

Professional Indemnity Policy Wording

Terms of our professional indemnity policy



FMG
Advice & Insurance

**Thank you for choosing to insure with FMG.
We are New Zealand's leading rural insurer,
100% New Zealand owned and protecting
property and livelihood in New Zealand
communities since 1905.**

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Important information about your FMG policy

This policy operates on a 'claims made and notified' basis

Some covers in this policy operate on a 'claims made and notified' basis. This means that the claim must be made against the party insured under this policy and notified to us in writing during the period of insurance.

- Additionally, this means that there is no cover under this policy for the following:
- Claims made against a party insured under this policy after the period of insurance ends even if the event giving rise to that claim occurred during the period of insurance, unless specified otherwise.
- Claims made against a party insured under this policy notified or arising out of circumstances notified (or which should have reasonably been notified) under a previous policy.
- Claims made against a party insured under this policy or intimated before the period of insurance began.
- Circumstances that a party insured under this policy first became aware of before the period of insurance began which they knew (or should have reasonably known) had the potential to give rise to a claim under this policy.
- Claims arising out of circumstances noted on the written proposal or renewal declaration form for the period of insurance or equivalent form for any previous period of insurance.
- Claims arising from legal proceedings or an investigation, arbitration or adjudication that existed prior to or which were pending before the period of insurance began.

Please read and file this document and your policy certificate

Please take the time to read carefully through this policy wording and the accompanying policy certificate. Together, these two documents form your insurance contract with us.

The policy certificate shows what you are covered for

Your policy certificate is particularly important. If there is any inconsistency between your FMG policy wording and what is on the certificate, it is the certificate that prevails.

We are here to help

Under this contract, you and FMG both have responsibilities to ensure everything runs smoothly. Read these documents to find out what they are. If there is anything that you don't understand, please contact us.

Please:

- tell us of any errors in your documentation
- contact us if there is anything you don't understand and would like explained
- keep this policy in a safe place along with your renewal notice(s).

We will remind you when your policies need to be renewed

The date that cover ceases is shown on the policy certificate. If your policy is renewable, we will contact you about renewing your insurance before that date.

We have defined the meanings of some words

In this document, we use italics to show that the words have the meanings given in the definitions section.

We also use the following common terms throughout the document, with the meanings shown:

- ***Certificate*** means the latest version of the policy certificate issued by us. The certificate contains details of the insurance cover under this policy.
- ***FMG*** means FMG Insurance Limited as shown on the certificate.
- ***Period of insurance*** means the duration of the policy, as shown on the certificate (unless the policy is ended earlier).
- ***We, us, or our*** means FMG.

You must provide information and pay your premium

You agree to give us correct and complete information

We have provided this policy based on the information you have disclosed to us. If you give us information that is incorrect or incomplete, you might not be covered under the policy.

You need to tell us:

- all material information before the cover starts, even if we don't specifically ask about it (material information is information that could change our decision if we knew about it)
- straight away if your circumstances change in any way while you are insured with us, both during the period of insurance and at renewal.

You agree to pay your premiums on time

Cover under your policy will not start until you have paid, or have agreed to pay, the premium (including any government charges) for the period of insurance. If your premiums are not paid by the due date, your insurance could be cancelled and you will not be insured.

You agree to the exclusions and obligations detailed in the policy

You are not covered for some items, events, and circumstances. These are called exclusions. Exclusions are detailed throughout the policy.

This policy also contains certain conditions and obligations that you must meet. If you don't, we may decline any claim you make. Any other person who is entitled to claim under this policy must also meet these conditions and obligations.

We will be fair in the way we provide this cover

We provide the cover listed on the certificate

The policies and benefits we agree to provide are listed on the certificate. This policy wording details the cover that this policy and benefits provide.

We are bound by the Fair Insurance Code

FMG is a member of the Insurance Council of New Zealand and bound by the Council's Fair Insurance Code. For a copy of the Code, please call us on 0800 366 466.

We comply with the Privacy Act 1993

We collect personal information about you, your business, or both. We asked you for personal information to fully evaluate and to administer this policy, and we may ask for more if you make a claim or renew the policy. You also authorise us to:

- collect relevant information about you or your business from third parties, such as other insurers and EQC.
- disclose information about you in connection with insurance to third parties.

We fully understand the importance of protecting your personal, commercial and financial information.

We store your information securely, within our organisation, and will not share it except in compliance with the Privacy Act 1993. You have rights under the Privacy Act 1993 to access and correct the information we hold about you.

For information about how we collect, use and store your personal information, see the full Privacy Statement on our website (www.fmg.co.nz).

We provide a 30-day 'cool off' period

We are confident this policy will be right for you. However, you may cancel this policy within 30 days of the start date if you are not entirely happy, without giving us a reason. We will refund any premium you have paid, provided you do not have a claim during this 30-day period.

We agree to provide you with professional indemnity cover

We agree to provide you with the insurance set out in this policy, if 'Professional Indemnity' is shown on the certificate.

We cover you for professional indemnity

1. We cover you for civil liability and defence costs

1.1 We cover you for civil liability

You are insured for a *claim* of civil liability incurred in *your* conduct of the *professional business*.

You are also insured for a *claim* of civil liability incurred in the conduct of another business that was substantially the same as the *professional business*, provided that:

- this business was conducted by *you* in a professional capacity before joining the insured named on the certificate, and
- the events giving rise to that claim occurred after the retroactive date shown on the certificate.

The *claim* must be first made against *you* and notified to us in writing during the period of insurance.

1.2 We cover you for legal defence costs

You are insured for the *legal defence costs* incurred with our prior written consent in the defence or settlement of a claim covered under this policy.

If the amount paid to dispose of a claim is greater than the cover available under this policy, we will pay the proportion of the total *legal defence costs* equal to the proportion of the available cover to the amount paid to dispose of the claim.

2. The cover also includes automatic benefits

Your insurance automatically includes the following benefits.

2.1 We cover your emergency legal defence costs

If it is not possible for *you* to get our prior written consent before incurring *legal defence costs* that would otherwise be covered under this policy, we will waive this requirement provided that our consent is subsequently obtained within 30 days of the first of these costs being incurred.

We will pay up to \$50,000 for all costs in the aggregate during the period of insurance.

2.2 We cover your expenses to be represented at a judicial review or inquiries

You are insured for the reasonable and necessary costs and expenses *you* incur with our prior written consent for legal representation if you are legally compelled to attend the following in connection with the *professional business*:

- a judicial review, or
- an investigation, inquiry or examination by an official body or institution legally empowered to investigate *your* professional conduct.

You must notify us about this attendance in writing during the period of insurance.

We will pay up to \$100,000 for all costs and expenses in the aggregate during the period of insurance.

This benefit does not extend to:

- attendance at Parliament, a Parliamentary Committee or similar proceedings
- *your* wages, salaries or fees, or
- costs or expenses incurred for criminal proceedings where *you* are found guilty.

2.3 We cover you for loss due to employee fraud or dishonesty

You are insured for loss of money or other property belonging to *you*, or that *you* are legally liable for, due to the dishonest or fraudulent act or omission of an *employee* in the conduct of the *professional business*.

You must notify us about this loss in writing within 28 days of:

- the discovery of any loss which gave rise, or which may give rise, to a claim under this policy, or
- the date there was reasonable cause for suspicion of an *employee's* fraud or dishonesty, whether that gave rise to a claim under this policy or not.

This discovery and notification must occur during the period of insurance.

Before we will cover *you* under this benefit the person responsible for this loss must be found guilty or convicted.

There is no cover for loss:

- *you* are entitled to have covered under another part of this policy
- brought about or contributed to by *your*, other than an *employee's*, own dishonest or fraudulent act or omission, or
- sustained due to the *employee's* conduct after the discovery or date there was reasonable cause for suspicion as described above.

2.4 We cover your liability due to an employee's criminal, fraudulent or dishonest conduct

You are insured for a *claim* for civil liability brought about or contributed to, by the dishonest, fraudulent, criminal, reckless or malicious act or omission of an *employee*.

You must notify us about this claim in writing within 28 days of:

- the discovery of any liability which gave rise, or which may give rise, to a claim under this policy, or
- the date there was reasonable cause for suspicion of an *employee's* dishonest, fraudulent, criminal, reckless or malicious conduct, whether that gave rise to a claim under this policy or not.

The *claim* must also be first made against *you* and notified to us in writing during the period of insurance.

There is no cover for:

- a person committing or condoning the dishonest, fraudulent, criminal, reckless or malicious act or omission
- a *claim* for loss of money, negotiable instruments, bearer bonds, coupons, stamps, banknotes or currency notes, or
- liability sustained due to the *employee's* conduct after the discovery or date there was reasonable cause for suspicion as described above.

2.5 We cover you for unintentional breaches of consumer legislation

You are insured for a *claim* for civil liability for compensation as a result of you breaching the Fair Trading Act 1986, the Consumer Guarantees Act 1993, or a similar Act for consumer protection.

The *claim* must be first made against you and notified to us in writing during the period of insurance.

There is no cover for a claim:

- arising out of, or in connection with, deliberate or fraudulent conduct, or
- under the criminal provisions of these enactments.

2.6 We cover you for unintentional breaches of privacy, confidentiality or intellectual property rights

You are insured for a *claim* arising from you unintentionally breaching or infringing the privacy, or breaching the confidentiality or *intellectual property rights*, of others in your conduct of the *professional business*.

The *claim* must be first made against you and notified to us in writing during the period of insurance.

There is no cover if you intentionally assisted or condoned this breach or infringement.

2.7 We cover your public relations costs

You are insured for the reasonable fees, costs and expenses you incur with our prior written consent to engage a public relations consultant for the sole purpose of protecting your reputation when it is brought into question as a direct result of a *claim* arising out of the conduct of the *professional business*.

You must notify us about this in writing during the period of insurance and within 30 days of your first awareness that your reputation is being brought into question. When you notify us you must provide full written details outlining the circumstances.

We will pay up to \$50,000 for all fees, costs and expenses in the aggregate during the period of insurance.

2.8 We cover your notification expenses following a privacy breach

You are insured for the notification expenses you incur during the period of insurance due to a breach of the Privacy Act 1993 or other privacy Act, provided that:

- this breach is reported to us in writing immediately when you discover it, and
- we have given our written consent before these expenses are incurred.

We will not unreasonably delay giving our consent.

We will pay up to \$50,000 for all expenses in the aggregate during the period of insurance.

We will not pay for expenses incurred to prove an entitlement to cover under this benefit.

Notification expenses means the reasonable costs and expenses incurred for advertising, or electronic, printed, broadcast or telecast communications, to comply with a law, regulation or order requiring notification of potential or actual unauthorised access or use of an individual's personal information, that is not publicly available, in the conduct of the *professional business*.

2.9 We cover your liability for work performed by your contractors and sub-contractors

You are insured for *your* civil liability for work performed on *your* behalf by *your* contractors and sub-contractors in the conduct of the *professional business*. This claim must be first made against *you* and notified to us in writing during the period of insurance.

No cover is provided to contractors and sub-contractors themselves under this benefit.

2.10 We cover firms and entities you acquire or merge with

We will cover a firm or entity conducting the same professional business as *you* which *you* acquire or merge with, and a *claim* arising from that firm or entity's work completed before or during the period of insurance, provided that:

- *you* give us written notice of this acquisition or merger and we accept this
- *you* pay any reasonable additional premium we require, and
- no other insurance is available.

The merged or acquired firm or entity is not covered for a *claim* arising out of circumstances:

- it knew about before the date of the acquisition or merger, and
- it knew could result, or should have reasonably expected could result, in a *claim* against it in the future.

2.11 We cover your joint venture's liability

You are insured for *your* proportionate civil liability in *your* conduct of the *professional business* due to an act, error or omission by *you* as a partner in a joint venture shown on the certificate, provided this is due to a *claim* made by an independent third party.

This claim must be first made against *you* and notified to us in writing during the period of insurance.

The joint venture partner(s) will not be indemnified.

2.12 We cover your spouse or de facto partner's liability

Your lawful spouse or de facto partner is insured when a claim against *you* that is covered under this policy is also made against them, provided this is solely due to that spouse or de facto partner's:

- status as *your* spouse or de facto partner, or
- ownership or other interest in property that is the object of the remedy sought by the party making the claim.

2.13 We cover expenses when you are required to attend a hearing or inquiry

You are insured for the expenses *you* incur during the period of insurance when it is necessary for *you* to attend a court as a witness in respect of a claim covered under this policy. We will pay up to:

- \$500 per day for each principal, partner or director
- \$250 per day for each *employee*.

The most we will pay for all expenses is \$10,000 in the aggregate during the period of insurance. There is no cover for *your* consultants, locums or individuals employed under a contract for service.

2.14 We cover loss of documents

You are insured for damage to, or loss or destruction of, *documents*, provided that these documents are within the territorial limits of New Zealand and Australia during the period of insurance.

You must notify us in writing that these documents have been damaged, destroyed, or after a diligent search cannot be found, within 30 days of this discovery.

The amount claimed under this benefit must be supported by invoices which a person, nominated by us and agreed to by *you*, has approved. If agreement is unable to be reached about who will complete this exercise, it will be undertaken by a competent person appointed by the President of the New Zealand Law Society.

There is no cover for:

- wear and tear, vermin, mould, mildew or any other cause involving gradual deterioration, or
- liability, costs or expenses that *you* are entitled to have covered under another part of this policy.

2.15 We continue your cover 30 days after your policy ends

If this policy is not renewed or replaced with an equivalent policy, or is cancelled other than due to the non-payment of premium, we will automatically extend cover under this policy for 30 days after the period of insurance ends.

2.16 We cover your unintentional defamatory statements

You are insured for a *claim* for an unintentional defamatory spoken or written statement *you* make in connection with *your* conduct of the *professional business*.

The *claim* must be first made against *you* and notified to us in writing during the period of insurance.

3. You can choose to add the following optional benefits

These optional benefits only apply if they are available, have been selected and paid for (if appropriate).

3.1 We cover the cost of rectifying a pollution event you cause

If you have bought this benefit, *you* are insured for the cost of rectifying a pollution event that is a direct result of *your* negligent act, error or omission in connection with the *professional business*, provided a *claim* has been made against *you* in this respect.

The *claim* must be first made against *you* and notified to us in writing during the period of insurance.

Pollution event means the actual, alleged or threatened accidental and unintended discharge, dispersal, release or escape of a *pollutant*.

3.2 We cover your liability following a data security breach or the infection of a client's network

3.2.1 What you are covered for

If *you* have bought this benefit, *you* are insured for damages resulting from a *claim* directly or indirectly arising out of, or in connection with, a data security breach or client network infection, provided *you*:

- maintain anti-virus and malware prevention solutions on *your* computer systems and update them regularly
- maintain firewalls on *your* computer systems, and
- implement an on-going patch management process to ensure timely patching of *your* computer systems.

The *claim* must be first made against *you* and notified to us in writing during the period of insurance.

We may engage a computer forensic or security specialist at our own expense to investigate an alleged data security breach or client network infection. You must fully co-operate with this specialist's investigation.

3.2.2 What we will pay

The most we will pay for all claims is \$100,000 in the aggregate during the period of insurance.

3.2.3 What you are not insured for

There is no cover directly or indirectly arising out of or in connection with:

- a *claim* arising from *you* actually or allegedly intentionally releasing or disclosing confidential information in circumstances allegedly in violation of an Act, ethical rule, court or arbitral order or confidentiality agreement
- a *claim* arising from *you* actually or allegedly intentionally transmitting a computer virus or other electronic infection
- the cost of repairing, replacing or modifying *your* data security system or clearing computer viruses or other electronic infections from *your* computers or network, either preventatively or in response to a claim against *you*
- a government authority gaining access to *your* computer or network
- proceedings against you before a government agency in connection with a data security breach or client network infection including an audit or other investigation by such an agency, or
- a *claim* or damages that you are entitled to have covered under another part of this policy.

3.2.4 Definitions

Client network infection means the actual or alleged transmission of a computer virus or other electronic infection from *your* computer system to *your* client's computer system, in connection with the *professional business*, which causes damage to that client's computer or computer network or disrupts their business.

Damages means a loss, judgment or settlement.

Damages does not include:

- a fine, penalty or punitive or exemplary damages
- the return, withdrawal or reduction of professional fees or commissions, or
- equitable relief or an award of legal costs and expenses.

Data security breach means the actual or alleged breach, violation, unauthorised interception, unauthorised use, or misuse by a person of a security system or procedure maintained by *you* for storing *your* client's confidential information in connection with the *professional business*.

3.3 We reinstate your cover

If *you* have bought this benefit, we will automatically reinstate the specific limit of a cover or benefit that has been exhausted, due to claims payments, for future claims.

You do not have to pay additional premium for this reinstatement.

The most we will pay for all claims under this policy in the aggregate during the period of insurance, including those following reinstatement under this benefit, is two times the sum insured shown on the certificate.

4. What we will pay

What we will pay depends on:

- whether the cover or benefit has a specific limit (clause 4.1),
- the maximum cover limit (clause 4.2), and
- whether there is a right of reinstatement (clause 4.3).

4.1 What we will pay depends on the specific limit

Subject to the clause 4.2 below, when the certificate, cover or benefit refers to a specific limit for a cover or benefit that is the maximum we will pay in the aggregate for all claims under that cover or benefit during the period of insurance.

In the event a claim is covered under multiple covers or automatic benefits, the most we will pay for that claim is the lowest limit applicable under any of those covers or benefits to the extent that limit has not been exhausted.

4.2 The maximum cover limit that applies

Subject to clause 4.3 below, the most we will pay for all claims under this policy in the aggregate during the period of insurance is the sum insured shown on the certificate.

4.3 If you have a right to reinstate limits for future claims

If you have bought optional benefit 3.3 (reinstatement), and it applies to reinstate the specific limit of a cover or benefit that has been exhausted, the most we will pay for all claims under this policy in the aggregate during the period of insurance is two times the sum insured shown on the certificate.

5. General Exclusions

5.1 An excess may be payable

If we accept a claim under one or more of your FMG policies, there is no insurance for the amount of any excess on the certificate.

5.2 There is no cover for contractors or sub-contractors

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with work performed for *you*, or on *your* behalf, by a contractor or sub-contractor, unless:

- they earn more than 80 percent of their annual total income from fees received from *you*, or
- covered under automatic benefit 2.9 (contractors and sub-contractors).

5.3 There is no cover for misconduct

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with a dishonest, fraudulent, criminal, reckless or malicious act or omission by:

- *you*
- a company, individual or entity with a beneficial interest in the insured named on the certificate, or
- *your* consultant, contractor, sub-contractor or agent.

There is also no cover under this policy for a claim arising directly or indirectly from, or in connection with:

- a wilful breach of an Act, contract or duty, or
- an actual or alleged act or omission by *you* or *your* consultant, contractor, sub-contractor or agent, with reckless disregard for the consequences.

These exclusions do not apply if the claim is covered under automatic benefits 2.3 (loss due to employee fraud or dishonesty) or 2.4 (liability due to employee crime, fraud or dishonesty).

5.4 There is no cover for wrongful employment acts

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with an actual, attempted or alleged error, misstatement, misleading statement, act, omission or breach of duty, by *you* in connection with *your* employment of a person.

5.5 There is no cover for claims and circumstances that you were aware of before this policy was in place

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with:

- a claim that was first made against *you* before the inception of this policy
- a circumstance first *discovered* before the inception of this policy
- a claim or circumstance stated in a written proposal or renewal declaration form in relation to this policy or any earlier policy or contract, or
- a claim or circumstance which has been notified under any other policy of insurance.

5.6 There is no cover for matters arising before the retroactive date

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with an act, error, omission or other matter committed or allegedly committed before the retroactive date shown on the certificate.

5.7 There is no cover for your conduct in a previous business

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with an act, error, omission by *you* before becoming a principal, partner, director or *employee* of the insured stated on the certificate.

This exclusion does not apply if the claim relates to the conduct of another business covered under clause 1.1 (civil liability) above.

5.8 There is no cover for obligations you assume outside of normal business

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with a duty or obligation *you* assume which is outside of the normal conduct of the *professional business*.

5.9 There is no cover for claims brought in North America

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with work carried out within, or to individuals or entities in:

- The United States of America
- Canada, or
- their territories, dependencies or protectorates.

There is also no cover under this policy for a claim arising directly or indirectly from, or in connection with a claim brought or maintained in full or in part within the jurisdiction or based upon the laws of:

- The United States of America
- Canada, or
- their territories, dependencies or protectorates.

Additionally, there is no cover under this policy for a claim arising directly or indirectly from, or in connection with the enforcement of an award, order or judgment arising from a claim brought or maintained within the jurisdiction or based upon the laws of the countries, territories, dependencies or protectorates described above.

5.10 There is no cover for arranging or maintaining insurance

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with an act, error or omission by *you* in connection with effecting or maintaining insurance or adequate insurance.

This exclusion does not apply to the extent the claim relates to the normal conduct of the *professional business* in respect of effecting insurance that would otherwise be covered under this policy.

5.11 There is no cover for pollution

There is no cover under this policy for a claim in any way connected with:

- the actual, alleged or threatened discharge, dispersal, release, escape or disposal of a *pollutant* into or on real or personal property, water or the atmosphere, or
- a direction or request that you test, monitor, clean-up, remove, contain, treat, detoxify or neutralise a *pollutant* or *you* voluntarily deciding to do so.

This exclusion does not apply to the extent the claim is covered under optional benefit 3.1 (pollution) above.

5.12 There is no cover for confiscation, nuclear materials, terrorism or war

There is no cover under this policy for a claim in any way connected with:

- *confiscation*
- *nuclear materials*
- *terrorism*
- *war*.

5.13 There is no cover for fees

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with any fees or disbursements:

- claimed back by *your* client
- refunded to *your* client due, or allegedly due, to the non-performance of *your* contractual obligations to them, or
- waived.

This exclusion does not apply when the fees or disbursements claimed, refunded or waived form part of the settlement of a claim we have consented to in writing.

There is also no cover under this policy for a claim arising directly or indirectly from, or in connection with costs incurred relating to a dispute about fees or disbursements.

5.14 There is no cover for claims between insured parties or by family members or related entities

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with, a *claim* brought by a party insured under this policy or a family member.

There is also no cover under this policy for a claim arising directly or indirectly from, or in connection with a *claim* involving an entity, trust, facility or arrangement which, at the date of the claim was made against *you*, or when the events giving rise to the claim occurred:

- was managed or controlled wholly or in part by *you*, *your* nominee or a family member, or
- *you* or a family member had a direct or indirect financial interest in.

Family member means *your* spouse, de facto partner, companion, parent, sibling or child or *your* spouse, de facto partner or companion's parent, sibling or child.

Financial interest means a financial interest exceeding 10 percent of the issued capital in a company or more than 10 percent of the value of any other business or asset.

5.15 There is no cover for breaches of intellectual property rights or confidentiality

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with the infringement of *intellectual property rights*, plagiarism, breach of confidentiality, or the breach or infringement of privacy, unless covered under:

- automatic benefits 2.6 (unintentional breaches of privacy, confidentiality or intellectual property rights) or 2.8 (privacy breach notification expenses), or
- optional benefit 3.2 (data breach or client network infection).

5.16 There is no cover for bodily injury

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with *bodily injury*, unless this arises out of a design, specification or formula you devise in connection with the *professional business*.

5.17 There is no cover for property loss

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with *property loss* unless:

- this arises out of a design, specification or formula *you* devise in connection with the *professional business*, or
- covered under automatic benefit 2.14 (loss of documents).

5.18 There is no cover for asbestos

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with *bodily injury* or *property loss* related to:

- mining, processing, transporting, distributing or storing asbestos
- manufacturing asbestos products or processing materials containing asbestos, or
- any process of decontaminating, treating or controlling asbestos.

5.19 There is no cover for fungi, mould, spores or mycotoxins

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins or the following in response:

- an action taken by any party, or
- a governmental or regulatory order, requirement, directive, mandate or decree that any party take action.

5.20 There is no cover for leaky buildings

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with a building or structure failing to meet or perform to the requirements of the building code set out in Schedule 1 of the Building Regulations 1992 in relation to:

- external water or moisture, or
- durability or protection from external water or moisture entering the building or structure or its effects.

5.21 There is no cover for punitive or exemplary damages, taxes, fines or penalties

There is no cover under this policy for a claim arising directly or indirectly from or in connection with:

- punitive or exemplary damages, or
- fines or penalties imposed by law.

5.22 There is no cover for contractual liability

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with, any contractual liability, warranty or guarantee *you* have assumed or provided unless *you* would have been liable without that contractual liability, warranty or guarantee.

5.23 There is no cover for motor vehicles, marine craft or aircraft

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with *your* liability as an owner or operator of a motor vehicle, marine craft or an aircraft.

5.24 There is no cover for the occupation of land or buildings

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with *your* occupation or alleged occupation of land or a building.

5.25 There is no cover for loss that would expose us to sanctions

There is no cover under this policy for a claim that would expose us to a sanction, prohibition or restriction under:

- United Nations resolutions or trade or economic sanctions, or
- the law of New Zealand, Australia, the European Union, the United Kingdom or the United States of America.

5.26 There is no cover for product liability

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with goods, products or merchandise, including their containers, manufactured, produced, processed, treated, sold, supplied, distributed, assembled, installed, serviced, handled or dealt with by, or on *your* behalf.

This exclusion does not apply to the extent the claim relates to the normal conduct of the *professional business* in respect of these goods, products or merchandise that would otherwise be covered under this policy.

5.27 There is no cover for trading debts

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with the payment of trading debts or loss of profit *you* incur.

5.28 There is no cover for bankruptcy, insolvency or liquidation

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with *your* bankruptcy, insolvency or liquidation.

5.29 There is no cover for financial services

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with:

- the provision of financial services even if *your* conduct falls outside the definition of financial service under section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008
- actual or alleged investment advice, service or representation including but not limited to:
 - projecting or estimating returns on a financial product or investment
 - the performance of a financial product or investment
 - tax matters related to but not limited to the effects of depreciation, depression, negative or positive gearing, or
 - financial planning activities.

5.30 There is no cover for your responsibilities as a director or officer

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with *your* functions and duties as a director or officer of a legal entity.

5.31 There is no cover for liability coverable under compulsory insurance

There is no cover under this policy for a claim arising directly or indirectly from, or in connection with any liability that *you* are, or would be, entitled to have covered under insurance *you* are required to have by law, or a contribution or protection from a statutory, mutual, fidelity or contribution fund or arrangement.

Making a claim

The conditions in this section are important. All conditions must be met before we will accept a claim under this policy.

6. What you must do

6.1 You must let us know as soon as there is a claim or circumstance expected to give rise to one

You must let us know in writing as soon as reasonably practicable within the period of insurance if there is a claim or circumstance which may be reasonably expected to give rise to a claim.

If, during the period of insurance *you* become aware of and advise us in writing of a circumstance which may give rise to a claim against *you* and that circumstance does not give rise to a claim until after the end of the period of insurance, we will treat that claim as if it was first made against *you* during the period of insurance. *You* must provide the names of the potential claimants and the likely allegations.

You must use all due diligence and take all reasonable steps to minimise the claim and avoid any further claim.

You must make a complaint to the police if criminal activity is suspected.

6.2 When communicating with us

You must notify us in writing, providing full particulars including relevant dates, events, circumstances and persons or entities involved and the amount of the alleged or potential loss.

You must immediately send us all relevant correspondence and court documentation.

You must authorise us to:

- get personal information about *you* from you and third parties in connection with your insurance
- disclose personal information about *you* to third parties in connection with your insurance.

For more information about how we collect, use and store your personal information, see the full Privacy Statement on our website (www.fmg.co.nz).

6.3 You must fully co-operate with us

You must fully co-operate with us regarding the investigation, defence and settlement of any claim.

You must provide us with any information and documentation we reasonably request at *your* own cost.

6.4 When you have other insurance

You must immediately notify us of any other insurance that covers you for any of the risks covered under this policy.

7. What you must not do

7.1 You must not accept liability, settle things yourself or incur defence costs without our consent

You must not admit liability or agree to settle a claim or part of a claim without our prior written consent.

Except for *emergency legal defence costs*, *you* must not incur any fees, costs or expenses without our prior written consent.

7.2 You must not make untrue statements

You must ensure all statements made to us are true and complete.

If the claim is dishonest or fraudulent in any way, we are entitled to:

- decline your claim in whole or in part
- bring this policy to an end from the date of the dishonest or fraudulent act
- bring all other insurance you have with us to an end from the date of the dishonest or fraudulent act.

We may also notify the police, the Serious Fraud Office, or both.

8. How we will manage the claim

8.1 If two or more excesses apply, you need to pay the higher excess

If a claim is covered under multiple covers and/or benefits under this policy, you will have to pay only one excess. This will be the highest excess we can apply under these covers and/or benefits.

Additionally, if a claim is covered under more than one of your FMG policies, you will have to pay only one excess. This will be the highest excess we can apply under those policies.

8.2 We will pay the difference between another cover and this one

You must immediately let us know if you have other insurance or indemnity available to you covering the risks covered under this policy.

We will only pay over and above the limit payable under that other insurance or indemnity.

8.3 You have rights and responsibilities regarding the conduct of the defence and settlement

You or FMG are not required to defend a claim unless an *independent lawyer* advises that the claim should be defended taking into account the economics of the matter, including the likely *legal defence costs* covered under clause 1.2 (legal defence costs) of the 'We cover you for civil liability and defence costs' section above, the amount of the claim and the prospects of a successful defence and cost recovery from the claimant. The costs of this advice forms part of the *legal defence costs* covered under clause 1.2 (legal defence costs) above.

Additionally, we may require you to defend a claim if we believe that a claim will not exceed the applicable excess. If this occurs and damages paid to dispose of that claim exceed the excess, we will reimburse you for *legal defence costs*.

We are entitled to take over the conduct of the defence or settlement of a claim in *your* name.

If you do not agree to our proposed settlement of a claim or recommendation, or continue with an action or proceedings in connection with that claim, subject to the cover limits set out in the 'what we will pay' section above, the cover available under this policy for that claim will not exceed:

- the amount the claim could have been settled for, and
- the amount of the fees, costs and expenses incurred with our prior written consent up until the date of that refusal.

8.4 We will review legal defence costs

We will review *legal defence costs* as they are incurred to assess whether they are covered under this policy. We will advise you if they are not covered under this policy as soon as practicable.

8.5 Multiple claims arising out of the same conduct or events are treated as one claim

Any two or more claims arising out of, based on, or attributable to, a single act, error or omission or which are attributable to continuous or repeated events or circumstances, or a series of interrelated or connected acts, errors or omissions, are treated as one claim.

8.6 When our prior written consent is required we will only withhold this if this is reasonable

When *you* are required to obtain our prior written consent under this policy we will only withhold this when it is reasonable for us to do so.

8.7 In certain circumstances we will provide cover when there is a late claim or notification

We will extend this policy to cover *you* in respect of a circumstance *you* knew about prior to the period of insurance beginning, provided that:

- there is no fraudulent non-disclosure or misrepresentation on *your* part
- we were *your* professional indemnity insurer when *you* first became aware of that circumstance
- a claim was first made against *you* in relation to that circumstance during the period of insurance, or *you* notified us in writing about that circumstance during the period of insurance, and
- we have continuously been *your* professional indemnity insurer from the time that *you* first became aware of that circumstance.

This extension is available despite anything in this policy to the contrary. However, we reserve the right to reduce the cover under this clause to the extent that our interests are prejudiced by this late claim or notification.

8.8 The parties will use their best efforts to determine the appropriate allocation of amounts when only some elements of the claim are covered

You and FMG will jointly use best efforts to agree on a fair and proper allocation of amounts between *you* and us if:

- *you* incur a loss or liability covered under this policy together with one that is not covered under this policy, or
- a claim is made against *you* and it is not possible to identify whether this is attributable exclusively or primarily to something covered under this policy or not.

In making the assessment about the fair and proper allocation, we will consider:

- in relation to an award of damages or a claimant's costs, the relative legal and financial exposures of the parties to them, and
- in relation to *legal defence costs*, the relative benefits obtained by each party given the claims they are exposed to and their relative legal and financial exposures in that regard.

If an appropriate allocation cannot be agreed on FMG and *you* will jointly instruct an *independent lawyer* to advise, at their absolute discretion, a fair and proper allocation using the criteria outlined above. The costs of this advice forms part of the *legal defence costs* covered under clause 1.2 (legal defence costs) of the 'We cover you for civil liability and defence costs' section above.

The *independent lawyer* can take whatever accounting or other expert advice they consider appropriate and necessary to determine the appropriate allocation. This recommendation will be final unless there is manifest bias or impropriety on their part.

The allocation will be applied retrospectively. Any previous allocation or advancement does not create a presumption in respect of the final allocation arrived at.

8.9 We may recover costs from those responsible for the loss

If we make any payment under this policy, we may exercise any legal rights *you* have to recover these amounts from the persons or entities responsible including from any *employee* or their estate in respect of a claim covered under automatic benefits 2.3 (loss due to employee fraud or dishonesty) or 2.4 (liability due to employee crime, fraud or dishonesty). Any recovery will be at our cost.

If we exercise these rights, *you* must co-operate with us, giving us any help we ask for and not do anything that may prejudice our rights of subrogation.

We have the right to be reimbursed first if:

- *you* suffer a loss not covered under this policy or that is less than the applicable excess, and
- amounts are recovered from another party and it is not clear whether these relate to something that is covered under this policy or not.

We will not exercise these rights of subrogation against an *employee* unless the circumstances were brought about, or contributed to, by dishonest, fraudulent, criminal, reckless or malicious acts or omissions on their part.

8.10 We can choose whether or not to salvage

If the claim relates to damaged property, we are entitled to retain possession of the damaged property and deal with salvage in a reasonable manner.

You cannot abandon any property to us.

8.11 We will deduct amounts from claim payments due to employee fraud or dishonesty

We will deduct from a claim payment in respect of an *employee's* fraud or dishonesty:

- money which, but for the *employee's* fraud or dishonesty, *you* would have paid them, and
- *employee* money *you* hold.

General conditions of this policy

The following conditions apply to the whole policy, and cover what *you* agree to do, how we manage the policy, and how the policy will be interpreted.

9. What you agree to do

These conditions must all be met before we will accept a claim under this policy.

9.1 You must comply with all terms of this policy

You must comply with all the terms of the policy before we will meet any claim under it.

You must tell the truth at all times.

9.2 You must tell us immediately if anything changes

After this policy starts, *you* must notify us immediately of any change in circumstances *you* are aware of that affects any risks insured under this policy, whether by increasing or altering them.

Once *you* have done so, we may change the premium and terms of cover, at our discretion.

If *you* fail to let us know about any change in circumstances, we may (from the date of the failure):

- refuse to meet any claim or part of it
- cancel this policy.

9.3 Premiums must be paid on time

Cover under this policy will begin when *you* have paid, or agreed to pay, the premium for the period of insurance (including any government charges).

If we have agreed that premium can be paid in instalments, cover under this policy will begin when the first instalment (including any government charges) due under this agreement, has been paid, or agreed to be paid.

Premiums must be paid by the due date. If there is a total loss:

- we will not settle the claim:
 - until the full annual premium is paid, or
 - if premium is being paid by instalments, until the balance of the full annual premium is paid, and
- we may deduct any outstanding annual premium from the claim settlement.

9.4 This policy cannot be assigned without our consent

This policy cannot be assigned unless we have consented to this in writing. No change, modification or assignment of interest under this policy will be effective unless it is recorded as an imposed term on the certificate.

9.5 If a dispute cannot be resolved this will be referred to mediation and failing that arbitration

If a dispute between *you* and FMG about an aspect of this policy cannot be resolved by us to *your* reasonable satisfaction within six months of it arising, this will be referred for mediation by an *independent lawyer*. *You* and FMG will be jointly liable for this lawyer's fees.

If the dispute remains unresolved after mediation, *you* and FMG may refer this matter to arbitration in New Zealand. Each party will bear their own costs in this respect.

10. How we will manage this policy

10.1 How to make changes to this policy

If we agree, *you* may change this policy by giving us notice of the changes.

We may change the terms of this policy at any time by giving *you* notice at the last known address we have for *you*. The changes we make will take effect 30 days after the day we send or deliver the notice to *you*.

10.2 How to cancel this policy

You may cancel this policy at any time by giving notice to us.

We may cancel this policy at any time by giving notice to *you* at the last known address we have for *you*. This policy will be cancelled 30 calendar days after the day we send or deliver the notice to *you*.

- If *you* cancel this policy, we will (subject to 'We will be fair in the way we provide this cover' on page 7) refund 90% of the unexpired portion of the premium
- If we cancel this policy, we will refund the unexpired portion of the premium.

If *you* have made a claim and we have paid the full amount under:

- the policy, we will cancel the policy
- an item, we will cancel the item
- an optional benefit, we will cancel the optional benefit.

In all three cases, the cancellation will be from the date of loss.

10.3 Each person insured under this policy is treated separately

This policy will be treated as a separate contract between FMG and each person insured under this policy excluding sole traders, in that no breach of a term or condition of this policy or other misconduct by one person will be imputed to any other person.

Additionally:

- No information held by one person or statements made in, or associated with, the written proposal or renewal declaration form completed by them will be imputed to any other person.
- The written proposal or renewal declaration form is treated as a separate form for each person and any material non-disclosure or misstatement by one person will not be imputed to any other person provided that they are able to establish, to our reasonable satisfaction, that they were not aware of this non-disclosure or misstatement.

This clause will not apply where there is fraudulent misrepresentation or fraudulent non-compliance with the duty of disclosure to us at the time this policy was entered into.

10.4 We will add Goods and Services Tax where applicable

Where we are able to recover GST under the Goods and Services Tax Act 1985:

- all amounts insured exclude GST (unless otherwise shown on the certificate), and
- GST will be added, where applicable, to claim payments.

All excesses include GST.

It is mutually agreed that, to the extent possible, neither FMG or *you* will be adversely affected or advantaged by the operation of GST.

If a party requires a tax invoice or another party's assistance to obtain an input tax credit that invoice or assistance will be provided promptly.

How to interpret this policy

11.1 Words in italics have a specific meaning

Words which appear in italics must be interpreted using their defined meaning stated in the definitions section.

11.2 We use New Zealand currency

All monetary amounts referred to in this policy are expressed and payable in New Zealand dollars. If a judgment, settlement or other amount covered under this policy is stated in a currency other than New Zealand dollars we will pay the New Zealand dollar equivalent of that amount based on the cash rate of exchange for the purchase of New Zealand dollars published on the www.rbnz.govt.nz website for the date that judgment is reached, settlement is agreed to or the other amount becomes due.

11.3 The law of New Zealand governs this policy

The law of New Zealand applies to this policy and the New Zealand courts have exclusive jurisdiction.

11.4 'Acts' include amendments and regulations

Any Acts referred to in this policy include any:

- amendments or statutory regulations made under them, and
- Acts or regulations made in substitution for the original Acts or regulations.

Act means any Act, regulation or other legislative instrument enacted by the Parliament of New Zealand, by-laws or ordinances.

11.5 Headings are for ease of reading

The headings in this document are merely there to make it easier to read. They do not form part of the policy and are not to be used in interpreting it.

11.6 The remainder of this policy is still in effect if part is invalid, void or unenforceable

If part of this policy is found to be invalid, void or unenforceable, the remainder remains in full force and effect.

Definitions

The following definitions apply to your policy.

Please note:

- references to the singular include the plural and vice versa
- the definitions apply to any derivatives of the word used in this policy.

Bodily injury means bodily injury, disease, sickness, emotional distress or other mental, psychiatric, emotional or physical injury, or the death of a person.

Claim means:

- proceedings served on you alleging a breach of professional duty in the conduct of the *professional business*, including a proceeding initiated by or involving a writ, summons, originating or interlocutory application, cross-claim, counterclaim or other legal or arbitral process, or
- a demand alleging a breach of professional duty by *you* in *your* conduct of the *professional business* communicated to you by whatever means.

Confiscation means confiscation, requisition, nationalisation, destruction of, or damage to property by order of Government, a local authority, a court, or any public authority. The definition of confiscation excludes such orders given for the purpose of controlling a peril covered by this policy.

Discovers or **discovered** means *you* become aware of an act, error, omission or event which *you* consider may give rise to a claim under this policy or which may be reasonably expected to give rise to a claim under this policy.

Documents means documents of any nature whether written, printed or capable of being reproduced by another method provided that they are:

- *your* property or have been entrusted to *you*, and
- believed to be in *your* care, custody or control or the care, custody or control of another party *you* have entrusted with them in the ordinary course of the *professional business*.

Documents does not include:

- bearer bonds, coupons, stamps, banknotes, currency notes, cheques and negotiable instruments, or
- computer or electronic data destroyed, damaged or lost due to a manual, electronic or mechanical act, error or omission.

Employee means:

- a person who was, is, or will be, under a contract of employment, service or apprenticeship with the insured stated on the certificate including an individual whose position is terminated during the period of insurance
- a contractor or sub-contractor (whether incorporated or otherwise) engaged to provide professional services to the insured stated on the certificate, provided they earn more than 80 percent of their annual total income from fees received from this insured, and
- a student or volunteer worker under the supervision, control and direction of the insured shown on the certificate and in the ordinary course of the *professional business*.

Excess means the first amount of a claim that *you* must pay, as shown on the certificate.

Independent lawyer means an independent lawyer that *you* and FMG have agreed to and appointed. If it is not possible to reach an agreement, the independent lawyer will be appointed by the President of the New Zealand Law Society.

Intellectual property rights means trademarks, trade secrets, patents, copyright or registered designs, systems or programs.

Legal defence costs means the reasonable and necessary fees, costs and expenses, incurred to defend a *claim* that *you* allegedly breached a duty in the conduct of the *professional business*.

Legal defence costs includes legal counsel's fees and expert fees but does not include *your* wages, salaries or fees.

Nuclear materials means:

- ionising radiation or contamination by radioactivity from:
 - any nuclear fuel
 - any nuclear waste
 - the combustion or fission of nuclear fuel, or
- nuclear weapons material.

Pollutant means a solid, liquid, gaseous or thermal irritant or contaminant.

Professional business means *your* business as shown on the certificate.

Property loss means:

- damage to, or the defect, impairment, destruction or loss of, physical property, including consequential loss or the loss of use of that property, or
- consequential loss relating to, or loss of use of, physical property not damaged as described above.

Terrorism means a particular type of use, threatened use, or preparation for the use, of:

- force or violence towards any person or group(s) of people
- property damage
- conduct that creates a risk to health and safety, or
- interference or disruption with an electronic system.

What makes it terrorism is that these are actions by a person, group or groups (whether acting alone, or on behalf of, or in connection with, any organisation or government):

- designed to influence, coerce or retaliate against, a government or group of people, or
- to bring about change that aligns with the person or group's particular political, religious, ideological, ethnic, economic agenda.

Our definition of 'caused by terrorism' extends to conduct connected with controlling, preventing, suppressing, retaliating against, or responding to such actions.

You and **your** means:

- the company, statutory authority, association, firm or other insured stated on the certificate, a principal, partner or director of that insured, an *employee*, and their predecessor in the *professional business*
- a person who becomes a principal, partner or director of the insured stated on the certificate, or an *employee*, during the period of insurance but only in respect of work they each carry out for, or on behalf of, that insured and in the conduct of the *professional business*, and
- the legal representative, heir, assign or estate of a principal, partner, director or *employee* described above who is deceased.

This includes any former principal, partner or director named on the certificate.

War means conflict, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to an uprising, insurrection, rebellion, revolution, military or usurped power, and extends to activity connected with controlling, preventing or suppressing such conduct.

Notes



Tell us what you think about us and our service

Your feedback helps us to identify opportunities to make our products and services even better. If you have any feedback—good or bad—we would like to hear from you.

If you have a concern about something that has happened, tell us and we will investigate the issue and inform you of the outcome, either by phone, in writing or by visiting you at a convenient time.

Similarly, if you have received exceptional service, we would like to know about it so we can congratulate our team—so please let us know.

How you can contact us



Call us on 0800 366 466



Contact your local FMG manager



FMG Connect - our online service www.fmg.co.nz/connect



Visit our website www.fmg.co.nz



Email us at contact@fmg.co.nz



Write to us PO Box 1943, Palmerston North 4440, New Zealand



Fax us on 0800 366 455



We're easy to contact



Call us on
0800 366 466



FMG Connect - our online service
www.fmg.co.nz/connect



Visit our website
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Email us at
contact@fmg.co.nz