damage and loss of a limb) or substantial **Property Damage** (including, but not limited to substantial damage to buildings, structures or equipment caused by fire, collapse, explosion and loss of support) and must immediately forward to **Chubb** all information relevant to the **Occurrence** held by the **Insured**.
- d) The **Insured** must not, without **Chubb’s** prior written consent, make any admission, offer, promise or payment in connection with any **Occurrence**.
- e) The **Insured** must use its best endeavours to preserve all property, any **Product**, appliance and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair is to be effected without the consent of **Chubb** until **Chubb** has had an opportunity of inspection.

#### 5.10 Limits of Liability

- a) Unless otherwise stated in this **Policy**, the aggregate limit of **Chubb's** liability to indemnify **Compensation** arising from any one **Occurrence** is the sum specified in Item 6(a) of the **Schedule**.
- b) **Chubb's** maximum aggregate liability under this **Policy** for all **Occurrences** during the **Policy Period** relating to liability arising out of the **Insured's Products** is the sum specified in Item 6(b) of the **Schedule**.
- c) Any sub-limit specified in this **Policy** shall be **Chubb's** maximum aggregate liability under such sub-limit, irrespective of the number of **Occurrences** or claims on this **Policy**. Any sub limit shall be part of and not in addition to the applicable limit specified in the **Schedule**.

#### 5.11 Other Insurance

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

#### 5.12 Precautions

The **Insured** at their own expense shall take all reasonable precautions to prevent occurrences which may give rise to liability under this **Policy** and shall take all reasonable steps

- a) to maintain their ways, works, machinery, plant and premises in good order and repair;
- b) to ensure that their **Products** are free from defect and fit for the purposes intended and comply with all statutory obligations and regulations imposed by any authority before possession thereof is relinquished to others;
- c) to remedy any defect or danger upon discovery thereof and take such additional precautions as the circumstances may require; and
- d) in the selection of employees.

#### 5.13 Right to defend, assistance and co-operation of the Insured

- a) In respect of any **Occurrence** covered under this **Policy**, **Chubb** has the right, if it so elects, to defend any suit against the **Insured** seeking **Compensation** or reimbursement of expenses for an **Occurrence** and to bring any cross claim in the name of the **Insured** even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient; but **Chubb** is not obligated to pay any claim or judgment or to defend any suit after **Chubb's** liability under this **Policy** in respect of the claim has been exhausted.
- b) If the cost of any **Occurrence** and defence costs and expenses are not likely to exceed the **Deductible**, **Chubb** may elect not to defend the suit. In these circumstances and, subject to the provisions of this **Policy**, the **Insured** is responsible for the handling and payment of the claim and its defence costs and expenses up to the amount of the **Deductible**.
- c) The **Insured** must co-operate with **Chubb** and comply with the terms and conditions of this **Policy**, and assist as necessary in enforcing any right to contribution or indemnity from any person, corporation or organisation.

#### 5.14 Sanctions Exclusion



**Chubb** shall not be deemed to provide cover and **Chubb** 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 Chubb, or its parent or its ultimate holding company, to any sanction, prohibition or restriction implemented pursuant to resolutions of the United Nations or the trade and economic sanctions, laws or regulations of the European Union, United Kingdom, New Zealand or United States of America.

#### 5.15 **Statutory Requirements**

The **Insured** must take reasonable measures to comply with all statutory obligations and regulations imposed by any statutory or governmental authority.

#### 5.16 **Subrogation**

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

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

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

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

#### 5.17 **Third Party Rights**

A person who is not a party to this **Policy** has no right under the Contracts (Privity) Act 1982 to enforce any term of this **Policy**. This **Policy** does not confer or purport to confer a benefit on such person and is not intended to create any obligation enforceable by any person who is not a party to the **Policy**.

## 6. Special Conditions

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### 6.1 Foreign Entity Loss

Notwithstanding anything contained elsewhere within this policy to the contrary:

- a) **Chubb** will indemnify the **First Named Insured** for an **Insured Loss**, the value of which is conclusively agreed and shall be equal to:
    - 1) where at the time of the **Foreign Entity Occurrence** the **Ownership Interest** is a **Controlling Interest**, the **Foreign Entity Loss**; or
    - 2) subject to b)(1) below, where at the time of the **Foreign Entity Occurrence** the **Ownership Interest** is not a **Controlling Interest**, the **Ownership Interest** multiplied by the **Foreign Entity Loss**.
  - b) if, at the date of the **Foreign Entity Occurrence**:
    - 1) the **First Named Insured** does not have an **Ownership Interest** or has an **Ownership Interest** which is not a **Controlling Interest** but in either case, the **First Named Insured** or an intervening subsidiary is responsible:
      - i. for reimbursing the **Foreign Entity** for the **Foreign Entity Loss**; or
      - ii. for obtaining liability insurance for the **Foreign Entity** pursuant to some form of responsibility which the **First Named Insured** or an intervening subsidiary has in relation to the **Foreign Entity**; or
    - 2) the **First Named Insured** has an **Ownership Interest** which is not a **Controlling Interest** and the **First Named Insured** or an intervening subsidiary is responsible for obtaining liability insurance for the **Foreign Entity**, (an “Obligation”),
- Chubb** will indemnify the **First Named Insured** for the **Insured Loss**, the value of which is agreed and shall be deemed conclusively to be equal to the **Foreign Entity Loss** to the extent that the **First Named Insured** has an Obligation to pay.
- c) **Chubb** will treat any **Foreign Entity Loss** in accordance with all of the terms and conditions of this **Policy**, including, but not limited to, exclusions and other limitations in this **Policy**, as if the **Foreign Entity Loss** occurred to the **First Named Insured**.
  - d) Information material to this insurance which is known to the **Foreign Entity** shall be deemed to be known to the **First Named Insured**.
  - e) The **First Named Insured** shall, when directed by **Chubb**:
    - 1) retain in its own name, but at **Chubb’s** expense, a loss adjusting expert (“loss adjuster”), authorized in the jurisdiction in which the **Foreign Entity Loss** occurred and approved by **Chubb**, to adjust the **Foreign Entity Loss**;
    - 2) where permitted by applicable law, grant **Chubb** the full right to collaborate with such loss adjuster;
    - 3) grant **Chubb** full access to any records produced by such loss adjuster; and
    - 4) obtain the right to control the investigation, adjustment, defence and settlement of a **Foreign Entity Loss**, including access to books, records, bills invoices, vouchers and other information.

- f) The **First Named Insured** shall make best endeavours to ensure that the **Foreign Entity** shall, to the extent permitted by the laws and/or regulations to which the **Foreign Entity** is subject, do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by **Chubb** for the purpose of enforcing any rights and remedies, or of obtaining relief, indemnity or settlement sums from other parties in each case in priority to the insurer with whom the **Local Policy** is written.

In the event any such recovery is subsequently received by the **Foreign Entity** in respect of which a payment or settlement is or has been made by **Chubb** to the **First Named Insured** in relation to the **Foreign Entity Loss**, the **First Named Insured** shall immediately pay to **Chubb** a sum equivalent to such payment or settlement.

### **Definitions applicable to this Special Condition 6.1**

**First Named Insured** means

the **Insured** named first in the **Schedule**.

**Foreign Entity** means

an entity (located in a country or territory in which **Chubb** is not lawfully permitted to insure that entity) in which the **First Named Insured** has an economic interest as a result either of benefiting financially from the continued operation of the **Foreign Entity** or of being prejudiced by loss or damage to or liability of a **Foreign Entity** or its business or for which the **First Named Insured** is responsible for arranging liability insurance.

**Foreign Entity Loss** means

the **Compensation, Defence Costs** and expenses that a **Foreign Entity** has incurred or become legally obligated to pay because of injury, damage, loss, or liability to which this insurance would apply if the **First Named Insured** were directly liable for such amounts.

**Insured Loss** means

the decrease in the value of the economic interest of the **First Named Insured** in the **Foreign Entity** as a result of the **Foreign Entity Loss**.

**Foreign Entity Occurrence** means

an event which may result in a **Foreign Entity Loss**.

**Ownership Interest** means

the percentage ownership interest that the **First Named Insured** has in the **Foreign Entity**, either directly or through intervening subsidiaries.

**Controlling Interest** means

an **Ownership Interest** which is either (i) greater than 50 per cent.; or (ii) greater than 15 per cent provided that such **Ownership Interest** is the largest shareholding in the **Foreign Entity**.

## 6.2 Policy Response

Notwithstanding anything contained elsewhere within this **Policy** to the contrary:

- a) where legislation in any territory requires that a liability insurance policy applies criteria different from those applicable to this **Policy** in determining under which **Policy Period** a claim is admissible, this **Policy** shall apply in the same way in respect of that part of the **Business** carried out at or from premises in such territory;
- b) in circumstances where any **Local Policy** applies criteria different from those applicable to this **Policy** in determining under which **Period of Insurance** a claim is admissible Special Conditions 6.3 and 6.4 shall apply as though this **Policy** is subject to the same criteria;
- c) all payments made under this **Policy** and under all **Local Policies** issued as part of this programme as described in Definition 2.12 (a) shall be counted in diminution of the **Limits of Liability** specified in the **Schedule** to this **Policy**;
- d) in respect of each **Local Policy** this **Policy** shall not provide any indemnity in respect of the greater of any deductible or excess applying under such **Local Policy** and the relevant **Deductible** stated in the **Schedule** to this **Policy**;
- e) where any amounts paid under any **Local Policy** issued as part of this programme as described in Definition 2.12 (a) exceed the **Limits of Liability** all such excess amounts shall be recoverable from the **Insured**;

Provided that:

- 1) nothing contained in this Condition shall require **Chubb** to provide indemnity in respect of liability which is the subject of indemnity under any **Local Policy** as described in Definition 2.12 effected prior to the inception of or subsequent to the cessation of this **Policy**; and
- 2) Definition 2.11(b) is deleted and replaced with the following:
  - i. The amount stated in Item 6(b) of the **Schedule** which is the maximum amount **Chubb** shall indemnify the **Insured** for in respect of all **Compensation** for **Personal Injury, Property Damage and Advertising Injury** pertaining to any one **Policy Period** arising out of the **Insured's Products**.

## 6.3 Difference in Conditions

Where a claim is made under a **Local Policy** and is rejected as not being within its policy terms and conditions then this **Policy** will operate to provide an indemnity but only to the extent that **Chubb** would have accepted that claim had it been made under this **Policy** provided however that **Chubb** shall not be liable to pay the amount of any excess or deductible that would have applied under such **Local Policy**.

## 6.4 Difference in Limits

In the event that a claim is payable under a **Local Policy** and the total amount of the claim exceeds the limit of liability thereunder this **Policy** will pay the difference between the limit of liability payable under such **Local Policy** and the corresponding limit for this **Policy** stated in Item 6 of the **Schedule** under **Limit of Liability**.

It is hereby understood and agreed that the terms, definitions, exclusions and conditions contained in or endorsed onto this **Policy** shall be those used to determine **Chubb's** liability under this Special Condition 6.4.



## 6.5 USA/Canada

It is hereby agreed between **Chubb** and the **Insured** that in respect of **Occurrences** happening in or claims or legal proceedings brought or originating in the United States of America or Canada or in any territory or protectorate within the jurisdiction of either such country:

- a) the liability of **Chubb** under this **Policy** in respect of all **Compensation** payable together with all **Defence Costs** and expenses shall not exceed the **Limit of Liability** for this **Policy** stated in item 6 the **Schedule**;
- b) regardless of any of the other provisions of this **Policy**, this insurance does not apply to punitive or exemplary damages;
- c) regardless of Extension 4.10 this insurance does not apply to:
  - 1) liability arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water;
  - 2) any cost or expense arising out of any governmental demand or request that an **Insured** test for, assess, monitor, clean-up, remove, contain, treat, de-toxify or neutralise any irritants, contaminants or pollutants;

and **Chubb** shall not have the duty to defend any claims or suits seeking to impose any such liability cost or expense or any other relief.

## 6.6 Non-Accumulation of Limits

It is hereby understood and agreed that in relation to any master policy and the certificates or **Local Policies** as defined in Definition 2.12 issued to the **Insured**, the maximum limit of liability under all of such policies and certificates in aggregate shall not exceed the highest applicable Limit of Liability provided for under this **Policy**.

Any indemnity paid under any of the **Local Policies** issued by **Chubb** and/or their co-operative partners under the programme as defined in Definition 2.12 shall be deducted from and thereby reduce the **Limits of Liability** of this **Policy**.

## 6.7 Insolvency of Local Insurer

In the event of any claim being payable under any **Local Policy** and which is not settled solely by reason of the **Insolvency** of the insurer of such **Local Policy** then this **Policy** will operate to provide an indemnity but only to the extent that **Chubb** would have accepted the claim had it been made under this **Policy**

Provided that:

- a) if the insurer of such **Local Policy** is not an **Affiliate** of **Chubb** any limit or amount under this **Policy** shall be reduced by an amount equal to the amount retained by the insurer of such **Local Policy** or ceded to any entity other than **Chubb** or any **Affiliate** of **Chubb** whether or not any claim is made under such **Local Policy**;
- b) **Chubb** shall not be liable to pay the amount of any deductible excess or other self-insurance that would have applied under such **Local Policy**;
- c) this Special Condition 6.7 does not apply in respect of any claim by any liquidator receiver or successor entity to any insurer of such **Local Policy**;

- d) in the event a settlement is made to the **Insured** under such **Local Policy** in respect of which a settlement is also made by **Chubb** under this Special Condition 6.7 a sum equivalent to such settlement shall immediately be reimbursed to **Chubb** by the **Insured**;
- e) in the event of any occurrence giving rise to or which may give rise to a claim under this Special Condition 6.7 the **Insured** shall:
  - 1) give immediate written notice to **Chubb** as soon as the **Insured** becomes aware of the **Insolvency** of any insurer of such **Local Policy**;
  - 2) pursue all rights available under such **Local Policy** and take all reasonable steps to ensure that the **Insured** under the **Local Policy** pursues all rights available under such **Local Policy**;
  - 3) comply with all duties and obligations under this **Policy** and take all necessary steps to ensure that the **Insured** under the **Local Policy** complies with all duties and obligations under such **Local Policy**;
  - 4) at the request of **Chubb** submit a sworn statement of loss even if such a statement has already been submitted by the **Insured** under the **Local Policy**;
  - 5) give all such information and assistance as **Chubb** may require and take all necessary steps to obtain for **Chubb's** benefit all possible recoveries and indemnities available from any other source.

The following additional Definitions apply to this Special Condition 6.7:

**Insolvency** means an adjudicated bankruptcy or insolvency of the insurer of any **Local Policy** or a refusal or inability to pay within a reasonable amount of time from the date of a final judgement or settlement that determines the amount the insurer of such **Local Policy** is legally obligated to pay.

**Affiliate** means any company within the Chubb Group with Chubb Limited as its ultimate holding company.

### About Chubb in New Zealand

Chubb is the world's largest publicly traded property and casualty insurer. Chubb's operation in New Zealand (Chubb Insurance New Zealand Limited) offers corporate Property & Casualty, Group Personal Accident and corporate Travel Insurance products through brokers.

More information can be found at [www.chubb.com/nz](http://www.chubb.com/nz)

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## Chubb. Insured.<sup>SM</sup>

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