

Vero Marine  
Integrated  
Transit  
Liability  
Wording

OFFL0913



**Note: individual policies may not include all the coverage sections  
shown in this sample wording**

# Transport Liability section

## **What this Section Covers**

Subject to the Limits of Liability and Deductibles shown in the Schedule, we will indemnify you for all amounts you become legally liable to pay as direct compensation resulting from physical loss or damage to your customers' cargo, and including physical loss or damage to others' cargo caused by your negligence, whilst in the ordinary course of transit, provided that:

- a) Your customers' cargo is being carried under your Bills of Lading Insured or Contract Conditions Insured, or on terms which apply to such carriage by statute; and
- b) The physical loss or damage is caused by an Accident; and
- c) The Accident occurs:
  - i) In connection with the Business Activities Insured; and
  - ii) Within the Territorial Transit Area; and
  - iii) During the Period of Insurance.

If it cannot be proved beyond reasonable doubt whether or not the Accident occurred during the Period of Insurance, then subject to the terms and conditions of the Policy we may pay a proportion of the claim. Such an amount shall be calculated by taking the number of days falling within the Period of Insurance during which the loss might reasonably have occurred divided by the total number of days during which the loss might reasonably have occurred. This figure is then multiplied by the net claim which would have been recoverable were the loss fully insured hereunder.

***Except as specifically modified in this Section, all the terms, conditions, limits and exclusions in this Policy apply to the coverage provided by this Section.***

## **Additional Claims Expense Applicable to this Section - General Average and Salvage**

We will provide security for General Average, Salvage, and Special Charges due from cargo interests under your Bill of Lading. You must not release cargo to consignees without ensuring that they have provided adequate substitute security to the owners, salvors or other parties demanding such security. If you release cargo without confirming adequate substitute security has been provided, you must provide to us a cash deposit in the full amount of that security within ten (10) days.

## **Additional Exclusions Applicable to this Section**

When coverage is provided by this Section the following additional exclusions apply:

- a) We will not cover, pay or defend any claim for or in relation to liability assumed by you under a contract of carriage on terms "at declared value risk", or "on declared terms" as per section 8(1)(c) and 8(1)(d) of the Carriage of Goods Act 1979 unless you have taken out the appropriate insurance under Part 3 of this section to cover the carriage.
- b) We will not cover, pay or defend any claim for physical loss or damage to your customer's cargo, or other's cargo, when it is not in the ordinary course of transit.
- c) We will not cover, pay or defend any claim for physical loss or damage to your customer's cargo, or other's cargo, during any period when the ordinary course of transit of the cargo has been interrupted or suspended.

## **Additional Conditions Applicable to this Section, for Transport of Goods within NZ**

When coverage is provided by this Section for Transport of Goods within New Zealand, the following additional conditions apply:

- a) Section 14(d) of the Carriage of Goods Act, which states that a carrier shall not be liable for loss of or damage to goods in circumstances where such loss or damage results directly, and without fault on the actual carrier's part, from the act(s) of saving or attempting to save life or property in peril, shall not be applicable to this Policy.
- b) **Debris Removal Clause** - Where liability for loss or damage to the goods has been admitted under this Policy, all removal of debris costs and reasonable consequent cleanup costs as properly and reasonably incurred by you, relating solely to costs concerning the goods, shall be recoverable up to a maximum liability of NZD 5,000 per Accident. It is a condition of this Debris Removal and cleanup expenses extension that any material damage or liability insurance policy must first be exhausted before this debris removal and cleanup cover under this Policy applies. (In the event that any other insurance policy has a similar exhaustion condition, then this Policy shall contribute equally).

- c) **Commencement and Termination of Risk** - Unless otherwise expressly stated in a Declared Terms contract, this insurance attaches from the time the goods entrusted to you are delivered into the custody of the first actual carrier ("carrier" as defined in section 2 of the Carriage of Goods Act), up to the time such as the goods entrusted to you have been delivered by the final carrier (if more than one carrier is involved with the carriage). This insurance does not extend to cover goods after delivery, whether or not a receipt for delivery has been obtained by the carrier.

**Additional Conditions Applicable to this Section, for Transport of Goods within NZ (Limited Carriers Risk Contracts) only**

When coverage is provided by this Section, for Transport of Goods within New Zealand (Limited Carriers Risk Contracts) only, the following additional condition applies:

**Deductible**

This insurance is subject to the following deductibles:

- 1 NZD x,xxx each Accident, when the goods being carried are on board or attached to the transporting vehicle and are damaged as a result of:
  - a) fire, other than fire as a result of malicious damage; or
  - b) the transporting vehicle being involved in an accident or collision
    - i) where the transporting vehicle's driver is established as being "at fault"; or
    - ii) not involving any other vehicle; or
    - iii) where the "at fault" vehicle or party cannot be identified.
- 2 NZD x,xxx each Accident from any other cause.

## Errors and Omissions section

### **What this Section Covers**

Subject to the Limit of Liability, Total Annual Policy Limit and Deductible shown in the Schedule, we will indemnify you for all amounts you become legally liable to pay as direct compensation resulting from your customers' financial loss as a result of your negligence provided that:

- a) The financial loss is caused by an act, error or omission that is the direct and proximate cause of the loss complained of; and
- b) The act, error or omission incurring the financial loss was whilst conducting your Business Activities Insured, within the Territorial Transit Area; and
- c) The financial loss is notified to you either verbally or in writing during the Period of Insurance and advice is passed on to the Company within 7 days.

***Except as specifically modified in this Section, all the terms, conditions, limits and exclusions in this Policy apply to the coverage provided by this Section.***

### **Additional Exclusions Applicable to this Section**

When coverage is provided by this Section the following additional exclusion applies:

We will not cover, pay or defend any claim directly or indirectly based upon, contributable to, or in consequence of any duty or obligation assumed by you which is not assumed in the normal course of your Business Activities Insured, your Contract Conditions Insured or your Bills of Lading Insured as per those outlined in any part of the Transport Liability Section as applicable.

# Bailee Liability section

## **What this Section Covers**

Subject to the Limits of Liability and Deductible shown in the Schedule, we will indemnify you for all amounts you become legally liable to pay as direct compensation resulting from physical loss of or damage to the property of others (including cargo, trailers, containers, and similar transportation equipment not owned, hired, rented or leased by you), provided that:

- a) Such property is:
  - i) In your care, custody and/or control; and
  - ii) Subject to your Contract Conditions Insured noted in the Schedule above; and
- b) The physical loss or damage is caused by an Accident; and
- c) The Accident occurs:
  - i) In connection with the Business Activities Insured; and
  - ii) Within or at the Location Addresses specified in the Schedule above which is (are) occupied by you as a warehouse; and
  - iii) During the Period of Insurance.

***Except as specifically modified in this Section, all the terms, conditions, limits and exclusions in this Policy apply to the coverage provided by this Section.***

## **Subcontractors**

Such property of others in the care, custody and/or control of your subcontractors and/or agents will not be considered to be in your care, custody or control and is not covered by this Section.

## **Policy General Exclusion 19**

When coverage is provided by this Section, item b) of General Exclusion 19 is amended such that the exclusion reads:

### **19. Loss of or Damage to Your Property or the Property of Others**

We will not cover, pay or defend any claim for, resulting from or alleging:

- a) Loss or damage to your owned, occupied, leased or rented property regardless of cause except as may be otherwise provided by the Policy.
- b) Physical loss or damage to the property of others unless in your care, custody, and/or control under your Contract Conditions Insured within your Business Activities Insured at the Location Address(es).

## **Policy General Exclusion 27**

When coverage is provided by this Section, General Exclusion 27 will not apply to claims for loss or damage to transportation equipment in your care, custody and/or control that is not owned, rented or leased by you.

## **Additional Exclusions Applicable to this Section**

When coverage is provided by this Section, the following additional exclusions apply:

- a) We will not cover, pay or defend any claim for physical loss or damage to the property of others which is being carried under a contract of carriage entered into by you as carrier or on terms which apply by statute to such carriage.
- b) We will not cover, pay or defend any claim for loss or damage to your or your subcontractors' and/or agents' owned, occupied, leased, or rented property regardless of cause.
- c) We will not cover, pay or defend any claim for loss or damage caused by criminal, fraudulent, dishonest, or illegal acts committed by:
  - (i) you, and/or
  - (ii) others who have an interest in the property, and/or
  - (iii) others to whom you entrust the property, and/or
  - (iv) your partners, officers, directors, trustees, or joint ventures, and/or
  - (v) the employees or agents of (i) to (iv) above, whether or not they are at work.

**Additional Condition Applicable to this Section**

When coverage is provided by this Section, the following condition is added:

The Limit of Liability provided by this Section is the maximum Limit of Liability payable under the Policy and may not be added onto the Limit of Liability of any other Section or Sections provided in this Policy.

# Packing Liability section

## **What this Section Covers**

Subject to the Limit of Liability and Deductible shown in the Schedule, we will indemnify you for all amounts you become legally liable to pay as direct compensation resulting from physical loss or damage to your customers' cargo, and including physical loss or damage to others' cargo caused by your negligence, damaged during transit or reshipment as a result of:

- a) Improper or insufficient packing or crating, including but not limited to improper disassembly of cargo for packing or crating purposes; or
- b) Improper or insufficient packing, loading, consolidating, stowing, blocking, or bracing into a container, trailer, or similar transportation equipment; or
- c) Improper selection of the wrapping, cushioning, packing or other means utilised inside a crate, box, or other container selected; or
- d) Improper selection, design, and/or construction of the crate, box, or other container;

Provided that the above activity:

- e) Is performed by you or your subcontractors and/or agents; and
- f) Is subject to your Contract Conditions Insured as noted in the Schedule above; and
- g) Occurs:
  - i) In connection with the Business Activities Insured; and
  - ii) Within Territorial Limits Insured; and
  - iii) During the Period of Insurance.

***Except as specifically modified in this Section, all the terms, conditions, limits and exclusions in this Policy apply to the coverage provided by this Section.***

## **Policy General Exclusion 19**

When coverage is provided by this Section, item b) of General Exclusion 19 is amended such that the exclusion reads:

### **19. Loss of or Damage to Your Property or the Property of Others**

We will not cover, pay or defend any claim for, resulting from or alleging:

- a) Loss or damage to your owned, occupied, leased or rented property regardless of cause except as may be otherwise provided by the Policy;
- b) Physical loss or damage to the property of others unless caused as a direct result of one of the activities listed in the Packing Liability Section – What This Section Covers.

## **Additional Condition Applicable to this Section**

When coverage is provided by this Section, the following condition is added:

The Limit of Liability provided by this Section is the maximum Limit of Liability payable under the Policy and may not be added onto the Limit of Liability of any other Section or Sections provided in this Policy.

# Customs Liability section

## **What this Section Covers**

Subject to the Limits of Liability, Total Annual Policy Limit and Deductible shown in the Schedule, we will indemnify you for all amounts you become legally liable to pay in fines, penalties and direct compensation for confiscation of your customers' property lawfully imposed by an Authority resulting only from your negligent and unintentional breach of import or export legislation, provided that:

- a) The Customs Broking service is subject to your Contract Conditions Insured as noted in the Schedule above; and
- b) The breach occurs:
  - i) In connection with the Business Activities Insured; and
  - ii) Within Territorial Limits Insured; and
  - iii) During the Period of Insurance.

Such fines and penalties are limited to additional customs duty, sales tax, government service tax, value added tax or other similar monetary charges that would not otherwise have been due but for your negligent and unintentional breach of import or export legislation. Also included are fines for re-export of your customers' cargo where an Authority lawfully requires such action.

***Except as specifically modified in this Section, all the terms, conditions, limits and exclusions in this Policy apply to the coverage provided by this Section.***

## **Definition**

For the purposes of this Section, an Authority is defined as:

- a) Any central or local government; and/or
- b) Any agency of such government; and
- c) Any body or person empowered to make regulations or issue directions in relation to:
  - (i) The administration of any seaport, airport or railway
  - (ii) The import, export or transport of any cargo
  - (iii) Immigration
  - (iv) The imposition of any tax or duty
  - (v) Security or anti-terrorism.

## **Policy General Exclusion 26**

When coverage is provided by this Section, General Exclusion 26 is amended such that the exclusion reads:

### **26. Taxes, Fines, Penalties, and Liquidated Damages**

We will not cover, pay or defend any claim for, resulting from or alleging fines, penalties, liquidated damages or taxes assessed directly against you by an Authority for alleged or proven violation of any law or regulation.

This exclusion does not apply to claims which would otherwise be recoverable under the Customs Liability Section – What This Section Covers.

## **Additional Condition Applicable to this Section**

When coverage is provided by this Section, the following condition is added:

The Limit of Liability provided by this Section is the maximum Limit of Liability payable under the Policy and may not be added onto the Limit of Liability of any other Section or Sections provided in this Policy.



# General Conditions

The following General Conditions apply to the whole Policy

## **1. Application of Deductibles**

You are responsible up to the amount of the applicable Deductible for each Accident as shown in the Schedule. If a claim involves more than one of the insured Sections, then the highest of the applicable Deductibles only will apply. If more than one claim results from an Accident, the applicable Deductible will apply only once.

We will pay claims to which this Policy responds over the applicable Deductible, up to the Limit of Liability and/or the Total Annual Policy Limit (if applicable) of the relevant Section. We may elect to pay all or part of the applicable Deductible to settle a claim with a third Party. If we do, you agree to repay us such Deductible within thirty (30) days of notification to you of the settlement. If you do not repay us, we may cancel this Policy according to General Condition 3 - *Cancellation*, and we may seek the recovery of that Deductible from you together with all costs and solicitor's fees we incur in connection with such recovery.

Furthermore, in respect of the defence of any proceeding, if you fail to pay the Deductible within (30) days of notification to you we have no duty to defend you, nor will we pay any monies of any kind on your behalf in connection with a claim to which this Policy responds.

The Deductibles apply to claims for loss, damages, defence fees (for solicitors we appoint), other costs and expenses, or all combined. We will not be liable for any claim for loss, damages, defence expenses, other costs and expenses, or all combined, unless the amount of the claim exceeds the applicable Deductible amount shown in the Schedule.

## **2. Assignment and Transfer**

No one covered under this Policy can assign or transfer any interest in it without our written consent.

## **3. Cancellation**

You may cancel this Policy at any time by giving us thirty (30) days written notice and we will refund to you the amount of unearned premium calculated at our usual short-term rates. This written notice must be received by us before the effective date of cancellation.

We may cancel this Policy at any time by giving you written notice if you fail to comply with any provision of this Policy, including payment of premium, or where you are otherwise in breach of any of the terms of this Policy. We may also cancel the Policy for any other reason giving thirty (30) days notice to you in writing. The mailing of such notice by registered mail to your last known address, or by our normal, established method(s) of communication, is sufficient proof of notice of cancellation. After cancellation by us we will refund to you the amount of unearned premium calculated on a pro rata basis.

Even if the Policy is cancelled, you shall furnish us with all particulars we require to be able to adjust the premium. If you do not provide the relevant details, we will not be required to make any refund.

We will make the premium adjustment with you as soon as practicable after cancellation. However, this premium adjustment is not a condition precedent to cancellation.

In any event, no refund will be allowed if the total cost of claims exceeds 65% of the applicable premium.

## **4. Changes or Amendments to the Policy**

You must notify us immediately of any material change to your statements in the proposal/application, whether these changes occur either before or after this Policy becomes effective. Such changes include, but are not limited to, the names of protected persons, the locations where you operate, new business operations, any change in your business activities.

The premium shall thereupon be adjusted for the unexpired period, the difference paid by or allowed to you as the case may be, at the discretion of the underwriters.

This Policy may only be changed or amended by written endorsement. The endorsement form must be signed by one of our authorised representatives and becomes part of this Policy.

Nothing else will change this Policy, or waive any of its terms, conditions, limits or exclusions or prevent us from asserting any of our rights under it.

## **5. Concealment and Fraud**

We will not provide coverage before or after any claim or loss if you or any protected person(s):

- a) conceal or misrepresent, intentionally or unintentionally, any material facts or circumstances; or
- b) make false statements or engage in fraudulent conduct relating to this insurance and/or the application.

## **6. Contract Conditions**

It is a condition precedent to our liability that all Business Activities Insured under this Policy are performed under your Contract Conditions Insured and/or your Bill of Lading Insured, where specifically requested by us, which:

- a) are noted in the Schedule; and
- b) have been seen and approved by us; and
- c) are attached to and form part of this Policy; and
- d) are being used whilst you are conducting your Business Activities Insured (business as stated in Schedule).

### **You must not:**

- **vary any of the Contract Conditions Insured or Bills of Lading Insured; nor**
  - **accept any special declaration of value; nor**
  - **accept any declaration of special interest in delivery;**
- without our prior written consent.**

## **7. Governing Law**

This Policy is to be interpreted in accordance with the laws of New Zealand.

## **8. Indemnity**

We will indemnify you for your legal liability arising out of lawful shipments/transactions within the Territorial Transit Area or Location Addresses arising out of your Business Activities Insured listed in the Schedule as being insured, during the Period of Insurance.

This indemnity is subject to the terms, conditions, limits and exclusions contained within your Policy.

## **9. Mediation**

Neither you nor us shall commence any Court proceedings relating to any dispute arising out of or relating to this Policy (including any dispute as to the validity, breach, or cancellation of this Policy) unless either you or us have complied with the following mediation provisions.

We both agree to mediate any such dispute in terms of the LEADR New Zealand Inc Standard Mediation Agreement.

The mediation shall be conducted by a mediator agreed by the parties, at a fee agreed between ourselves and the mediator. Failing agreement between us, the mediator shall be selected, and the mediator's fee shall be determined, by the Chair for the time being of LEADR New Zealand Inc.

In the event one party fails to take part in mediation or the dispute is not settled in mediation then the dispute will be determined in Court. The parties agree that this Policy is subject to the exclusive jurisdiction of the Courts of New Zealand and the parties agree to submit to the jurisdiction of the Courts of New Zealand in relation to any dispute arising under this Policy.

## **10. Other Insurances**

If other valid and collectible insurance is available to you for a claim we may cover, our obligations under this Policy are limited as follows:

- a) If the other insurance allows contribution by equal shares, we will follow this method as well. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or until none of the amount of damages remains, whichever comes first.
- b) If the other insurance does not allow contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

If either you or we believe that other insurance could apply to a submitted claim, you must immediately do the following:

- a) provide us with copies of the policies and applications;
- b) immediately submit claims to these insurance and/or surety bond companies; and
- c) provide us with copies of those claims and all correspondence.

## **11. Our Right to Inspect**

You agree to let us inspect your business records and business operation during normal business hours while this Policy is in effect. However, we are not required to make inspections, nor will we guarantee that your property or operations are safe, or that they conform to any laws, rules, or regulations.

You also agree to allow us to examine your business records that relate to this insurance at any time up to three (3) years after this Policy ends or three (3) years after the last claim is reported, whichever is later.

## **12. Parties Insured by this Policy**

Where the "Insured" named in the Schedule comprises more than one Party, all such parties shall be treated as one Party or legal entity so that there will be only two parties to the contract of insurance namely Vero Marine Insurance, an operating division of Vero Insurance NZ Ltd, and the parties named in the Schedule being jointly insured.

## **13. Policy Premium**

It is a condition precedent to any liability under this Policy that you pay the deposit premium within thirty (30) days of the commencement of the Policy, or its renewal, or the effective date of any endorsement, or within any other period as may be agreed by us.

You shall declare to us at the commencement of each Period of Insurance the estimated Gross Receipts for such period and shall pay the deposit premium as agreed.

The deposit premium shall be adjustable at the rate and in the manner agreed at the commencement of the Period of Insurance subject to any minimum premium provisions that may apply.

At the end of the Period of Insurance you shall declare to us within sixty (60) days the actual Gross Receipts for the period so that the earned premium may be calculated and any additional premium paid within thirty (30) days of our advice.

## **14. Policy Statements and Representations**

When you accept this Policy, you agree that:

- a) This Policy is issued in reliance upon the truth of the statements and representations in your application/proposal; and
- b) The statements and representations are yours.

## **15. Release of Cargo Without Production of Bill of Lading**

The maximum amount we will pay for any claim where the direct or indirect cause of the loss is the inadvertent failure by you and/or your employee and/or your agent to obtain the appropriate Bill of Lading or other similar documentation prior to releasing the cargo is NZD50,000 or the applicable Limit of Liability, whichever is less.

We will not pay claims where the direct or indirect cause of the loss is the deliberate failure by you and/or your employee and/or your agent to obtain the appropriate Bill of Lading or other similar documentation prior to releasing the cargo.

## **16. Subcontractors**

You must not entrust cargo and/or transportation equipment to any subcontractor (other than a subcontractor acting in the capacity of a shipping line, airline, road carrier, port or railway operator) unless prior to acceptance they have agreed in writing to:

- a) accept no less liability than you have; or
- b) fully indemnify you for all loss and damage.

We will not pay claims to the extent that your liability is incurred or increased or our rights of recovery have been reduced by your failure to obtain from any subcontractor a bill of lading or other contract of carriage which enumerates the packages or other units of cargo and/or transportation equipment in exactly the same manner as is shown on your bill of lading or other contract of carriage.

The benefit of this insurance shall in no circumstances whatsoever pass to any subcontractors or actual carriers or the Insurers of subcontractors or actual carriers.

## **17. Subrogation**

If we have accepted liability for a claim under this Policy, we are entitled to become subrogated to your rights of recovery or indemnity from any other person or entity.

We have the sole right and option to act in your name and on your behalf to negotiate, defend or settle any claim and to make over for its own benefit any legal right to recovery you might have, whether before or after you have been indemnified by us.

Where we recover from other parties a sum more than the amount of its loss (including administrative, survey and legal costs), then the order in which the sum recovered is to be applied shall be as follows

- a) First - in meeting our loss;
- b) Second - in compensating us for interest foregone in respect our loss for the period commencing from the date of your claim/s to the date of receipt of moneys recovered from other parties calculated at the current market "on call" rate and compounded 6 monthly;
- c) Third - in meeting your uninsured losses (if any); and
- d) Fourth - for our benefit.

## **18. Theft Attractive Goods**

The maximum amount we will pay for any claim for theft of Theft Attractive Goods (*see Definitions*) is NZD250,000 or the applicable limit of liability, whichever is less.

This event limit will only apply if you or any employee are aware or should reasonably have been aware that Theft Attractive Goods were/are being carried and/or handled and/or stored.

# General Exclusions

The following General Exclusions apply to the whole Policy.

## **1. Actions from Related Companies/Directors and Officers**

We will not cover claims made by:

- (a) one protected person named in this Policy against another protected person named in this Policy; or
- (b) any business enterprise which controls, or is controlled by, any protected person through 10% or more of voting power or by contract or common management; or
- (c) any business enterprise which is part of a group of companies, one of which is the protected person, having common ultimate ownership.

## **2. Asbestos**

We will not cover, pay or defend any claim which is directly or indirectly caused by or attributable to asbestos.

## **3. Chemical, Biological, Bio-Chemical, Electromagnetic Weapons and Cyber Attack**

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.**

We will not cover, pay or defend any claim which is attributable to loss, damage, liability or expense directly or indirectly caused by or contributed to, by or arising from:

- a) any chemical, biological, bio-chemical or electromagnetic weapon; or
- b) the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.

## **4. Consequential or other Similar Indirect Loss**

We will not cover, pay or defend any claim for, resulting from or alleging loss of market, loss of profits or any consequential loss of any nature whatsoever.

## **5. Delay and Wrongful Delivery**

We will not cover, pay or defend any claim for, resulting from or alleging delay or wrongful delivery unless such delay or wrongful delivery was fortuitous.

## **6. Earthquake**

We will not cover, pay or defend any claim which is directly or indirectly caused by or attributable to earthquake.

## **7. Electrical or Mechanical Derangement**

We will not cover, pay or defend any claim caused by, resulting from or alleging electrical or mechanical derangement unless caused by an external force which is evident from marks etc. on packaging or other evidence.

## **8. Electronic Data**

We will not cover any claim, for loss, damage cost and/or expense directly or indirectly related to

- a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data; or
  - b) error in creating, amending, entering, deleting or using Electronic Data where that creation, amendment, entry, deletion or use is program code-generated or automatically but erroneously calculated using correct input data; or
  - c) total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;
- from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

For the purposes of this clause Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

## **9. Excluded Property**

We will not cover, pay or defend any claim for, resulting from, or alleging damage to or loss of any of the following:

- a) Accounts
- b) Bills
- c) Evidence of debt
- d) Computer records
- e) Bullion; gold, silver (coined or uncoined); banknotes, cash, coins, cheques, currency notes, bank cheques and the like
- f) Credit or charge cards
- g) Deeds, manuscripts
- h) Postal and/or revenue stamps
- i) Securities and/or documents and the like of any kind
- j) Bonds or other negotiable instruments or documents of any kind whatsoever

Furthermore, unless noted in the Goods Specifically Agreed section of the Policy Schedule, we will not cover, pay or defend any claim for, resulting from or alleging damage to or loss of any of the following:

- k) Living animals but not limited to livestock (applicable to International transits only)
- l) Household goods & personal effects (applicable to transits within New Zealand only)
- m) Office removals (applicable to transits within New Zealand only)
- n) Perishable goods (applicable to transits within New Zealand only)
- o) Dangerous Goods as per Appendix A of the NZ Standard 5433:1999 (Land Transport Rule: Dangerous Goods 1999) or subsequent amendments (applicable to transits within New Zealand only)

## **10. Fees, Charges, Tariffs or Debts**

We will not cover, pay or defend any claim for, resulting from or alleging any disputes involving you or your parent, sister, and/or subsidiary company's fees, charges, tariffs, or the return of same. This includes, but is not limited to any claims arising from you or your parent, sister, and/or subsidiary company's holding, refusing, or delaying the release or delivery of a shipment or documents, transportation equipment, money, or of any other property because of any dispute involving your fees, tariffs, or the return of same, or your non-payment or late payment of your debts.

## **11. Fiduciary Funds**

We will not cover, pay or defend any claim for, resulting from or alleging or brought about or contributed to by your inability or intentional failure or the inability or failure of your agent(s) or representative(s) to pay or collect monies or arising from the administration of funds held in a fiduciary capacity by you or your agent(s) or representative(s). This includes, but is not limited to, a situation where you or your agent(s) or representative(s) collect duty and/or freight monies and are unable to pay customs, the freight carrier, or any other party.

## **12. Hazardous Materials, Pollution and Contamination**

We will not cover, pay or defend any claim for, resulting from or alleging environmental damage, pollution, or contamination of any kind whatsoever and howsoever caused, including but not limited to claims arising out of accidental, sudden or gradual, foreseeable or unforeseeable, intentional or unintentional occurrences.

We will not cover claims arising out of the actual, alleged, or threatened discharge, disposal, release, or escape of pollutants in any stage of storage, handling, or transportation, whether accidental, sudden or gradual, foreseeable or unforeseeable, intentional or unintentional occurrences.

We also will not cover claims arising from any error or omission involving the documentation of all or part of a shipment of hazardous, dangerous, poisonous, infectious, nuclear, or radioactive cargo. We also will not cover claims arising from the failure to provide or make available in any way "emergency response information" or similar emergency procedures, with regard to these cargoes at any stage of transit, storage or handling.

We will not cover any claims arising from failure to properly label, mark or designate any shipment or any part thereof where shipment involves hazardous, dangerous, poisonous, radioactive or nuclear materials, goods, or commodities. We will not cover any claims arising out of the failure to follow or advise of any applicable governmental regulations or procedures regarding any activity involving such materials, goods, or commodities. This Policy will not cover any loss, expense, fine, or penalty arising out of any governmental action, requirement or request that you test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any of the things excluded from coverage.

### **13. Hold Harmless**

We will not cover claims arising out of your agreement to hold harmless, indemnify, or contribute to the actual or potential liability of another.

### **14. Inherent Vice and Deterioration**

We will not cover, pay or defend any claim for, resulting from or caused by inherent vice, corrosion, decay, fungus, mildew, mould, rot, rust, or any quality, fault or weakness in the property that caused it to damage or destroy itself.

### **15. Injury to Persons**

We will not cover, pay or defend any claim for injury to persons including but not limited to claims for, resulting from or alleging:

- a) Bodily injury
- b) Sickness
- c) Physical condition
- d) Mental anguish
- e) Emotional distress
- f) Disease
- g) Death of any person.

### **16. Insolvency of Any Company**

We will not cover, pay or defend any claim for, resulting from or alleging consequential or other similar indirect losses following the liquidation, insolvency or placing into receivership of any company.

### **17. Insurance Advice and/or Arrangements**

We will not cover, pay or defend any claim for, resulting from, alleging or concerning the provision of any type of insurance advice or insurance arrangements.

This includes, but is not limited to, your failure to arrange insurance on behalf of a third party when requested or contracted to do so.

### **18. Labour Disputes, Riots, Civil Commotion and Terrorism**

We will not cover, pay or defend any claim caused by, resulting from or alleging:

- a) labour disputes, strikers, locked-out workmen, or persons taking part in labour disturbances, riots, or civil commotions; or
- b) a terrorist or any person acting from a political or religious motive.

### **19. Loss of or Damage to Your Property or the Property of Others**

We will not cover, pay or defend any claim for, resulting from or alleging:

- a) Loss of or damage to your owned, occupied, leased or rented property regardless of cause except as may be otherwise provided by the Policy.
- b) Physical loss of or damage to the property of others unless in your care, custody and/or control during the normal course of sea, air, rail or road transport under your Contract Conditions Insured or Bills of Lading Insured.

### **20. Mysterious Disappearance**

We will not cover, pay or defend any claim for, resulting from or alleging mysterious disappearance or unexplained loss or shortage upon taking the inventory, regardless of when or how discovered.

## **21. Nuclear / Atomic / Radioactive**

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.**

We will not cover, pay or defend any claim which is attributable to loss, damage, liability or expense directly or indirectly caused by or contributed to, by or arising from:

- a) Ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or
- b) The radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- c) Any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- d) The radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.

## **22. Performance Contracts**

We will not cover, pay or defend any claim for, resulting from or alleging your having a deadline or performance contract (oral or written) or policy and your failure to perform on time.

## **23. Personal Injury and Infringement of Rights**

We will not cover, pay or defend any claim for personal injury and/or infringement of rights including but not limited to claims for, resulting from or alleging:

- a) False arrest, imprisonment or detention of goods and/or person;
- b) Libel, slander or defamation of character;
- c) Discrimination and/or harassment;
- d) Trespass, wrongful entry upon premises, eviction, or invasion of any right of privacy;
- e) Malicious prosecution;
- f) Advertising offences, infringement of copyright, title, slogan, patent, trade name, service mark, service number, or trademark;
- g) Plagiarism, piracy or misappropriation of an idea or intellectual property;
- h) Unfair competition, restraint of trade, including but not limited to, disparagement of goods, or services of another;
- i) Boycotts and/or restrictive trade agreements.

## **24. Property Under Process**

We will not cover, pay or defend any claim for, resulting from or alleging damage to property which may be sustained whilst the same is in use and/or being worked upon and directly resulting therefrom.

## **25. Punitive and/or Exemplary Damages**

We will not cover, pay or defend any claim for, resulting from or alleging punitive and/or exemplary damages of any kind whatsoever or howsoever arising, including but not limited to solicitor's fees and/or other costs awarded against you.

We will only provide defence against such damages if we are defending proceedings for relief or which seeks compensation for loss otherwise covered by this Policy in addition to punitive and/or exemplary damages. We will not pay any such punitive and/or exemplary damages award.

## **26. Sanction Limitation and Exclusion Clause - 11/08/2010**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

## **27. Taxes, Fines, Penalties and Liquidated Damages**

We will not cover, pay or defend any claim for, resulting from or alleging fines, penalties, liquidated damages or taxes assessed directly against you by the government of any country or any of its administrative and/or regulatory agencies for alleged or proven violation of any law or regulation.



This exclusion does not apply to claims brought against you for customs duty, sales tax, value added tax or similar fiscal charges by an importer/exporter for which the importer/exporter holds you responsible for an otherwise covered activity.

### **28. Transportation Equipment**

We will not cover, pay or defend any claim for, resulting from or alleging the chartering, ownership, lease, management, maintenance, operation, or use of any:

- a) Watercraft, motor vehicles, aircraft or any kind of conveyance;
- b) Containers, drums, tanks, equipment or device used to transport, hold or contain any goods or commodities.

### **29. Unfair, Misleading or Deceptive Trade Practices**

We will not cover, pay or defend any claim for, resulting from or alleging unfair, misleading or deceptive trade practices or for unfair, misleading or deceptive claims practices whether under the law of any state, province, country, or under international laws, custom or usage. We also will not pay any statutory, court-ordered, or governmental fine or penalty imposed. We will only provide defence against such claims if we are defending a proceeding for relief or for compensation for loss otherwise covered by this Policy.

### **30. Unsafe Motor Vehicle**

We will not cover, pay or defend any claim for, resulting from or alleging damage or loss whilst any motor vehicle carrying the goods or operated by you is being driven in an unsafe condition which causes or contributes to the occurrence, which you or any authorised driver is aware of, or should have been aware of, by the exercise of reasonable diligence.

### **31. Voluntary Parting with Title or Possession**

We will not cover, pay or defend any claim for, resulting from or caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretence.

### **32. War and Seizure**

We will not cover, pay or defend any claim caused by, resulting from or alleging:

- a) War, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile acts by or against a belligerent power; or
- b) Capture, seizure, arrest, restraint, detainment (piracy excepted), civil arrest, attachment, or confiscation, and the consequences thereof or any attempt thereat; or
- c) Derelict mines, torpedoes, bombs or other derelict weapons of war.

### **33. Wrongful, Wilful, Knowing and/or Intentional Conduct**

We will not cover, pay or defend any claim for, resulting from or alleging any wrongful, wilful, knowing and/or intentional conduct or omission by you or committed by or at the direction of anyone for whom you are legally responsible. Wrongful conduct includes but is not limited to: dishonest, criminal, intentional, deliberate, fraudulent, or knowingly wrongful or malicious acts or omissions, breach of contract, gross negligence, or conversion.

We will not cover claims resulting from the wrongful, wilful, knowing and/or intentional violation of any law, ordinance, statute, and/or regulation.

# Claims Conditions

The following Claims Conditions apply to the whole Policy. It is a condition precedent to liability that the following conditions are strictly complied with.

## **1. What you MUST do if you know or believe you have a Loss**

Upon the discovery of any circumstance which may give rise to a loss under this Policy (irrespective of your view as to the validity of the claim and even if no formal claim has been made against you) you must:

- a) Immediately notify us of any Accident, incident, or occurrence that might reasonably give rise to a claim.
- b) Immediately upon receipt send us details of every demand, letter, claim, writ, summons and/or other process written or oral, made against you.
- c) Immediately give notice to the police in respect of loss or damage caused by malicious persons or thieves.
- d) Provide to us in writing within ten working days of the discovery a detailed statement of claim including:
  - (i) The time and place of the loss or damage
  - (ii) The person or persons involved
  - (iii) What happened or did not happen
  - (iv) What claim has or might be made against you
  - (v) The amount of damages that may result
  - (vi) The names and addresses of the possible claimants
  - (vii) Copies of all documents relating to the transaction, including those instructions received prior to the accident, incident, or occurrence and your contract conditions and/or bill of lading used with the transaction.

You must also send us copies of all your internal written communications (or a log of all your internal oral communications) which occurred:

- a) in the handling of the underlying transaction(s) which gave rise to the claim; and
- b) in your handling of the claim once demand was made upon you or once you knew the Accident had occurred.

You must immediately notify all other parties who may be involved in this loss, as well as provide timely notice where applicable.

For the purpose of this condition "timely" means within seven (7) working days or, where applicable, the time limitation under any relevant contract, statute or international convention whichever is sooner.

You and your representatives must co-operate and assist us and our representatives in the investigation, negotiation, or litigation of any claim and/or proceeding including giving us access to and interviews with relevant persons.

You and your representatives must keep strictly confidential your alleged negligence unless disclosure is required by law.

You must produce the original of a document or documents if requested by us.

## **2. What you MUST NOT do if you know or believe you might have a Loss**

You must not take on any financial obligation, guarantee any payment, or pay out any money without our written authorisation. You must not make any statement or take any action admitting responsibility for a claim nor grant an extension of statutory or contractual time limit without our specific written consent.

## **3. Mutual Right of Recovery**

If we make payments under this Policy, any rights of recovery from other persons are ours. You agree not to waive or prejudice our rights before or after any claim. You must do whatever is reasonably necessary for us to obtain that recovery, including but not limited to preventing any recovery becoming time barred.

# Claims Expenses

The following Claims Expenses apply to the whole Policy.

## **1. Claims Expenses**

We agree to pay reasonable costs and expenses, including solicitor's fees, that you incur with our prior written approval. We will not pay any other expenses or charges you may incur unless we authorise them in advance and in writing. Payment for claims expenses is provided under this Policy, but our obligation to pay ends after the applicable Limit of Liability has been used up by the total amount paid for judgements, settlements, and/or claims expenses.

## **2. Defending Proceedings**

We will defend a proceeding or claim to which this Policy responds even if the proceeding is groundless or the claim is fraudulent. We have the right to adjust, investigate, negotiate and settle without your consent, or to otherwise litigate any proceeding or claim. We will pay all costs of investigating and defending the proceeding, including any interest on any judgment to which this Policy relates, provided that the amount does not exceed the applicable Limit of Liability for the section. We have the right to withdraw from continuing with the defence of a claim against you if all covered counts or causes of action are dismissed, struck out and/or withdrawn from any claim, arbitration, mediation or litigation. Unless otherwise prohibited by law, we have a right to withdraw from continuing with the defence of a claim against you and will not pay a claim after the applicable Limit of Liability has been used up by paying judgements, settlements, and/or claims expenses, including solicitor's fees, for any pending claim.

We may at any time pay you the appropriate limit of indemnity (after deduction of any sums already paid) or any lesser amount for which a claim or claims can be settled and thereupon we shall relinquish the control of such claims and be under no further liability in connection with it except for costs and expenses incurred prior to the date of payment.

Unless otherwise prohibited by law, we have the right to seek from you all claims expenses, including solicitors fees and any payment we make to you, if a claim or proceeding is ultimately found to be not covered or judgement is rendered only on non-covered grounds.

## **3. Legal Bonds/Security**

If required in a proceeding we are defending, we will pay appeal bonds or bonds or similar security to release property that is being used to secure maritime liens. However, we will only pay for bonds valued up to the applicable Limit of Liability and we have no obligation to apply for or furnish these bonds.

## DEFINITIONS

The following Definitions form part of this Policy.

|                                    |  |
|------------------------------------|--|
| <b>Accident</b>                    | Any unforeseen event or occurrence or a series of events or occurrences consequent upon or attributable to one original source or cause.   |
| <b>Bills of Lading</b>             | Airway bills, waybills, ocean or surface bills of lading, house bills of lading or house airway bills.   |
| <b>Bills of Lading Insured</b>     | Your Bills of Lading stated in the Schedule.   |
| <b>Business Activities</b>         | Activities carried out in the normal course of business  |
| <b>Business Activities Insured</b> | Business Activities carried out by you as specified in the Schedule and which may or may not be provided through sub-contractors.  |
| <b>Cargo</b>                       | Goods and/or merchandise, including anything used or intended to be used to pack or secure goods, carried and/or handled and/or warehoused for which you contract to provide services for reward, other than Transportation Equipment.   |
| <b>the Company</b>                 | The insurer, Vero Marine Insurance, an operating division of Vero Insurance NZ Ltd   |
| <b>Contract Conditions</b>         | Your consignment note, trading conditions, conditions of service, storage conditions, packing conditions, Declared Value conditions or Declared Terms conditions.  |
| <b>Contract Conditions Insured</b> | Your Contract Conditions stated in the Schedule.   |
| <b>Conveyance</b>                  | Any ship, barge, aircraft, vehicle or rail wagon used or intended to be used for the carriage of Cargo.  |
| <b>Deductible</b>                  | The first amount of any claim that you must pay and which is set out in each Section of the Schedule.  |
| <b>Employee</b>                    | Any person under a contract of service with you, any self-employed individual providing you with labour only, any individual hired to or borrowed by you.  |
| <b>Gross Receipts</b>              | All payments to you for insured services including those to agents and subcontractors in respect of services provided to your customers, but excluding customs duty, general sales tax or similar fiscal charges paid on behalf of customers.  |
| <b>Hazardous Material</b>          | Any goods listed within the current edition, including any addenda, of the International Maritime Dangerous Goods Code.  |
| <b>the Insured</b>                 | The Insured named in the Schedule, including specified Protected Persons.  |
| <b>Location Addresses</b>          | The address(es) stated in the Schedule which is (are) occupied by you as a warehouse.  |
| <b>Limit of Liability</b>          | <p>The most we will pay in respect of each Accident as specified in the Section or Sections of the Schedule regardless of the number of:</p> <ul style="list-style-type: none"><li>a) Protected persons; or</li><li>b) Claims made or proceedings brought; or</li><li>c) Persons or organisations making claims or bringing proceedings; or</li><li>d) Contracts entered into by you.</li></ul> <p>Note: if claims are made under more than one section, cover will be restricted to the Limit of Liability specified in each section.</p> |
| <b>Period of Insurance</b>         | The period stated in the Schedule or any subsequent renewal period as agreed. The time of commencement of this Policy shall be at 16.01 hrs NZST time on the commencement date shown in the Schedule and the expiry will be at 16.00 hrs NZST on the expiry date shown in the Schedule. These times to continue to apply to any subsequent renewal periods   |
| <b>Policy</b>                      | The Schedule; the Definitions and Interpretations; the General Conditions and Exclusions; the Claims Conditions and Expenses; the application or proposal; the broker's submission to insurers; and any Endorsement or Memorandum issued by us and forming part of this document or intended to form part of this document.  |

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| <b>Pollution</b>                | The emission, discharge, dispersal, release or escape of smoke, vapour, soot, dust, liquid, gas, petroleum substance or derivative, chemical or waste material into or upon land, sea, the atmosphere, any watercourse or body of water.   |
| <b>Protected Persons</b>        | <p>People and/or organisations identified in the proposal form and/or schedule which forms part of this Policy. Following is a list of protected persons, and a list of certain limitations of that protection.</p> <p>(a) <b>Individual</b> - If you are an individual named in the Schedule, you are protected only while conducting your business as a sole proprietor.</p> <p>(b) <b>Partnership or Joint Venture</b> - If you are a partnership or joint venture named in the Schedule, you are protected while conducting such business. Your business partners are protected only while conducting your business. However, we will not protect any person or organisation while conducting the business of a partnership or joint venture not named in the Schedule.</p> <p>(c) <b>Corporation</b> - If you are a corporation named in the Schedule, you are protected while conducting corporate business. Your officers and directors are protected only while acting within the scope of their duties or actual authority for you. However, we will not pay, cover, or defend any claim by any employees, shareholders, or other <i>representatives against you or your officers and/or directors</i>.</p> <p>(d) <b>Employees</b> - Except as modified or excluded by endorsement(s) to this Policy, your employees are protected while conducting your corporate business but only while they are acting within the scope of their duties or actual authority for you while conducting your business activities named in the Schedule as Business Activities Insured.</p> <p>(e) <b>Legal Representatives</b> - The heirs, executors, administrators, trustees, assigns, and legal representatives of each Insured are protected only while acting within the scope of their duties for you and while conducting your business activities named in the Schedule as Business Activities Insured</p> |
| <b>Schedule</b>                 | <p>The policy Schedule attached to this risk proposition, describing the particular details of the Insured, the risks insured, the amounts insured under the various Insured Items, and policy details.</p> <p>The information shown in the Schedule forms part of the insured policy terms and conditions.</p>  |
| <b>Subcontractor</b>            | Any person (other than an Employee) to whom property is entrusted for reward by you or on your behalf for the performance of the whole or part of the contract.  |
| <b>Terms and Conditions</b>     | All terms, conditions, endorsements, exceptions, exclusions, memoranda, notices, limits of liability, provisions and extensions contained in or added to this Policy.  |
| <b>Territorial Transit Area</b> | The area specified in the Schedule or section of the Schedule (being the complete geographical area in which you have cover under the Policy)  |
| <b>Theft Attractive Goods</b>   | <ul style="list-style-type: none"> <li>• Bottled perfumery</li> <li>• Bottled spirits</li> <li>• Computer equipment and/or accessories</li> <li>• Computer components (consisting of but not limited to system boards, memory boards, microchips, integrated circuits, microcontrollers, hard disks, disk drives, memory SIMMS, memory DIMMS, central processing units, CD ROM drives, PCMIA cards and similar electronic data processing equipment for use with computers and/or hardware and/or software and/or programs and/or electronic data processing equipment)</li> <li>• Jewellery and/or watches</li> <li>• Mobile, cellular, other portable telephone equipment and/or accessories</li> <li>• Non-ferrous base metals in sheet, bar, tube, ingot, coil, scrap or similar form</li> <li>• Precious metals and/or articles made of or containing precious metals (other than bullion)</li> <li>• Processed tobacco and/or tobacco products</li> <li>• Valuable Cargo (see definition below)</li> </ul>   |

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|----------------------------------|--|
| <b>Total Annual Policy Limit</b> | The most we will pay in respect of each Period of Insurance as specified in the Section or Sections of the Schedule regardless of the number of: <ul style="list-style-type: none"> <li>a) Protected persons; or</li> <li>b) Claims made or proceedings brought; or</li> <li>c) Persons or organisations making claims or bringing proceedings; or</li> <li>d) Contracts entered into by you.</li> </ul> |
| <b>Trailer</b>                   | Any trailer or semi-trailer.   |
| <b>Transportation Equipment</b>  | Any carrying or handling equipment incidental to your Business Activities Insured, including containers, flat racks, etc (refer also to General Exclusion 27).   |
| <b>Unattended</b>                | Where neither you nor any employee is in a position to keep the Cargo and/or Vehicle under constant surveillance and at the same time have a reasonable prospect of preventing any unauthorised interference with the Property and/or Vehicle.   |
| <b>Vehicle</b>                   | Any motor vehicle (other than motor cycles) or trailer used for the carriage of Cargo.   |
| <b>Valuable Cargo</b>            | Precious stones, plans, works of art, antiques, musical instruments and the like of any kind.  |
| <b>We, Us, Our and Ours</b>      | The insurer, Vero Marine Insurance, an operating division of Vero Insurance NZ Ltd   |
| <b>You, Your and Yours</b>       | The Insured named in the Schedule, including specified Protected Persons.  |

## INTERPRETATIONS

The following Interpretations form part of this Policy.

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| <b>May</b>   | "May" shall be construed as permissive.   |
| <b>Shall</b>   | "Shall" shall be construed as imperative.   |
| <b>Comparative, Superlative</b>                            | The comparative shall include the superlative.  |
| <b>Singular, Plural</b>                                    | Words referring to only the singular number shall include the plural number and vice versa.                                     |
| <b>Masculine, Feminine</b>                                 | Words referring to only the masculine gender shall include the feminine and neuter genders.                                     |
| <b>Persons, Companies, Associations, Bodies of Persons</b> | Words referring to persons shall include companies or associations or bodies of persons whether incorporated or unincorporated. |