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FIXED SITE ENVIRONMENTAL & POLLUTION LIABILITY INSURANCE POLICY

This is a claims made and notified policy, which means the Policy requires a **claim** to be made against the **insured** and reported to **us** during the **policy period**, or extended reporting period if applicable. Various provisions in this Policy restrict coverage. Please read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy the words “you” and “your” refer to the Named Insured(s) shown in the Schedule, and any other person or organisation qualifying as a **named insured** under this Policy. The words “we”, “us” and “our” refer to the Insurer providing this insurance.

Defined terms, other than headings, appear in bold face type. Refer to **SECTION V – DEFINITIONS**.

In consideration of the payment of the premium and in reliance upon the statements and information in the Application we agree to provide coverage as follows:

SECTION I – INSURING AGREEMENTS

1. Pre-existing Conditions Coverage

We will pay **claims** for **loss** and **Claims Expense** arising out of a **pollution incident** at or migrating from an **insured location** but only if:

- a The **pollution incident** takes place in the **coverage territory**; and
 - i The **claim** is first made against the insured during the **policy period**; and

- ii The **pollution incident** commenced prior to the **retroactive date**, and
 - iii You report the **claim** to us as soon as practicable during the **policy period** or extended reporting period if applicable.
- b We will pay **environmental damage** or **emergency response expense** arising out of a **pollution incident** at or migrating from an **insured location** but only if:
- i The **pollution incident** takes place in the **coverage territory**; and
 - ii The **pollution incident** commenced prior to the **retroactive date**, and
 - iii The **pollution incident** is discovered by you during the **policy period** and reported to us as soon as practicable during the **policy period** or extended reporting period, if applicable.

2. New Conditions Coverage

We will pay **claims** for **loss** and **Claims Expense** arising out of a **pollution incident** at or migrating from an **insured location** but only if:

- a The **pollution incident** takes place in the **coverage territory**; and
 - i The **claim** is first made against the insured during the **policy period**; and
 - ii The **pollution incident** commenced on or after the **retroactive date**, and
 - iii You report the **claim** to us as soon as practicable during the **policy period** or extended reporting period if applicable.
 - iv We will pay **environmental damage** or **emergency response expense** arising out of a **pollution incident** at or migrating from an **insured location** but only if:
- b The **pollution incident** takes place in the **coverage territory**; and
 - i The **pollution incident** commenced on or after the **retroactive date**, and
 - ii The **pollution incident** is discovered by you during the **policy period** and reported to us as soon as practicable during the **policy period** or extended reporting period, if applicable.

3. Transportation Coverage

- a We will pay **claims for loss** and **Claims Expense** arising out of a **pollution incident** caused by **transportation**, but only if:
 - i The **pollution incident** takes place in the **coverage territory**; and
 - ii The **claim** is first made against the insured during the **policy period**; and
 - iii The **pollution incident** commenced on or after the **retroactive date**, and
 - iv You report the **claim** to us as soon as practicable during the **policy period** or extended reporting period if applicable.

4. Business Interruption Coverage

- a We will pay **business interruption costs** arising out of a **pollution incident** at an **insured location** but only if:
 - i The **pollution incident** takes place in the **coverage territory**; and
 - ii The **pollution incident** commenced prior to the **retroactive date** if the pre-existing conditions coverage described in SECTION I – INSURING AGREEMENTS, 1. Pre-existing Conditions Coverage is purchased, or on or after the **retroactive date** if the new conditions coverage described in SECTION I – INSURING AGREEMENTS, 2. New Conditions Coverage, is purchased, and
 - iii The **business interruption costs** are caused solely and directly by the **pollution incident**, and
 - iv You report the **business interruption** to us as soon as practicable during the **policy period** or
 - v extended reporting period if applicable.

5. Claim Expense and Defence Applicable to Coverages 1. – 3.

- a We will have the right but not the duty to defend the insured against any **claim for bodily injury, property damage, environmental damage and emergency response expense** to which this insurance applies. However, we will have no duty to defend the insured against any **claim** to which this insurance does not apply. We may, at

our discretion, investigate any **pollution incident** and settle any **claim** that may result. But;

- i The amount we will pay for damages is limited as described in SECTION III – LIMITS OF INSURANCE AND DEDUCTIBLE;
- ii Our right to defend ends when we have used up the applicable limits of insurance in the payment of **loss, clean-up costs or emergency response expense**.

SECTION II – EXCLUSIONS

The insurance provided in SECTION I does not apply to:

1. Asbestos and Lead

Environmental Damage arising from asbestos, asbestos-containing materials or lead-based paint in, on, or applied to any building or other structure. This exclusion does not apply to **clean-up costs** for the remediation of soil, surface water or groundwater.

2. Contractual Liability

Loss, Claims Expense or business interruption costs for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- a That the **insured** would have in the absence of the contract or agreement; or
- b Assumed in a contract or agreement that is an **insured contract**, provided the **loss or business interruption costs** occur(s) subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an **insured contract**, reasonable lawyers fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of **loss or business interruption costs**, provided:
 - i Liability to such party for, or for the cost of, that party's defence has also been assumed in the same **insured contract**; and
 - ii Such lawyers fees and litigation expenses are for defence of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

3. Criminal Fines and Penalties

Any criminal fines, criminal penalties, criminal assessments or reparation orders.

4. Damage to Conveyance

Property damage to any **conveyance** utilised during **transportation**. This exclusion does not apply to **claims** made by third-party carriers for such **property damage** arising from the insured's negligence.

5. Damage to Property

Property damage to:

- a Property you own, rent, or occupy including any costs or expenses incurred by you, or any other person, organisation or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property; or
- b Property loaned to you.

6. Damage to Your Product

Property damage or **environmental damage** to **your product** arising out of it or any part of it.

7. Employer's Liability

Bodily injury to:

- a An **employee** of the **insured**, arising out of and in the course of:
 - i Employment by the **insured**; or
 - ii Performing duties related to the conduct of the **insured's** business; or
- b The spouse, child, parent, brother or sister of that **employee** as a consequence of Paragraph a.(1) above.

This exclusion applies whether the **insured** may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the **insured** under an **insured contract**.

8. Expected or Intended Injury or Damage

Loss, Claims Expense or **business interruption**

costs which could have been expected, intended, or reasonably foreseen by a **responsible manager**.

9. Identified Underground Storage Tanks

Loss or **business interruption costs** resulting from an **underground storage tank** whose existence is known by a **responsible manager** prior to the **policy period** unless such **underground storage tank** is scheduled on the policy by endorsement.

This exclusion does not apply to any **underground storage tank** which has been closed, abandoned in place or removed prior to the inception of the **policy period** in accordance with **environmental laws**.

10. Intentional Non-compliance

Loss, Claims Expense or **business interruption costs** that results from any **responsible manager's** intentional disregard of or deliberate willful or dishonest non-compliance with any **environmental law** or any other statute, regulation, ordinance, order, administrative complaint, notice of violation, notice letter, or instruction by or on behalf of any government agency or regulatory agency.

11. Insured versus Insured

A **claim** by any **insured** against any other person or entity who is also an **insured** under this policy. This exclusion does not apply to **claims** initiated by third parties or **claims** that arise out of an indemnification given by one **named insured** to another **named insured** in an **insured contract**.

12. Known Pollution Incident

A **pollution incident** that resulted in or could be expected to result in **loss, Claims Expense** or **business interruption costs** that occurred in whole or in part prior to the **policy period** and was known prior to the **policy period** by a **responsible manager**, and not disclosed to us prior to the **policy period**. Any continuation, change or resumption of such **pollution incident** will be deemed to have been known by a **responsible manager** prior to the **policy period**.

13. Previously Reported Claim, Clean-Up Costs or Emergency Response Expense

Any **claim, clean-up costs, emergency response expense** or **business interruption costs** reported under this **policy period** arising from the same, related or continuous **pollution incident** from which

a **claim, clean-up costs, emergency response expense or business interruption costs** arose that was reported under any policy of which this policy is a renewal or replacement, whether or not such prior policy affords coverage for such **claim, clean-up costs, emergency response expense or business interruption costs**.

14. Products

Loss or Claims Expense arising from **your product** or any part of it after you have relinquished possession of the same, or the product is no longer under your care, custody or control.

15. Third-Party Carrier

Bodily injury, property damage, environmental damage or emergency response expense incurred by a third-party carrier. This exclusion does not apply to a **pollution incident** arising from the insured's negligence.

16. War and Terrorism

Loss or business interruption costs caused directly, in whole or in part, as a result of or in connection with war, whether declared or not, or any act or condition incident to war or act of Terrorism. War includes:

- a Civil war;
- b Armed conflict between two or more nations, armed conflict between military forces of any origin, or warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

Terrorism includes any 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) committed for political, religious, ideological or similar purposes including the intention to influence any government and / or to put the public in fear.

17. Workers Compensation and Similar Laws

Any obligation of the **insured** under a workers' compensation, disability benefits unemployment

compensation, wrongful dismissal, unfair dismissal and redundancy or any similar law.

18. Cyber Liability

Loss, Claims Expense or business interruption costs caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

19. Material Change in Use

Loss, Claims Expense or business interruption costs arising from a change in the use of or operations at an **insured location** from that which you disclosed to us, in writing, prior to the first day of the **policy period**, where such change materially increases the likelihood or extent of a **pollution incident, bodily injury, property damage, environmental damage, loss, business interruption costs or claim** in relation to the disclosed use or operations.

20. New Pollution Incident at Divested Property

Loss, Claims Expense or business interruption costs arising from a **pollution incident** on, at, under or migrating from an **insured location**, where such **pollution incident** commenced after the time such **insured location** was sold, given away or abandoned by an **insured**, or was condemned.

SECTION III – LIMITS OF INSURANCE AND DEDUCTIBLE

1. The Limits of Insurance shown in the Schedule and the rules below fix the most we will pay regardless of the number of:
 - a Insureds;
 - b **Claims** made or brought;
 - c Persons or organisations making **claims**; or
 - d **Pollution incidents** discovered.
2. The Policy Aggregate Limit shown in Item 4. of the Schedule is the most we will pay for the sum of all **loss and business interruption costs** under SECTION I, INSURING AGREEMENTS.
3. Subject to Paragraph 2. above, the Each Incident Limit of coverage shown in Item 3. of the Schedule is the most we will pay for the sum of all **loss and business interruption costs** under each coverage

in SECTION I, INSURING AGREEMENTS 1.- 4. arising out of any one **pollution incident**.

4. Subject to Paragraph 2., the Coverage Section Aggregate Limit in Item 3. of the Schedule is the most we will pay for the sum of all **loss** and **business interruption costs** under each coverage in SECTION I, INSURING AGREEMENTS 1.- 4.
5. The maximum **business interruption costs** we will pay under SECTION I –INSURING AGREEMENTS, Paragraph 4. **Business Interruption Coverage** is 90% of the lesser of:
 - a the **business interruption costs**, incurred during the **business interruption period** caused solely and directly by a **pollution incident at the insured location** stated in Item 5 of the Schedule, and
 - b the amount stated in Item 3 of the Schedule.

It is a condition precedent under SECTION I – INSURING AGREEMENTS, Paragraph 4. **Business Interruption Coverage** that the remaining 10% of such amount shall remain payable by the **insured** at its own risk and shall remain uninsured.

6. **Claims Expense** are not part of, and are in addition to, the Policy Limit and any Sublimit of Liability of this Policy. Payment by Us of **Claims Expenses** shall not reduce any such Limit of Liability or Sublimit of Liability. The limit of liability for **Claims Expenses** is as per the Coverage Section Limit at item 3. 5.
7. The Limits of Insurance apply in excess of the deductible amounts shown in Item 3. of the Schedule. The deductible amount applies to the sum of all **loss** and **business interruption costs** under SECTION I, INSURING AGREEMENTS 1.- 4. arising out of any one **pollution incident**.
8. We may pay any part or all of the deductible amount to effect settlement of any **claim**, or to pay **clean-up costs, business interruption costs** or **emergency response expense** which may be covered under this policy and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.
9. The Limits of Insurance apply to the entire **policy period**. If the **policy period** is extended after issuance for an additional period, the additional period will be deemed part of the last preceding period for the purposes of determining the Limits of Insurance.
10. If the same, related or continuous **pollution incidents** result in coverage under more than one coverage

section in SECTION I – INSURING AGREEMENTS, only the highest deductible amount stated in Item 3. of the Schedule among all the coverage sections applicable to the **loss** will apply.

SECTION IV – CONDITIONS

1. Assignment

This policy may not be assigned without our prior written consent. Assignment of interest under this policy shall not bind us until our consent, which shall not be unreasonably withheld, is endorsed thereon.

2. Bankruptcy

Bankruptcy or insolvency of the **insured** or of the **insured's** estate will not relieve us of our obligations.

3. Cancellation

- a The **first named insured** shown in the Schedule may cancel this policy by mailing or delivering to us advance written notice of cancellation. When the **first named insured** cancels this Policy, we will return premium to you less the amount of premium earned for the period of cover and any applicable administrative charges incurred by us in effecting the cancellation of this Policy.
- b We may cancel this policy for non payment of premium by sending by registered mail or delivering to the **first named insured** written notice of cancellation at least ten (10) days before the effective date of cancellation if we cancel for nonpayment of premium.
- c Subject to clause 3c above, any notice of proposed cancellation given by us shall take effect on whichever is the earlier of the following times:
 - i when another contract of insurance is entered into between you and us or some other insurer that is intended to replace this policy; or
 - ii whichever is the latest of 4pm on the 3rd business day after the date on which notice was given to the **named insured** or the time specified in the notice.
- d If notice is mailed, proof of mailing will be sufficient proof of notice.

4. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The **first named insured** shown in the Schedule is authorised to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

5. Currency

All reimbursement shall be made in New Zealand dollars or the currency at the rate of exchange prevailing on:

- a The date of judgment if judgment is rendered;
- b The date of settlement if settlement is agreed upon with our written consent; or
- c The date legal expenses are paid.

6. Duties in the Event of a Pollution Incident or Claim

- a You must see to it that we are notified as soon as practicable within the **policy period** or extended reporting period of discovery of a **pollution incident** which may result in a **claim**, which may result in **environmental damage** or which may result in **business interruption costs**. You must also see to it that we are notified as soon as practicable of receipt of a **claim**. To the extent possible, notice should include:
 - i How, when and where the **pollution incident** took place;
 - ii The names and addresses of any injured persons and witnesses; and
 - iii The nature and location of any injury or damage arising out of the **pollution incident**.
- b If a **claim** is made against any **insured**, you must:
 - i Immediately record the specifics of the claim and the date received; and
 - ii Notify us as soon as practicable within the policy period or extended reporting period.

You must see to it that we receive written notice of the **claim** as soon as practicable within the **policy period** or extended reporting period. Written notice should be mailed or delivered to us at the address designated in the Schedule.

c You and any other involved **insured** must:

- i Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim**;
 - ii Authorise us to obtain records and other information;
 - iii Cooperate with us in the investigation, settlement or defence of the **claim**; and
 - iv Assist us, upon our request, in the enforcement of any right against any person or organisation which may be liable to the **insured** because of injury or damage to which this insurance may also apply.
- d No **insured** will, except at that **insured's** own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than **emergency response expense**, without our prior written consent.
- e When any **insured** becomes obligated to pay **clean-up costs** to which this policy applies, the **insured** must:
- i Submit, for our approval, all proposed work plans prior to submittal to any regulatory agency.
 - ii Submit, for our approval, all bids and contracts for clean-up costs prior to execution or issuance.
 - iii Forward progress submittals regarding clean-up costs at reasonable intervals and always prior to submittal to any regulatory agency that is authorised to review and approve such submittals.

We shall have the right, but not the duty to assume direct control of such **clean-up costs**. Any **clean-up costs** incurred by us shall be applied against the applicable deductible and limit of insurance shown in the Schedule of this policy.

- f You must see to it that we are notified as soon as practicable within the **policy period** or extended reporting period of a **pollution incident** which may result in an **emergency response expense** under this policy. When **emergency response expenses** have been incurred, the **insured** shall forward to us within seven (7) consecutive days of the commencement of the **pollution incident** for which the **emergency response expenses** have

been incurred all information including but not limited to: the cause and location of the **pollution incident**, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such **emergency response expenses**.

- g** If we are prohibited under applicable law from investigating, defending or settling any such **claim**, the **insured** shall, under our supervision, arrange for such investigation and defence thereof as is reasonably necessary, and subject to our prior written authorisation, shall effect such settlement thereof.

7. Economic and Trade Sanctions

If coverage for a **claim** under this policy is in violation of any economic or trade sanctions by the United States of America, the United Nations (UN), the European Union (EU)/ European Economic Area (EEA) or any other applicable national economic or trade sanction law or regulations, then coverage for that **claim** will be null and void.

8. Extended Reporting Period

The **first named insured** shall be entitled to an Automatic Extended Reporting Period, and (with certain exceptions as described in Paragraph b. of this section) be entitled to purchase an Optional Extended Reporting Period for SECTION I., INSURING AGREEMENTS 1.– 3. collectively, upon termination of coverage as defined in Paragraph b.(3) of this section. Neither the Automatic nor the Optional Extended Reporting Period shall reinstate or increase any of the limits of liability of this Policy.

a Automatic Extended Reporting Period

Provided that the **first named insured** has not purchased any other insurance to replace this insurance and the **claim** is otherwise covered hereunder, the **first named insured** shall have the right to the following: a period of sixty (60) days following the effective date of such termination of coverage in which to provide written notice to the Company of **claims** first made against the **insured** and reported within the Automatic Extended Reporting Period. A **claim** first made and reported within the Automatic Extended Reporting Period will be deemed to have been made on the last day of the **policy period**, provided that the **claim** arises from a **pollution**

incident that commenced before the end of the **policy period** and is otherwise covered by this Policy. No part of the Automatic Extended Reporting Period shall apply if the Optional Extended Reporting Period is purchased.

b Optional Extended Reporting Period

The **first named insured** shall be entitled to purchase an Optional Extended Reporting Period upon termination of coverage as defined herein (except in the event of nonpayment of premium), as follows:

- i** A **claim** first made and reported within the Optional Extended Reporting Period, if purchased in accordance with the provisions contained in Paragraph 2. below, will be deemed to have been made on the last day of the **policy period**, provided that the **claim** arises from a **pollution incident** that commenced before the end of the **policy period** and is otherwise covered by this policy.
- ii** The Company shall issue an endorsement providing an Optional Extended Reporting Period of up to thirty-six (36) months from termination of coverage hereunder, provided that the **first named insured**:
 - a** makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and
 - b** pays the additional premium when due. If that additional premium is paid when due, the Extended Reporting Period may not be cancelled, provided that all other terms and conditions of the policy are met.
- iii** Termination of coverage occurs at the time of cancellation or nonrenewal of this policy by the **first named insured** or by the Company, or the Company's deletion of a location which previously was an **insured location** or by the Company's reduction of coverage under this policy.
- iv** The Optional Extended Reporting Period is available to the **first named insured** for not more than 200% of the full policy premium stated in the Schedule.

9. Headings

The descriptions in the headings and sub-headings of this policy are inserted solely for convenience and do not constitute any part of the terms or conditions of this policy.

10. Independent Counsel

In the event that we agree to the insured retaining independent counsel at our expense, the attorney fees and all other litigation expenses we must pay to that counsel are limited to the rates we actually pay to counsel we retain in the ordinary course of business in the defense of similar **claims** in the community where the **claim** arose or is being defended.

Additionally, we may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency including experience in defending **claims** similar to the one pending against the insured and to require such counsel have errors and omissions insurance coverage. As respects any such counsel, the insured agrees that counsel will timely respond to our requests for information regarding the **claim**.

Furthermore, the insured may at any time, by the insured's signed consent, freely and fully waive these rights to select independent counsel.

11. Inspections and Surveys

- a We have the right to:
 - i Make inspections, carry out surveys and audits at any time of books, records, services, properties and activities as far as they relate to the subject matter of this Policy
 - ii Give you reports on the conditions we find; and
 - iii Recommend changes.
- b We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organisation to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - i Are safe and provide a healthy environment for workers or the public; or

- ii Comply with laws, regulatory codes and standards set in the territory where coverage is provided under this Policy.

This applies not only to us, but also to any rating, advisory, rate service or similar organisation which makes insurance inspections, surveys, reports or recommendations.

12. Legal Action Against Us

No person or organisation has a right under this Policy:

- a To join us as a party or otherwise bring us into a suit asking for damages from an **insured**; or
- b To sue us on this policy unless all of its terms have been fully complied with.

A person or organisation may sue us to recover on an agreed settlement or on a final judgment against an **insured**; but we will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the **insured** and the claimant or the claimant's legal representative.

13. Notice of Possible Claim

- a If during the **policy period**, the **responsible manager** first becomes aware of a **possible claim**, the **responsible manager** must provide written notice to us during the **policy period** containing all the information required under Paragraph b. below. Any **possible claim** which subsequently becomes a **claim** made against an **insured** and reported to the Company within three (3) years after the end of the **policy period** of this Policy or any continuous, uninterrupted renewal thereof, shall be deemed to have been first made and reported during the **policy period** of this Policy. Such **claim** shall be subject to the terms, conditions and limits of coverage of the policy under which the **possible claim** was reported.
- b It is a condition precedent to the coverage afforded by this policy that written notice under paragraph a. above contain all of the following information:
 - i the cause of the **pollution incident**;
 - ii the **insured location** where the **pollution incident** took place;

- iii the **bodily injury, property damage, environmental damage, emergency response expense or business interruption costs** which has resulted or may result from such **pollution incident**;
- iv the insured(s) which may be subject to the **claim** and any potential claimant(s);
- v all engineering information available on the **pollution incident** and any other information that the Company deems reasonably necessary; and
- vi the circumstances by which and the date the **insured** first became aware of the **possible claim**.

14. Premiums and Deductible

The **first named insured** shown in the Schedule:

- a Is responsible for the payment of all premiums;
- b Will be the payee for any return premiums we pay; and
- c Is responsible for the payment of all deductibles.

15. Related Pollution Incidents

If a **claim** for **bodily injury, property damage, environmental damage, or emergency response expense** is first reported to us during this **policy period**, then all **claims** that result from the same continuous or related **pollution incident** reported to us during subsequent policies issued by us to you providing coverage substantially the same as that provided by SECTION I – INSURING AGREEMENTS of this Policy for **bodily injury, property damage, environmental damage, or emergency response expense** will be deemed to have been made during this **policy period**, and all **claims** arising from all such **bodily injury, property damage, environmental damage, or emergency response expense** shall be deemed to have arisen from one **pollution incident** and shall be subject to the Each Incident Limit applicable to this Policy.

16. Representations

- a **By accepting this Policy, you agree:**
 - i The statements and information in the Application and other supplemental materials submitted to us are accurate and complete and are material to our underwriting of this Policy;

- ii Those statements and information provided are representations you made to us; and
 - iii We have issued this Policy in reliance upon your representations.
- b Misrepresentation, concealment, breach of a term or condition, or violation of any duty under this Policy by one **insured** shall not prejudice the interest of coverage for another **insured** under this Policy. Provided, however, that this Paragraph b. shall not apply to any **insured** who is a parent, subsidiary or affiliate of the **first named insured**.

17. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the **first named insured**, this insurance applies:

- a As if each **named insured** were the only **named insured**; and
- b Separately to each **insured** against whom a **claim** is made or who makes a claim to which this Policy responds.

18. Governing Law and Jurisdiction

This Policy shall be governed by, and interpreted in accordance with the law in force in New Zealand. All matters arising from or relating to the interpretation or operation of the provisions of this Policy shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of New Zealand.

19. Transfer of Rights of Recovery Against Others to Us

If the **insured** has rights to recover all or part of any payment we have made under this Policy, those rights are transferred to us. The **insured** must do nothing after **loss** to impair them. At our request, the **insured** will bring legal proceedings or transfer those rights to us and help us enforce them.

Any recovery as a result of subrogation proceedings arising out of the payment of **loss** covered under this Policy shall accrue first to us to the extent of our payment under the Policy, and then to you to the extent of your deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

20. Transfer of Your Rights and Duties Under This Policy

Your rights and duties under this Policy may not be transferred without our written consent, which shall not be unreasonably withheld, except in the case of death of an individual **named insured**.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

21. Service of Suit

It is agreed that in the event of failure by us to pay any amount claimed to be due hereunder, we, at the request of the **Insured**, will submit to the courts of New Zealand. Nothing in this condition constitutes or should be understood to constitute a waiver of our rights to commence an action in the courts of New Zealand, to remove an action to such a Court, or to seek a transfer of a case to another court as permitted by law. It is further agreed that service of process in such suit may be made upon the Claims Manager, Delta Insurance New Zealand Limited, Level 3, 57 Fort Street, Auckland 1010, or his or her representative, and that in any suit instituted against us with respect to this contract, we will abide by the final decision of such court or of any appellate court in the event of any appeal. The parties will submit to the Courts of Australia.

22. Complaints Procedure

Any enquiry or complaint relating to this Policy should be referred to Delta Insurance New Zealand Limited in the first instance. If this does not resolve the matter or the Insured is not satisfied with the way the enquiry or complaint has been dealt with, the Insured should write to:

Lloyd's General Representative in New Zealand
C/O Hazelton Law
Level 3
101 Molesworth Street
P O Box 5639
Wellington New Zealand

SECTION VI – DEFINITIONS

1. **Auto** means:

- a A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b Any other land vehicle that is subject to compulsory third party insurance law in the state where it is registered.

However, **auto** does not include **mobile equipment**.

2. **Bodily injury** means physical injury, sickness, building related illness, mental anguish, shock or emotional distress or disease sustained by a person, including death resulting from any of these at any time.

3. **Business income** means:

- a Your net profit or loss before income taxes that would have been earned or incurred had there been no business interruption.
- b Your continuing normal operating and payroll expenses, except for payroll expenses of officers, executives, department managers and employees under contract.
- c Costs you are required to pay to rent temporary premises when that portion of the insured location occupied by you cannot be occupied, loaned, leased or rented. Such costs shall not exceed the fair rental value of such portion of an insured location that cannot be occupied, loaned, leased or rented.
- d Charges you incur which are the legal obligation of your tenant(s) which would otherwise be your obligations.

4. **Business interruption** means the necessary suspension of your operations at an **insured location** caused by a **pollution incident**.

5. **Business interruption costs** means **business income** and **extra expense** you incur during the **business interruption period**. Calculation of **business interruption costs** will consider the extent to which such costs could be reduced by a complete or partial resumption of operations at the **insured location**, or by making use of other portions of the **insured location** or other **locations**. **Business interruption costs** shall not include any amounts that do not directly result from a covered **pollution incident**.

6. **Business interruption period** means the length of time reasonably necessary to resume normal business operations at the **insured location** from the date operations are first suspended due to a **pollution incident**. **Business interruption period** does not include any delays in resuming normal operations due to interference by your employees or others.
7. **Claim** means the receipt of a written demand seeking a remedy and alleging liability or responsibility on the part of the insured, including any original legal or arbitral process, cross claim, third party notice alleging a **pollution incident**.
8. **Claim expense** means reasonable and necessary fees and expenses authorised by us and incurred in the investigation and defence of a **claim** for **bodily injury, property damage** or **environmental damage** to which this insurance applies. **Claim expense** does not include any fees of legal representatives retained by the **insured** without our written consent or any cost or charge incurred by the **insured** in assisting in the investigation or defence of a **claim**, including salaries or wages of the **insured's** in-house counsel or other **employee**.
9. **Clean-up costs** means reasonable and necessary expenses, including restoration costs and legal expenses incurred with our prior written consent, which consent shall not be unreasonably withheld or delayed, to investigate, abate, contain, treat, remove, remediate, monitor, or dispose of soil, surfacewater, groundwater or other contaminated media but only:
- a To the extent required by **environmental laws**; or
 - b For those costs that have been incurred by the government, any governmental authority, authorised regulator or by third parties; or
 - c In the absence of a. above, to the extent recommended by an **environmental professional**.
- Clean-up costs** do not include:
- a costs, charges or expenses incurred by any **insured** for materials supplied or services performed by any **insured**, unless such costs, charges or expenses are incurred with our prior written approval.
 - b **Property damage**.
10. **Conveyance** means only **auto**, railcar, train, watercraft or aircraft.
11. **Coverage territory** means New Zealand.
12. **Emergency response expense** means reasonable and necessary costs, charges or expenses incurred by you to abate or respond to an imminent and substantial threat to human health or the environment arising from a **pollution incident**.
13. **Employee** includes a **leased worker** and a **temporary worker**.
14. **Environmental damage** means physical damage to soil, any water course or body of water including groundwater, atmosphere, or plant or animal life, buildings or other structures giving rise to **clean-up costs**. **Environmental damage** does not include **property damage**.
15. **Environmental laws** means any federal, state, provincial, municipal or other local laws, statutes, ordinances, rules, guidance documents, regulations, administrative orders and directives and all amendments thereto, including state voluntary cleanup or risk-based corrective action guidance.
16. **Environmental Professional** means an individual or entity approved by us in writing that is licensed and certified to provide environmental services.
17. **Extra expense** means the reasonable and necessary costs incurred by you that would not have been incurred had there been no **business interruption** and which are reasonable and necessary to avoid, mitigate or minimize such **business interruption**, but only to the extent these expenses actually reduce **business interruption costs** otherwise covered under this policy.
18. **First named insured** means the person or entity designated in Item 1. of the Schedule.
19. **Fungi** means any of numerous eukaryotic organisms of the kingdom Fungi, which lack chlorophyll and vascular tissue and range in form from a single cell to a body mass of branched filamentous hyphae that produce specialised fruiting bodies.
20. **Insured** means each **named insured** and any past or present director, officer, partner, member or **employee** of such **named insured**, but only while acting in the course and scope of his or her duties as such with respect to the conduct of such **named insured's** business. If a **named insured** is a limited liability company, then **insured** also means your managers, but only with respect to their duties as your managers. **Insured** also means any person

- or entity expressly designated as an additional **insured** in an endorsement, if any, attached to this Policy. Any such additional **insured** shall maintain only those rights to coverage under this Policy as specified by the endorsement.
- 21. Insured contract** means a contract or agreement submitted to and approved by the Company, and listed on an endorsement to this Policy.
- 22. Insured location** means the location(s) entered in Item 5. of the Schedule.
- 23. Leased worker** means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.
- 24. Loading or unloading** means the handling of property:
- a** After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or **auto**;
 - b** While it is in or on an aircraft, watercraft or **auto**; or
 - c** While it is being moved from an aircraft, watercraft or **auto** to the place where it is finally delivered.
- Loading or unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or **auto**.
- 25. Loss** means one or more of the following:
- a Bodily injury** and **property damage**, including monetary awards or settlements of compensatory damages for **bodily injury** or **property damage**
 - b Environmental damage**, and
 - c Emergency response expense**.
- 26. Microbial matter** means **fungi, mold**, bacteria or viruses which reproduce through the splitting of cells, the release of spores or by any other means, whether or not such **microbial matter** is living and mildew, whether or not such **microbial matter** is living.
- 27. Misdelivery** means the delivery of any liquid product into a wrong receptacle or to a wrong address or the erroneous delivery of one liquid product for another.
- 28. Mobile equipment** means any of the following types of land vehicles, including any attached machinery or equipment:
- a** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b** Vehicles maintained for use solely on premises you own or rent;
 - c** Vehicles that travel on crawler treads;
 - d** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - i** Power cranes, shovels, loaders, diggers or drills; or
 - ii** Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e** Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - i** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - ii** Cherry pickers and similar devices used to raise or lower workers;
 - f** Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **autos**:
- i** Equipment designed primarily for snow removal, road maintenance (but not construction or resurfacing) or street cleaning;
 - ii** Cherry pickers and similar devices mounted on **auto** or truck chassis and used to raise or lower workers; and
 - iii** Air compressor, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

- However **mobile equipment** does not include any land vehicles where it is compulsory for the vehicle and / or its driver to be **insured** in the jurisdiction where it is licensed and principally garaged. Land vehicles where it is compulsory for the vehicle and / or its driver to be **insured** in the jurisdiction where it is licensed and principally garaged are considered as **autos**.
29. **Mould** means any of the various **fungi** responsible for the disintegration of organic or inorganic matter, or the growth of such **fungi**.
30. **Named insured** means the first named insured and any other person or entity that is designated as such in an endorsement, if any, attached to this Policy.
31. **Natural resource damage** means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the government agency or department where the **pollution incident** occurred or where the **pollution incident** migrated to.
32. **Policy period** means the period of time stated in Item 2. of the Schedule however, if the policy is cancelled in accordance with SECTION IV – CONDITIONS, 3. Cancellation, the policy period ends on the effective date of such cancellation.
33. **Pollution incident** means the discharge, emission, seepage, migration, dispersal, **misedelivery**, release or escape of:
- a any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapours, soot, fumes, acids, alkalis, chemicals, hazardous substances, petroleum hydrocarbons;
 - b low level radioactive waste;
 - c **microbial matter**;
 - d legionella pneumophila;
 - e medical, infectious and pathological waste;
 - f waste materials; and
 - g electromagnetic fields;
- into or upon land, or any structure on land, the atmosphere or any watercourse or body of water including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered.
34. **Possible Claim** means a **pollution incident** that commenced during the **policy period** that you reasonably expect may result in a **claim**.
35. **Property damage** means:
- a Physical injury to or destruction of tangible property, including all resulting loss of use and diminished value of that property.
 - b Loss of use of tangible property that is not physically injured or destroyed arising out of physical injury to or destruction of other tangible property; or
 - c **Natural resource damage**.
- Property damage** does not include **clean-up costs** or **environmental damage**.
- For the purpose of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
36. **Responsible manager** means you and your manager, director or officer, your supervisor responsible for environmental affairs, control or compliance or any other **employee** authorised by you to give or receive notice of a **pollution incident** or **claim**.
37. **Restoration costs** means reasonable and necessary expenses incurred by you with our written consent to repair or replace damaged real or personal property when such damage occurs because of **clean-up costs** to which this insurance applies. **Restoration costs** shall not exceed the replacement cost of such real or personal property. If repair or replacement results in kind or quality exceeding that of the real or personal property before it was damaged, whether at your option or not, we will not pay for the amount of the betterment.
38. **Retroactive date** means the date entered in Item 6. of the Schedule.
39. **Temporary worker** means a person who is furnished to you to substitute for a permanent worker on leave or to meet seasonal or short - term workload conditions.

40. Transportation means the movement of goods, product, merchandise, supplies or waste in a **conveyance** by the insured or a third party carrier properly licensed to transport such goods, products, merchandise, supplies or waste from the time of movement from the point of origin until delivery to the final destination. **Transportation** includes the movement of goods, products, merchandise, supplies or waste into, onto or from a **conveyance**.

41. Underground storage tank means any tank that has at least ten (10) percent of its volume below ground at inception of the **policy period**, or installed thereafter including associated underground piping connected to the tank.

42. Volunteer worker means a person who is not your **employee**, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

43. Your product means:

- a** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed by:
 - i** You;
 - ii** Others trading under your name; or
 - iii** A person or organisation whose business or assets you have acquired; and
- b** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

Your product includes:

- a** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
- b** The providing of or failure to provide warnings or instructions.