

# Statutory Liability Policy



# Thank you for choosing Ando Statutory Liability Insurance

## Find out what your insurance does and doesn't cover

This document explains how the insurance works, your responsibilities, and how to make a claim. Please read it carefully, as it's really important you understand it. While there's a lot of information, if you take time to read it now, you'll know what the insurance covers. Just as important – you'll also know what it doesn't cover.

This Statutory Liability Insurance policy document sets out the policy's benefits, what's not covered, and the main terms and conditions of the insurance agreement.

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Looking for something specific? Search key words by pressing **Ctrl + F (PC)** or **Command + F (Mac)** on your computer.

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# Important information about this policy

## Our promise to you

In return for **you** having paid the required premium **we** agree to insure **you** as set out in this **policy**.

## Your policy

**Your policy** with **us** consists of:

- > any information provided to **us** by **you** or on **your** behalf including **your** proposal;
- > this **policy** document;
- > any endorsements or clauses that **we** apply to **your policy**; and
- > the **schedule**.

## Duty of disclosure

When **you** apply for insurance, **you** have a legal duty of disclosure. This means **you** or anyone applying on **your** behalf must tell **us** everything **you** know (or could be reasonably expected to know) that might affect **our** decision when deciding:

- > to accept **your** insurance; and/or
- > the cost or terms of the insurance, including the **excess**.

In particular, **you** should tell **us** anything which may increase the chance of a **claim** under this **policy**, or the amount of a **claim** under this **policy**.

**You** also have this duty every time **your** insurance renews and when **you** make any changes to it. If **you** or anyone on **your** behalf breaches this duty of disclosure, **we** may treat this **policy** as being of no effect and to have never existed.

Please ask **us** if **you** are not sure whether **you** need to tell **us** about something.

## Changes to facts or circumstances during the policy

**You** must tell **us** of any material change to any of the facts or circumstances existing at the beginning of the **period of insurance**.

If **you** do notify **us** of a change, **we** may alter the premium, the terms of **your** insurance or cancel the insurance with effect from the date on which the change first occurred.

## Changing your mind

If **you** change **your** mind **you** can cancel **your policy** within 30 days of it starting provided **you** have not made a **claim**.

**We** will then cancel the **policy** from its commencement and refund in full any premium **you** have paid.

## Reading this policy

There are words in bold that have specific meaning(s) and are explained in the 'Definitions' section at the end of this **policy** document.

The headings that **we** have used in this **policy** document are intended to help **you** find **your** way through it more easily. They are not intended to be used for interpreting the contents of the **policy** document.

## Privacy Act and the Insurance Claims Register

By entering into this insurance contract with **us**, **you** consent to **your** personal information being collected by **us** and being shared by **us** with other insurance companies, claims supply partners and brokers, for the purposes of entering into this **policy** with **you** and any **claim** in connection with this **policy**.

**You** also consent to any personal information **we** hold in connection with any **claim** that **you** make being transferred to the Insurance Claims Register, a register operated by Insurance Claims Register Limited for use by participant insurers, including **us**.

This information may be accessed by participant insurers for the purpose of managing claims.

## Fair Insurance Code

**We** are committed to complying with the Fair Insurance Code as published by the Insurance Council of New Zealand. This means **we'll**:

- > provide insurance contracts which are understandable and show the legal rights and obligations of both **us** and **you**;
- > explain the meaning of legal or technical words or phrases;
- > explain the special meanings of words or phrases as they apply in the **policy**;
- > manage claims quickly, fairly and transparently;
- > clearly explain the reason(s) why a **claim** has been declined;
- > provide **you** with a written summary of **our** complaints procedure as soon as disputes arise and advise **you** how to lodge a complaint and tell **you** about the Insurance and Financial Services Ombudsman Scheme.

## Concern or complaint

**We** aim to provide a great standard of service in everything **we** do.

If **you** have a concern or complaint, **we** want to hear from **you** so that **we** have the opportunity to make it right. **You** can contact **us** on the details below or see [www.ando.co.nz](http://www.ando.co.nz) for information on **our** complaints and dispute resolution process.

Complaints Officer  
Ando Insurance Group Limited  
PO Box 6649  
Victoria Street West  
Auckland 1142  
New Zealand

p 09 377 1432  
e [complaints@ando.co.nz](mailto:complaints@ando.co.nz)

Complaints that cannot be resolved by the Complaints team may be referred to the Insurance and Financial Service Ombudsman. Further details will be provided at the appropriate stage of the complaints process.

## Claims made

This is a claims-made **policy** and no claim under this **policy** can be made after the **period of insurance** specified in the **schedule**. The **policy** does not cover acts or omissions prior to the **retroactive date**.

# Section 1: Coverage

In consideration of the payment of the premium to **us** and in reliance on the written proposal and any other underwriting information provided, which will be deemed to be incorporated into and to be the basis of this **policy**, **we** will insure **you**, subject to the **policy** terms, as follows.

## 1.1 Your liability

**We** will pay on **your** behalf any:

- a) **Fine** under any **Act of Parliament**;
- b) **Order for reparation**;
- c) **Statutory damages**;

arising out of a **valid claim**.

## 1.2 Limit of indemnity

- a) All **claims** arising out of a series of related **events** arising from one source or cause will be one **claim**.
- b) **Our** maximum liability for all amounts paid under this **policy** excluding **defence costs**:
  - (i) for any one **claim**; or
  - (ii) in the aggregate during any one **period of insurance** for all **claims**;  
will not exceed the **limit of indemnity**.
- c) A payment under any Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

## 1.3 Defence costs

In addition to the applicable **limit of indemnity**, **we** will pay the **defence costs** necessarily and reasonably incurred by **you** with **our** prior written consent, to defend:

- a) a prosecution that if proven could result in a **fine** that would be insured under this **policy**;
- b) a **proceeding** that if proven could result in **statutory damages** that would be insured under this **policy**;
- c) a prosecution under the Health and Safety at Work Act 2015.

Provided that:

- (i) the prosecution or **proceeding** is a **valid claim** under this **policy**;
- (ii) **our** maximum liability in the aggregate in respect of all **defence costs** during the **period of insurance**, including any **defence costs** paid under any Additional Coverage Clause, will not exceed the amount of the **limit of indemnity**;
- (iii) upon payment by **us** of the **limit of indemnity** in respect of any **fine, order for reparation** or **statutory damages**, **our** liability in respect of any further **defence costs** in connection with that **claim** will cease;
- (iv) if a payment exceeding the **limit of indemnity** has to be made to dispose of a **claim**, **our** liability to pay **defence costs** in connection with that **claim** will be limited to such proportion of the **defence costs** as the **limit of indemnity** bears to the amount paid to dispose of the **claim**.

## 1.4 Excess

- a) **We** will deduct an **excess** from the amounts **we** pay in respect of any **claim**, including from **defence costs**.
- b) Where a **claim** arises from separate **events**, then an **excess** will apply to each **event**, except where the **claim** arises from a series of related **events** arising from one source or cause, in which case only one **excess** will apply.

## Section 2: Additional Coverage Clauses

These Additional Coverage Clauses are to be read together with the Coverage Clauses at Section 1 above and are subject to the **policy** terms. The sublimits and **excesses** specified in each Additional Coverage Clause apply unless there is a different sublimit or **excess** shown in the **schedule**. The sublimits are included in, not in addition to, and may be less than the **limit of indemnity** shown in the **schedule**.

### 2.1 Counselling

**We** will reimburse the reasonable costs for counselling for **insured persons**, (for up to a maximum of 5 hours of counselling in total for all **insured persons**), in relation to a **valid claim**, to be provided by a member of the New Zealand Association of Counsellors, provided that:

- a) no **excess** will apply to this Additional Coverage Clause; and
- b) a payment under this Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

### 2.2 Defence costs if acquitted

**We** will reimburse **your** reasonable **defence costs** where it is alleged that **you** have acted knowingly, wilfully or intentionally and **you** are subsequently **acquitted** of the charge to which the allegation relates.

### 2.3 Enforceable undertakings

**We** will insure **you** for amounts which **you** are required to pay as part of an enforceable undertaking accepted by the regulator under the Health and Safety at Work Act 2015, and **defence costs** incurred in relation to the enforceable undertaking, provided that:

- a) the enforceable undertaking arises out of a **valid claim** which would have resulted in an **order for reparation** if **you** were convicted; and
- b) the maximum amount **we** will pay under this Additional Coverage Clause (excluding **defence costs**) is no greater than the amount **we** would expect to pay as an **order for reparation** had **you** been convicted; and
- c) the maximum amount of **defence costs we** will pay under this Additional Coverage Clause is \$25,000.
- d) the maximum aggregate amount payable by **us** under this Additional Coverage Clause during any one **period of insurance** shall be the sublimit shown in the **schedule**. A payment under this Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

Provided **you** are not insured under this Additional Coverage Clause for:

- (i) any amounts payable in respect of an enforceable undertaking or agreement **you** incur or agree to without **our** prior written consent; or
- (ii) any costs of or in connection with compliance, training or remedial actions; or
- (iii) any costs of compliance, monitoring activities or meeting any non-financial terms of the enforceable undertaking; or
- (iv) any amount payable to any party other than a 'victim' (as defined under section 4(1) of the Sentencing Act 2002) had the **event** resulted in a conviction; or
- (v) any amounts that may result from **your** failure to comply with or contravention of any of the terms of the enforceable undertaking.

Exclusion 3.2(b) (Compliance costs) will not apply to this Additional Coverage Clause.

## 2.4 Extended reporting period

- a) If **we** cancel or refuse to offer renewal terms for this **policy**, **you** have the right, upon payment of 90% of the annual premium, to an extension of the cover granted by this **policy** for the period of 12 months following the effective date of such cancellation or non-renewal, but only in respect of an **event** otherwise covered under this **policy** that takes place prior to the effective date of such cancellation or non-renewal.
- b) This right of extension will lapse unless written notice of such election, together with payment of the additional premium due, is given to **us** within 30 days following the effective date of cancellation or non-renewal. If the right of extension lapses then cover under this **policy** ceases as at the effective date of the cancellation or non-renewal.
- c) Any **claim** made during the extended reporting period will be treated as if it had been made during the last **period of insurance** and is subject to the remaining **limit of indemnity** at the effective date of cancellation or non-renewal.
- d) The entire premium for the extended reporting period is non-refundable upon payment.

## 2.5 Licensed Building Practitioners

**We** will indemnify **you** for:

- a) any fine or costs imposed by any statutory registration board or similar regulatory authority under the provisions of the Building Act 2004; and
- b) all reasonable **defence costs** incurred in the investigation and defence of a **claim** covered by this Additional Coverage Clause.

Provided:

- (i) **you** are a **Licensed Building Practitioner** and hold a current licence of the relevant class at the time the work giving rise to the complaint was supervised and/or signed off; and
- (ii) any **defence costs** incurred must be with **our** prior written consent.

The maximum aggregate amount which **we** will pay under this Additional Coverage Clause will be the lesser of the sublimit in the **schedule** or the **limit of indemnity**. A payment under this Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

## 2.6 Mergers and consolidations

If the **named entity**:

- a) is merged, amalgamated, or consolidated with or becomes a subsidiary of another company; or
- b) sells all or substantially all of its assets to another company;

then this **policy** will be extended to insure the new company, provided:

- (i) the operations and activities of the merged, amalgamated or consolidated company are the same as those undertaken by **you** as described in the **schedule**; and
- (ii) **you** give **us** notice that **you** wish to extend cover to the new company within 30 days of the merger, amalgamation, consolidation or sale; and
- (iii) **we** will be entitled to vary the **policy** terms and/or charge an additional premium.

If the provisions of subparagraphs (i), (ii) and (iii) are not met, then the only cover available for any **claim** that has occurred prior to the date of the merger, amalgamation or consolidation will be for the **named entity**.

## 2.7 New subsidiary companies

This **policy** is extended to insure a subsidiary company created or acquired by **you** during the **period of insurance** provided:

- a) the operations and activities of the new subsidiary company are the same as those undertaken by **you** described in the **schedule**; and
- b) **you** give **us** notice that **you** wish to extend cover to the new subsidiary within 30 days of the acquisition or creation of the new subsidiary company; and
- c) **we** will be entitled to vary the **policy** terms and/or charge an additional premium.

There is no cover for any **claim** that has occurred prior to the date of the creation or acquisition of the subsidiary company.

## 2.8 Official investigations

**We** will pay **defence costs** for **you** to be represented at any **official investigation**, public examination or commission, provided:

- a) the investigation arises out of an **event**, or potential **event**, that occurred after the **retroactive date** in New Zealand in connection with **your business**; and
- b) **you** first knew, or ought to have known, during the **period of insurance**, of the **official investigation**, public examination or commission in relation to that **event**; and
- c) **you** have notified **us** of the **official investigation**, public examination or commission, as soon as possible, but no later than 30 days after the **period of insurance** ends.

## 2.9 Pecuniary penalties

**We** will pay any amount which **you** are ordered to pay as a **pecuniary penalty**, provided:

- a) **we** are not legally prohibited from insuring **you** for the **pecuniary penalty**; and
- b) the **pecuniary penalty** arises out of an act, error or omission that occurred after the **retroactive date** in New Zealand in connection with **your business**; and
- c) **you** first knew, or ought to have known, during the **period of insurance**, of the proceeding to which the **pecuniary penalty** relates; and
- d) **you** have notified **us** of the proceeding to which the **pecuniary penalty** relates, as soon as possible, but no later than 30 days after the **period of insurance** ends.

The maximum aggregate amount which **we** will pay under this Additional Coverage Clause will be the lesser of the sublimit in the **schedule** or the **limit of indemnity**. A payment under this Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

Exclusion 3.5 (Damages and non-criminal penalties) will not apply to this Additional Coverage Clause.

## 2.10 Private prosecutions

**We** will pay on **your** behalf any **order for reparation** and **defence costs** arising out of a **private prosecution** under the Health and Safety at Work Act 2015, provided that the **private prosecution** arises out of the same **event** as a **valid claim** which was previously notified to **us**. An **order of reparation** paid under this Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

Exclusion 3.17 (Private prosecution) will not apply to this Additional Coverage Clause.



### 2.11 Public relations expenses

**We** will pay the reasonable costs and expenses of a public relations consultant for the sole purpose of protecting **your** reputation that has been brought to question as a direct result of a **valid claim**, provided:

- a) **you** must notify **us** within 30 days of first becoming aware of **your** reputation being brought into question and provide full written details outlining the circumstances surrounding the **event**; and
- b) **we** must have given **our** prior written consent to retain the services of the public relations consultant.

**Our** total aggregate liability during any one **period of insurance** for all expenses under this Additional Coverage Clause will not exceed the sublimit in the **schedule** and will be part of and not in addition to the **limit of indemnity**.

### 2.12 Reparation at restorative justice conference

**We** will pay reparation that is offered by **you** at a restorative justice conference as appropriate to be paid prior to sentencing, provided:

- a) the restorative justice conference relates to charges which have been notified to **us** as a **valid claim**; and
- b) **our** written agreement is obtained prior to the restorative justice conference as to whether any reparation should be offered at the restorative justice conference, and as to the amount of the reparation to be paid, which will be no greater than the amount **we** would expect to pay as an **order for reparation** upon **your** conviction.

The maximum aggregate amount which **we** will pay under this Additional Coverage Clause will be the lesser of the sublimit in the **schedule** or the **limit of indemnity**. A payment under this Additional Coverage Clause will be part of and not in addition to the **limit of indemnity**.

Exclusion 3.14 (Monetary amounts paid or offered before sentence) and Exclusion 3.18 (Reparation) will not apply to this Additional Coverage Clause.

# Section 3: Exclusions

We will not insure **you** in respect of any **claim**:

## 3.1 Asbestos

Directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

## 3.2 Compliance costs

- a) For payment of any **fine** (or part of a **fine**) which is a penalty imposed for failing to comply with any enforcement order or remedial order; or
- b) For the cost incurred by **you** in complying with any enforcement or remedial order or enforceable undertaking.

## 3.3 Continuing fine

For payment of any **fine** (or part of a **fine**) which is imposed in relation to a period of time after **you** first received notice from the prosecuting body of the intention to commence a prosecution in relation to the offence.

## 3.4 Cyber loss

Caused by or arising out of **cyber act** or **cyber incident** including but not limited to any action taken in controlling, preventing, suppressing, or remediating any **cyber act** or **cyber incident**.

## 3.5 Damages and non-criminal penalties

Arising from any proceeding seeking:

- a) damages, including punitive, aggravated, liquidated, multiple or exemplary damages, except for **statutory damages**; or
- b) compensation for injury suffered, including physical or mental injury, humiliation, distress or damage to reputation, except for an **order of reparation**; or
- c) penalties provided by an **Act of Parliament**.

## 3.6 Dishonesty and fraud

Resulting from or contributed to by any dishonest, fraudulent, criminal or malicious act or omission by **you**. Provided that this exclusion will not apply to **you** where **you** have not committed or condoned the dishonest, fraudulent, criminal or malicious act or omission.

## 3.7 Employment disputes

Arising out of any contract of employment or service or any intended contract of employment or service with any current, former or prospective employee, including any personal grievance or similar action by an employee but this exclusion will not apply to any investigation, inquiry or prosecution by the Ministry of Business, Innovation and Employment pursuant to the Health and Safety at Work Act 2015.

### 3.8 Excluded Acts

Arising out of, based upon, attributable to, or in any way involving, directly or indirectly the following **Acts of Parliament**:

- a) Anti-Money Laundering and Countering Financing of Terrorism Act 2009
- b) Arms Act 1983
- c) Aviation Crimes Act 1972
- d) Crimes Act 1961
- e) Commerce Act 1986
- f) Financial Markets Conduct Act 2013
- g) Financial Service Providers (Registration and Dispute Resolution) Act 2008
- h) Financial Markets Authority Act 2011
- i) Land Transport Act 1998
- j) Misuse of Drugs Act 1975
- k) Criminal Proceeds (Recovery) Act 2009
- l) Summary Offences Act 1981
- m) Waste Minimisation Act 2008

and any other **Act of Parliament** specified in this **policy** as an excluded **Act of Parliament**.

### 3.9 Health and Safety at Work Act

For any **fine** ordered to be paid by **you** following conviction under the Health and Safety at Work Act 2015.

### 3.10 Infringement fees

For any infringement fees of any kind.

### 3.11 Intentional or deliberate disregard

Arising out of or based upon, attributable to, or in any way involving **your** intentional or reckless disregard of the provisions of any **Act of Parliament**, including **your** intentional or reckless disregard of prior warnings from a regulator or enforcement action taken by a regulator against **you**.

### 3.12 Known claims and events

- a) Made against, or intimated to, **you** prior to the commencement of the **period of insurance**; or
- b) Notified under any previous **policy**; or
- c) Arising out of or connected with any **event** that:
  - (i) **you** were aware of prior to commencement of the **period of insurance**; and
  - (ii) a reasonable person in **your** position would have considered may give rise to a **claim**.

### 3.13 Legal jurisdiction

- a) Where the **proceeding**, prosecution, investigation or inquiry is brought or may be brought in a court outside New Zealand; or
- b) Which is brought or may be brought in a court within New Zealand to enforce a **fine** ordered in a court outside New Zealand whether by way of a reciprocal agreement or otherwise; or
- c) In which the proper law to be applied is that of a country other than New Zealand.

### 3.14 Monetary amounts paid or offered before sentence

For any sum paid, or offered to be paid, by the **named entity** and/or **insured persons**, without **our** prior written consent, to or for a complainant prior to imposition of sentence by a court, as reparation or otherwise, following an **event**.

### 3.15 Nuclear

Arising out of or connected with:

- a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive assembly or its nuclear components.

### 3.16 Other activities

Arising out of activities otherwise than in the course of or in connection with **your business**.

### 3.17 Private prosecution

Arising out of or related to any **private prosecution**.

### 3.18 Reparation

For any monetary amount ordered to be paid by **you** by way of reparation imposed by a Court under any **Act of Parliament**, except an **order for reparation**.

### 3.19 Retroactive date

Arising out of any **event** that occurred prior to the **retroactive date**.

### 3.20 Sanctions

To the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America, Australia or New Zealand.

### 3.21 Taxes

For the payment of any tax, including any **fine** or penalty resulting from the failure to pay any tax.

### 3.22 Terrorism

Arising from or in any way related to death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with, any act of **terrorism** regardless of any contributing cause or **event**.

This **policy** also excludes death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any action taken in controlling, preventing or suppressing **terrorism**, or in any way relating to the above exclusion.

### 3.23 War

- a) Arising out of or connected with war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b) Arising out of or connected with confiscation, nationalisation or damage to property by or under the order of any government or public or local authority.

# Section 4: Conditions

## 4.1 Allocation of costs

If costs or expenses are incurred both in respect of a **claim** insured under this **policy** and a matter that is not insured under this **policy** then **we** will pay only a fair proportion of such costs or expenses. In the event that **you** and **us** are unable to agree as to a fair proportion, then counsel mutually agreed upon by both parties and whose decision will be final, will determine what is a fair proportion.

## 4.2 Breach of condition

Where **your** breach of any condition of this **policy** has resulted in prejudice to the handling and/or settlement of any **claim** to which this **policy** responds, which in all other respects qualifies to be insured under this **policy**, the insurance cover afforded by this **policy** in respect of such **claim** or loss will be reduced to such amount as would have been payable by **us** in the absence of such prejudice.

## 4.3 Cancellation

- a) **You** may cancel this **policy** at any time by giving notice to **us** in writing. **We** will refund to **you** on a pro rata basis the amount of the unexpired premium already paid subject to any applicable minimum premium.
- b) **We** may cancel this **policy** after sending at least 30 days' notice to **you** in accordance with Conditions 4.11(b) and 4.11(c) (Notices by us). **We** will refund on a pro rata basis the amount of any unexpired premium already paid.

## 4.4 Changes to legislation

Any term used in this **policy** and defined by reference to an **Act of Parliament** will have the meaning given for the term in the current form of the **Act of Parliament**, taking into account any amendment to, or replacement of, an earlier **Act of Parliament**.

## 4.5 Conduct of claims

- a) **You** must not make any admission or any decision that affects the conduct of the **claim**, or incur any costs or expenses in connection therewith without **our** prior written consent.
- b) **We** are entitled at any time to nominate a solicitor to act as **your** solicitor and will have total discretion as to the **conduct of the claim**, in **your** name. The solicitor will at all times be at liberty to disclose to **us** any information obtained in the course of so acting, whether from **you** or howsoever. **You** agree to waive all claims to legal professional privilege that might otherwise have existed as between **you** and the solicitors retained by **us** to act on **your** behalf, in respect of such information.
- c) If **we** believe that the **claim** will not exceed the **excess**, **we** may instruct **you** to assume responsibility for the conduct of the **claim** at **your** expense. Should the **claim** subsequently exceed the **excess**, **we** agree to reimburse the reasonable costs and expenses incurred by **you** that exceed the **excess**. **You** must advise **us** as soon as the total costs of the **claim** exceed the **excess** or it becomes apparent that they are likely to do so.

## 4.6 Constructive notice / no waiver

- a) Except as provided by statute, notice to any agent or broker or knowledge possessed by any agent, broker or other person will not constitute notice to **us**.
- b) The terms of this **policy** will not be waived or changed, except by written agreement with **us**.

#### 4.7 Defence of prosecutions

**We** will not require **you** to defend any prosecution in respect of any **claim** against **you**, nor will **you** require **us** to defend, on **your** behalf, any prosecution in respect of any such **claim** unless legal counsel (to be mutually agreed upon by **you** and **us**) advises **us** that the prosecution should be defended.

In formulating such advice, counsel will take into consideration whether the defence of the prosecution has a reasonable prospect of success, the likely costs of the defence and **our** liability under the **policy**. The cost of the legal counsel's opinion will be part of the **defence costs**.

In the event that counsel advises that, having regard to all the circumstances, the matter should not be defended, then **you** can elect to defend the prosecution at **your** own expense but **our** liability will not exceed the total amount which **we** consider would have been paid by **us** under this **policy** (including **defence costs**) had **you** elected not to defend.

#### 4.8 Fraud

If any answers or statements in respect of any **claim** under this **policy**, or in any information provided to obtain, amend or renew this insurance, are false in any way, **we** will not provide any indemnity to **you** under this **policy**.

#### 4.9 GST

Where, on receiving any indemnity payment under this **policy**, **you** are liable to pay tax under section 5(13) of the Goods and Services Tax Act 1985 (or any re-enactment or substitute), **we** will pay **you** for the cost of that tax. The indemnity under this clause is in addition to the applicable **limit of indemnity**.

#### 4.10 Material change

**You** will give immediate notice to **us** of any material change to any of the facts or circumstances existing at the commencement of the **period of insurance**. **We** will be entitled to vary the **policy** terms and/or charge an additional premium.

#### 4.11 Notices by us

- a) Any notice given in writing by **us** to the first named insured in the **schedule**, or to the broker through which **you** arranged this **policy** with **us**, will be deemed to be notice to each insured.
- b) Any notices by **us** may be effected by sending an email or letter to the last known contact address.
- c) Any such notice will be deemed to have been received, if sent by email, at the time of transmission, and if sent by post, three business days after the date of posting.

#### 4.12 Other insurance

Upon giving notice of any **claim** under this **policy**, **you** will provide **us** with written details of any other insurance that may cover or partially cover that **claim**.

In the event that **you** hold other insurance cover with another insurer in respect of any **claim** under this **policy**, then the indemnity under this **policy** will not be available until the limit of indemnity under any other **policy** has been exhausted.

#### 4.13 Policy disputes

This **policy** is governed by the laws of New Zealand whose courts will have exclusive jurisdiction in any dispute arising herein.

#### 4.14 Reasonable precautions

**You** will take all reasonable precautions to:

- a) avoid or prevent the happening of any circumstances that may give rise to an **event**; and
- b) comply, and ensure that **your** employees, contractors and agents comply with all statutory obligations, by-laws or regulations imposed by a public authority for the safety of persons or property.

#### 4.15 Reporting of claims

Irrespective of the quantum, **you** must give **us** immediate notice in writing of:

- a) any **claim** made against **you**; or
- b) the receipt of notice from, or information as to any intention by, any party to make a **claim** against **you**; or
- c) any **event**; or
- d) any circumstance that a reasonable insured in **your** position would have considered may give rise to a **claim** or to a **claim** under this **policy**. Where such notice is given to us by **you**, any **claim** that may subsequently be made against **you** will be deemed to be a **claim** made during the **period of insurance**.

Provided in order to qualify as a **claim** capable of being covered by this **policy**, **your** notice in writing must:

- (i) relate to a **claim** that occurred during the **period of insurance**; and
- (ii) be given during the **period of insurance** or within 30 days after its expiry.

#### 4.16 Severability

- a) If more than one legal entity is insured under this **policy**, each entity is covered in the same manner as though **we** had issued them with a separate **policy**. However where the named entity is a company with a sole director the knowledge of that sole director will be imputed to the named entity.
- b) If there is a claim against more than one entity in respect of the same event, only one excess and one **limit of indemnity** will apply, regardless of the number of entities indemnified. Where the **limit of indemnity** is insufficient to fully indemnify all insured entities, it will apply in priority to the named entity.

#### 4.17 Subrogation

- a) If **we** make any payment under this **policy** to or on behalf of **you**, **we** will be subrogated to all **your** rights of recovery.
- b) **You** will execute all papers and do all that is necessary to assist **us** in the full exercise of such rights, including prosecuting proceedings in **your** name at **our** expense.
- c) If **you** effect any recovery in respect of the **claim** under the **policy**, **you** will account to **us** for the full amount received.

#### 4.18 Words

Certain words in this **policy** have a specific meaning. These words appear in bold and **you** will find the meaning listed in 'Definitions' of this **policy**. Words importing persons will include companies and other legal entities. The singular includes reference to the plural and vice versa, and reference to any gender includes all other genders.

# Section 5: Definitions

## 5.1 Acquitted

The dismissal of charges before or after a defended hearing, or the entry of a not guilty verdict. Acquitted does not include the withdrawal or disposition of a charge pursuant to a plea bargain or agreement with the prosecutor where multiple charges have been laid.

## 5.2 Act of Parliament

Any Act of the New Zealand Parliament, including any amendment, enactment or replacement legislation or any Statutory Regulations, rules or codes issued under such an Act.

## 5.3 Claim

- a) Any threatened or actual prosecution or investigations or inquiry regarding an **event**; or
- b) Any circumstances which indicate to a reasonable insured in **your** position that a prosecution, investigation or inquiry regarding an **event** may occur, which is connected with **your business** and which may give rise to the imposition of a **fine**; or
- c) Any threatened or actual **proceeding** regarding an **event**; or
- d) Any circumstances which indicate to a reasonable insured in **your** position that a **proceeding** regarding an **event** may occur.

## 5.4 Computer system

Any computer, hardware, software, firmware and the **data** stored thereon, as well as associated input and output devices, data storage devices, networking equipment, components and storage area network or other electronic back up facilities owned or operated by **you** or any other party.

## 5.5 Conduct of the claim

The investigation, defence, compromise or handling of the:

- a) **claim**; or
- b) **official investigation**; or
- c) complaint to any statutory registration board or similar regulatory authority under the provisions of the Building Act 2004;  
on **your** behalf.

## 5.6 Cyber act

An unauthorised or malicious act or series of related unauthorised or malicious acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **computer system** or any **data** by any person or group(s) of persons.

## 5.7 Cyber incident

- a) Any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **computer system**; or
- b) Any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **computer system** arising from any **cyber act** under 5.7 a).

## 5.8 Data

Information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **computer system**.



## 5.9 Defence costs

Reasonable and necessary costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred with **our** prior written consent which relate directly to the **conduct of the claim**.

Defence costs does not include charges for time spent by partners, directors, officers or employees of **yours** or reimbursement of any form of remuneration for such people.

## 5.10 Event

- a) Any act or omission by **you** in connection with **your business** that may result in an allegation that **you** have committed an offence under an **Act of Parliament** punishable by conviction; or
- b) A **proceeding**.

## 5.11 Excess

The **excess** specified in the **policy** or **schedule**.

## 5.12 Fine

Any monetary penalty for which the **named entity** and/or **insured persons** are liable on conviction of any offence under an **Act of Parliament** in connection with an **event**, for which **we** may legally insure **you**.

This **fine** will include amounts ordered to be paid, upon conviction, towards the costs of the prosecution.

For the avoidance of doubt this **fine** does not include either any amount ordered as compensation, or a **fine** imposed pursuant to the Health and Safety at Work Act 2015.

## 5.13 Insured person

Any person who is currently, or was at the date of any **event**, or becomes during the **period of insurance**, partner, director, officer, trustee or employee of the **named entity**.

## 5.14 Licensed Building Practitioner

A building practitioner whose name is at the time of the act, error or omission entered in the register established and maintained under the Building Act 2004 or any amendments, enactments or statutory regulations of such Act.

## 5.15 Limit of indemnity

The limit of indemnity specified in the **schedule**.

## 5.16 Named entity

The entity specified in the **schedule** and includes any subsidiary.

The definition of named entity includes any entity that ceased to be a subsidiary before or during the **period of insurance**, but **we** will not pay on **your** behalf any **fine** or **order for reparation** or **statutory damages** arising from an **event** occurring after it ceased to be a subsidiary, nor will **we** pay on **your** behalf any **fine** or **order for reparation** or **statutory damages** arising from an **event** occurring before it became a subsidiary.

## 5.17 Official investigation

Statutory Registration Board or similar Regulatory inquiry, investigation or proceeding.

## 5.18 Order for reparation

An amount of money **you** are ordered to pay as reparation under Section 32 of the Sentencing Act 2002.

## 5.19 Pecuniary penalty

A monetary penalty ordered by a New Zealand Court in a civil proceeding which is to be paid to a Crown entity pursuant to an **Act of Parliament** which provides for the pecuniary penalty.

## 5.20 Period of insurance

The period specified in the **schedule**.

## 5.21 Policy

This document, the **schedule** and any endorsements issued by **us**.

## 5.22 Private prosecution

Any investigation, defence, proceeding, inquiry, or prosecution taken by a person or entity other than the statutory authority or enforcement agency given that responsibility under an **Act of Parliament**.

## 5.23 Proceeding

- a) A complaint against **you** alleging a breach (or potential breach) of either the Privacy Act 2020 or the Human Rights Act 1993; or
- b) A civil proceeding against **you** alleging a breach (or potential breach) of either the Privacy Act 2020 or the Human Rights Act 1993.

## 5.24 Retroactive date

The date specified in the **schedule**.

## 5.25 Schedule

The current **schedule** issued by **us**.

## 5.26 Statutory damages

Damages payable by **you** under either the Privacy Act 2020 or the Human Rights Act 1993 for an accidental breach of the applicable Act.

## 5.27 Terrorism

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

## 5.28 Valid claim

Any **claim** that is:

- a) first made against **you** during the **period of insurance**; and
- b) notified in writing to **us** by **you** during the **period of insurance** or within 28 days after its expiry; and
- c) arising out of any act, error or omission or conduct in connection with **your business** that occurred subsequent to the **retroactive date**.

**Claims** that do not satisfy all of (a), (b) and (c) of this definition will not be covered under this **policy**.

## 5.29 We, us, our

Ando Insurance Group Limited for and on behalf of the Underwriters as noted in the **schedule**.

## 5.30 You, your

The **named entity** and **insured persons**.

## 5.31 Your business

The business and undertakings of the **named entity**, as specified in the **schedule**.

ANDO SL 0323

