

# Chubb Public and Products Liability Insurance Policy Wording

Name of Insured: Cycling New Zealand  
Period of Insurance: 31 December 2016 to  
31 December 2017

CHUBB®

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## Important Notices

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### Duty Of Disclosure

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Before entering into a contract of general insurance with Chubb Insurance New Zealand Limited (**Chubb**), each prospective **Insured** has a duty to disclose to **Chubb** every matter that is material to Chubb's decision whether to accept the risk of the insurance and, if so, on what terms.

It has the same duty to disclose those matters to **Chubb** before renewal, extension, variation or reinstatement of a contract of general insurance with **Chubb**.

An **Insured's** duty however does not require disclosure of any matter:

- that diminishes the risk to be undertaken by **Chubb**;
- that is of common knowledge;
- that **Chubb** knows or, in the ordinary course of its business, ought to know;
- as to which compliance with your duty is waived by **Chubb**.

It is important that each prospective **Insured** understands all information provided in support of the application for insurance and that it is correct, as each prospective **Insured** will be bound by the answers and by the information it has provided. If a prospective **Insured** does not understand any part of this notice, it should obtain independent advice.

As a prospective **Insured**, the duty of disclosure continues after the application for insurance has been completed up until the time the contract of insurance is entered into.

### *Consequences of Non-Disclosure*

If a prospective **Insured** fails to comply with its duty of disclosure, **Chubb** may be entitled, without prejudice to its other rights, to reduce its liability under the contract in respect of a claim or may cancel the contract. Chubb may also have the option of avoiding the contract from its beginning.

### Fair Insurance Code

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We are a member of the Insurance Council of New Zealand (**ICNZ**) and a signatory to ICNZ's Fair Insurance Code (**the Code**). The objectives of the Code are to establish high standards of service, promote confidence in the general insurance industry and improve relationships between insurers and their customers. Further information about the Code is available at [www.icnz.org.nz](http://www.icnz.org.nz) and on request.

### Financial Strength Rating

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At the time of print, Chubb Insurance New Zealand Limited has an "AA-" insurer financial strength rating given by Standard & Poor's (Australia) Pty Limited. The rating scale is:

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AAA	Extremely Strong	BBB	Good	CCC	Very Weak	SD or D – selective default or default
AA	Very Strong	BB	Marginal	CC	Extremely Weak	R - Regulatory Action
A	Strong	B	Weak			NR – Not Rated

The rating from ‘AA’ to ‘CCC’ may be modified by the addition of a plus (+) or minus (-) sign to show relative standings within the major rating categories. A full description of the rating scale is available on the Standard & Poor's website.

## Policy Schedule

No.	Title	Description
<b>Item 1.</b>	<b>Policy Number</b>	NZCASA03264
<b>Item 2.</b>	<b>Insured</b>	Cycling New Zealand including affiliated organisations, technical personnel, accredited coaches and development personnel, event personnel, administrators, Members, Directors and volunteers whilst performing activities for and on behalf of Cycling New Zealand and all affiliated organisation activities and events.
<b>Item 3.</b>	<b>Address</b>	C/ Aon New Zealand PO Box 1281 HAMILTON
<b>Item 4.</b>	<b>Business</b>	Umbrella body embracing all national bike and cycling organisations including but not limited to current member organisations: BMX NZ, Cycling New Zealand Road and Track, Mountain Bike NZ and Cycling New Zealand Schools including but not limited to trail maintenance and construction of tracks on leased third party land.
<b>Item 5.</b>	<b>Policy Period</b>	Start: 31 December 2016
		Expiry: 31 December 2017
		At 4.00pm local standard time of issuing office.
<b>Item 6.</b>	<b>Limit of Liability</b>	NZD 5,000,000 Any one Occurrence and in the aggregate in respect of the Products Hazard. NZD 2,000,000 Forest & Rural Fires Act sub-limit.
<b>Item 7.</b>	<b>Premium</b>	As agreed
<b>Item 8.</b>	<b>Deductible</b>	NZD 500 Each and Every Occurrence increasing to: NZD 2,500 Each and Every Occurrence outside New Zealand NZD 10,000 Each and Every Occurrence in respect of ccc

## Endorsements

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Endorsement Number:	01
Policy Number:	NZCASA03264
Insured:	Cycling New Zealand
Effective Date:	31 December 2016

This Policy excludes legal liability in respect of Personal Injury or Property Damage caused while any person is cycling, including training for and/or participating in any cycling event outside of NZ.

In all other respects this Policy remains unaltered.

## 1. Insuring Agreements

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In consideration of the premium being paid by the **Insured** to Chubb Insurance New Zealand Limited (hereinafter called '**Chubb**') and in reliance upon the written proposal agreement and declaration which shall be deemed to be the basis of this **Policy**, Chubb agrees to indemnify the **Insured** as follows:

### 1.1 Public and Products Liability Coverage

Subject to the terms, conditions, limitations and exclusions of this **Policy** all sums which the **Insured** shall be legally liable to pay as **Compensation** on account of:

- a) Personal Injury; or
- b) Property Damage,

occurring within the **Policy Territory** during the **Policy Period** as a result of an **Occurrence** happening in connection with the **Business** of the **Insured** described in Item 4 of the **Schedule**.

### 1.2 Limit of Liability

Chubb's liability under this Policy shall not exceed the **Limit of Liability** stipulated in Item 6 of the **Schedule**.

### 1.3 Supplementary Payments

In addition to the **Limit of Liability** stipulated in Item 6 of the **Schedule**, Chubb will pay:

- a) all reasonable charges, expenses and legal costs incurred by either Chubb or the **Insured** with the written consent of Chubb in the settlement or defence of any claim for **Compensation** in respect of which the **Insured** is entitled to indemnity under this **Policy**;
- b) all charges, expenses and legal costs recoverable from the **Insured** by claimants in connection with such **Compensation**;
- c) in the event of a claim being made against the **Insured** in any court or before any other legally constituted body in the United States of America, Canada or their respective protectorates and territories, the total amount payable in respect of the claim by Chubb under this **Policy** including all charges, legal costs and expenses will not exceed the **Limit of Liability** stipulated in Item 6 of the **Schedule**.

provided that Chubb's liability to pay either or both of these types of charges, expenses or legal costs shall cease upon the **Limit of Liability** stipulated in Item 6 of the **Schedule** having been exhausted by payment of judgments or settlements.

### 1.4 Deductible

The Deductible is the amount stipulated in Item 8 of the **Schedule** payable by the **Insured**. The Deductible applies to each **Occurrence** and is payable by the **Insured** at such time required by Chubb. Chubb's liability to indemnify the **Insured** under this **Policy** is over and above the Deductible.

## 2. Automatic Coverage Extensions

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Subject to all of the terms, conditions, exclusions and limitations of this **Policy** (including the Insuring Agreements) cover is extended by the following coverage extensions. Unless Chubb otherwise agreed in writing all cover provided by these extensions form part of and do not increase the **Limit of Liability** stipulated in Item 6 of the **Schedule**.

### 2.1 Advertising Injury

Notwithstanding Definition 3.9(c), Chubb agrees to indemnify the Insured in respect of liability for **Personal Injury** from any unintentional:

- a) libel;
- b) slander;
- c) defamation;
- d) invasion of rights of privacy,

arising out of the **Insured's** advertising activities.

### 2.2 Business Advice/Service/Medical Advice

Notwithstanding Exclusion 4.15, Chubb agrees to indemnify the **Insured** in respect of liability for **Personal Injury** or **Property Damage** arising out of:

- a) the rendering of or failure to render medical advice or service by medical persons employed by the **Insured** to provide first aid on the **Insured's** premises; or
- b) other professional advice or service not given for a fee.

### 2.3 Care Custody & Control and Tenant's Liability

Notwithstanding Exclusion 4.11, Chubb agrees to indemnify the **Insured** in respect of liability for **Property Damage** to:

- a) premises which are leased, rented, tenanted or hired by the **Insured**;
- b) **Vehicles**, other than **Vehicles** owned or used by or on behalf of the **Insured**, in the care, custody or control of the **Insured** only whilst such **Vehicles** are in a car park owned or operated by the **Insured** other than for income or reward as a car park operator;
- c) directors', employees' and visitors' clothing and personal effects;
- d) any other goods, equipment, merchandise and property (not owned by the **Insured**), other than real property, provided that a sub limit of NZD500,000 any one **Policy Period** shall apply to this sub-paragraph (d).

## 2.4 Excess Motor Liability

Exclusion 4.20 does not apply to **Personal Injury** or **Property Damage** resulting from the ownership possession control or use by or on behalf of the **Insured** of any **Vehicle** or trailer attached thereto;

Provided that:

- a) there is separate motor insurance in force in respect of such liability with a limit of liability of at least NZD10,000,000; and
- b) this Extension 2.4 shall apply only to amounts in excess of such limit of liability stated in paragraph (a) above.

## 2.5 Forest and Rural Fires Act 1977

For the purpose of this Extension 2.5 only, notwithstanding Insuring Agreement 1.1 or Exclusion 4.8, coverage under this **Policy** extends to all sums which the **Insured** shall be legally obligated to pay in respect of:

- a) costs (but excluding levies for expenditure under Section 44 and 45 of the Forest and Rural Fires Act 1977), fines and penalties incurred and apportioned by any Fire Authority (as that term is defined therein) under the Forest and Rural Fires Act 1977 or any amendments or replacing legislation; and
- b) costs incurred and claimed by any other person as to measures taken in order to protect that person's property from fire,

where such costs arise as a result of and in connection with the **Business** of the **Insured** described in the **Schedule**.

The cover provided by this Extension 2.5:

- a) shall apply whether **Property Damage** or **Personal Injury** has occurred or not; and
- b) shall apply to machinery, plant, trailers or **Vehicles** (insofar as liability covered under this extension 2.5 is not otherwise **Insured**); and
- c) is subject always to the terms exceptions limits and conditions of the **Policy** insofar as they are not specifically varied by this Extension 2.5; and
- d) is subject to a sub limit of NZD2,000,000 any one **Policy Period**.

## 2.6 Indemnity to Principals and Others

Chubb will indemnify any person or organisation to which the **Insured** (as defined in Definition 3.5(a) or (b) only) is obligated by virtue of a written contract to provide insurance as is afforded by this **Policy**, but only for the vicarious liability of such person or organisation arising out of the performance by the **Insured** (as defined in Definition 3.5(a) or (b) only) of such written contract and for such coverage and **Limit of Liability** as provided in this **Policy**.

## 2.7 Mechanical Plant

Notwithstanding Exclusion 4.20, Chubb agrees to indemnify the **Insured** in respect of liability for **Personal Injury** or **Property Damage**:

- a) arising from the loading or unloading of any **Vehicle** used by or on behalf of the **Insured** but not where the **Vehicle** is under the care custody or control of the **Insured**; or
- b) arising from any **Vehicle** that either has plant or machinery attached to it or is primarily designed as mobile plant or machinery, while it is operating as plant or machinery.

## 2.8 NZ Exemplary Damages

- a) Coverage Extension

Notwithstanding Exclusion 4.8, Chubb agrees to indemnify the **Insured** for **Exemplary Damages** which the **Insured** is legally obliged to pay as a result of a claim for **Personal Injury** that is covered under this **Policy** provided that such claim:

- 1) is first made against the **Insured** during the **Policy Period** or is subject to clause (b) of this Extension 2.8; and
  - 2) is notified to Chubb during the **Policy Period**; and
  - 3) is brought by, or on behalf of, a person who has suffered a **Personal Injury**.
- b) Coverage For Claims Made After The End Of The **Policy Period**

The cover provided by this Extension 2.8 ceases at the end of the **Policy Period**. However, Chubb agrees to indemnify the **Insured** under clause (a) of this Extension 2.8 in respect of a claim which is first made against the **Insured** after the end of the **Policy Period**, if the claim arises from circumstances which arose during the **Policy Period** and which the **Insured** has notified to Chubb during the **Policy Period**.

- c) Extension Sub Limit

A sub limit of NZD2,000,000 any one **Policy Period** shall apply to this Extension 2.8.

- d) Defence Costs and Expenses

In addition to the sub limit specified in (c) above, Chubb agrees to pay the expenses and costs referred to in Insuring Agreement 1.3 in relation to the claims covered by this Extension 2.8.

- e) Definitions

For the purposes of the coverage provided by this Extension 2.8 only:

- 1) the Definition of "**Occurrence**" at Clause 3.8 is deleted and replaced with the following:

"**Occurrence**" means an event including continuous or repeated exposure to conditions which results in **Personal Injury** neither expected nor intended from the standpoint of the **Insured**. All **Occurrences** of a series consequent on or attributable to one source or original cause shall be deemed one **Occurrence**.

- 2) the following Definition applies:

"**Exemplary Damages**" means exemplary damages paid or agreed to be paid by judgment or settlement for **Personal Injury** provided such damages only payable in respect of an **Occurrence** to which this Extension 2.8 applies.

f) Exclusions

In addition to the Exclusions applicable to this **Policy**, with respect to the cover provided by this Extension 2.8 only, Chubb shall not indemnify the **Insured** against:

- any claim made, threatened, or in any way intimated against the **Insured** before the **Policy Period** commences;
- any claim arising from a circumstance that, at the start of the **Policy Period**, the **Insured** was aware or ought reasonably have been aware may give rise to a claim against the **Insured**;
- any claims or circumstance disclosed on the proposal for insurance or which the Insured has notified to any previous insurer (including Chubb);
- any claim arising out of any statement, act or omission of the **Insured** made, done or committed outside New Zealand;
- any claim against the **Insured** brought outside New Zealand or any settlement or compromise of a claim entered into outside New Zealand;
- any claim arising out of the enforcement of a judgment, order or award obtained outside New Zealand;
- any claim as a result of any judgment entered in any Court, other than a New Zealand Court applying the law of New Zealand; or
- any claim arising directly or indirectly from deliberate, intentional or malicious conduct by the **Insured**.

g) Conditions

In addition to the General Conditions applicable to this **Policy**, it is a condition precedent to the **Insured's** right to be indemnified under this Extension 2.8, that the **Insured** must notify Chubb as soon as possible in writing if:

- 1) any claim for Exemplary Damages is made against the **Insured**; or
- 2) the **Insured** is notified of any matter which may give rise to a claim under this Extension 2.8; or
- 3) the **Insured** becomes aware of any circumstances which may give rise to a claim under this Extension 2.8.

This applies even if the claim is likely to be less than the Deductible stipulated in Item 8 of the **Schedule**.

## 2.9 Product Recall Expenses

Notwithstanding Exclusion 4.14, Chubb will indemnify the **Insured** for 80% of the costs and expenses incurred to instigate and carry out a withdrawal or recall of the **Insured's Products** from use in New Zealand, which has already given rise to a claim for **Personal Injury** or **Property Damage** under this **Policy**;

Provided that:

- a) the prior approval of Chubb was obtained prior to the withdrawal or recall of the **Insured's Products**; and
- b) a sub limit of NZD100,000 shall apply to this Extension 2.9.

#### 2.10 Service and Repair

Notwithstanding Exclusion 4.1 and Exclusion 4.16, Chubb will indemnify the **Insured** for liability in respect of **Property Damage** to all **Watercraft, Vehicles**, machinery and parts thereof that are, or have been, in the care custody or control of the **Insured** for the purposes of service and/or repair, subject to the following sub limits:

- a) **Property Damage** to **Watercraft, Vehicles** or machinery being serviced or repaired: Sub Limit: NZD250,000 any one **Policy Period** shall apply to this Extension 2.10(a); and
- b) **Personal Injury** or **Property Damage** to other property arising from service and/or repairs to **Watercraft, Vehicles** or machinery: Sub Limit: NZD250,000 any one **Policy Period** shall apply to this Extension 2.10(b);

provided that in all cases there is no cover for liability for the costs of rectifying defective or faulty:

- 1) workmanship; or
- 2) materials,

in respect of the actual **Watercraft, Vehicle** and/or machinery being worked upon.

#### 2.11 Sudden and Accidental Pollution

Exclusion 4.12 shall not apply to **Personal Injury** or **Property Damage** which:

- a) arises from a sudden, identifiable, unintended and unexpected event from the standpoint of the **Insured**; and
- b) which takes place in its entirety at a specific time and place and occurs outside of the United States of America, Canada and their respective protectorates and territories.

#### 2.12 Underground Services

Chubb agrees to indemnify the **Insured** in respect of **Personal Injury** arising out of and **Property Damage** in New Zealand to existing underground services, cables, pipes or equipment;

Provided that:

- a) prior to the commencement of any work, the **Insured** inquired of the relevant authority, corporation or company as to the location of such underground services, cables, pipes or equipment and the **Insured** took all reasonable precautions to prevent **Personal Injury** or **Property Damage**; and
- b) a sub limit of NZD250,000 shall apply to this Extension 2.12.

### 2.13 USA and Canada

Notwithstanding Definition 3.12, Chubb agrees to indemnify the **Insured** in respect of **Personal Injury** or **Property Damage** occurring in the United States of America, Canada and their respective protectorates and territories arising from:

- a) products exported into such countries; or
- b) the activities of travelling executives and salesmen on **Business** who are non-resident in such countries.

### 2.14 Vendors Indemnity

Where required by contract, Chubb agrees to include as an additional insured, any person who or organisation which distributes or sells the **Insured's Products** in the regular course of their business (herein referred to as 'vendor') but only with respect to **Personal Injury** or **Property Damage** arising out of the distribution or sale of the **Insured's Products**.

Provided that:

- a) the cover with respect to the vendor does not apply to any liability of the vendor in connection with:
  - 1) any express warranty, or any distribution or sale for a purpose, unauthorised by the named **Insured**;
  - 2) **Personal Injury** or **Property Damage** arising out of:
    - (i) any act of the vendor which changes the condition of the **Insured's Products**;
    - (ii) any failure to maintain the **Insured's Products** in merchantable condition;
    - (iii) any failure to make such inspections, adjustments tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the **Insured's Products**; or
    - (iv) **Insured's Products** which after distribution or sale by the **Insured** have been labelled or re-labelled or used as a container, part or ingredient of any other thing or substance by or for the vendor;
  - 3) **Personal Injury** or **Property Damage** occurring within the vendor's premises not directly caused by the **Insured's Products**.
- b) the insurance does not apply to any liability of the vendor which arises from the **Insured's** acquisition from the vendor of any products or any ingredient, part or container of such products.

### 2.15 Vibration and Removal of Support

Chubb agrees to indemnify the **Insured** for or in respect of **Personal Injury** and **Property Damage** in New Zealand arising from the vibration, or removing, weakening or interfering with, the support of land or buildings;

Provided that:

- a) the land or buildings are not owned or occupied by the **Insured** and the **Personal Injury** or **Property Damage** arises from the actions of the **Insured**; and
- b) a sub limit of NZD500,000 shall apply to this Extension 2.15.

### 3. Definitions

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Wherever appearing in this **Policy** or any annexure forming a part hereof, the following terms shall, unless otherwise stated, be interpreted in the manner described below:

3.1 **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, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

3.2 **Aircraft** means:

any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

3.3 **Business** means:

All activities and operations of the business stated in Item 4 of the **Schedule** including the ownership and occupation of premises for the purposes of the **Business**, and the provision or management of canteen, social, sports, welfare or child care services or activities for the Insured's employees and internal first aid, fire, security and ambulance services.

3.4 **Compensation** means:

monies paid or agreed to be paid by judgment or settlement for:

- a) Personal Injury; or
- b) Property Damage

provided that **Compensation** is only payable in respect of an **Occurrence** to which this **Policy** applies.

3.5 **Insured** means:

- a) the Insured named in the Schedule;
- b) any subsidiary company (including subsidiaries thereof) of the **Insured** named in the **Schedule** and any other organisation under the control of the **Insured** named in the **Schedule** and over which it is exercising active management;
- c) any director, employee, partner or shareholder of the **Insured**, but only whilst acting within the scope of their duties in such capacity;
- d) any social and/or sporting club formed with the consent of the **Insured** including any office bearer or member thereof in their capacities as such;
- e) any new organisation acquired by the **Insured** during the **Policy Period** through consolidation, merger, purchase of the assets of or assumption of control and active management, provided such acquisition or assumption is reported to Chubb within ninety (90) days after it is effected and provided further that such acquisition is endorsed on this **Policy**.

3.6 **Insured's Products** means:

goods or products (after they have ceased to be in the possession of, or under the control of the **Insured**) manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the **Insured** including any container thereof (other than a **Vehicle**).

37 **Limit of Liability** means:

the limit of liability amount(s) stipulated in Item 6 of the **Schedule**.

3.8 **Occurrence** means:

an event including continuous or repeated exposure to conditions which results in **Personal Injury** or **Property Damage** neither expected nor intended from the standpoint of the **Insured**. All **Occurrences** of a series consequent on or attributable to one source or original cause shall be deemed one **Occurrence**.

3.9 **Personal Injury** means:

- a) bodily injury death, illness, disability, shock, fright, mental anguish or mental injury;
- b) false arrest, detention, false imprisonment, malicious prosecution or humiliation;
- c) the publication or utterance of libel slander or other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:
  - 1) when the first such publication or utterance was made prior to the commencement of this Policy; or
  - 2) when any such publication or utterance is made in the course of or is related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Insured;
- d) wrongful entry or eviction or other invasion of the right of private occupancy;
- e) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

3.10 **Policy** means:

this policy wording including the Schedule and any endorsements hereto.

3.11 **Policy Period** means:

the period stipulated in Item 4 of the **Schedule** or such further period shown in a renewal certificate for which the **Policy** has been renewed.

3.12 **Policy Territory** means:

anywhere in the world except the United States of America, Canada and their respective protectorates and territories.

3.13 **Products Hazard** means:

**Personal Injury** and/or **Property Damage** arising out of the **Insured's Products** or their use but only where loss from such injury or damage accrues to persons other than the **Insured**.

3.14 **Property Damage** means:

- a) physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting there from; or
- b) loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by physical damage of other tangible property.

3.15 **Schedule** means:

the **Schedule** issued with this **Policy**.

3.16 **Vehicle** means:

any type of machine on wheels or on caterpillar tracks made or intended to be self-propelled by mechanical power.

3.17 **Watercraft** means:

any vessel, craft or thing made or intended to float on or in or travel on or through water.

## 4. Exclusions

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This **Policy** does not apply to:

### 4.1 Aircraft, Hovercraft, Watercraft

**Personal Injury or Property Damage arising out of the ownership, maintenance, operation or use by the Insured of:**

- a) any **Aircraft** or hovercraft; or
- b) any **Watercraft** exceeding 15 metres in length while on, in or under water. However this clause 4.1 (b) shall not apply to **Watercraft** not owned or operated by the Insured but used by the **Insured** for **Business** entertainment purposes.

### 4.2 Aircraft Products

any product that is incorporated with the **Insured's** knowledge in an **Aircraft**.

### 4.3 Asbestos

any loss, demand, claim, suit or other **Occurrence** arising out of or related in any way to asbestos or asbestos-containing materials. Chubb shall have no duty of any kind with respect to any such loss, demand, claim suit, or **Occurrence**.

### 4.4 Building Defects & Mould

**Personal Injury or Property Damage** (or charges, expenses and legal costs) which is directly or indirectly caused by, arising out of or in any way connected with:

- a) the actual, threatened or alleged ingress, inhalation, discharge, dispersal, seepage, migration, absorption, release or escape of external water, liquid or moisture from any source at any time in or into any building or structure or any materials or components thereof; or
- b) the actual, threatened or alleged existence or effects of any concentration of external water, liquid or moisture on or within any building or structure or any materials or components thereof; or
- c) the actual, threatened or alleged existence or effects of:
  - 1) fungus, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms; or
  - 2) any spore, toxin, vapour, gas or other emission or organic or inorganic body or substance, created, produced by or emanating from such fungus, mould, mildew, yeast, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure or any materials or components thereof; or
- d) any costs or expenses arising out of the preventing, abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in any way responding to or assessing the matters set out in paragraphs (a), (b) and/or (c) above; or

- e) the actual, threatened or alleged failure of any building or structure or any materials or components thereof to comply with or conform to the requirements of the New Zealand Building Code contained in the first Schedule to the Building Regulations 1992 (or any amendment or substitution thereof) or to meet the level of performance, quality, fitness or durability of its intended purpose, in relation to:
- 1) external water, liquid or moisture; or
  - 2) protection from external water, liquid or moisture entering that building or structure or any materials or components thereof, or the effects thereto.

This Exclusion 4.4 shall apply regardless of any other cause, event, building materials or building components that contributed concurrently or in any sequence to the **Personal Injury** or **Property Damage** (or charges, expenses and legal costs).

However this Exclusion 4.4 shall not exclude any indemnity for Personal Injury or Property Damage that is caused by or arises out of leakage of internal water pipes or cisterns.

#### 4.5 **Contractual Liability**

any liability assumed by the **Insured** under any contract, agreement or warranty except to the extent that such liability would have been implied by law in the absence of such contract, agreement or warranty.

#### 4.6 **Employment Liability**

- a) any **Personal Injury** to any person arising out of or in the course of employment of such person by the **Insured**; or
- b) any liability that the **Insured** is or would be entitled to indemnity under any fund, scheme, policy of insurance or self-insurance pursuant to or required by any legislation relating to workers' compensation whether or not such insurance has been effected.

#### 4.7 **Faulty Workmanship**

any claims in respect of the cost to rectify faulty workmanship, provided that this Exclusion 4.7 shall not apply to **Personal Injury** or **Property Damage** resulting from such faulty workmanship.

#### 4.8 **Fines, Penalties and Damages**

fines, penalties, punitive, exemplary, liquidated or aggravated damages.

#### 4.9 **Genetically Modified Organisms (GMOs)**

**Personal Injury** or **Property Damage** arising from any condition directly or indirectly caused by or associated with Genetically Modified Organisms (GMOs).

For the purpose of this Exclusion 4.9, "GMOs" shall mean any organism in which the genetic material has been modified or altered through gene technology in a way that does not occur naturally by multiplication and / or natural recombination.

#### 4.10 **Loss of Use**

loss of use of tangible property which has not been physically injured or destroyed resulting from:

- a) a delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement, or
- b) the failure of the **Insured's Products** or work performed by or on behalf of the **Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured**.

This Exclusion 4.10 does not apply to loss of use of property other than the Insured's Products resulting from the sudden and accidental physical injury to or destruction of the Insured's Products or work performed by or on behalf of the Insured after such products or work have been put to use by any person or organisation other than the Insured.

#### 4.11 **Own Property and Property in the Insured's Care, Custody or Control**

**Property Damage to:**

- a) property owned by the Insured, or in the Insured's care, custody or control; or
- b) the Insured's Products arising out of such products or any part of such products.

#### 4.12 **Pollution**

**Personal Injury** or **Property Damage** arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water. Waste includes material to be recycled, reconditioned or reclaimed.

#### 4.13 **Product Guarantee**

any product guarantee or warranty given by or on behalf of the **Insured** but this Exclusion 4.13 does not apply to legislative requirements concerning product safety and information.

#### 4.14 **Product Recall**

the liability or costs of withdrawal, recall, inspection, repair, adjustment, removal, replacement or loss of use of the **Insured's Products** or work completed by or for the **Insured** and/or the withdrawal or recall of any property of which such products form a part.

#### 4.15 **Professional Liability**

**Personal Injury** or **Property Damage** arising from the rendering of or failure to render professional advice or services by the Insured or any error or omission connected therewith.

#### 4.16 **Property Worked Upon**

**Property Damage** to property on which the **Insured** is or has been working if the **Property Damage** is caused directly by that work.

#### 4.17 **Radioactivity**

**Personal Injury** or **Property Damage** directly or indirectly caused by or contributed to by or arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion 4.17 only combustion shall include any self-sustaining process of nuclear fission; or
- b) nuclear weapons material.

#### 4.18 **Sanctioned Territories**

the extent that trade or economic sanctions or other laws or regulations prohibit Chubb from providing insurance, including, but not limited to, the payment of claims.

#### 4.19 **Terrorism**

any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss or any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

#### 4.20 **Vehicles**

**Personal Injury** or **Property Damage** arising out of the use of any **Vehicle** owned by, or in the physical or legal control of the **Insured**:

- a) which is or should have been registered; or
- b) in respect of which insurance is required by virtue of any legislation relating to **Vehicles**; or
- c) which is otherwise insured in respect of the same liability.

This Exclusion 4.20 does not apply to **Vehicles** described in Extension 2.3 (b).

#### 4.21 **War**

liability of the Insured directly or indirectly occasioned by, happening through, or in consequence of 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 of or damage to property by or under the order of any government or local authority.

## 5. General Conditions

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### 5.1 Action against Chubb

No action shall lie against Chubb unless as a condition precedent thereto, there shall have been full compliance with all the terms of this **Policy**, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and Chubb. Any person or organisation or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this **Policy** to the extent of the insurance afforded by this **Policy**. No person or organisation shall have any right under this **Policy** to join Chubb as a co-defendant in any action against the **Insured** to determine the **Insured's** liability, nor shall Chubb be impleaded by the **Insured** or his legal representative.

### 5.2 Applicable Law

Should any dispute arise concerning this **Policy**, the dispute will be determined in accordance with the laws of New Zealand. In relation to any such dispute the parties agree to submit to the exclusive jurisdiction of any competent court in New Zealand.

### 5.3 Assignment

Assignment of interest under this **Policy** shall not bind Chubb until its consent is endorsed hereon; if, however, the **Insured** shall die, or be adjudged bankrupt or insolvent, such insurance as is afforded by this **Policy** shall apply to:

- a) the **Insured's** legal representative, as the **Insured** but only while acting within the scope of his duties as such;
- b) with respect to the property of the **Insured**, to the person or corporation having proper temporary custody thereof, as **Insured**, but only until the appointment and qualification of the legal representative.

### 5.4 Cancellation

- a) This **Policy** may be cancelled by the **Insured** by surrender thereof to Chubb or any of its authorised agents or by mailing to Chubb written notice stating when thereafter the cancellation shall be effective.
- b) Chubb may cancel this **Policy** by mailing to the **Insured** at the address shown in the **Policy** written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient notice. The time of surrender or the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice as specified in (a) or (b) above shall be equivalent to mailing.
- c) If the **Insured** cancels, earned premium shall be computed in accordance with the customary short period rate and procedure. If Chubb cancels, earned premiums shall be computed pro rata. If any matter has been notified under the **Policy** the premium will be deemed to be fully earned and none will be repayable to the **Insured**.
- d) When this Policy insures more than one (1) **Insured** cancellation may be effected by the first **Insured** specified in the Schedule for the account of all **Insureds**. Notice of cancellation by Chubb to the first **Insured** specified in the Schedule or the authorised representative shall be deemed notice to all **Insureds** and payment of any unearned premiums to such **Insured** or representative shall be for the account of all **Insureds**.

- e) Premium adjustment may be made either at the time cancellation is affected or as soon as practicable after cancellation becomes effective, but notice of cancellation by Chubb shall be effective even though Chubb makes no payment or tender of return premiums with such notice.

#### 5.5 Changes

- a) Every change materially affecting the facts or circumstances existing at the commencement of this insurance, or at any subsequent renewal date, shall be notified to Chubb as soon as practicable after such change comes to the notice of the **Insured's** Officer responsible for insurance;
- b) Notice to any agent or broker or knowledge possessed by any agent or broker or by any other person shall not constitute notice to Chubb and shall not effect a waiver or a change in any part of this **Policy** or stop Chubb from asserting any right under the terms of this **Policy** nor shall the terms of this **Policy** be waived or changed except by endorsement issued to form part of this **Policy**.

#### 5.6 Cross Liability

- a) In the event of claims being made by reason of **Personal Injury** suffered by any employee of one **Insured** for which another **Insured** is legally liable, then this **Policy** shall cover such **Insured** against whom a claim is made in the same manner as if separate policies had been issued to each **Insured** under this **Policy**.
- b) In the event of claims being made by reason of **Property Damage** to property belonging to one **Insured** for which another **Insured** is legally liable then this **Policy** shall cover such **Insured** against whom a claim is made in the same manner as if separate policies had been issued to each **Insured** under this **Policy**,

provided that this Condition 5.6 shall only apply where the **Insured** are separate legal entities.

Nothing contained in this clause shall operate to increase the **Limit of Liability** stipulated in Item 6 of the Schedule.

#### 5.7 Hot Work Warranty

It is warranted by the **Insured** that any Hot Work carried out either by it or by any person for whom the **Insured** is legally responsible will be undertaken strictly in accordance with New Zealand Standard 4781:1973 Code of Practice for Safety in Welding and Cutting (and any amendment or substitution thereto) and/or its equivalents in any relevant jurisdiction.

For the purpose of this Condition 5.7:

“**Hot Work**” means the use of any electric, oxy-acetylene, laser or similar welding or cutting and spark producing equipment, blow lamps (including electric hot air blowers) or other heat or flame producing apparatus and allied processes.

#### 5.8 Insured’s Duties in the event of an Occurrence, Claim or Suit

- a) The **Insured** shall give notice in writing to Chubb as soon as practicable of every **Occurrence** and shall immediately forward to Chubb all information relevant to such **Occurrence** received or held by him or his representative.
- b) In the event of an **Occurrence** or the likelihood of an **Occurrence** the **Insured** shall take at his own expense all reasonable steps to prevent **Personal Injury** or **Property Damage** arising, or continuing out of the same or similar conditions.

- c) The **Insured** shall co-operate with Chubb and, upon Chubb's request, assist in making settlements, in the conduct of allegations, claims, litigation, proceedings and suits and in enforcing any right of contribution or indemnity against any person or organisation who may be liable to the **Insured** because of an **Occurrence** and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** shall not without the consent in writing of Chubb make any admission, offer, promise or payment in connection with any **Occurrence** or claim, and Chubb if it so desires shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any claim.

## 5.9 Other Insurance

If other valid insurance with any other Insurer is available to the **Insured** covering a loss also covered by this **Policy**, then Chubb shall only be liable for the amount payable in excess over and above such other insurance.

## 5.10 Premium

Unless otherwise provided for the premium for this **Policy** is an adjustable premium. In the event of additional **Insureds** being added to the coverage or increased exposure under this **Policy**, notice shall be given to Chubb who shall be entitled to charge an appropriate additional premium.

## 5.11 Subrogation

In the event of any claim or payment under this **Policy**, Chubb shall be subrogated to all the **Insured's** rights of recovery therefore against any person or organisation and the **Insured** shall execute and deliver any and all appropriate instruments and papers and do whatever else is necessary to secure such rights. Any amount so recovered shall be apportioned in the following order of priority:

- a) firstly, to the uninsured proportion of the loss;
- b) secondly, to reimburse Chubb to the extent of its actual payment hereunder; and
- c) if any balance then remains unpaid, it shall be applied to reimburse the **Insured** or any underlying Insurer as their interest may appear.

The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no such recovery in proceedings conducted solely by Chubb, it shall bear the expenses thereof.

Where the **Insured** has agreed with another person or company, who would otherwise be liable to compensate the **Insured** for or contribute towards any loss or damage which is covered by the **Policy**, that the **Insured** will not seek to recover such loss or damage or contribution from that person, Chubb will not cover the **Insured**, to the extent permitted by law, for such loss or damage or contribution, unless the agreement is specified in the **Schedule**.

## Privacy Statement

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Chubb Insurance New Zealand Limited (“**Chubb**”) is committed to protecting your privacy. Chubb collects, uses and retains your personal information in accordance with the principles in the *Privacy Act 1993*.

### Personal Information Handling Practices

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#### *Collection, Use and Disclosure*

Chubb collects your personal information (which may include health information) when you are applying for, changing or renewing an insurance policy with us or when we are processing a claim, complaint or dispute. We collect the information to assess your application for insurance, to provide you or your organisation with competitive insurance products and services and administer them, to handle any claim, complaint or dispute that may be made under a policy. If you do not provide us with this information, we may not be able to provide you or your organisation with insurance or to respond to any claim, complaint or dispute.

We may disclose the information we collect to third parties, including contractors and contracted service providers engaged by us to deliver our services or carry out certain business activities on our behalf (such as actuaries, loss adjusters, claims investigators, claims handlers, professional advisers including doctors and other medical service providers, credit reference bureaus and call centres), other companies in the Chubb group, insurance and reinsurance intermediaries, other insurers, our reinsurers, and government agencies (where we are required to by law). These third parties may be located outside New Zealand.

#### *Your Choices*

In dealing with us, you agree to us using and disclosing your personal information as set out above. This consent remains valid unless you alter or revoke it by giving written notice to our Privacy Officer.

From time to time, we may use your personal information to send you offers or information regarding our products that may be of interest to you. If you do not wish to receive such information, please contact our Privacy Officer using the contact details provided below.

#### *How to Contact Us*

If you would like to access a copy of your personal information, or to correct or update your personal information, or if you have a complaint or want more information about how Chubb is managing your personal information, please contact the Privacy Officer by posting correspondence to Chubb Insurance New Zealand Limited, PO Box 734, Auckland; telephoning: +64 (9) 3771459; or emailing [Privacy.NZ@chubb.com](mailto:Privacy.NZ@chubb.com)

## About Chubb in New Zealand

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Chubb is the world's largest publicly traded property and casualty insurance company. With operations in 54 countries, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance and life insurance to a diverse group of clients. The company is distinguished by its extensive product and service offerings, broad distribution capabilities, exceptional financial strength, underwriting excellence, superior claims handling expertise and local operations globally. Parent company Chubb Limited is listed on the New York Stock Exchange (NYSE: CB) and is a component of the S&P 500 index. Chubb maintains executive offices in Zurich, New York, London and other locations, and employs approximately 31,000 people worldwide.

Chubb's operation in New Zealand (Chubb Insurance New Zealand Limited) offers corporate Property & Casualty, Group Personal Accident and corporate Travel Insurance products through brokers. It leverages global expertise and local acumen to tailor solutions to mitigate risks for clients ranging from large multinational companies to local corporates.

More information can be found at [www.chubb.com/nz](http://www.chubb.com/nz).

**Chubb. Insured.<sup>SM</sup>**

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