



Commercial Legal Expenses

Policy wording



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Policy wording

Policy Wording

This **Policy** is a contract between **You** (named in the **Policy Schedule**) and the **Underwriters** and is managed by Delta Insurance New Zealand Limited (hereafter referred to as **Us, Our, We**).

Provided the premium specified in the **Policy Schedule** has been paid in the required manner, the **Underwriters** shall provide the insurance specified in this **Policy** (which includes any attached **Endorsements**) and **Policy Schedule** during the **Period of Insurance**

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Important Information

This document, the **Policy Schedule** and any **Endorsements** attached form **Your Policy**. This document sets out the conditions of the insurance between **You** and **Underwriters**. Please read this **Policy** carefully and if the coverage or benefits provided do not meet **Your** requirements or **You** do not comply with the conditions set out in this section, please return these documents as soon as practicable to the Insurance Intermediary who arranged this **Policy** on your behalf.

It is important that:

- **You** check that the Sections of Cover that **You** have requested are included in the **Policy Schedule**
- **You** check that the information **You** have given **Us** is accurate – please see the “Information That **You** Provide to **Us**” further below
- **You** notify **Your** Insurance Intermediary as soon as practicable of any inaccuracies in the information that **You** have provided to **Us**
- **You** comply with **Your** duties under each Section of Cover for which **You** are insured, and under the terms and conditions of this **Policy** as a whole

Information that You Provide to Us

We are relying upon the information **You** provide to **Us**, either directly or through **Your** Insurance Intermediary, in deciding whether to provide **You** with this **Policy** and on what terms and at what premium.

If **You** become aware that any information **You** have given **Us** is not complete or accurate or **You** fail to notify **Your** Insurance Intermediary that the information **You** have provided **Us** is inaccurate or incomplete, and **We** establish that **You** deliberately or recklessly provided **Us** with false or misleading information, then **Underwriters** may treat this **Policy** as if it never existed and decline all **Claims**.

If **We** establish that **You** carelessly provided **Us** with false or misleading information, then the cover and benefits under this **Policy** could be affected and **Underwriters** might, for example:

- Treat this **Policy** as if it never existed and return **Your** premium paid; and/or
- Cancel this **Policy** and refuse to pay any **Claim**; and/or
- Revise the premium; and/or
- Charge an additional premium; and/or
- not pay a **Claim** in full.

We will write to **You** via **Your** Insurance Intermediary if **Underwriters** are going to treat this **Policy** as if it never existed or need to amend the terms of **Your Policy**.

How to make a Claim

If **You** need to notify a **Claim** or possible **Claim**, **You** should contact **Our** Claims Department as soon as practicable after **You** become aware of a cause, event or circumstance which has given or may give rise to a **Claim**, dispute or legal proceedings involving **You**.

Tel: +64 9 300 0165

Email: claims@deltainsurance.co.nz

Post: Delta Insurance New Zealand Ltd, PO Box 106 276, Auckland 1143.

You should provide **Your** Policy Number (which is listed on the **Policy Schedule**) and brief details of the circumstances. **We** will promptly send **You** a Notification Form for completion once contact is made and this must be returned to **Us** as soon as practicable.

If **You** encounter any issues with this process, **You** should contact **Your** Insurance Intermediary who sold **You** this **Policy** (whose contact details will appear on their correspondence sent to **You**). **Your** Insurance Intermediary will be able to assist **You** with making the claim and any further issues that may arise.

Fraudulent Claims

If **You** or any other person acting on **Your** behalf make any request for payment under this **Policy** knowing it to be fraudulent or false through concealment, misstatement or deliberative provision of false information, in any respect or if **You** ought to reasonably in the circumstances to know it to be fraudulent or false, or where there is collusion between any parties to any dispute or legal proceedings for which **Legal Expenses** cover under this **Policy** is being requested, then **We** may:

- cancel this **Policy** and not refund any premium;
- decline a **Claim** in full or in part; and/or
- recover any amounts paid in support of any false or fraudulent **Claim**.

Cancellation

You may cancel this **Policy** at any time by providing **Us** with written notice stating when such cancellation shall be effective, either directly or through **Your** Insurance Intermediary who arranged this **Policy** for **You**. **We** will refund the premium **You** have paid to **Us** less the amount of premium which relates to the time period under which **You** have been covered under this **Policy**, provided **You** have not made a **Claim** and post receipt of a No Claims Declaration by **You**. **We** may cancel this **Policy** by giving thirty (30) days written notice to **You** at **Your** last known address and to **Your** Insurance Intermediary. **We** will only do this for a valid reason, for example:

- Failure to pay the premium within 60 days after the Inception Date set out in the **Policy Schedule**; or
- Non-cooperation or failure to supply information or documentation upon request; or
- A change in risk occurring such that **We** are no longer able to provide **You** with insurance cover; or



- If **You** are placed in liquidation, receivership or administration or bankruptcy or if any application is made to the Court or meeting convened for any these purposes

If this **Policy** is cancelled for any reason, then, **We** will refund the premium **You** have paid less the amount of premium which relates to the time period under which **You** have been covered under this **Policy**, provided that **You** have not made a **Claim** and post receipt of a No Claims Declaration by **You**.

Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Delta Insurance New Zealand Limited in the first instance:

Complaints officer
Delta Insurance New Zealand Limited
complaints@deltainsurance.co.nz
Auckland +64 9 300 3079

Level 22
48 Shortland Street
Auckland Central
Auckland 1010
PO Box 106 276
Auckland 1143

We will acknowledge receipt of your complaint within 5 business days and do our utmost to resolve the complaint to your satisfaction within 10 business days, unless we require further information in which case, we will agree an alternate time frame with you.

If we cannot resolve your complaint to your satisfaction, you can escalate the matter Lloyd's

General Representative in New Zealand:
Lloyd's General Representative in New Zealand
Email: IDRNewZealand@lloyds.com
Telephone: +64 4 472 7582

Post: PO Box 5639
Wellington
New Zealand

Following receipt of your complaint, you will be advised whether your dispute will be handled by the Complaints team at Lloyd's Australia or the Lloyd's Complaints team in the UK, or what other avenues are available to you.

A final decision will be provided to you within two months of the date on which you first made the complaint unless certain exceptions apply.

If your complaint is not resolved in a manner satisfactory to you or we do not resolve your complaint within two months of originally receiving it, you may refer the matter to the Insurance and Financial Services Ombudsman (IFSO Scheme). IFSO Scheme can be contacted as follows:

Telephone: 0800 888 202 or +64 4 499 7612
Email: info@ifso.nz or via their website www.ifso.nz .
Post: PO Box 10-845 Wellington New Zealand

Your complaint must be referred to IFSO Scheme within 3 months of the final decision, unless IFSO Scheme considers special circumstances apply. If your complaint is not eligible for consideration by IFSO Scheme, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Service of Suit

The Underwriters accepting this Insurance agree that:

- if a dispute arises under this Insurance, this Insurance will be subject to New Zealand law and practice and the Underwriters will submit to the jurisdiction of any competent Court in New Zealand;

- any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's General Representative in New Zealand
Level 29
Plimmer Tower
2-6 Gilmer Terrace
Wellington 6011
New Zealand

who has authority to accept service on the Underwriters' behalf;

- if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

Telephone Legal Advice

You have access to commercial legal advice by calling the Delta Legal Line telephone number specified in the **Policy Schedule** and quoting **Your Policy** Number shown in the **Policy Schedule**.

You should seek legal advice from the Delta Legal Line:

- prior to carrying out any disciplinary procedure or action or suspension of an **Employee**;



- prior to dismissal of an **Employee**;
- prior to notifying an **Employee** of their intended retirement date or prior to retiring an **Employee**;
- prior to instituting a redundancy programme and prior to making an **Employee** redundant;
- upon notification formally or informally of a grievance from an **Employee** or **ex-Employee**;
- upon notification formally or informally of a complaint relating to discrimination, victimisation or harassment because of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion or belief, sex or sexual orientation;
- prior to any actual or proposed variation of the terms and conditions of employment that an **Employee** could reasonably consider to be adverse (including altering the hours or time or place worked or demotion or deduction from or reduction in an **Employee's** remuneration);
- as soon as practicable if an **Employee** leaves their employment with or without written notice;
- upon receipt of an appeal from an **Employee** or **ex-Employee** against a decision made by a Court, tribunal or other similar body.

Failure to seek advice will not invalidate **Your** insurance coverage under this **Policy**, but could decrease **Your** prospects of a successful defence in any subsequent dispute or legal proceedings and **Your** ability to make a **Claim**.

Call recording

In the interest of monitoring the quality of advice and service, and where appropriate to ensure compliance with the terms and conditions under this **Policy**, conversations may be recorded. **You** agree that in all circumstances **We** have **Your** express permission to listen to any of these recordings and expressly authorise the Telephone Adviser to provide these recordings to **Our** Claims and Underwriting departments.

Definitions

Wherever words or phrases appear in **bold** type in this **Policy**, they will have the specific meanings described in this Definitions Section, unless otherwise shown in any Sections of Cover that apply as specified in the **Policy Schedule**. Any words used in this **Policy** that are in the singular shall include the plural and vice versa.

Acts of Parliament

All Acts of Parliament means any Act of the New Zealand Parliament, including any amendments, re-enactments, replacements or Statutory Regulations of such Act.

Any One Claim

All **Claims** or possible **Claims** arising from the same original cause, event or circumstance.

Appointed Representative

A lawyer, patent or trademark agent or other appropriately qualified person appointed to act for **You** in accordance with the terms of this **Policy**.

Business Description

As specified in the **Policy Schedule**.

Claim

A claim under this **Policy** for **Legal Expenses**.

Co-Insurance

The amount specified in the **Policy Schedule** that **You** must pay expressed as a percentage of **Legal Expenses** in respect of **Any One Claim** above any **Excess** specified in the **Policy Schedule** before **Underwriters** shall be liable to make any payment under this **Policy**.

Computer System

Any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by you or any other party.

Construction Contract

A contract to provide construction work as defined by the Construction Contracts Act 2015. (For the avoidance of doubt supply of a construction contract to a residential occupier will be deemed a **Construction Contract** for the purposes of this **Policy**).

Contracting Party

A person, firm or company domiciled within the **Territorial Limits** with whom **You** have a direct contractual relationship.

Cyber Act

An unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal 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**.

Cyber Incident

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 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**.

Due Date

The date monies owed to **You** first becomes due and payable.



Endorsement

Any changes to the terms and conditions of this **Policy** or **Policy Schedule** which form part of this insurance contract.

Employee

Any person who is employed by the **Insured** in connection with the **Insured's Business** and in respect of whose remuneration the **Insured** deducts pay-as-you-earn (PAYE) tax at source.

Excess

The amount specified in the **Policy Schedule** **You** must pay in respect of **Legal Expenses** in respect of **Any One Claim** before **Underwriters** shall be liable to make any payment.

Policy Schedule

The document showing details of the cover **You** have purchased.

Legal Expenses

Any professional fees, expenses and other disbursements reasonably incurred by the **Appointed Representative** with **Underwriters'** prior written consent; and any costs awards made against **You** in any Court or tribunal proceedings or become liable to pay these costs under a settlement made with another party with **Underwriters'** prior written consent, but excluding any costs which **You** may be ordered to pay by a Court for an offence under the Crimes Act 1961.

Limits of Our Liability

Our maximum liability under this **Policy** is limited to the amounts specified in the **Policy Schedule** for:

- **Any One Claim**; or
- All **Claims** notified during the **Period of Insurance**.

Minimum Sum in Dispute

The sum in dispute between **You** and the **Contracting Party** as specified in the **Policy Schedule** below which **We** shall not be liable to provide cover under this **Policy**.

Period of Insurance

As specified in the **Policy Schedule**.

Policy

The contractual terms and conditions of insurance coverage and benefits payable to **You** set out in this document, **Policy Schedule**, and any **Endorsements**.

Property

Land and/or buildings owned or occupied by **You** for which **You** are legally responsible.

Statutory Licence

A licence or certificate of registration issued under statute, statutory instrument or by a Government or Local Authority to **You** provided that this licence or certificate is necessary to engage in **Your Business Description**.

For the avoidance of doubt and for purposes of this **Policy** **Statutory Licence** does not include any registration certificate or licence for an individual's medical and/or associated professional practise.

Territorial Limits

As specified in the **Policy Schedule**.

Underwriters

Certain underwriters at Lloyd's from whom **We** have delegated underwriting and claims authority.

We / Us / Our

Delta Insurance New Zealand Limited, who manage this **Policy** on behalf of **Underwriters**.

You / Your

The company, firm, partnership or trading individual as specified in the **Policy Schedule** and if requested by **You** and agreed in writing by **Us**, also to include any **Employee** including director or partner, conditional on the same **Appointed Representative** acting for all parties insured under this **Policy**.

Conditions Precedent

You must comply with the following Conditions Precedent, unless **We** agree in writing to the contrary, before any contractual duty that **Underwriters** might have to **You** under this **Policy** arises.

1. Notification of Claims

It is a condition precedent to **Underwriters'** liability that **We** be notified by **You** in writing during the **Period of Insurance** and as soon as practicable after **You** are aware of any cause, event or circumstance which has given or may give rise to a **Claim**, dispute or legal proceedings involving **You**.

Where this notification has been given, **We** agree to treat any subsequent **Claim** in respect of the same cause, event or circumstance as notified as though the subsequent **Claim** had been notified during the **Period of Insurance**.



2. Our Consent

It is a condition precedent to **Underwriters** liability that **Underwriters**' consent to incur **Legal Expenses** must be obtained in writing prior to **You** incurring any **Legal Expenses**. This consent will be given by **Us** if **You** can satisfy **Us** that:

- a. it is reasonable to incur **Legal Expenses** having regard to the proportionality between the remedy claimed and the **Legal Expenses** to be incurred and;
- b. where **You** are pursuing a claim, there are reasonable prospects of proving the other party's legal liability and of recovering the damages claimed or other legal remedy sought; or
- c. where **You** are defending a claim, the other party does not have reasonable prospects of proving **Your** legal liability.

If during the course of a **Claim** **You** cease to satisfy **Us** in respect of the applicable points a-c above, all future payments will cease in respect of **Legal Expenses** related to that **Claim**.

The decision to grant or withhold **Our** consent will be made on receipt of the following information:

- a fully completed insurance claim form; and
- the information and documentation **We** reasonably request; and
- a legal opinion from the **Appointed Representative** as to the applicable points a-c above; and
- any advice **We** may deem necessary to take.

With **Your** agreement, **We** may provide assistance in settling disputes or legal proceedings, the costs of which will be covered under this **Policy** subject to the payment of the **Excess** and **Co-insurance** within the **Limits of Our Liability**.

Underwriters may require **You** to obtain an opinion from Senior Counsel at **Your** expense assessing the merits of the subject matter of the **Claim** and any legal action. If based upon this opinion **Underwriters** are satisfied in respect of the applicable points a-c above the **Legal Expenses** in obtaining that opinion will be paid by **Underwriters** within the **Limits of Our Liability**.

In granting **Our** consent **Underwriters** undertake to pay **You** subject to the terms and conditions of this **Policy** and its **Policy Schedule** but this consent does not imply that all **Legal Expenses** will be paid. In particular **Legal Expenses** for matters that go beyond the immediate scope of the **Claim** shall be deemed by **Underwriters** to fall outside the insurance coverage provided by this **Policy**. **Underwriters** reserve the right to limit **Our** consent by time and/or financial amount of **Legal Expenses** and/or stage of proceedings to allow for a review of **Underwriters** continued consent.

If after **Underwriters** prior written consent has been granted it is shown the **Claim** has not been brought within the terms and conditions of this **Policy** and its **Policy Schedule**, **Our** consent will be withdrawn and no insurance coverage under this **Policy** shall be provided for this **Claim**. **Underwriters** shall be entitled to recover any **Legal Expenses** previously paid.

If **You** elect to proceed with the pursuit or defence of a dispute or legal proceedings to which **Underwriters** consent has not been granted because **You** have not satisfied applicable points a-c above, and if **You** are successful in this pursuit or defence, **Underwriters** will pay the **Legal Expenses** incurred after **Underwriters** consent had not been granted subject to the terms and conditions of this **Policy**.

3. Disclosure

It is a condition precedent to **Underwriters** liability that:

- a. **You** must give the **Appointed Representative** and **Us** all necessary cooperation, assistance and information including a complete and truthful account of the facts of the **Claim** and all relevant documentation or other evidence in **Your** possession; and
- b. **You** must provide, obtain or execute all documents as necessary and attend meetings or conferences as requested; and
- c. **You** must instruct the **Appointed Representative** to provide **Us** with any information, documents or advice in connection with any **Claim** and the subject matter of any **Claim** even if privileged; and
- d. **You** must instruct the **Appointed Representative** to provide **Us** with regular updates on the progress of the subject matter of any **Claim** and inform **Us** as soon as practicable if and when any circumstance adversely impacts the factors on which **We** granted **Our** consent.

The insurance coverage under this **Policy** may be withdrawn if **You** fail to co-operate with **Our** or the **Appointed Representative's** requests or if **You** or the **Appointed Representative** fails to provide **Us** with any information in connection with any **Claim** or the subject matter of any **Claim**.

4. Offer of Settlement

It is a condition precedent to **Underwriters** liability that **You** must inform **Us** in writing as soon as an offer to settle the subject matter of the **Claim** is received and/or **You** propose to make an offer of settlement. In deciding whether to accept or reject any settlement offer, **You** must consider the **Legal Expenses** incurred or likely to be incurred and recovered.

No insurance coverage under this **Policy** shall be provided if **You** enter into any agreement to settle without **Our** prior written consent (this consent not to be unreasonably withheld) and **Underwriters** shall be entitled to recover any **Legal Expenses** previously paid.

If **You** reject an offer of settlement which **Underwriters** recommend that **You** accept, or **You** make an offer with which **Underwriters** do not agree, no further insurance coverage under this **Policy** shall be provided for the subject matter **Claim**.

Underwriters may at **Our** discretion decide to pay **You** the amount of damages that **You** are claiming or that are being claimed against **You** instead of paying **You** for **Legal Expenses** to pursue or defend the dispute or legal proceedings. Where **Underwriters** exercise this discretion **Underwriters** will cease to be liable for any further **Legal Expenses** for the subject matter **Claim**.

Sections of Cover

The Sections of Cover applicable to **You** are specified in the **Policy Schedule**.

Underwriters will only pay **You** for **Claims** where the dispute or legal proceedings are or would be within the **Territorial Limits** and the **Claim** is notified during the **Period of Insurance** and the dispute or legal proceedings are in connection with activities within the scope and extent of **Your Business Description**.



Section A:

Property Disputes

What Is Covered

Underwriters agree to pay **You** for **Legal Expenses** incurred in any dispute or legal proceedings made by or brought against **You** provided **You** will suffer financial loss if **You** fail to pursue or defend the dispute or legal proceedings:

- Over the physical possession of the **Property** provided that all statutory and contractual notices have been correctly served by **You**; or
- Over the terms of a tenancy agreement between **You** and a **Contracting Party** relating to the use or maintenance of the **Property**; or
- The actual or alleged negligence, damage (including trespass) or nuisance to the **Property** other than with a tenant.

Section B:

Data Protection

What Is Covered

Underwriters agree to pay **You** for **Legal Expenses** incurred in defending any dispute or legal proceedings brought against **You** regarding an alleged breach under the Privacy Act 2020 or unlawful disclosure of personal information.

Section C:

Statutory Licence

What Is Covered

Underwriters agree to pay **You** for **Legal Expenses** incurred in:

- An appeal by **You** against the suspension, revocation, imposed alteration of or refusal to renew a **Statutory Licence**.
- An appeal by **You** against the service of a remedial or stop-work order under the Health and Safety at Work Act 2015

Exclusions to Section C

What we do not cover

Underwriters shall not be liable to pay **You** in respect of **Claims** arising out of or in connection with any allegation relating to arising from:

- A suspension, revocation, alteration or refusal to renew a **Statutory Licence** which is imposed by an **Act of Parliament** or national or local government regulation or order; or
- Any costs incurred to comply with a notice or order; or
- Driving licences.

Section D:

Employee's Breach of Restrictive Covenants

What Is Covered

Underwriters agree to pay **You** for **Legal Expenses** incurred in pursuing legal proceedings against an **Employee** or **ex-Employee** to obtain the remedy of an injunction against that **Employee** or **ex-Employee** for their breach of an express restrictive covenant in their employment contract where the breach by the **Employee** or **ex-Employee** relates to or arises from:

- Soliciting **Your Employees**, or
- Soliciting **Your** customers or clients.

Exclusions to Section D

What we do not cover

Underwriters shall not be liable to pay **You** for **Legal Expenses** incurred in respect of any **Claims** arising out of or in connection with individuals who before the inception of this **Policy** either ceased to be **Employees** or were working out their notice period (including where the **Employee** was on a period of gardening leave).

Section E:

Employment Disputes

What is Covered

Underwriters agree to pay **You** for **Legal Expenses** incurred by **You** in defending legal proceedings brought against **You** by an **Employee**, **ex-Employee** or prospective **Employee** in respect of their contract of employment with **You** or a breach of employment related legislation.

You should seek legal advice from the Delta Legal Line:

- Prior to carrying out any disciplinary procedure or action or suspension of an **Employee**; or



- Prior to dismissal of an **Employee**; or
- Prior to notifying an **Employee** of their intended retirement date or prior to retiring an **Employee**; or
- Prior to instituting a redundancy programme and prior to making an **Employee** redundant; or
- Upon notification formally or informally of a grievance from an **Employee** or **ex-Employee**; or
- Upon notification formally or informally of a complaint relating to discrimination, victimisation or harassment because of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion or belief, sex or sexual orientation; or
- Prior to any actual or proposed variation of the terms and conditions of employment that an **Employee** could reasonably consider to be adverse (including altering the hours or time or place worked or demotion or deduction from or reduction in an **Employee's** remuneration); or
- As soon as practicable if an **Employee** leaves their employment with or without written notice; or
- Upon receipt of an appeal from an **Employee** or **ex-Employee** against a decision made by a Court, tribunal or other similar body.

Failure to seek advice will not invalidate **Your** insurance coverage under this **Policy**, but could decrease **Your** prospects of a successful defence in any subsequent disputes or legal proceedings and **Your** ability to make a **Claim**.

Section F:

Commercial Contract Disputes

What Is Covered

Underwriters agree to pay **You** for **Legal Expenses** incurred in the pursuit or defence of any dispute or legal proceedings made by or brought against **You** in a contractual dispute or legal proceedings with a **Contracting Party** over a contract for the sale of goods or a contract for the hire of goods or a contract for the supply of a service within the meaning set out in Section 3 of the Contract and Commercial Law Act 2017 provided that:

- **Legal Expenses** incurred in the pursuit of any dispute or legal proceedings shall be limited to seventy-five percent (75%) of the amount in dispute; and
- The amount in dispute exceeds the **Minimum Sum in Dispute**; and
- Where the contract is a **Construction Contract** the construction operations are carried out or are to be carried out by the **Contracting Party** on **Your Property** and the **Construction Contract** is for the repair or renovation of the **Property** and the repair and renovation of the **Property** is not part of **Your Business Description**; and
- Where the dispute or legal proceedings arise from an undisputed debt, **You** have exhausted all reasonable methods of recovery and the **Appointed Representative** recommends legal action.

Exclusions to Section F

What we do not cover

Underwriters shall not be liable to pay **You** in respect of **Claims** arising out of or in connection with:

- Contracts that provide or arrange credit, insurance, securities, guarantees or other financial products and financial services as defined in the Consumer Protection (Fair Trading) Act; or
- Contracts where the liability or right of recovery is incurred through **Your** agent or by assignment; or
- Franchise contracts; or
- Contracts of employment; or
- Any tenancy or licence to use any real property.

General Exclusions

What we do not cover

We shall not be liable to pay **You** for **Legal Expenses** incurred in respect of:

1. **Your** defence in civil legal proceedings arising from:
 - a. Injury or disease including psychiatric injury and stress; or
 - b. Loss, destruction or damage of or to property; or
 - c. Alleged breach of any professional duty; or
 - d. Any non-contractual wrongful act or infringement of a right (other than as specified in Section A **Property Disputes** if **You** are covered under that Section of Cover as specified in the **Policy Schedule**); or
2. Any dispute or legal proceedings brought, made or commenced outside the **Territorial Limits**; or
3. **Legal Expenses** incurred without **Our** prior written consent or for a sum in excess of **Our** consent; or
4. Any **Claim** or possible **Claim** relating to or arising from any cause, event or circumstance occurring prior to or existing at inception of this **Policy** and which has or which **You** knew or ought reasonably to have known may give rise to a dispute or legal proceedings by or against **You**; or
5. Fines or other penalties imposed by a Court or tribunal; or



6. Any dispute or legal proceedings in respect of which **You** are, or but for the existence of this **Policy** would be, entitled to any payment under any insurance policy whether a legal expenses insurance or not or under a legal aid certificate or representation order; or
7. Any **Claim** arising from **Your** intentional wrongdoing or an act or omission with negligent disregard as to its consequences; or
8. Any dispute or legal proceedings with Government or Local Authority departments concerning the imposition of statutory charges; or
9. Disputes or legal proceedings between **You** as specified in the **Policy Schedule** or any **Endorsement**, or with any parent company or subsidiary company or associated company or partner; or
10. Any dispute or legal proceedings between **You** and **Us**, or **You** and the **Appointed Representative**, or **You** and **Your** Insurance Intermediary; or
11. Any dispute or legal proceedings arising out of breach or alleged breach of confidentiality or passing off whether related to intellectual property or not; or
12. Any dispute or legal proceedings arising out of the ownership or existence of any intellectual property rights; or
13. Any dispute or legal proceedings arising out of or in connection with actual or alleged defamation or malicious falsehood; or
14. Any **Legal Expenses** incurred in respect of or in connection with a judicial review; or
15. Appeals arising out of legal proceedings to which **Our** prior written consent has not been granted or withdrawn; or
16. Any claim, legal liability or any loss or damage to property or **Property** directly or indirectly caused by or contributed to by seepage, pollution or contamination of any kind; or
17. Any **Legal Expenses** which **You** should or would have had to incur irrespective of any dispute or legal proceedings; or
18. Any expense, legal liability or any loss or damage to property or **Property** directly or indirectly caused by or contributed to by:
 - a. Ionising radiations 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 nuclear assembly or nuclear component; or
19. Any loss, damage, cost or expense directly or indirectly caused by, resulting from or in connection with (including any action taken in controlling, preventing, suppressing or in any way relating to any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
 - a. War, invasion, 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. Any act including but not limited to the use or threat of force or violence by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.
20. Any legal costs and expenses for, incurred as a result of, or arising out of a **Cyber Act** or **Cyber Incident**.
21. Any actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
 - a. For the purposes of this exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.

As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
 - a. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
 - b. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
 - c. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

General Conditions

These are the conditions of the insurance coverage under this **Policy** that **You** need to meet as **Your** part of this contract. If **You** do not meet these conditions, **Underwriters** may reject **Your Claim** or a **Claim** payment could be reduced. In some circumstances, **Your Policy** may not be valid.

1. Instruction and Choice of Appointed Representative and Counsel

Underwriters will choose an **Appointed Representative** to act on **Your** behalf in any **Claim**.

In all cases the **Appointed Representative** shall be appointed in the name of and on behalf of **You**. If in the course of any **Claim** the **Appointed Representative** wishes to instruct Senior Counsel or an expert, Senior Counsel's or the expert's name and an explanation of the necessity for this instruction must be submitted to **Us** for **Underwriters'** prior written consent to the proposed instruction which will not be unreasonably withheld.

2. Payment of Legal Expenses

All invoices and requests for payment for **Legal Expenses** which **You** receive from the **Appointed Representative** should be forwarded to **Us** as soon as practicable upon receipt. If **We** so require **You** must ask the **Appointed Representative** to submit to **Us** the bill of costs for assessment. **You** are responsible for payment of all **Legal Expenses**. **We** may settle these requests for payment of **Legal Expenses** directly at **Our** discretion if requested by **You** to do so. The payment of some **Legal Expenses** by **Us** is not an indication that all **Legal Expenses** will be paid.



3. Recovery of Costs

Whenever **You** are awarded costs or under the terms of any settlement where costs are included, those costs are to be repaid to **Us**.

You and **Your Appointed Representative** must make every reasonable effort to make a recovery of costs. Where a settlement purports to be a global or a without costs settlement or where costs are awarded but not recovered, **You** agree that a fair and reasonable proportion of that settlement will be deemed costs and due to **Us**. Where this settlement is paid in instalments all costs to **Us** shall be paid first.

4. Appeal Procedure

If, following legal proceedings to which **We** have given **Our** prior written consent, **You** wish to appeal against the judgment or decision of a Court or tribunal, the grounds for this appeal must be submitted to **Us** through the **Appointed Representative** as soon as practicable so that **We** may consider whether to consent to this further action.

If an appeal is lodged against a judgment or decision of a Court or tribunal made in **Your** favour following legal proceedings to which **We** have given **Our** prior written consent, **You** must notify **Us** as soon as practicable in order that cover may continue. **We** will inform the **Appointed Representative** of **Our** decision. If **We** so require it **You** must co-operate in an appeal against the judgment or decision of a Court or tribunal.

5. Duty to Mitigate

You must take all reasonable precautions to avoid, prevent and mitigate **Claims**, disputes or legal proceedings.

You must use every endeavour and take all reasonable measures to minimise the cost and effect of any **Claim**.

6. Alteration of Risk

You must notify **Us** as soon as practicable in writing of any change in circumstances that might affect **Our** decision to provide **You** with this **Policy** or the premium charged. Examples include changes to **Your Business Description** or the acquisition of or by another company.

7. Exercise of Reasonable Care

You must exercise reasonable care to prevent injury, loss or damage to **You** or others and comply with all the terms and conditions of this **Policy**.

8. Governing Law and Jurisdiction

This **Policy** and any issue, including all and any disputes, relating to its formation, construction, validity or operation shall be determined by the laws of New Zealand whose Courts shall have exclusive jurisdiction to hear any dispute.

9. Privacy Act 2020

You agree that any information provided to **Us** regarding **You** will be processed by **Us** in compliance with the provisions of the Privacy Act 2020 for the purposes of providing insurance, facilitating renewal of insurance and handling **Claims**, if any, which may necessitate providing this information to third parties including **Your** Insurance Intermediary and **Your** data being transferred outside of New Zealand.

10. Your Insolvency or Liquidation

If **You** become insolvent or are placed in liquidation, receivership, administration or bankruptcy or enter into a voluntary arrangement or deed of arrangement or if any application is made to the Court or meeting convened for any these purposes **We** have the right to cease to provide under this **Policy** for **Legal Expenses** despite any previous consent **Underwriters** may have granted.

11. Goods and Services Tax

If **You** are registered for GST, **We** will not pay the GST element of any **Legal Expenses**.

12. Third Parties

This **Policy** is not intended to create an obligation enforceable at the suit of any person who is not a party to this **Policy**, and any such person shall have no right to enforce any obligation under this **Policy** under the Contract and Commercial Law Act 2017.

13. Underwriters shall not:

- a. be required to provide any cover; or
- b. be liable to pay any claim or provide any benefit,

under this **Policy** to the extent that doing so would expose the **Underwriter** to any legally enforceable sanction, prohibition, restriction, measure, ban or imposition under the laws or regulations of New Zealand, Australia, the United Kingdom, the European Union, the United States of America and/ or the United Nations.

14. Several Liability

Underwriters' liability under this **Policy** is several and not joint with other underwriters party to this **Policy**. An underwriter is liable only for the proportion of liability it has underwritten. An underwriter is not jointly liable for the proportion of liability underwritten by any other underwriter; nor is an underwriter otherwise responsible for any liability of any other underwriter that may underwrite this **Policy**.

The proportion of liability under this **Policy** underwritten by an underwriter (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown on the **Policy Schedule**.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an underwriter. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any other Underwriter that may underwrite this **Policy**. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this section to "this **Policy**" in the singular, where the circumstances so require this should be read as a reference to **Policies** in the plural.





**Embrace
Change.**

Delta Insurance New Zealand Limited

Level 22 48 Shortland Street

Auckland Central

Auckland 1010

