

Important Notices

These following notes are provided to assist you to understand the terms of your insurance and to be aware of your important policy obligations

DUTY OF DISCLOSURE

When you apply for a policy of insurance you have a duty to the insurer to provide complete and accurate material information that you know or ought to know. Material information is any facts that the insurer may rely on to decide whether or not to offer you insurance, and if so, on what terms. This may include providing information that has not been asked for directly in the proposal or declaration form. The duty of disclosure applies at the inception of a policy, renewal of a policy or as soon as you become aware of any material facts. It also applies when you are providing claims information. Failure to comply with the duty of disclosure may result in the insurer reducing the amount they pay in the event of a claim, avoiding a claim, or avoiding a policy from the renewal/inception date.

“CLAIMS MADE” POLICIES

Some types of liability policies (including Professional Indemnity, Directors and Officers Liability, Trustees Liability, Statutory Liability, Employer’s Liability, Internet Liability and Employment Disputes Liability) are issued on a “claims made” basis. This means that where cover applies, it is provided under the policy that is current at the time you become aware of a claim or a circumstance that could give rise to a claim and that is notified to insurers during the period of the policy.

It does not matter when the original cause or event giving rise to the claim occurred, provided it is after the retroactive date stated in the policy.

As soon as you become aware of a claim or a circumstance that may give rise to a claim, it is imperative that you advise your insurer in writing immediately.

If you presently have a “claims made” policy, please consider whether there are any circumstances that should be notified to your present insurer before that policy expires.

NOTIFYING A POTENTIAL CLAIM CIRCUMSTANCE

A circumstance is one which when objectively evaluated, creates the reasonable and appreciable possibility that it will give rise to a loss or claim against you.

At the time when you give notice in writing or at any later relevant time, you must be aware of a circumstance sufficiently specific that you can and do provide details of the names of the potential claimants and potential acts or omissions. Liability must be causally related to the circumstance notified. A notification of circumstances that does not objectively meet the aforementioned criteria may be deemed by insurers as premature and ineffective.

Discuss the “circumstance” with your broker to determine whether you should notify. If there is any doubt, notify.

PAYMENT OF PREMIUM

Premiums are payable on invoice. It is your obligation to pay your premium (s) on time. Your policy will lapse if you do not pay the premium(s) within the time period(s) notified to you by the insurer. Aon reserves the right to receive interest and charge interest, collection costs and legal fees incurred in recovering overdue accounts. Part payment of your invoice will not amount to full and final settlement unless we have agreed to this in writing. Premium funding arrangements may be available through your Aon broker.

AON REMUNERATION

We strive to establish a professional relationship with you that are open and satisfactory to both parties. You must feel that you are receiving quality advice, service and access to resources commensurate with the remuneration paid. The level of remuneration must reflect the future structure of the combined insurance programme. It provides for the considerable knowledge and value that we bring to the table, and the work that comes with the setting up and maintenance of a complex insurance programme.

We may earn brokerage paid by the Insurer out of the premium amount/s or a fee or combination of fee and brokerage. **An administration fee applies to each invoice.** As part of the arrangement Aon has with your Society Aon rebates a portion of the remuneration back to the Society. There is no brokerage payable on any of the taxes or statutory charges that form part of the Total Due amount shown on your tax invoice, (usually referred to as Fire Service Levy, EQC and Goods & Services Tax). These taxes and statutory charges are always shown separately on the tax invoice you receive from us, and are paid to the statutory authorities concerned either directly by Aon or via the Insurer. Any fee amounts will be disclosed to you.

Our Broking services may include:

- Negotiation with insurers for placement and renewal of your insurance programme.
- Confirmation of placement of your insurance programme.
- Processing of premium invoices and payment of premiums, duties and levies in respect of insurance covers placed by Aon New Zealand on your instructions. This includes the allocation of premiums to each division.
- Providing an ongoing review of your risk exposures both insured and self-insured.
- Meetings as required to progress the service programme with updated status reports to review all outstanding issues, claims statistics, broker and insurer performance.
- Provision of regular technical and general newsletters, updating you on changes in legislation, market conditions and other exposures.
- Collation, recording, negotiation and settlement of routine claims.
- Provision of insurance certificates of currency as/when required.
- On-going maintenance of the insurance programme, alterations to cover, policy limits and values.
- Issuing of policy documents from all insurers on all classes of insurance.
- Collation of information for renewal and negotiation with insurers.
- Contract reviews.

The following services or charges are not included in the remuneration outlined above and may subject to separate negotiation and agreement:

- Services from other Aon Divisions i.e. Risk Consulting, Aon Consulting
- Any other service which is not covered under this proposal
- Reasonable reimbursable disbursements such as travel and accommodation

- Premium Instalment Contracts
- Major one-off projects (e.g. construction) or acquisitions.

TERMS OF BUSINESS

Except as may otherwise have been agreed (in writing), you agree that Aon's Terms of Business apply to the provision of services by us. These terms are available at www.aon.co.nz/About-Aon/Terms-of-Business. These terms apply to all new business and renewals, and have been amended to include provision for the Foreign Account Tax Compliance Act, and an amendment to limitation of liability.

Some key terms include:

- Our obligation to perform our service competently, with reasonable care, skill and integrity;
- Your obligation to supply us with all material information and facts in relation to the provision of our services. Relevant information includes all information and facts that may be material to an insurers' assessment of a risk for which you have asked us to arrange insurance cover;
- Our disclosure of remuneration. Aon may receive consideration from insurers, banks and/or finance companies with whom they place insurance and associated services, on your behalf. Minimum service and administration fees may apply;
- Limitation of liability. Among other things, to the extent permitted by law, our aggregate liability in respect of any claim howsoever arising in connection with the terms or the services is limited to NZ \$1 million or such other amount as may be expressly agreed between us in writing. To the extent permitted by law, we are also not to be liable for any consequential, incidental, indirect or special damage or loss of any kind;
- Our obligation to hold your personal information in accordance with the Privacy Act 1993. It will be necessary for us to pass your information on to insurers and other product or service providers which may provide us with additional support in connection with our provision of our services. Unless you instruct us not to do so, we may also contact you in connection with other products or services we feel may be of interest or benefit to you. You have rights of access to and correction of this information subject to the provisions of the Privacy Act 1993.

Foreign Account Tax Compliance Act (FATCA)

If you have US operations, or trade with US domiciled entities, please go to aon.com/FATCA to obtain the appropriate W-8IMY.

MAKING A COMPLAINT

Please contact your Aon client relationship manager or your local Aon office by telephone, email or in writing if you have any complaint in respect to Aon. If your Aon client relationship manager is not able to resolve your complaint, it will be referred to Aon's complaint manager for an independent review in accordance with Aon's internal complaint and dispute resolution procedures. Alternatively, you can contact Aon's complaint manager directly on 09 362 9000 or you can email details of your complaint to us in writing at nzfeedback@aon.co.nz

If your complaint remains unresolved, or if you are dissatisfied with Aon's response to your complaint, you may refer the matter to Financial Services Complaints Limited by emailing info@fscl.org.nz or calling 0800 347257.

MARKET SECURITY

We assess the financial soundness of the proposed insurers and markets we recommend using public information including that produced by recognised rating agencies. However, we will not in any circumstances act as an insurer nor will we guarantee or otherwise warrant the solvency of any insurer or market used for your requirements. As a consequence the decision regarding the suitability of any insurer or markets rests with you. If you have any concerns regarding any insurers chosen for your insurance requirements you must advise us as soon as possible and we will discuss them with you. If requested, we will make available to you factual analysis prepared by the Aon Market Security Department in respect of listed insurance carriers proposed to be used for your requirements

PRIVACY

We are covered by the Privacy Act 1993 and its subsequent amendments, which set out standards for the collection, use, disclosure and handling of personal information. We respect your privacy and are committed to protecting your personal information.

We collect personal information in order to provide our various services. These include insurance broking, claims management, risk management consultancy, underwriting management and reinsurance broking. Other purposes include helping to develop and identify products and services that may interest clients, conduct customer satisfaction surveys, establish and administer alliances and other arrangements with other organisations in relation to the promotion, administration and use of our respective products and services. For further information regarding our services please contact your Aon representative.

We disclose personal information to third parties who are involved in the provision of our services. For example, in arranging and managing your insurance needs we may need to provide information to insurers, reinsurers, other insurance intermediaries, its advisors such as loss adjustors, lawyers and accountants, and other parties involved in the claims handling process. We also may provide it to purchasers of our business and related Aon Group companies.

When you provide us with personal information about other individuals, we rely on you to have made them aware that; you will or may provide their information to us, the purposes we use it for, the types of third parties we disclose it to, and how they can access it. If it is sensitive or health information, we rely on you to have obtained their consent to the above. If you have not done either of these things you must notify us before you provide the relevant information.

If you would like a copy of the Aon Privacy Statement or would like to access your personal information, please contact the Aon Privacy Officer on (09) 362 9000.

Unless you notify us in writing otherwise, by proceeding to deal with us, you confirm on your behalf and/or on behalf of those you represent agreement to the above principles.

UTMOST GOOD FAITH

The duty of Utmost Good Faith is implied in every contract of insurance that you enter into. The duty requires you, the insurer, the broker and any other parties to the insurance contract to act openly and honestly with each other at all times. A breach of the duty of Utmost Good Faith could lead to a policy or a claim being voided by the insurer.

MATERIAL CHANGE OF RISK

Many policies require you to notify the insurer in writing of any material change to the insured risk during the period of insurance. The insurer can then decide whether to cover the new risk.

Some examples of material changes are if you:

- change your profession or occupation
- acquire or merge with another business
- commence any new activities or services.

If you are in any doubt as to whether the insurer should be told about any particular change to the insured risk, please ask us.

CONTINUITY OF COVER

Your “claims made” policy may be subject to a continuity date. The application of the continuity date limits the insurer’s ability to deny indemnity solely on the basis of late notification where the notification should otherwise have been made in a period of insurance subsequent to the continuity date and prior to the actual notification. Any element of prejudice will be taken into account by the insurer.

RETROACTIVE DATE

If your “Claims Made” policy is subject to a retroactive date then the policy only provides cover for claims arising out of acts performed after that date (any claim arising from acts performed prior to the specified retroactive date is excluded from the policy). If however the retroactive date is ‘unlimited’ then no such restriction applies to your policy.

BUSINESS DESCRIPTION

It is important that the Business Description outlined in your proposal for insurance is full and accurate and in respect of claims made and product liability policies, includes historical business activities.

You need to check that this description is repeated in the policy issued by your insurer. Insurers will only indemnify you for claims that arise from your business as described in the policy (subject to the other terms of the policy).

INDEMNITY

Indemnity is in respect of legal liability to pay compensation in response to a third party claim; the circumstances of which are covered under the policy. Costs incurred in the defence or investigation of such claims are also covered as is any award of costs in addition to a damages award.

Examples of damages that are generally uninsurable are exemplary, multiple, punitive, liquidated, aggravated damages and fines and penalties. However, certain New Zealand statutory fines and penalties may be insured under a Statutory Liability policy. Punitive damages arising from personal injury to employees and the public may be insured under an Employers Liability policy and a Public Liability policy.

Costs incurred in judicial reviews or injunctive proceedings are also generally uninsured.

REINSTATEMENT (LIABILITY POLICIES)

Your policy limit of indemnity will be reduced by the amount of any claim under the policy. However, if your policy has a reinstatement provision, the Limit of Indemnity will be reinstated for the amount of any claim paid. That reinstated limit will apply to subsequent unrelated claims not exceeding the aggregate specified in the policy.

EXCESS/DEDUCTIBLE

Insurers will indemnify you subject to the terms of the policy for that part of a claim that exceeds the amount specified as your excess or deductible. If the claim does not exceed the excess or deductible, no indemnity will be available. This means costs incurred in the defence of such a claim will not be insured notwithstanding the sum of the claim and defence costs exceeds the excess or deductible.

EXCESS/DEDUCTIBLE – COSTS INCLUSIVE OR EXCLUSIVE

The excess or deductible may be stated as inclusive or exclusive of costs.

- Costs inclusive – applies to the sum of defence costs and settlements
- Costs exclusive – applies only to settlement (insurers meet the costs of the defence of claims without deduction)

CONTRACTORS, SUB-CONTRACTORS AND AGENTS

The indemnity provided in respect of Contractors, Sub-contractors and Agents under a Professional Indemnity policy is limited solely to liability that devolves onto the insured (the Insured's vicarious liability) arising from the negligent actions of the Contractors, Sub-contractors and Agents whilst they are acting on behalf of the insured (subject to the terms and conditions of the policy). Insurers will expect to exercise their subrogation rights against the Contractors, Sub-contractors and Agents to recover their costs.

RECOVERY RIGHTS

Many policies exclude or limit the insurer's liability if you have entered, or enter, into an agreement that excludes or limits your rights of recovery against third parties whose acts, errors, omissions or other conduct have caused or contributed to your loss or liability. (These are often called "hold harmless" agreements). You may be asked by sub consultants or sub contractors to provide them with an indemnity or waiver of recovery. If you have entered, or consider entering, such an agreement, please let us know, so that we can advise you about how the agreement affects, or will affect, your cover.

SUBROGATION

Insurers are entitled to "stand in your shoes" to pursue other parties for recovery of indemnity and you are required to render all necessary assistance.

The order of payment of recovery is usually:

1. Insurer – for costs of recovery action and indemnity
2. Insured - for any loss beyond the limit of the insurance policy
3. Insured – for excess/deductible

ABNORMAL ACCEPTANCE OF RISK/ CONTRACTUAL LIABILITIES

Where you have entered into a contractual relationship with another party that extends your liability beyond that normally agreed to in the conduct of your business, you will not be indemnified. Nor will you be indemnified for any liability assumed regardless of fault or for any express guarantee or warranty unless such guarantee or warranty is generally an implied term of your business or liability would have attached in the absence of any express guarantee or warranty.

The indemnity provided is for liability implied in law relating to your provision of services. This requires your exercise of reasonable skill and care. What is reasonable can be measured against professional

body and/or standard peer practice. Contractual obligations can extend this implied duty beyond normal accepted risk. Ensure your standard terms and conditions of engagement have been vetted by lawyers and lodged with your insurers. Any deviations that assume additional liability therefore need to be declared to insurers and their agreement sought as to whether they can agree to provide indemnity in relation to the same.

Where you do not have standard terms and conditions of engagement, but are required to deliver your services under a client produced contract where you are expected to accept increased liability and indemnity obligations, you will need to ensure that this is presented to your insurers for acceptance.

RUN-OFF

You will remain at risk for liability arising out of past acts well after you have ceased practice.

Aon is not qualified to provide legal advice and we recommend that where you are faced with the need to arrange run-off insurance that you seek legal advice. Issues that you should ask your lawyer to consider include:

- In contract – as agreed in the contract; usually six years from the breach of contract.
- In negligence – from 1 January 2011 the Limitation Act 2010 provides that the limitation period in relation to money claims is six years **after** the date of the act or omission on which the claim is based. This period can be extended by up to 3 years if a claimant is able to establish late knowledge provisions (s14 of the Act) and is subject to an ultimate long stop of 15 years from the date of the act, error or omission.
- Prior to 31 December 2010, some causes of action are subject to a common law test of “reasonable discoverability” from which a six year period commences within which to bring proceedings subject to an ultimate long stop of 31 December 2015 or 15 years from the date of the act, error or omission.
- Building Act s393 (2) – up to ten years from the date of act or omission.
- Fair Trading Act s43A – up to three years from the date loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered (personal liability also applies)
- Fiduciary liabilities – no time limit.

It is therefore necessary to maintain your insurance on a “run-off” basis beyond the date of cessation of practice. All other things being equal, the annual premium will be discounted at subsequent renewals as the likelihood of a claim reduces over the passage of time. Claims arising from services provided subsequent to the “run-off” date will be excluded.

An organisation may provide insurance to cover outgoing personnel however if not, and you remain in practice, you may upon application to an insurer, be able to arrange insurance in respect of your past liabilities.

INSURED

Insurers will only provide indemnity to the party noted as the Insured in the schedule and that is otherwise defined in the policy.

The “Insured” may not include subsidiary companies or employees in the absence of express notation on the schedule or by extension or endorsement.

The 'Insured' will not include external contractors so if that cover is required you will need to make application for a special extension (e.g. if you are contractually bound to arrange insurance or have agreed to hold that party harmless).

Where multiple insureds are to be covered then you should consider seeking your insurer's agreement to allow the cover to apply severally (preserving rights to cover as between the parties)

TERRITORY AND JURISDICTION

The Territory and Jurisdiction limits are usually described in the schedule of a policy.

The Territorial Limits of a policy refers to the country where the services giving rise to the claim were undertaken.

The Jurisdictional Limits of a policy refers to the law applicable to the country in which the claim is made.

Please note that indemnity under the policy is restricted to the limits as defined in the policy and/or the policy schedule (subject to the terms and conditions of the policy). Claims arising outside of these limits are not covered and you will need to seek your insurer's agreement to provide any wider coverage if required.

LIMIT OF INDEMNITY

The limit of indemnity applicable to your insurance applies to the aggregate of all claims notified during the period of the policy. The limit may be "costs inclusive" or "costs in addition".

A costs inclusive limit of indemnity applies to the sum of the costs of your defence of any claim and damages. Section 9 of the Law Reform Act 1936 creates a charge against the policy limit such that the limit of indemnity cannot be eroded by defence costs such that the claimant does not receive a full indemnity. Therefore it is prudent to either split the limit of indemnity between defence costs and damages or insure defence costs in addition to the limit of indemnity.

A costs in addition limit provides for defence costs to be paid in addition to the limit of indemnity and without erosion of the limit of indemnity applicable to damages. Defence costs may be either for a specified amount or on an "average" basis not exceeding an amount equal to the limit of indemnity. That is, in the event a claim is required to be paid that exceeds your limit of indemnity, insurers will pay defence costs in addition to the limit of indemnity in the same ratio that your limit of indemnity relates to the amount of the claim. See following examples:

- Claim settled up to 100% of the limit of indemnity will result in an additional contribution towards costs of 100%.
- Claim settled for 150% of the limit of indemnity will result in an additional contribution towards costs of 66.67%.
- Claim settled for 200% of the limit of indemnity will result in a contribution towards costs of 50%.

MISSTATEMENT OF PREMIUM

All attempts are made to state the correct amount of premium and statutory charges that apply to your insurance. In the event that we misstate that amount (either because we have made an unintentional error or because a third party has misstated the amount), we reserve the right to correct the amount.

By instructing us to arrange insurance for you, you agree, where permitted by law, that you shall not hold us responsible for any loss that you may suffer as a result of any such misstatement of amount.