



## Energy Liability Insurance Policy Wording

### 1. OPERATIVE CLAUSE

The Underwriters will indemnify the INSURED against their liability to pay damages (including claimants' costs, fees and expenses) in accordance with the law of any country but not in respect of any judgment, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part) unless the INSURED has requested that there shall be no such limitation and has accepted the terms offered by Underwriters in granting such cover, which offer and acceptance must be signified by specific endorsement to this Policy.

The indemnity applies only to such liability as defined by each insured Section of this Policy arising out of the BUSINESS specified in the SCHEDULE, subject always to the terms, Conditions and Exclusions of such Section and of the Policy as a whole.

### 2. DEFINITIONS

For the purpose of determining the indemnity granted:

2.1 **ADVERTISING INJURY** means INJURY arising out of:

- 2.1.1 libel, slander or defamation; or
- 2.1.2 any infringement of copyright or passing-off of title or slogan; or
- 2.1.3 unfair competition, piracy, misappropriation of advertising ideas or style of doing BUSINESS; or
- 2.1.4 invasion of privacy

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast or by the use of any internet website and caused by or arising out of the INSURED's advertising activities.

2.2 **BUSINESS** means:

the INSURED's BUSINESS as described in the SCHEDULE and, where applicable, as further described in any more specific underwriting information provided to the Underwriters at the time when this Policy was negotiated, and shall include:

- 2.2.1 the ownership and/or tenancy of premises by the INSURED;
- 2.2.2 the staging of exhibitions or trade stands or the attendance at conventions or seminars and the like;
- 2.2.3 the provision of sports, social, educational and welfare organisations and fire, first aid and medical facilities;
- 2.2.4 private work undertaken by the INSURED's EMPLOYEES for any director, partner, officer or executive of the INSURED;
- 2.2.5 the ownership or operation of lifts, elevators, escalators or hoists, but only in so far as this liability is not otherwise INSURED;
- 2.2.6 the organisation and/or sponsorship of sporting (including motor sports events/racing teams anywhere in the world) charity, literary, theatrical and fund raising events and competitions;
- 2.2.7 building, construction, erection, plant change, maintenance, cleaning and all other minor works carried out by contractors, sub-contractors and/or an EMPLOYEE of the INSURED relating to or associated with or ancillary to the work or projects with a total contract value not exceeding NZD xxxxxx (or the equivalent thereof in the currency of this Policy). If separate insurance has been effected by or on behalf of such contractors and/or sub-contractors then this Policy shall apply excess of the amounts payable under such insurance(s).

2.3 **COMPLETED OPERATIONS** means operations which have been completed or abandoned and which occur away from premises owned by or rented to the INSURED. Operations shall include materials, parts or equipment furnished in connection therewith, and shall be deemed completed at the earliest of the following times:

- 2.3.1 when all operations to be performed by or on behalf of the INSURED at the site of the operations have been completed; or

- 2.3.2 when the portion of the work out of which the INJURY or DAMAGE arises has been put to its intended use by any person or organisation other than another contractor or sub-contractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise completed, shall be deemed completed.

2.4 **DAMAGE** means:

- 2.4.1 physical loss, destruction of or damage to tangible property, including the loss of use thereof at any time resulting therefrom; and/or
- 2.4.2 loss of use of tangible property which has not been physically lost, damaged or destroyed, provided such loss of use is caused by physical DAMAGE to or destruction of other tangible property which first happened during the Period of Insurance; all such loss of use shall be deemed to occur at the time of the physical damage or destruction that caused it; and / or
- 2.4.3 costs of evacuation from a premises following actual or threatened physical damage to tangible property and/or INJURY.

2.5 **EMPLOYEE** shall mean:

- 2.5.1 any person under a contract of service or apprenticeship with the INSURED;
- 2.5.2 any labour master or labour only sub-contractor or person supplied by them;
- 2.5.3 any self-employed person working for or on behalf of the INSURED;
- 2.5.4 any person engaged by the INSURED as a substitute for a permanent EMPLOYEE or to meet seasonal or short-term work requirements;
- 2.5.5 any person engaged by the INSURED, not being a permanent EMPLOYEE and not receiving any remuneration, fee or other compensation from the INSURED, for whose work the INSURED is responsible;
- 2.5.6 any person supplied to, hired or borrowed by the INSURED from another employer agency or third party under an agreement by which the person is deemed to be employed by the INSURED;
- 2.5.7 any person under a work experience, apprenticeship, training, study or similar scheme and any person on secondment to the INSURED;
- 2.5.8 any former EMPLOYEE of the INSURED hired or re-hired on a consultancy basis;
- 2.5.9 any person deemed to be an EMPLOYEE by the terms or provisions of any legislation whilst working for the INSURED in connection with the BUSINESS;

2.6 **INJURY** means:

- 2.6.1 bodily INJURY, death, sickness, disease, disability, shock, fright, mental anguish and/or mental INJURY ("Bodily INJURY ");
- 2.6.2 false arrest, false imprisonment, wrongful detention, malicious prosecution, discrimination or humiliation to any person other than an EMPLOYEE;
- 2.6.3 wrongful entry or wrongful eviction or other invasion of privacy;
- 2.6.4 libel, slander or defamation of character, unless arising out of ADVERTISING INJURY;
- 2.6.5 assault and battery not committed by or at the direction of the INSURED unless committed for the purpose of eliminating danger to persons or property.

2.7 **INSURED** means:

- 2.7.1 the INSURED named in the SCHEDULE (the "Named INSURED"), which term shall include all subsidiary and/or related and/or controlled corporations (including subsidiaries thereof) of the Named INSURED and/or any other organisations under the control of the Named INSURED, as now existing or which may hereafter be constituted or acquired provided that any new acquisition:
- (i) does not represent a material change to the existing BUSINESS
  - (ii) does not represent an increase in wages or turnover of more than 10% of the existing declared wages or turnover
- 2.7.2 every director, partner, proprietor, officer, executive and EMPLOYEE of the Named INSURED (including the spouse or partner of any such person while accompanying such person on any commercial trip or function on behalf of the BUSINESS) while such persons are acting in their capacity as such for or on behalf of the Named INSURED;

every person or firm who enters into an agreement with the INSURED for any purpose of the BUSINESS, including but not limited to any principal, contractor, sub-contractor and/or vendor, but only to the extent required by such agreement and subject always to Clauses 7.3.3 and 12.3;

- 2.7.3 every officer, member, EMPLOYEE or voluntary helper of the Named INSURED's canteen, social, sports, medical, fire fighting or welfare organisations or facilities while acting in their respective capacity as such;
- 2.7.4 officials of the INSURED in their private capacity arising out of their temporary engagement of the INSURED's EMPLOYEES;
- 2.7.5 with respect to any vehicle owned by any person or entity named in paragraph (2.7.1), (2.7.2) or (2.7.4) above or hired for use on behalf of any such person or entity, any person or organisation legally responsible for the use thereof, provided the actual use of the vehicle is with the permission of such person or entity;
- 2.7.6 the personal representatives of the estate of any person indemnified by reason of this Clause 2.7 in respect of liability incurred by such persons.

2.8 **POLLUTION** means:

any pollution or contamination of the atmosphere or any water, land or other tangible property.

2.9 **PRODUCT** means:

any property after it has left the custody or control of the INSURED which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the INSURED but shall not include food or drink supplied by or on behalf of the INSURED.

2.10 **SCHEDULE** means:

the schedule as issued by DUAL New Zealand Limited

3. **CROSS LIABILITIES**

Each person or party indemnified is separately indemnified in respect of claims made against any of them by any other, subject to the Underwriters' total liability not exceeding the stated Indemnity Limits.

4. **DEFENCE COSTS**

The Underwriters will pay all costs, fees and expenses incurred by the INSURED with Underwriters' prior consent ("Defence Costs")

- 4.1 in the investigation, defence or settlement of;
  - 4.2 as a result of representation at any inquest, inquiry or proceedings in respect of matters which have a direct relevance to;
- any occurrence which forms or could form the subject of indemnity by this Policy.

The selection of defence counsel will be made by the INSURED with the Underwriters' prior consent.

5. **INDEMNITY LIMITS**

Underwriters' liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the sum stated in the SCHEDULE against each Section in respect of any one occurrence or series of occurrences arising from one originating cause, but under Section B and Section C the Indemnity Limits represent Underwriters' total liability in respect of all occurrences.

Defence Costs will be payable in addition to the Indemnity Limits unless this Policy is endorsed to the contrary.

Should liability arising from the same originating cause form the subject of indemnity by more than one Section of this Policy, each Section shall be subject to its own Indemnity Limit, provided always that the total amount of Underwriters' liability shall not exceed the greatest Indemnity Limit available under any one of the Sections providing indemnity.

**SECTION A. PUBLIC LIABILITY**

6. **SECTION A - INDEMNITY**

The INSURED is indemnified by this Section in accordance with the Operative Clause for liability arising out of INJURY and/or DAMAGE and/or ADVERTISING INJURY occurring during the Period of Insurance but not against liability arising out of

- 6.1 Pollution; or
- 6.2 in connection with any PRODUCT or COMPLETED OPERATIONS

7.

## **SECTION A - EXCLUSIONS**

This Section does not cover liability

- 7.1. arising out of the ownership, possession or use of any motor vehicle or trailer by or on behalf of the INSURED, other than liability
- 7.1.1 caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
  - 7.1.2 arising beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;
  - 7.1.3 for DAMAGE to any bridge, weighbridge, road or anything beneath caused by the weight of any motor vehicle or trailer or the load thereon;
  - 7.1.4 arising out of any motor vehicle or trailer temporarily in the INSURED's custody or control for the purpose of parking;  
  
provided always that no indemnity is granted against liability compulsorily insurable by legislation or for which the government or other authority has accepted responsibility;
- 7.2 arising out of the ownership possession or use by or on behalf of the INSURED of any aircraft, watercraft or hovercraft (other than watercraft not exceeding five metres in length and then only whilst on inland waterways);
- 7.3 for and/or arising out of DAMAGE to property owned leased or hired or under hire purchase or on loan to the INSURED or otherwise in the INSURED's care, custody or control other than;
- 7.3.1 premises (or the contents thereof) temporarily occupied by the INSURED for work therein (but no indemnity is granted for DAMAGE to that part of the property on which the INSURED is working and which arises out of such work);
  - 7.3.2 clothing and personal effects belonging to EMPLOYEES and visitors of the INSURED;
  - 7.3.3 premises tenanted by the INSURED to the extent that the INSURED would be held liable in the absence of any specific agreement.

## **SECTION B - POLLUTION LIABILITY**

8.

### **SECTION B - INDEMNITY**

The INSURED is indemnified by this Section in accordance with the Operative Clause for liability arising out of INJURY and/or DAMAGE and/or ADVERTISING INJURY occurring in its entirety during the Period of Insurance and arising out of Pollution, but only to the extent that the INSURED can demonstrate that such Pollution

- 8.1 was the direct result of a sudden, specific and identifiable event occurring during the Period of Insurance;
- 8.2 was not the direct result of the INSURED failing to take reasonable precautions to prevent such Pollution.

9.

### **SECTION B - EXCLUSIONS**

This Section is subject to the Exclusions to Section A7 and C11, and also does not cover liability for and/or arising out of;

- 9.1 DAMAGE to premises presently or at any time previously owned or tenanted by the INSURED;
- 9.2 DAMAGE to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by the INSURED or otherwise in the INSURED's care, custody or control.

## **SECTION C - PRODUCTS LIABILITY**

10.

### **SECTION C - INDEMNITY**

The INSURED is indemnified by this Section in accordance with the Operative Clause for liability arising out of INJURY and/or DAMAGE and/or ADVERTISING INJURY occurring during the Period of Insurance but only against liability arising out of or in connection with any PRODUCT, COMPLETED OPERATIONS and not against liability arising out of Pollution

11.

### **SECTION C - EXCLUSIONS**

This Section does not cover liability

- 11.1 for and/or arising out of DAMAGE to any PRODUCT or part thereof;

- 11.2 for costs incurred in the repair, reconditioning, modification or replacement of any PRODUCT or part thereof and/or any financial loss consequent upon the necessity for such repair, reconditioning, modification or replacement;
- 11.3 arising out of the recall of any PRODUCT or part thereof;
- 11.4 arising out of any PRODUCT or part thereof which with the INSURED's knowledge is intended to be incorporated into the structure, machinery or controls of any aircraft, watercraft or vehicle.

12.

## **AUTOMATIC COVERAGE CLAUSES**

The Automatic Coverage Clauses are subject to the Operative Clauses and all other policy terms and conditions.

The following sub-limits are included in, are not in addition to and may be less than the indemnity limits stated in the SCHEDULE.

### 12.1 Forest and Rural Fires Act

The INSURED is indemnified in respect of liability under the Forest and Rural Fires Act 1977 for:

- 12.1.1 costs and losses incurred during the period of Insurance recoverable under section 43;
- 12.1.2 levies imposed by a Fire Authority and apportioned to the INSURED during the Period of Insurance under section 46.

This clause applies:

- 12.1.3 regardless of whether or not DAMAGE has occurred;
- 12.1.4 to vehicles, notwithstanding Exclusion 7.1 (Vehicles);

Provided that:

- 12.1.5 the maximum amount payable under this Automatic Coverage Clause is the amount specified in the SCHEDULE as the sub-limit; and
- 12.1.6 the DEDUCTIBLE applicable to this Automatic Coverage Clause is the amount specified in the SCHEDULE.

### 12.2 Punitive or Exemplary Damages

Notwithstanding Exclusion 13.8 (Fines, Penalties, etc) and Definition 2.4 (Damages), the INSURED is indemnified in respect of punitive or exemplary damages awarded for Bodily INJURY in New Zealand;

Provided that:

- 12.2.1 any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- 12.2.2 any award of punitive or exemplary damages by any Court outside New Zealand is excluded;
- 12.2.3 the maximum amount payable under this Automatic Coverage Clause is the amount specified in the SCHEDULE as the sub-limit; and
- 12.2.4 the DEDUCTIBLE applicable to this Automatic Coverage Clause is the amount specified in the SCHEDULE.

### 12.3 Visits to Countries outside the Policy Territory

Notwithstanding the operative clause, and the TERRITORY referred to in the SCHEDULE, the INSURED is indemnified in respect of INJURY or DAMAGE in any country outside of the TERRITORY arising solely out of the actions of non-resident directors, executives and salespersons temporarily visiting these countries in the course of the BUSINESS of the INSURED.

Provided that:

- 12.3.1 the INSURED has no premises, branch or subsidiary operation in the country being visited;
- 12.3.2 any work performed in, on, or in connection with, the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of the INSURED'S PRODUCTS is excluded;

- 12.3.3 the ownership, possession, control, or maintenance or use of any vehicle or watercraft is excluded;
- 12.3.4 the INDEMNITY LIMIT, inclusive of defence costs, during the Period of Insurance shall be the INDEMNITY LIMIT in the SCHEDULE for visits to the United States of America or Canada (or to any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part which operate under the laws of the United States of America or Canada).

### 13. GENERAL EXCLUSIONS APPLICABLE TO ALL SECTIONS OF THE POLICY

This Policy does not cover liability:

- 13.1 arising out of the deliberate, conscious or intentional disregard by the INSURED's technical or administrative management of the need to take all reasonable steps to prevent INJURY, DAMAGE or ADVERTISING INJURY (except as provided by paragraph (2.6.5) of the Definition of "INJURY" herein);
- 13.2 for and/or arising out of INJURY to any person under a contract of employment or apprenticeship with or the provision of labour only services to the INSURED where such INJURY arises out of the execution of such contract;
- 13.3 arising out of liquidated damages clauses, penalty clauses or performance warranties unless proven that liability would have attached in the absence of such clauses or warranties;
- 13.4 directly or indirectly occasioned by, happening through or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
- 13.5 directly or indirectly caused by or contributed to by or arising from
  - 13.5.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - 13.5.2 the radioactive, toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 13.6 for the Excess as stated in the SCHEDULE in respect of the first amount of each claim or series of claims arising out of one originating cause;
- 13.7 which forms the subject of insurance by any other policy and this Policy shall not be drawn into contribution with such other insurance;
- 13.8 for awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or in any other form whatsoever.
- 13.9 for ADVERTISING INJURY:
  - 13.9.1 resulting from breach of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
  - 13.9.2 resulting from the infringement of any trade mark, service mark or trade name on any PRODUCTS sold, offered for sale or advertised, but this exclusion shall not apply to claims for infringement of titles or slogans;
  - 13.9.3 resulting from any incorrect description of any Products or services;
  - 13.9.4 resulting from any mistake in advertised price;
  - 13.9.5 an offence committed by an Insured whose business is principally advertising, broadcast publishing or telecasting;
- 13.10 arising out of INJURY, DAMAGE or ADVERTISING INJURY, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
 

For the purpose of this Exclusion an "Act of Terrorism" means an act, including but not limited to the use of force or violence and/or threat, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done 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.

This policy also excludes liability arising out of INJURY, DAMAGE or ADVERTISING INJURY, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.
- 13.11 arising out of INJURY, DAMAGE or ADVERTISING INJURY or any benefit to the extent that the provision of such cover, payment of such loss or provision of such benefit would expose the Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

- 13.12 except where specified herein to the contrary, for financial or economic loss which is not consequent upon INJURY or DAMAGE;
- 13.13 for INJURY or DAMAGE arising out of:
- 13.13.1 the failure or alleged failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code contained in the First schedule of the Building Regulations 1992 or any applicable New Zealand Standard (or amended or substituted Regulation or Standard) in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system; or
- 13.13.2 Mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure
- 13.14 This Policy shall not apply to any claim or claims in respect of Loss or Losses for any liability relating directly or indirectly to asbestos;
- 13.15 Sanctions Limitation and Exclusion Clause
- WE will not cover the INSURED in respect of any OCCURRENCE or any benefit to the extent that the provision of such cover, payment of such OCCURRENCE or provision of such benefit would expose US to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

## 14. GENERAL CONDITIONS

(Conditions 14.1 to 14.4 are conditions precedent to Underwriters' liability to provide indemnity under this Policy).

- 14.1 The INSURED shall give written notice to the Underwriters as soon as reasonably practicable of any occurrence that may give rise to a claim under this Policy and shall give all such additional information as the Underwriters may require. Every claim, writ, summons or process and all documents relating thereto shall be forwarded to the Underwriters immediately they are received by the INSURED.

Notice of any loss shall be given to the Underwriters in writing via:

- (i) Your insurance broker (email or letter); or
- (ii) the DUAL New Zealand Limited office for the attention of the Claims Manager.
- 14.2 No admission, offer, promise or payment shall be made or given by or on behalf of the INSURED without the written consent of the Underwriters who shall be entitled to take over and conduct in the name of the INSURED the defence or settlement of any claim or to prosecute in the name of the INSURED to their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the INSURED shall give all such information and assistance as the Underwriters may reasonably require.
- 14.3 The INSURED shall give notice as soon as reasonably practicable of any fact or event which materially changes the information supplied to Underwriters at the time when this Policy was effected and Underwriters may amend the terms of this Policy according to the materiality of the change.
- 14.4 Where the premium is provisionally based on the INSURED's estimates, the INSURED shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as Underwriters require. The premium shall then be adjusted and any difference paid by or allowed to the INSURED as the case may be subject to any minimum premium that may apply.
- 14.5 The Underwriters may at any time pay to the INSURED in connection with any claim or series of claims under this Policy to which an Indemnity Limit applies the amount of such Limit (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the Underwriters shall relinquish the conduct and control of and be under no further liability in connection with such claims except for the payment of Defence Costs incurred prior to the date of such payment (unless the Indemnity Limit is stated to be inclusive of Defence Costs).
- Provided that if Underwriters exercise the above option and the amount required to dispose of any claim or series of claims exceeds the Indemnity Limit and such excess amount is INSURED either in whole or in part, with Defence Costs payable in addition to the Indemnity Limit under this Policy then the Underwriters will also contribute their proportion of subsequent Defence Costs incurred with their prior consent.
- 14.6 Any dispute concerning the interpretation of this Policy and/or SCHEDULE will be determined in accordance with the Laws of New Zealand.

The INSURED and Underwriters submit to the exclusive jurisdiction of any court of competent jurisdiction within New Zealand and agree to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.



- 14.7 Any phrase or word in this Policy will be interpreted in accordance with the law of New Zealand. The Policy and the SCHEDULE shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the SCHEDULE shall bear such specific meaning wherever it may appear.
- 14.8 The Underwriters may cancel this Policy by giving sixty days notice in writing of such cancellation to the INSURED's last known address.
- 14.9 If any claim under this Policy is in any respect fraudulent all benefit under the Policy shall be forfeited.
- 14.10 Any enquiry or complaint relating to this policy should be referred to the Underwriters in the first instance. If this does not resolve the matter or the INSURED are not satisfied with the way a complaint has been dealt with, the INSURED should write to:

Lloyd's General Representative in New Zealand  
c/o Hazelton Law  
Level 3  
101 Molesworth Street  
PO Box 5639  
Wellington  
New Zealand

- 14.11 Where, on receiving any indemnity payment under this policy, the INSURED is liable to pay tax under section 5(13) of the Goods and Services Tax Act 1985 (or any substitute), the Underwriters will indemnify the INSURED for the cost of that tax. The indemnity under this clause is in addition to the applicable INDEMNITY LIMIT.
- 14.12 The subscribing Underwriters' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.