

Professional Indemnity Policy



Signed :

Dated :

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Welcome to QBE Insurance and thank you for trusting us with your insurance.

QBE has been committed to New Zealand and its commerce since 1888. We are Australasia's largest international insurance and reinsurance group and have specialist staff operating all over the globe, providing insurance to clients in over 140 countries. Our standing in the insurance marketplace has been achieved through consistent delivery of quality service to both our brokers and policyholders.

This is your Professional Indemnity Policy document, which should be read in conjunction with your Policy Schedule. Together, they form your contract of insurance and tell you what you are, and are not, insured for.

We want your experience with QBE Insurance to be the best. To allow us to make your claims experience fast and easy, it is important that you provide us with all the information that could influence our decision about your insurance. You need to tell either QBE or your broker about facts known to you as well as those facts you become aware of, which you could have been reasonably expected to know about. If you are in any doubt as to whether or not a fact may be material to your insurance, you can discuss this with QBE or your broker who will guide you.

By not telling us something that it was your duty to tell us it may mean that your claim may not be accepted or an entitlement under the policy could be reduced.

If you need help understanding any aspect of your insurance cover, please contact your insurance broker.



Professional Indemnity Policy

In consideration of the payment of the premium to QBE Insurance (Australia) Limited ('QBE') and in reliance on the written proposal, declaration and any other underwriting information provided, which will be deemed to be incorporated into and to be the basis of this Policy, QBE will indemnify the Insured as follows.

Insuring clauses

1. Civil liability

QBE shall indemnify the Insured for any Valid Claim subject to the terms of this Policy.

2. Costs and expenses

In addition, QBE shall pay Costs and Expenses incurred with the written consent of QBE in the defence or settlement of any Valid Claim, up to the Limit of Indemnity or NZD1,000,000, whichever is the lesser.

Automatic extensions

The following extensions to the Policy are included automatically, provided that each extension is subject to the terms of this Policy (unless otherwise stated).

QBE shall, subject to the terms of this Policy, indemnify the Insured for any Valid Claim as follows:

1. Automatic reinstatement

If a Valid Claim or Valid Claims shall exhaust the Limit of Indemnity under this Policy, QBE agrees to one reinstatement only of the Limit of Indemnity,

Provided that QBE's total liability under this Policy shall not exceed:

- 1.1 the Limit of Indemnity, in respect of any one Valid Claim or all related Valid Claims; and
- 1.2 twice the Limit of Indemnity, in respect of all Valid Claims which are not related.

For the purpose of this extension, Valid Claims are related if they arise out of the same, identical or a series of acts, errors, omissions or conduct, or arise out of or are attributable to the same originating source or cause.

2. Breach of contract

Claim for the actual or alleged breach of a contract for the provision of professional services.

3. Consultants, subcontractors and agents

Claim for any act, error or omission committed by any consultant, subcontractor or agent for whose act, error or omission the Insured is legally liable, provided that this indemnity shall not extend to any such consultant, subcontractor or agent.

4. Continuous cover

Any Claim or fact or circumstance that should have been notified to QBE under an earlier Professional Indemnity insurance policy issued by QBE,

Provided that:

- 4.1 QBE has continuously been the insurer of the Insured under a Professional Indemnity insurance policy between the date when such notification should have been given and the date on which such notification was, in fact, given;
- 4.2 cover under this extension will be subject to the terms of this Policy or the terms of the previous insurance, whichever QBE at our sole discretion decides;
- 4.3 where QBE has been prejudiced by such late notification the liability of QBE will be reduced to the amount for which QBE would have been liable had the notification been made at the correct time.

5. Costs of representation at registration board proceedings

If any complaint (which may form the basis of a Valid Claim) is lodged against the Insured with a statutory registration board or similar regulatory authority, if any statutory or professional body claims jurisdiction to inquire into or adjudicate on any such matter, then QBE shall pay, within the terms of this Policy and subject to the limits set out in Insuring Clause 2 (Costs and Expenses) above, Costs and Expenses incurred by or on behalf of QBE or by or on behalf of the Insured with QBE's prior written consent, in respect of the investigation and defence of the Insured at such proceedings provided that QBE shall be entitled to appoint a solicitor or counsel to represent the Insured.

6. Defamation

Claim for unintentional defamation.

7. Fair Trading Act 1986

Claim for compensation made against the Insured alleging breach of sections 9 to 14 of the Fair Trading Act 1986 (or any similar fair trading legislation that may apply in the states, territories or countries of the jurisdiction specified in the Schedule).

8. Fraud and dishonesty of employees

Notwithstanding Exclusion 8 (Fraud and Dishonesty), QBE agrees to indemnify the Insured for legal liability for any Valid Claim, which is brought about or contributed to by any dishonest, fraudulent, criminal, malicious or deliberate act or omission of or on behalf of an Employee of the Insured.

Provided that:

- 8.1 such indemnity shall not be provided to any person committing or condoning any such act or omission;
- 8.2 in respect of Claims involving theft or misappropriation of funds for which the Insured is legally liable to account to another, the liability of QBE is conditional upon:
 - 8.2.1 the Insured maintaining a separate trust account for such funds, which shall be subject to independent audit by a duly qualified accountant at least annually; and
 - 8.2.2 all cheques drawn by Employees of the Insured on such trust account being signed by two authorised persons.

Automatic Extension 1 (Automatic Reinstatement) of this Policy shall not apply to this extension.

9. Intellectual property

Claim for unintentional infringement of copyright, trademark, registered design or patent, plagiarism or breach of confidentiality, arising directly from the Professional Business Practice.

10. Internet liability

Claim made against the Insured for unintentional transmission of any computer virus or program or code that causes loss or damage to any computer system and/or prevents or impairs any computer system from performing and/or functioning accurately and/or properly.

Provided that indemnity under this extension is limited to NZD 250,000 in the aggregate during the Period of Insurance which forms part of and is not in addition to the Limit of Indemnity and is inclusive of Costs and Expenses.

11. Joint venture liability - insured's liability only

Claim arising from the Insured's involvement in any joint venture or partnership but no other joint venture party or partner shall be an Insured.

12. Loss of documents

Claim for loss of any Documents that have been destroyed, damaged, lost or mislaid

Provided that such coverage shall be limited to loss of Documents:

- 12.1 which were in the physical custody or control of the Insured or any other person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business; and
- 12.2 that has occurred within the territorial limits of New Zealand or Australia.

13. Previous business

Claim made against any person who is, or becomes, during the Period of Insurance, a partner, director or principal of the Insured for any civil liability incurred on the part of such person in the conduct of the same profession as the Insured's Professional Business Practice before that person joined the Insured, provided that this Policy shall only cover the part of the loss that exceeds any indemnity available to that person under any other insurance policy.

Definitions

In this Policy, including any endorsements, unless specifically stated to the contrary:

1. 'Claim' means:

- 1.1 legal proceedings instituted and served on the Insured claiming damages; or
- 1.2 any allegation of wrongdoing by the Insured or for which the Insured is legally liable, together with a demand for damages; or
- 1.3 any threat or intimation that legal proceedings will be issued against the Insured.

2. 'Costs and Expenses' means:

- 2.1 all necessary and reasonable legal costs, disbursements, witness costs, assessor costs or expert costs incurred by QBE solely in investigating, defending or settling any Valid Claim;
- 2.2 all necessary and reasonable expenses (other than loss of earnings or profits) that are incurred by the Insured with the prior written consent of QBE solely in assisting QBE or our solicitors in the investigation, defence or settlement of any such Valid Claim;
- 2.3 any interest accruing after the date of entry of judgment against the Insured and until the date QBE pays, tenders or deposits in court the judgment sum or such part of that judgment sum as is required to satisfy our liability to the Insured in terms of the Limit of Indemnity.

3. 'Documents' means:

Deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material, but shall not include bearer bonds or coupons, stamps, bank currency notes or any other negotiable instrument.

4. 'Employee' means:

Any person employed under a contract of service or apprenticeship, on a full-time, part-time or seasonal basis.

5. 'Excess' means:

The amount of excess specified in the Schedule.

6. 'Family Member' means:

- 6.1 any spouse, domestic partner or companion;
 - 6.2 any parent or parent of the spouse; or
 - 6.3 any sibling or child
- of the Insured.

7. 'Insured' means:

- 7.1 the person, persons, partnership, company, corporation or other entity specified as the insured in the Schedule including their predecessors in business;
- 7.2 any person who is, or becomes during the Period of Insurance a principal, partner, director or Employee of the insured;
- 7.3 any former principals, partners, directors or Employees of the insured;
- 7.4 any Subsidiary Company.

8. 'Limit of Indemnity' means:

The limit of indemnity specified in the Schedule.

9. 'Period of Insurance' means:

The period of insurance specified in the Schedule.

10. 'Policy' means:

This wording, the Schedule and any endorsements.

11. 'Professional Business Practice' means:

The business conducted by the Insured as specified in the Schedule.

12. 'Retroactive Date' means:

The date specified in the Schedule.

13. 'Schedule' means:

The current schedule to this Policy.

14. 'Subsidiary Company' means:

- 14.1 any company that is deemed under any applicable legislation or law to be a subsidiary company of the Insured named in the Schedule at the commencement of the Period of Insurance; or
- 14.2 any subsidiary company that is acquired or created by the Insured named in the Schedule during the Period of Insurance and notified to QBE within thirty (30) days of creation or acquisition, subject to terms and conditions required by QBE at the time of notification.

15. 'Valid Claim' means:

Any Claim:

- 15.1 first made against the Insured during the Period of Insurance; and
- 15.2 notified in writing by the Insured to QBE during the Period of Insurance; and
- 15.3 alleging civil liability by any act, error, omission or conduct that occurred subsequent to the Retroactive Date in connection with the Insured's Professional Business Practice.

Any Claims that do not satisfy 15.1, 15.2 and 15.3 of this definition shall not be covered under this Policy.

Exclusions

QBE shall not be liable in respect of any Claim:

1. Asbestos

Alleging, resulting from, directly or indirectly arising out of, in consequence of, or contributed to by, asbestos, asbestos fibres or derivatives of asbestos.

2. Building defects

Alleging, arising directly or indirectly out of, or in respect of:

- 2.1 the failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code contained in the First Schedule to the Building Regulations 1992 or any applicable New Zealand Standard (or any amended or substituted regulation or standard) in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system; or
- 2.2 mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

3. Death or bodily injury

Alleging or in respect of death, bodily or mental injury or illness.

4. Directors liability

Alleging or in respect of any duties of any Insured as a director, trustee or legal officer of any company or entity.

5. Employers liability

Alleging or arising out of any breach of any obligation owed by the Insured as an employer.

6. Financial condition

Alleging or in respect of the insolvency, bankruptcy, receivership, statutory management or liquidation of the Insured.

7. Fines and penalties

Alleging or in respect of any liability to pay taxes, fines or penalties, or liquidated, aggravated, multiple, punitive or exemplary damages.

8. Fraud and dishonesty

Alleging or brought about or contributed to by any dishonest, fraudulent, criminal, malicious or deliberate act or omission of or on behalf of the Insured or of any person at any time employed by the Insured.

9. Harassment/discrimination

Alleging or arising out of harassment (including but not limited to sexual harassment or molestation) or discrimination of any kind.

10. Insured and family members

Brought or maintained by or on behalf of:

- 10.1 any Insured, any subsidiary or any associated entity (whether incorporated or not) of the Insured; or
- 10.2 any person who, at the time of the act, error or omission giving rise to the Claim, is a Family Member.

11. Jurisdiction

In respect of any legal action:

- 11.1 first brought in a court outside the jurisdiction of the countries specified in the Schedule; or
- 11.2 brought in a court within the jurisdiction of the countries specified in the Schedule to enforce a judgment of a court outside the jurisdiction of the countries specified in the Schedule whether by way of a reciprocal agreement or otherwise; or
- 11.3 in which the proper law to be applied to the issues or any of them is that of a country other than the countries specified in the Schedule.

12. Liability assumed

- 12.1 Alleging or in respect of any promise, guarantee, condition or representation that the Insured's services will meet a particular level or standard, or timeframe, or produce a particular result. However, this exclusion will not apply to liability that would have attached in the absence of such promise, guarantee, condition or representation.
- 12.2 In respect of liability incurred by or on behalf of the Insured arising from an agreement, where liability would not otherwise have existed in the absence of the agreement. However, this exclusion will not apply to an agreement by or on behalf of the Insured to provide professional services to a client or customer, except to the extent that the Insured has agreed to accept a liability regardless of fault.
- 12.3 In respect of a trading debt or a trading liability incurred, or financial or other guarantee granted by the Insured.
- 12.4 In respect of which the Insured has, without the written consent of QBE, surrendered or waived any right of contribution or indemnity to which the Insured might otherwise have been entitled.

13. Nuclear

Alleging or directly or indirectly caused by or contributed to or arising from nuclear energy operations, including but not limited to:

- 13.1 the erection, installation, occupation, repair, maintenance, control, use or ownership of any nuclear power station, similar reactor building or nuclear reactor; or
- 13.2 any process of nuclear fission or fusion or handling of radioactive material or irradiated nuclear fuel, which operations include but are not limited to:
 - 13.2.1 the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;
 - 13.2.2 the use, handling or transportation of radioactive materials; or
 - 13.2.3 the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion,

Provided that this exclusion shall not apply to any Claim arising from radioisotopes or radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

14. Occupiers liability

Alleging or arising out of the ownership, possession or use by or on behalf of the Insured of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.

15. Pollution

Alleging or directly or indirectly caused by or contributed to by or arising from seepage, pollution or contamination of any kind.

16. Prior or pending

- 16.1 made, threatened or in any way intimated prior to the commencement of the Period of Insurance; or
- 16.2 arising from any circumstance of which the Insured had, or should have, become aware prior to the commencement of the Period of Insurance and which the Insured or a reasonable Insured should have considered may give rise to a Claim, whether notified under any other insurance or not.

17. Refund of fees

For a refund of professional fees, by way of damages or otherwise.

18. Related or associated entities

Brought or maintained by or on behalf of any person, firm, company or entity:

- 18.1 operated or controlled by any Insured;
- 18.2 operated or controlled by any Employee, partner, nominee or trustee of any Insured;
- 18.3 in which any Insured has a direct or indirect financial interest (a shareholding of less than five per cent (5%) in a publicly listed company shall not constitute a financial interest); or
- 18.4 advised or induced by the Insured to invest in or lend money to any person, firm, company or entity referred to in any of 18.1, 18.2 or 18.3 above or to the Insured.

For the purpose of this exclusion, the term Insured shall include both the Insured and any Family Member.

19. Supply of goods

Alleging or arising from the sale, supply, installation, efficacy or manufacture of goods by or on behalf of the Insured.

20. Territorial limits

Alleging or arising from any act, error or omission that occurred outside the territorial limits specified in the Schedule.

21. Terrorism

Alleging or directly or indirectly caused by, resulting from or in connection with death, injury, illness, loss, damage, 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 purposes of this exclusion, 'Act of Terrorism' means an act, including but not limited to the use of force or violence and/or threat thereof, 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 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 exclusion will also apply to death, injury, illness, loss, damage, 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.

22. War

Alleging or directly or indirectly caused by, resulting from or in connection with loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.

Conditions

1. Cancellation

- 1.1 The Insured may cancel this Policy at any time by notifying QBE in writing.
- 1.2 QBE may cancel this Policy at any time by sending thirty (30) days' notice in writing to the Insured of the date from which cancellation is to take effect. Such notice may be delivered personally, posted or emailed to the Insured or their representative at the address last notified to QBE.

In either event, QBE will retain or be entitled to the premium for the period during which this Policy has been in force, based on QBE's cancellation rates.

2. Defence and settlement of a claim

The Insured shall not admit liability for or settle any Claim or incur any Costs or Expenses without the written consent of QBE, whose consent shall not be unreasonably withheld. QBE shall be entitled at any time to take over and conduct in the name of the Insured the defence or settlement of any Claim and any counterclaim.

3. Dishonest claim

If the Insured or any person who is entitled to indemnity under this Policy makes any dishonest statement in respect of an application for indemnity under this Policy, this insurance shall be voidable from the commencement of the Period of Insurance and all benefits under this Policy will be forfeited.

4. Excess

In respect of each and every Claim against the Insured the amount of the Excess is payable by the Insured and QBE shall only be liable to indemnify the Insured for the amount beyond the Excess up to the amount of the Limit of Indemnity.

When the amount of the Excess is shown in the Schedule as 'costs exclusive' the indemnity for Costs and Expenses shall not be subject to the Excess provided that the Claim is higher than the Excess.

For the purpose of this condition, 'Claim' means any and all Valid Claims that arise by reason of the same act, error, omission or conduct.

5. Goods and services tax

Where, upon receiving any indemnity payment under this Policy, the Insured is liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) and/or under the equivalent legislation in any other jurisdiction specified in the Schedule, QBE will indemnify the Insured for the amount of that tax. The indemnity under this clause is payable by QBE in addition to the Limit of Indemnity.

6. Insured's co-operation

The Insured shall take all reasonable steps to avoid or diminish any loss in relation to any possible Claim and shall immediately disclose all information and give assistance to QBE to enable us to investigate and defend the Claim or determine our liability under this Policy.

QBE may, upon receipt of notice from the Insured of any request for indemnity under this Policy, take whatever action we consider appropriate to protect the Insured's position in respect of the Claim and such action by QBE shall not be regarded in any way as prejudicing the Insured's or our own position and shall not be an admission of the Insured's entitlement to indemnity.

The Insured irrevocably waives all claims to legal professional privilege between themselves and any solicitor retained by QBE to act on the Insured's behalf in relation to any Claim. The Insured shall allow the solicitor to disclose to QBE and our reinsurers any information obtained in the course of its duties.

7. Insured's right to contest

If the Insured refuses to consent to any settlement recommended by QBE and elects to contest or continue any legal proceedings, QBE's liability shall not exceed the amount for which the Claim or circumstance could have been settled, less any Excess, plus the Costs and Expenses incurred up to the date of such refusal.

8. Interpretation of words

Words referring to persons shall include companies and other legal entities. The singular includes references to the plural and vice versa and any gender includes inference to all other genders.

9. Legal counsel

Neither QBE nor the Insured shall require each other to contest any legal proceedings in respect of any Claim against the Insured unless legal counsel (to be mutually agreed upon by the Insured and QBE or, in default of agreement, nominated by QBE) shall recommend that such proceedings should be contested.

In formulating such recommendation, counsel shall take into account the economics of the matter, the damages and costs that are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the Insured successfully defending the action. The cost of counsel's opinion shall, for the purpose of this Policy, be regarded as part of the Costs and Expenses.

In the event that counsel recommends that, having regard to all the circumstances, the matter should not be contested but should be settled, provided that settlement can be achieved within limits which, in counsel's opinion, are reasonable, then the Insured shall not object to any such settlement and shall co-operate with QBE to effect such settlement in accordance with this Policy, subject to Condition 7 (Insured's Right to Contest) above.

10. Limit of indemnity

QBE's liability to indemnify the Insured under Insuring Clause 1 (Civil Liability) in respect of any one Valid Claim (including all legal Costs and Expenses for which the Insured shall become legally liable to the claimant), or all such Valid Claims in the aggregate, shall not exceed the Limit of Indemnity.

11. Loss or suspension of registration/alteration to risk

The Insured shall give immediate notice in writing to QBE should the statutory registration of an Insured person be cancelled, suspended or terminated, or should there be any other material alteration to the risk, facts or circumstances.

12. Maximum costs and expenses

In no case whatsoever will QBE pay more than NZD 1,000,000 in the aggregate under this Policy in respect of Costs and Expenses under Insuring Clause 2 (Costs and Expenses) and Automatic Extension 5 (Costs of Representation at Registration Board Proceedings) or otherwise.

13. Notification of circumstance

If, during the Period of Insurance, the Insured notifies QBE of any circumstance which the Insured or a reasonable Insured should have considered may give rise to a Claim, and this circumstance later gives rise to a Claim first made against the Insured after expiry of the Period of Insurance, QBE will treat the Claim as first made against the Insured during the Period of Insurance. In this context, a 'circumstance' must be sufficiently specific that the Insured can and does provide to QBE details of name(s) of potential claimants and potential wrongful acts/omissions.

14. Other insurance

The Insured shall immediately advise QBE of any other insurance or indemnity from which they are entitled to receive any benefit in respect of any notified Claim or circumstance.

This Policy shall only cover the part of the loss which exceeds the amount of indemnity payable under such other insurance or indemnity - even if the other insurance or indemnity has a term to that effect. However, this shall not apply if the other insurance or indemnity is a specific excess layer cover over this Policy.

15. Payment in excess of limit of indemnity

If any payment, settlement or judgment in excess of the Limit of Indemnity has to be made or paid to settle or dispose of any Claim, QBE's liability for Costs and Expenses is limited to such proportion as the Limit of Indemnity bears to the amount payable to dispose of the Claim.

Where QBE has paid or incurred Costs and Expenses in excess of its proportionate liability, the Insured shall, upon demand from QBE, pay to QBE the amount of that excess. QBE may offset any amount payable by the Insured against any amount that is payable by QBE.

16. Payment of indemnity

QBE may, at any time, pay the Limit of Indemnity applying to any one Claim or series of Claims (after deduction of sums already paid) or any lesser amount for which such Claims can be settled and shall then be under no further liability in connection with such Claims except for our proportion of Costs and Expenses incurred prior to the date of payment.

17. Policy interpretation

Interpretation of this insurance shall be governed by the laws of New Zealand whose courts shall have exclusive jurisdiction in any dispute that may arise.

18. Reporting and notice

Irrespective of the alleged or actual quantum, the Insured shall give to QBE immediate notice in writing of:

18.1 any Claim;

18.2 the receipt of notice from, or information as to any intention by, any party to make a Claim; or

18.3 any circumstance of which the Insured becomes aware, and which the Insured or a reasonable Insured should consider may give rise to a Claim.

19. Subrogation

If any payment is made under the Policy in respect of a Claim, QBE is subrogated to all the Insured's rights of recovery in any way related to the Claim. The Insured shall give all such assistance in the exercise of rights of recovery as QBE may reasonably require. Any such recovery shall be applied first to QBE's defence costs incurred, regardless of how the recovery may be described in any settlement agreement between the Insured and the claimant. However, QBE shall not exercise any subrogated rights of recovery against any Employee of the Insured unless the Claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Employee.

20. Written notice

All notices, including notification of Claims, shall be sent to QBE in writing via the insured's:

20.1 insurance broker (email or letter); or

20.2 QBE contact person (email or letter).