

General Liability

DUAL

Wordings:





DUAL New Zealand Mind The Gap

General Liability Policy Wording

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DUAL New Zealand

Mind The Gap

General Liability Policy Wording

Section 1: Insuring Clause

1.1 Public and Products Liability

We agree to pay on behalf of the **insured** up to the **indemnity limit** all sums that the **insured** shall become legally liable to pay as **damages** in respect of **personal injury** or **property damage** happening during the **insurance period** within the **territory** and caused by an **occurrence** in connection with the **business**.

1.2 Defence Costs In Addition

In addition to the **indemnity limit**, we agree to pay to or on behalf of the **insured** any **defence costs** necessarily and reasonably incurred in respect of a **claim** for **damages** covered by this **policy**.

We will only pay **defence costs** however if:

- a. We incur them; or
- b. The **insured** incurs them after obtaining our agreement in writing and the **defence costs** are in our view reasonable and necessary.

We will not defend or continue to defend any **claim** to which the **policy** would provide indemnity, or pay or continue to pay any **defence costs** associated with such defence, once we have paid the **indemnity limit** in relation to any judgment or settlement.

Section 2: Automatic Coverage Clauses

The Automatic Coverage Clauses are subject to the Insuring Clause above and all other **policy** terms.

The maximum amount payable under any of these Automatic Coverage Clauses is the amount specified in the **schedule** as the sub-limit.

Where an Automatic Coverage Clause has a sub-limit, that sub-limit is part of and not in addition to and may be less than the **indemnity limit** in the **schedule**; and

The **deductible** applicable to each of these Automatic Coverage Clauses is the amount specified in the **schedule**.

2.1 Business Advice or Service

Notwithstanding Exclusion 3.18 (Professional Liability), we will pay on behalf of the **insured** damages the **insured** shall be legally liable to pay in respect of **personal injury** or **property damage** arising out of an error or omission in:

- a. advice or services rendered by the **insured** without charge;
- b. Professional medical advice by **medical persons** employed by the **insured** to provide first aid and other medical services on the **insured's** premises.

2.2 Defective Workmanship to Property Being Worked On

Notwithstanding Exclusion Clause 3.6 (Defective Materials, Design & Workmanship), we will pay on behalf of the **insured** damages the **insured** shall be legally liable to pay in respect of **defective workmanship** within New Zealand to property the **insured** is working on at the time, so long as it is not hired, leased or rented by the **insured**.

Provided that **we** will not cover:

- i. any liability arising out of professional advice or service provided by the **insured** or any error or omission connected therewith;
- ii. any liability for the costs of remedying any defect in design, plan or specification.

2.3 Goods On Hook

We agree to pay on behalf of the **insured** all sums which the **insured** shall become legally liable to pay for **damage** to property being lifted or lowered or moved or carried by any crane(s) owned, hired, or otherwise the responsibility of the **insured**.

2.4 Hot Work

Notwithstanding Exclusion 3.10 (Hot Work), **we** agree to pay on behalf of the **insured** all sums which the **insured** shall become legally liable to pay as **damages** in respect of **personal injury** or **property damage** happening during the **insurance period** arising from the **insured** undertaking any **hot work**, provided the **insured** fully complies with any applicable New Zealand Standard in relation to the conducting of that **hot work** at the time.

2.5 Innkeepers Liability

We agree to pay on behalf of the **insured** all sums which the **insured** shall become legally liable to pay as **damages** in respect of property damage as provided for under the Innkeepers Act 1962 and any amendments thereafter.

2.6 Landlord's Liability

We agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay as **damages** in respect of **personal injury** or **property damage** arising from the **insured's** legal ownership, but not physical occupation, of any premises.

2.7 Lost or Stolen Keys

We agree to pay to or on behalf of the **insured** costs reasonably and necessarily incurred in altering or replacing locks and their keys or combinations where, keys or combinations giving access to properties, for which the **insured** is responsible but does not own, hire, lease or rent, are lost, stolen or believed on reasonable grounds to have been duplicated without proper authority.

2.8 Mechanical Plant

Notwithstanding Exclusion 3.20 (Vehicles), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in **damages** in respect of **personal injury** or **property damage** happening during the **insurance period**:

- a. arising from loading or unloading any **vehicle** used by or on behalf of the **insured** but not in the **insured's** care, custody or control;
- b. arising from any **vehicle** operating its mechanical plant that it carries for its specialised function or purpose, and not as a **vehicle**;
- c. relating to the operation or ownership of a car-park so as to cause damage to **vehicles** within it (other than to **vehicles** belonging to, or used by or on behalf of the **insured**);
- d. relating to any bridge, viaduct, weigh bridge, road or anything beneath the **vehicle** caused by vibration or by the weight of any **vehicle** and/or its load;

Provided that any designated weight restrictions were not exceeded.

2.9 Machinery Service / Repair Liability

Notwithstanding Exclusions 3.6 (Defective Materials, Design & Workmanship) and 3.19 (Property Owned), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal**

injury or **property damage** in New Zealand arising from the service or repair by the **insured** of any machinery other than any **vehicle**, and/or **watercraft** and/or its internal combustion engine, accessories or fittings;

Provided that the machinery is not owned, hired, leased, or rented by the **insured**, and is in the care, custody or control of the **insured** for the purposes of the service or repair.

2.10 Panel Counsel

The **insured** is entitled to one (1) hour free advice from any one firm listed on **our** panel of solicitors relating to a matter which **we** have accepted as notification of circumstances which may give rise to a **claim** under this **policy**.

We consent to that firm listed on **our** panel of solicitors being retained to act for an **insured** in respect of any **claim** covered by this **policy**.

2.11 Product Withdrawal Costs

Notwithstanding Exclusion 3.21 (Withdrawal or Repair of Products), **we** agree to pay to or on behalf of the **insured** up to 80% of those costs reasonably incurred by the **insured** in the withdrawal or recall from use in New Zealand of the **insured's products** which have the same defect as a product that has already given rise to a **claim** in respect of which the **insured** is entitled to indemnity under Insuring Clause 1.1.

2.12 Property in Care Custody or Control

Notwithstanding Exclusion 3.19 (Property Owned), but subject to Exclusion 3.6 (Defective Materials, Design & Workmanship), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in **damages** in respect of **property damage** to property, including **employees'** property, where the liability arises while the property is in the care, custody or control of the **insured**;

Provided that real property, property owned by or premises leased or rented to or by the **insured** is excluded.

2.13 Punitive or Exemplary Damages

Notwithstanding Exclusion 3.9 (Fines, Penalties and Refund of Fees) and Definition 5.5 (Damages), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of punitive or exemplary damages awarded for **personal injury** in New Zealand;

Provided that:

- a. any liability arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse is excluded;
- b. any award of punitive or exemplary damages by any Court outside New Zealand is excluded.

2.14 Tenant's Liability

Notwithstanding Exclusion 3.19 (Property Owned), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **property damage** to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the **insured**.

2.15 Underground Services

We agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal injury** or **property damage** in New Zealand arising out of damage 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 services, or
- b. engaged a professional underground utility locating service, and
- c. the **insured** took all reasonable precautions to prevent **personal injury** or **property damage**.

2.16 Vehicle and Watercraft Service / Repair Liability

Notwithstanding Exclusions 3.6 (Defective Materials, Design & Workmanship), 3.19 (Property Owned) and 3.20 (Vehicles), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal injury** or **property damage** in New Zealand arising from:

- a. the service or repair by the **insured** of any **vehicle**, and/or **watercraft**, and/or its internal combustion engine, accessories or fittings, or
- b. storing or having the custody of a **vehicle** or **watercraft** without payment or reward for a period of no more than 7 days;

Provided that:

- a. the **vehicle** or **watercraft** is not owned, hired, leased, or rented by the **insured**, and is in the care, custody or control of the **insured** for the purposes of the service, repair or storage;
- b. the maximum amount payable under this Automatic Coverage Clause for the **vehicle** or **watercraft** being service or repaired is limited to the amount specified in the **schedule** as the sub-limit.

2.17 Vibration and Removal of Support

We agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal injury** or **property damage** in New Zealand arising from 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**;
- b. the **personal injury** or **property damage** arises from the actions of the **insured**.

2.18 Visits to Countries Outside the Policy Territory

Notwithstanding Exclusions 3.13 (North American Countries) and 3.14 (North American Exports), and the **territory** referred to in the **schedule**, **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal injury** or **property 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**;

Provided that:

- a. the **insured** has no premises, branch or **subsidiary** operation in the country being visited;
- b. any work performed in, on, or in connection with, the supply, manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of the **insured's products** is excluded;
- c. the ownership, possession, control, or maintenance or use of any **vehicle** or **watercraft** is excluded.

2.19 Warrant of Fitness

We agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay as **damages** in respect of **claims** occurring during the **insurance period** in connection with the **business**, by any licensed, qualified vehicle certifier employed by the **insured**;

Provided that:

- a. For the purpose of this Automatic Coverage Clause only the "**business**" means:
 - i. the inspection and certification of **vehicles** for the issuing of a warrant of fitness or other inspection certificate as may be required by law; and
 - ii. 'pre-purchase' or **vehicle** appraisal services.
- b. the coverage under this Automatic Coverage Clause does not extend to include the valuation of any **vehicle**, motorcycle, **watercraft**, motor and/or accessory of any type whatsoever;

- c. it is warranted that the **insured** and their **employees** are licensed and qualified to issue warrant of fitness or other inspection certificates as may be required by law.

Section 3: Exclusions

We will not cover the **insured** for :

3.1 Aircraft and Watercraft

Personal injury or **property damage** arising out of the ownership, possession, control, operation, use, service or repair, loading or unloading by the **insured** of any:

- a. **Aircraft** or hovercraft;
- b. **Watercraft** exceeding 10 metres in length.

3.2 Aircraft Products

Personal injury or **property damage** arising out of any of the **insured's products** which, with the **insured's** knowledge were, or were intended to be, incorporated into the structure, machinery or controls of any **aircraft** or aerial device.

3.3 Building Defects Exclusion

Personal injury or **property damage** arising out of:

- a. the failure or alleged failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code applicable at the time of the **occurrence** in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system; or
- b. mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

3.4 Contractual Liability

Liability assumed by the **insured** under any contract or agreement except to the extent that the **insured** would have been legally liable even if there had been no contract in existence. But this Exclusion shall not apply to liability pursuant to any:

- a. lease or hire of real or personal property;
- b. representation or warranty of fitness or quality in respect of the **insured's products**, or a representation or warranty that work performed by or on behalf of the **insured** will be done in a workmanlike manner;
- c. contracts or agreements specified in the **schedule**.

3.5 Defamation

Liability arising out of a statement made at the **insured's** direction, knowing of its defamatory nature, which results from or is related to advertising, broadcasting or telecasting activities by or on behalf of the **insured**.

3.6 Defective Materials, Design & Workmanship

Personal injury or **property damage** arising out of any defective materials, design or workmanship of any kind (including but not limited to **defective workmanship**) including the costs of or associated with:

- a. rectifying, repairing or replacing defective materials;
- b. remedying any defect in any design, plan or specification;
- c. remedying any **defective workmanship**;
- d. correcting or improving any work undertaken by the **insured**.

And any liability arising from the costs of (a) – (d).

However, subject to the **policy** terms, **we** will indemnify the **insured** for resultant **property damage** to property other than the **insured's products** arising from defective material, design or workmanship.

3.7 E-Commerce

- a. **Personal injury** or **property damage** arising, directly or indirectly, out of, or in any way involving the **insured's Internet Operations**.

This Exclusion does not apply to **personal injury** or **property damage** arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its website.

For the purposes of this exclusion "**Internet Operations**" means the following:

- i. use of electronic mail systems by the **insured** or **employees**;
- ii. access through the **insured's** network to the world wide web or a public internet site by the **insured** or **employees**;
- iii. access to the **insured's** intranet (meaning internal company information and computing resources) which is made available through the world wide web for customers of the **insured** or others outside the **insured's** organisation; and
- iv. the operation and maintenance of the **insured's** website.

Nothing in this Exclusion shall be construed to extend coverage under this **policy** to any liability which would not have been covered in the absence of this Exclusion.

- b. **Property damage** to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
- i. the use of any computer hardware or software;
 - ii. the provision of computer or telecommunication services by the **insured** or on the **insured's** behalf;
 - iii. the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

3.8 Failure to Insure

Any breach of an obligation to insure property.

3.9 Fines, Penalties and Refund of Fees

Liability arising for:

- a. Taxes, fines or penalties.
- b. Punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages, the consequences of non-payment or performance warranty.
- c. Any demand for the repayment or refund by the **insured** to a third party of professional fees paid to the **insured** for the provision of professional or other services by way of damages or otherwise.

3.10 Hot Work

Liability in connection with the **insured** carrying out **hot work**.

3.11 Insured's Products

Property damage to the **insured's products** if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

3.12 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** of any contract or agreement; or
- b. the failure of the **insured's products** to meet the level of performance, quality, fitness or durability that has been warranted or represented expressly or impliedly by the **insured**.

3.13 North American Countries

Personal injury or **property damage** happening in or instituted against the **insured** in **North American countries**, including any liability from or based on a settlement or arbitration in, or a judgment or order of a court in **North American countries**.

3.14 North American Exports

Liability arising from any of the **insured's products** knowingly exported by the **insured** (or exported by the **insured's** agents or distributors with the **insured's** knowledge) to **North American countries**, including any liability arising from or based on a settlement or arbitration in, or a judgment or order of a court in **North American countries**.

3.15 Offshore Gas or Oil Platforms

Liability arising from work performed on or about any offshore gas or oil platform.

3.16 Personal Injury to Employees

- a. **Personal injury** arising directly or indirectly out of or in the course of employment with or service to the **insured**, including labour hire staff, contactors, sub-contractors or **employees** of such contractors or sub-contractors while performing work for or on behalf of the **insured**, whether or not a contract of employment or for service exists;
- b. An obligation on the **insured** under any accident or workers compensation legislation or any industrial award, employment contract, agreement or determination.

3.17 Pollution

Any **personal injury** or **property damage** arising from or in any way connected with:

- a. The actual, alleged or threatened discharge, dispersal, release, seepage or escape of **pollutants** into or upon land, building or other property, the atmosphere or any water course or body of water, whether such discharge, dispersal, release or escape is intentional or accidental; or
- b. Any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **pollutants**.

Unless the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended from the standpoint of the **insured** and takes place in its entirety at a specific time and place.

However **we** will not cover the **insured** in relation to **personal injury** or **property damage** arising out of or in any way connected with the use, manufacture or distribution of methamphetamine or any other substance prohibited by the Misuse of Drugs Act 1975 or any amending or replacement legislation.

3.18 Professional Liability

Liability for an error or omission in professional advice or service.

3.19 Property Owned

Property damage to any property owned by, or in the care, custody or control of the **insured**.

3.20 Vehicles

Personal injury or property damage arising out of the ownership, possession, repair, operation, control, maintenance or use by or on behalf of the **insured** of any **vehicle** which is:

- a. required by legislation to be registered and/or licensed for use on public roads and/or insured;
- b. being operated while in an unsafe condition;
- c. being operated by any person who is under the influence of any liquor, substance or drug; or
- d. insured, or in respect of which the **insured** is insured under any other policy, even if the other insurance is not collectable because of a breach of condition or applicable exclusion;
- e. designed, modified or intended to be used for motor racing, rallying or for the purpose of competing in a race or practicing or preparing for any prearranged or organized racing or speed contest.

However, subject to the **policy**, we will indemnify the **insured** provided that:

- i. cover does not extend to indemnify the driver or operator of the **vehicle** causing the **occurrence**;
- ii. the driving or operation of the **vehicle** was without the knowledge or consent of the **insured** or any director, officer, manager or supervisor of the **insured**;
- iii. the **insured** has not waived any rights of recovery against the driver or operator causing the **occurrence**.

3.21 Withdrawal or Repair of Products

Liability for the recall (including making any refund on the price paid), repair, withdrawal, inspection, removal, altering, treating, modification, replacement or **loss** of use of the **insured's products** or any property of which such products form a part, or of work undertaken by or for the **insured**, if such products, property or work are withdrawn from the market or from use, because of any defect or deficiency which the **insured** knew or has reason to suspect or because of any Government or statutory ban, order or notice.

Section 4: Conditions

4.1 Cross Liability / Joint Insureds

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, the total amount payable in respect of all **claims** and indemnified entities in one **insurance period** shall not exceed the **indemnity limit** specified in the **schedule**.

If there is a **claim** against more than one entity in respect of the same **occurrence**, only one **deductible** and one **indemnity limit** shall apply, regardless of the number of entities indemnified.

The coverage under this Condition does not apply to entities which are **insured** under this **policy** by Definition 5.13 (c), 5.13 (e) or 5.13 (f).

4.2 Deductible

The amount shown in the **schedule**, or in any applicable Automatic Coverage Clause, as the **deductible**, shall be borne by the **insured** in respect of each and every **claim**, or series of **claims** arising out of one **occurrence**.

4.3 Indemnity Limit

Our maximum liability in respect of any **claim**, or any series of **claims**, arising out of one **occurrence**, or in the aggregate during the **insurance period** in respect of an **occurrence** involving the **insured's products**, shall not exceed the **indemnity limit** stated in the **schedule**, or the sub-limit in any applicable Automatic Coverage Clause. All **personal injury** or **property damage** in respect of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one **occurrence**.

Provided that:

- a. immediately that **we** have paid the **indemnity limit** in respect of any judgment or settlement, **our** liability in relation to **defence costs** shall cease;
- b. if a payment exceeding the **indemnity limit** has to be made to dispose of a **claim**, **our** liability in relation to **defence costs** shall be limited to the same proportion as the **indemnity limit** bears to the amount required to dispose of the **claim**.

4.4 Inspection of Property

We shall be permitted, but not obligated to, inspect the **insured's** property and operations at any reasonable time.

Section 5: Definitions

For the purposes of this **policy** only:

- 5.1 Act of Parliament** means any Act of the New Zealand Parliament, including any amendment to or re-enactment, and any code, rules, regulations, bylaws or other subordinate legislation made under such Act.
- 5.2 Aircraft** means any machine, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 5.3 Business** means the following, except in relation to Automatic Coverage Clause 2.19 (Warrant of Fitness):
- a. the Business of the **insured** specified in the **schedule**.
 - b. the provision and management of lunch room facilities, social, sports, welfare and similar organisations for the benefit of **employees**;
 - c. the provision of Fire Brigade, first aid, medical and ambulance services; and
 - d. any other activity that the **insured** may undertake provided that the **insured** gives written notice to **us** and obtains **our** acknowledgement of coverage within 60 days of any new activity commencing.
- 5.4 Claim** means:
- a. any civil proceeding brought by a third party against the **insured** for recovery of compensation or damages;
 - b. any written or verbal demand by a third party upon the **insured** for monetary relief;
 - c. any circumstance that the **insured** becomes aware of, and the **insured** or a reasonable insured should consider may give rise to either of (a) or (b) above.
- 5.5 Damages** means any amount payable as compensation, including interest and costs.
- 5.6 Deductible** means the amounts specified in the **schedule**.
- 5.7 Defective workmanship** means work by the **insured** which is defective, harmful or fails to perform its function so as to require rectification, remediation, removal, repair, alteration, treatment or replacement of the item being worked on.
- 5.8 Defence costs** means any legal costs, disbursements, witness costs, assessors or adjusters costs or experts costs incurred by **us**, or by the **insured** with **our** prior written consent in relation to the investigation, defence or settlement of a **claim** covered by this section of the **policy**, as well as any first aid expenses incurred by the **insured** arising from a **personal injury**. **Defence costs** shall not include any internal or overhead expenses of the **insured**, the cost of the **insured's** time or any **loss** of earnings or profits.
- 5.9 Employee** means any person who is a past, present or prospective **employee** of the **insured** under a contract of service or apprenticeship on a full-time, part-time or casual basis.

- 5.10** **Hot work** means any work involving;
- a. the application of heat, a naked flame or an open heat source, or work that produces sparks,
 - b. the use of welding equipment including cutting with such equipment,
 - c. cutting involving the use of rotary disc or grinding equipment, soldering, brazing or use of heat guns.
- 5.11** **Indemnity limit** means the amounts specified in the **schedule**
- 5.12** **Insurance period** means the period specified in the **schedule**.
- 5.13** **Insured** means:
- a. The **insured(s)** named in the **schedule** and any **subsidiary**; and
 - b. Every director, officer, **employee**, partner or shareholder of an **insured** defined under 5.13(a) whilst acting within the scope of their duties as such, except in respect of any liability under the Companies Act 1993.
 - c. Every principal, in respect of its vicarious liability arising solely out of the performance, by an **insured** as defined under paragraph 5.13(a), or 5.13(b), of any contract of work for such principal, but always subject to the terms of this **policy**.
 - d. Every office bearer or member of social and sporting clubs formed with the consent of the **insured** (other than an **insured** designated in paragraph 5.13(c) or 5.13 (e)) in respect of **claims** arising from the duties connected with the activities of any such club.
 - e. Each joint venture, co-venture or joint lessee of a named **insured** but only with respect to liability incurred as a joint venture, co-venture or joint lessee, provided that a named **insured** gives written notice to **us** and obtains **our** written acknowledgement of coverage for such joint venture, co-venture or joint lease.
 - f. any contractor or sub-contractor but only while they are engaged and working in New Zealand for and on behalf of the person or entity named in the **schedule** or any entity referred to in (a) and (b) above, provided that they are not otherwise insured.
- 5.14** **Insured's products** means any goods, products, including labels, instructions for use and advice, and property after they have ceased to be in the possession of or under the control of the **insured**, manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the **insured** (including any container, other than a **vehicle**).
- 5.15** **Medical persons** means any legally qualified medical practitioner, legally qualified registered nurse, dentist or first aid attendant.
- 5.16** **Money** means only local or foreign currency, coins, bank notes, cheques, traveller's cheques, registered cheques, postal orders, money orders and bullion.
- 5.17** **North American Countries** means the United States of America and Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.
- 5.18** **Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **personal injury** or **property damage** that is neither expected nor intended from the standpoint of the **insured**.
- 5.19** **Personal injury** means:
- a. bodily injury (including resulting death, illness or care), disability, shock, fright, mental anguish or mental injury;
 - b. false arrest, wrongful detention, false imprisonment or malicious prosecution or humiliation;
 - c. wrongful entry or eviction or other invasion of the right of privacy;

- d. assault and battery, provided that this was not committed by or at the direction of the **insured** except for the purpose of preventing or eliminating danger to persons or property;
- e. trespass to the person; or
- f. defamation.

5.20 Policy means this policy wording, the DUAL New Zealand Mind the Gap General Conditions and Exclusions, the **schedule**, the **proposal** and any endorsement attaching to and forming part of the **policy** either at commencement or during the **insurance period**.

5.21 Pollutants means any substance, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.

5.22 Property damage means:

- a. physical injury to or destruction or loss of tangible property including resulting loss of use; or
- b. loss of use of tangible property which has not been physically injured or destroyed.

5.23 Proposal means the **insured's** proposal made to **us** together with any attachments and material referred to therein.

5.24 Schedule means the policy schedule issued by **us**.

5.25 Subsidiary means:

- a. any entity which, at the commencement of the **insurance period**, is a subsidiary of the **insured** as defined in section 5 of the Companies Act 1993 (or any equivalent amendments or re-enactments of that provision); or
- b. any entity which, at the commencement of the **insurance period**, by virtue of any applicable legislation or law, is deemed to be a subsidiary of the **insured**; or
- c. any entity over which, at the commencement of the **insurance period**, the **insured** is in a position to exercise effective direction or control by means of a direct or uninterrupted succession of **subsidiaries** as defined in clauses (a) or (b) above; or
- d. any entity with total gross assets in value of 30% or less of the total gross assets of the **insured** which becomes a **subsidiary** of the **insured** as defined in clauses (a), (b) or (c) above after the commencement of the **insurance period**; or
- e. any entity with total gross assets in value greater than 30% of the total gross assets of the **insured** which becomes a **subsidiary** of the **insured** as defined in clauses (a), (b) or (c) above after the commencement of the **insurance period**, provided that within 60 days of the completion of the acquisition of such entity the **insured** provides **us** with full particulars of the entity and agrees to the imposition of any additional terms, including any additional premium, that **we** may require. If any part of this clause is not complied with the entity shall not be an **insured** under this **policy**.

5.26 Territory means worldwide, unless otherwise stated in the **schedule**, and subject to Exclusions 3.13 (North American Countries) and 3.14 (North American Exports), and the limitations to New Zealand only in Automatic Coverage Clauses 2.11 (Product Withdrawal Costs), 2.13 (Punitive or Exemplary Damages), 2.15 (Underground Services), 2.16 (Vehicle and Watercraft Service / Repair Liability) and 2.17 (Vibration and Removal of Support).

5.27 Vehicle means a motor vehicle or any type of machine on wheels or on self-laid tracks or rollers that is propelled by its own power and anything other than a watercraft intended to be towed by any such machine, and includes its accessories, tools, specialised equipment and spare parts.

- 5.28** **Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through water not exceeding 10 meters in length.
- 5.29** **We/us/our** means DUAL New Zealand Limited for and on behalf of Certain Underwriters at Lloyd's.
- 5.30** **You/your** means the **insured**.